

## IN THE MATTER OF

IRWIN SCADRON, INDIVIDUALLY AND TRADING AS  
METROPOLITAN DISTRIBUTING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3219. Complaint, Aug. 28, 1937—Decision, July 14, 1938*

Where an individual engaged in sale and distribution of clocks, in soliciting sale and in selling and distributing same—

- (a) Furnished various devices and plans of merchandising involving operation of gift enterprises or lottery schemes and distribution of such clocks to ultimate users wholly by lot or chance, through push card devices or plans, in accordance with which plans, substantially, amount paid by purchaser, in no event in excess of 29 cents, was dependent upon number disclosed under particular girl's name selected from list thereof displayed on card, and under which chance selection of girl's name corresponding to that disclosed under master seal, after sale of chances had been exhausted, entitled maker of such selection to clock, without further charge or additional service, and under which person, salesman, agent, or representative soliciting purchases of chances as above described also received, without further charge or additional service, a clock, and all other chance purchasers received nothing other than privilege of selection from card;

With result of thus supplying to and placing in the hands of others means of conducting a lottery in the sale of his said products, in accordance with plan above set forth, contrary to public policy, long recognized in common law and criminal statutes, and to that of the United States Government, and with result that many persons, attracted by said method and element of chance involved, were induced to buy and sell his said clocks in preference to those offered and sold by competitors, many of whom are unwilling to adopt and use such or any method involving sale of a chance to win by chance, or any method contrary to public policy, and refrain therefrom, or do not use any such method, and with effect that trade and custom was thereby diverted to him from said competitors;

- (b) Falsely caused representations to be made to customers and prospective customers, through use of words "manufacturers," "representatives," and "distributors," that he was a manufacturer or direct representative or direct distributor of the manufacturer of the merchandise sold and distributed by him;

With effect of misleading and deceiving many of his said customers into the erroneous belief that he was the manufacturer, etc., as above set forth, and that persons dealing with him were making their purchases from the manufacturer or direct representative or distributor thereof, as preferred by a substantial portion of purchasing public as securing such purchasers lower prices, superior quality, and other advantages not had through purchase from jobbers and middlemen, and were eliminating the profits of latter and obtaining various advantages not had by purchasing goods from latter, and of unfairly diverting trade to him from competitors, many of

## Complaint

whom do not falsely represent themselves as manufacturers or direct representatives or distributors of manufacturers of their merchandise; and

- (c) Caused representation to be made to customers and prospective customers that said clocks had a retail value of \$5; facts being said amount was grossly exaggerated and purely fictitious;

With effect of misleading and deceiving many of his customers into erroneous belief that said products had such a value, and with result that substantial portion of purchasing public, relying on and believing said representation, were, by reason thereof, induced to purchase such articles, and with effect of unfairly diverting trade to him from competitors, many of whom do not falsely represent the value of their merchandise:

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

Before *Mr. William C. Reeves*, trial examiner.

*Mr. P. C. Kolinski* and *Mr. D. C. Daniel* for the Commission.

*Nash & Donnelly*, of Washington, D. C., for respondent.

## 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 Irwin Seadron, individually and trading as Metropolitan Distributing Co., 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 is an individual trading under the name and style of Metropolitan Distributing Co., with his principal office and place of business located at 416 West Erie Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of clocks in commerce between and among the various States of the United States. He causes and has caused said products when sold to be shipped or delivered from his place of business in the State of Illinois to purchasers thereof in Illinois and in other States of the United States at their respective points 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 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.

## Complaint

27 F. T. C.

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 clocks, has furnished various devices and plans of merchandising which involve the operation of gift enterprises or lottery schemes and a distribution of such clocks to the ultimate consumers thereof wholly by lot or chance. Said devices or plans of merchandising consist of a variety of push cards, the use of which, in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent, was and is substantially as follows:

The said push cards bear a number of girls' names. Concealed under each name is a number. Also, under a master seal there is a name corresponding to one of the names on the card. Prospective purchasers select one of the names and remove the same disclosing the number thereunder. Persons selecting numbers from 1 to 29 pay in cents the amount of such number, and persons selecting numbers over 29 pay 29 cents for the privilege of selecting one of the names. The push cards bear various legends informing purchasers and prospective purchasers of the plan or method by which said push card is operated and by which the clock described thereon is to be distributed. When all the names have been purchased the master seal is removed, and the person who has selected the name corresponding to the name under the master seal receives the clock described without further charge, and the person, salesman, agent, or representative soliciting purchases of chances, as above described, also receives a clock without further charge or additional service. The numbers under the names are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting one of the names until the selection has been made and the name removed. The name under the master seal is concealed from purchasers and prospective purchasers until all the names have been selected. Those customers selecting names which do not correspond to the name under the master seal receive nothing but the privilege of making a selection for the money which they pay. The purchasing public is thus induced and persuaded into purchasing pushes from said cards in the hope of selecting a prize-winning name and thus obtain a clock for a sum not in excess of 29 cents. The clocks are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customers pay for a chance is determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnishes said devices use the same in purchasing, selling, and distributing respondent's clocks in accordance with the aforesaid sales plan. Respondent thus

supplies to and places in the hands of others the means of conducting lotteries in the sale of his clocks in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his clocks, and the sale of such clocks by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States.

