

Complaint

IN THE MATTER OF
DONALD REICHGOTT, INDIVIDUALLY AND TRADING AS
AMERICAN NOVELTY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3260. Complaint, Nov. 4, 1937—Decision, Apr. 9, 1938

Where an individual engaged in sale and distribution of various articles of merchandise, including electric razors and pen and pencil sets, to wholesale dealers and jobbers—

Furnished push cards for distribution of such merchandise to ultimate consumer, wholly by lot or chance, under plan or scheme by which number selected by chance, as disclosed under disc, determined amount paid by player, and in which correct chance selection from card's list of feminine names of name corresponding to that disclosed under master seal after sale of chances, resulted in player's receiving, without further cost, article of merchandise specified on card, and in which those selecting certain indicated numbers also similarly received articles of merchandise, which various articles were of a greater value than cost of single push or punch, and normal retail prices of which were much in excess of such cost;

With result of supplying to and placing in hands of others, through practice of forwarding said cards, descriptive literature and instructions to members of public, means of conducting lotteries, in accordance with such plan, in sale of his merchandise, purchased, sold, and distributed by many, attracted by said method and element of chance involved in sale or distribution thereof, in preference to that offered and sold by competitors, who do not use same or equivalent method, and with effect of unfairly diverting to him trade and custom from said competitors, including many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and refrain therefrom, and do not use same or equivalent methods, and with tendency and capacity so to divert:

Held, That such acts and practices were all to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Donald Reichgott, individually and trading as American Novelty Company hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in

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said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style of American Novelty Company, with his principal office and place of business located at 1841 Broadway, New York, N. Y. He is now, and for several months last past has been, engaged in the sale and distribution of various articles of merchandise, including, among others, electric razors and pen and pencil sets, to wholesale dealers and jobbers and to members of the public located at points in the various States of the United States. Respondent causes and has caused such merchandise when sold to be transported from his principal place of business in New York City to purchasers thereof in the State of New York and in other States of the United States at their respective places of location. There is now, and has been for several months last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of and in selling and distributing the said merchandise, has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes by which said merchandise is distributed to the ultimate consumers wholly by lot or chance. Said devices and plans of merchandising consist of push cards, the use of which, in connection with the sale and delivery to the purchasing public, was and is substantially as follows: The push cards have a number of partially perforated disks, and when a push is made and the disk is separated from the card a number is disclosed. There are as many separate numbers as there are disks on the card, but the numbers are varied or assorted and are not arranged in numerical sequence. The number on said disks are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disk separated from the card. The price or terms of sale vary, depending upon the number obtained. Numbers from 1 to 10, inclusive, are free, and numbers from 11 to 35 pay in cents the amount of the number, and numbers over 35 pay 35 cents. Directly above each disk there is printed a girl's name, and the card has a space prepared for recording the name of each purchaser

of a disk opposite the corresponding girl's name. The card also has a master seal which, when removed exposes a girl's name corresponding to one of those appearing under said disks. The purchaser who pushed the disk corresponding to the name under the master seal is entitled to a specified article of merchandise, and the purchasers selecting certain indicated numbers also receive a specified article of merchandise. The name under the master seal is effectively concealed from purchasers and prospective purchasers until all sales have been made and the master seal removed. Purchasers who select names other than the name appearing under the master seal, or numbers other than those indicated as winning a prize, do not receive anything for their money other than the privilege of pushing a disk from said card. The said articles of merchandise are of a greater value than the cost of a single push from said card. The fact as to whether a customer receives his chance free or pays for the same, and the fact as to whether a purchaser receives a specified article of merchandise, is thus determined wholly by lot or chance. Other push cards furnished and distributed by respondent for use in the sale and distribution of his merchandise involve the same principle, but vary in detail.

PAR. 3. Respondent forwards his push cards, together with various descriptive literature and with instructions as to how to operate said push cards or explaining what to do in order to obtain said articles of merchandise, to various members of the public, and a substantial amount of such merchandise is sold or distributed by such persons by means of said push cards and in accordance with the instructions furnished by respondent. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who make or sell merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale or distribution thereof in the manner above described, and are thereby induced to buy and sell or distribute respondent's merchandise in preference to merchandise