PAR. 4. The said clocks have a retail value greater than the cost of a single push, and the sale of said clocks to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a clock at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute such 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 thereof in the manner above described, and are thereby induced to buy and sell respondent's clocks in preference to clocks 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. In the course and conduct of his said business, respondent has caused and causes the representation to be made to his customers and prospective customers, by the use of the words "manufacturers," "representatives," and "distributors," that he is a manufacturer or a direct representative or a direct distributor of the manufacturer of the merchandise which he sells and distributes. A substantial portion of the purchasing public have expressed, and have, a preference for dealing direct with the manufacturer or his representative or his distributor of products being purchased, such purchasers believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from jobbers or middlemen. The use by respondent of said representations has the capacity and tendency to, and does, mislead and deceive many of respondent's said customers into the erroneous belief that respondent is the manufacturer or the direct representative or direct distributor of the manufacturer of the merchandise sold by respondent,

and that persons dealing with respondent are buying said merchandise from the manufacturer or the direct representative or the direct distributor of the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various advantages that are not obtained by persons purchasing goods from middlemen. The truth and fact is that respondent is not the manufacturer or the direct representative or the direct distributor of the manufacturer but purchases the clocks which he sells from middlemen, jobbers, or dealers. There are many competitors of respondent who do not falsely represent that they are the manufacturers or the direct representatives or the direct distributors of the manufacturers of the merchandise sold by them. The use of said representations by respondent has the tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors.

PAR. 6. In the course and conduct of his said business, respondent, in the sale of said clocks, has caused and causes the representation to be made to his customers and prospective customers that said clocks have a retail value of \$5. A substantial portion of the purchasing public, relying on and believing the said representation, are induced and have been induced to purchase said clocks because of said representation. The use by respondent of said representation has the capacity and tendency to, and does, mislead and deceive many of respondent's customers into the erroneous belief that said clocks have a retail value of \$5. The truth and fact is that said clocks do not have a reasonable retail value of \$5, but said amount is grossly exaggerated and purely fictitious. There are many competitors of respondent who do not falsely represent the value of the merchandise sold by them. The use of said representation by respondent has the tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors.

PAR. 7. The aforesaid methods, 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 August 28, 1937, issued and thereafter served its complaint in this proceeding upon the respondent,

Irwin Scadron, individually and trading as Metropolitan Distributing Co., 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 to file in lieu thereof his 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 being now 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. The respondent, Irwin Scadron, is an individual doing business under the trade name and style of Metropolitan Distributing Co. with his principal office and place of business located at 416 West Erie Street, Chicago, Ill. Prior to May 10, 1938, and for some time previous thereto, the respondent was engaged in the sale and distribution of clocks in commerce between and among the various States of the United States. He caused said products when sold to be shipped or delivered from his place of business in the State of Illinois to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There was for some time prior to May 10, 1938, a course of trade in commerce by said respondent in such merchandise between and among the States of the United States. In the course and conduct of said business respondent was 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 clocks has furnished various devices and plans of merchandising which involved the operation of gift enterprises or lottery schemes and a distribution of such clocks to the ultimate users thereof wholly by lot or chance. Said devices or plans of merchandising consisted of a variety of push cards, the use of which, in connection with the sale and delivery to the purchasing

public by the method or plan suggested by respondent, was substantially as follows:

The said push cards bore a number of girls' names. Concealed under each name was a number. Also, under a master seal there was a name corresponding to one of the names on the card. Prospective purchasers selected one of the names and removed the same disclosing the number thereunder. Persons selecting numbers from 1 to 29 paid in cents the amount of such number, and persons selecting numbers over 29 paid 29 cents for the privilege of selecting one of the names. The push cards bore various legends informing purchasers and prospective purchasers of the plan or method by which said push card was operated and by which the clock described thereon was to be distributed. When all the names had been purchased, the master seal was removed and the person who had selected the name corresponding to the name under the master seal received the clock described without further charge, and the person, salesman, agent, or representative soliciting purchases of chances, as above described, also received a clock without further charge or additional service. The numbers under the names were concealed from purchasers and prospective purchasers, and they did not know how much they would have to pay for the privilege of selecting one of the names until the selection had been made and the name removed. The name under the master seal was concealed from purchasers and prospective purchasers until all the names had been selected. Those customers selecting names which did not correspond to the name under the master seal received nothing but the privilege of making a selection for the money which they paid. The purchasing public was thus induced and persuaded into purchasing pushes from said cards in the hope of selecting a prize-winning name and thus obtain a clock for a sum not in excess of 29 cents. The clocks were thus distributed to the purchasing public wholly by lot or chance, and the amount which the customers paid for a chance was determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnished said devices used the same in purchasing, selling, and distributing respondent's clocks in accordance with the aforesaid sales plan. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of his clocks in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his clocks, and the sale of such clocks by and through the use of and by the aid of said method was and is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and was and is contrary to an established public policy of the Government of the United States.