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offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to, and does divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid acts and practices of respondent are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 4, 1937, issued, and thereafter served, its complaint in this proceeding upon Donald Reichgott, individually and trading as American Novelty Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and substitute therefor a substitute answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission, on the said complaint and the substitute answer, and the Commission, having duly considered the matter and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style of American Novelty Company, with his principal office and place of business located at 1841 Broadway, New York, N. Y. He is now, and for some time last past has been, engaged in the sale and distribution of various articles of merchandise, including, among others, electric razors and pen and pencil sets, to wholesale dealers and jobbers and to members of the public located at points in the various States of the United States. Respondent

causes and has caused such merchandise when sold to be transported from his principal place of business in New York City to purchasers thereof in the State of New York and in various other States of the United States at their respective places of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of and in selling and distributing the said merchandise, has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes by which said merchandise is distributed to the ultimate consumers wholly by lot or chance. Said devices and plans of merchandising consist of push cards, the use of which, in connection with the sale and delivery to the purchasing public, was and is substantially as follows: The push cards have a number of partially perforated discs, and when a push is made and the disc is separated from the card a number is disclosed. There are as many separate numbers as there are discs on the card, but the numbers are varied or assorted and are not arranged in numerical sequence. The numbers on said discs are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disc separated from the card. The price or terms of sale vary, depending upon the number obtained. Numbers from 1 to 10, inclusive, are free, and numbers from 11 to 35 pay in cents the amount of the number, and numbers over 35 pay 35 cents. Directly above each disc there is printed a girl's name, and the card has a space prepared for recording the name of each purchaser of a disc opposite the corresponding girl's name. The card also has a master seal, which, when removed, exposes a girl's name corresponding to one of those appearing above said discs. The purchaser who pushes the disc corresponding to the name under the master seal is entitled to a specified article of merchandise, and the purchasers selecting certain indicated numbers also receive a specified article of merchandise. The name under the master seal is effectively concealed from purchasers and prospective purchasers until all sales have been made and the master seal removed. Purchasers who select names other than the name appearing under the master seal, or numbers other than those indicated as winning a prize, do not receive anything for their money other than the privilege of pushing a disc from said

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card. The said articles of merchandise are of a greater value than the cost of a single push from said card. The fact as to whether a customer receives his chance free or pays for the same, and the fact as to whether a purchaser receives a specified article of merchandise, are thus determined wholly by lot or chance. Other push cards furnished and distributed by respondent for use in the sale and distribution of his merchandise involve the same principle, but vary in detail.

PAR. 3. Respondent forwards his push cards, together with various descriptive literature and with instructions as to how to operate said push cards or explaining what to do in order to obtain said articles of merchandise, to various members of the public, and a substantial amount of such merchandise is sold or distributed by such persons by means of said push cards and in accordance with the instructions furnished by respondent. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail prices thereof. Many persons, firms, and corporations who make or sell merchandise in competition with the respondent, as above found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale or distribution thereof in the manner above described, and are thereby induced to buy and sell or distribute respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of respondent, Donald Reichgott, individually and trading as American Novelty Company, are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Donald Reichgott, individually and trading as American Novelty Company, or trading under any other name, his agents, representatives and employees, in connection with the offering for sale, sale and distribution of electric razors, pen and pencil sets, and other articles of merchandise, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punch boards or other lottery devices for the purpose of enabling such persons to dispose of or sell such or similar products by the use thereof;

2. Mailing, shipping, or transporting to his agents or to distributors or to the members of the public, push or pull cards, punch boards or other lottery devices so prepared or printed as to enable said persons to sell or distribute such or similar products by the use thereof;

3. Selling or otherwise disposing of such or similar products by the use of push or pull cards, punchboards or other lottery devices.

It is further ordered, That, within 60 days from the date of the service of this order upon said respondent, he shall file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF
JOE LIEBOWITZ

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3282. Complaint, Dec. 13, 1937—Decision, Apr. 9, 1938

Where an individual engaged in the manufacture of ladies' undergarments and other allied products, and in sale and distribution of such undergarments to retail dealers and other customers in the various States—

Attached and sewed to certain of his aforesaid products a label bearing language "100% Pure Silk," notwithstanding fact that said products, thus represented, designated and referred to, were not composed of pure silk, product of the cocoon of the silk worm, and were not "pure silk," as long understood by retail trade and consuming public generally, i. e., products composed entirely of silk with no weighting material whatsoever, and, as such, regarded by trade and public generally as superior to and much preferred over silk products containing weighting, but were predominantly, or to a substantial degree, composed of non-silk weighting material;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous belief that said products were pure silk, and to cause them to purchase same as result of such belief, and with effect of unfairly diverting trade to him from competitors who do not resort to such methods and practices and do not misrepresent material from which their respective products are made:

Held, That such acts and practices were to the prejudice and injury of the public and of said competitors and constituted unfair methods of competition.

Mr. George W. Williams for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission; to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Joe Liebowitz, an individual, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Joe Liebowitz, is an individual with his office and principal place of business located at 1007 Chandler Avenue, Linden, N. J., and is engaged, and for many years last past has been engaged in the business of manufacturing ladies' undergar-