PAR. 4. The said clocks have a retail value greater than the cost of a single push, and the sale of said clocks to the purchasing public in the manner above described involved a game of chance or the sale of a chance to procure a clock at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute such merchandise in competition with the respondent were and 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 was or is contrary to public policy, and such competitors have refrained therefrom. Many persons were attracted by respondent's said method and by the element of chance involved in the use thereof in the manner above described and were thereby induced to buy and sell respondent's clocks in preference to clocks offered for sale and sold by said competitors of respondent who did or do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, had the tendency and capacity to and did divert trade and custom to respondent from his said competitors who did not use the same or an equivalent method.

PAR. 5. In the course and conduct of his said business, respondent caused the representations to be made to his customers and prospective customers by the use of the words "manufacturers," "representatives," and "distributors," that he was a manufacturer or a direct representative or a direct distributor of the manufacturer of the merchandise which he sold and distributed. A substantial portion of the purchasing public have expressed, and have, a preference for dealing direct with the manufacturer, or the manufacturer's representative or distributor, of products being purchased, such purchasers believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from jobbers or middlemen. The use by respondent of said representations had the capacity to and did mislead and deceive many of respondent's said customers into the erroneous belief that respondent was the manufacturer or the direct representative or direct distributor of the manufacturer of the merchandise sold by respondent and that persons dealing with respondent were buying said merchandise from the manufacturer or the direct representative or the direct distributor of the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various advantages that were not obtained by purchasing goods from middlemen. The truth and fact was and is that respondent was and is not the manufacturer or the direct representative or the direct distributor of the manufacturer but purchased the clocks which he sold from middlemen, jobbers, or

dealers. There were and are many competitors of respondent who did not and do not falsely represent that they were and are the manufacturers or the direct representatives or the direct distributors of the manufacturers of the merchandise sold by them. The use of said representations by respondent had the tendency and capacity to and did unfairly divert trade to respondent from his said competitors.

PAR. 6. In the course and conduct of his said business, respondent in the sale of said clocks caused the representation to be made to his customers and prospective customers that said clocks had a retail value of \$5. A substantial portion of the purchasing public, relying on and believing the said representation were induced to purchase said clocks because of said representation. The use by respondent of said representation had the capacity and tendency to and did mislead and deceive many of respondent's customers into the erroneous belief that said clocks had a retail value of \$5. The truth and fact was and is that said clocks did not and do not have a reasonable retail value of \$5, but said amount was grossly exaggerated and purely fictitious. There were and are many competitors of respondent who did not and do not falsely represent the value of the merchandise sold by them. The use of said representation by respondent had the tendency and capacity to and did unfairly divert trade to respondent from his said competitors.

#### CONCLUSION

The aforesaid acts and practices of respondent are all to the 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 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, Irwin Scadron, individually and trading as Metropolitan Distributing Co., his agents, representatives, and employees in connection with the offering for sale, sale, and distribution of clocks or other articles of merchandise in inter-

state commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards or other lottery devices for the purpose of enabling such persons to dispose of or sell such articles of merchandise by the use thereof.

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

3. Selling or otherwise disposing of such articles of merchandise by the use of push cards or any other lottery devices.

4. Representing directly or indirectly that he is the manufacturer or the representative or the distributor for the manufacturer of the articles of merchandise which he sells when such is not the fact.

5. Representing directly or indirectly that the articles of merchandise which he sells or offers for sale have a retail value greatly in excess of the usual or normal retail value thereof.

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

## IN THE MATTER OF

## JANE ENGEL, INC., AND KALLMAN &amp; MORRIS, INC.

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

*Docket 3281. Complaint, Dec. 8, 1937—Decision, July 14, 1938*

Where a corporate retailer of dresses and other items of wearing apparel for women; in connection with offer and sale of certain dresses purchased by it for sale and distribution to retail stores and other customers in the various States, and bearing the trade name label of said manufacturer—

- (a) Represented, designated, and referred to said garments as "Silk Jersey" in advertising matter over and in connection with its name and in publications of interstate circulation; and

Where said manufacturer and said retailer—

- (b) Respectively advertised and caused to be advertised certain of its dresses in publications of interstate circulation as "Celanese Russian Eagle Satin," "Celanese Crepe," and "Celanese Taffeta," together with its aforesaid trade name, and purchased, resold, and delivered some of said dresses, thus labeled, to various customers in States other than State of origin of shipments thereof;

Facts being said dresses, fabrics of which closely simulated, and had the appearance of silk fabrics, long held in great public esteem for their preeminent qualities, were not made wholly of silk, product of the cocoon of the silk worm, as long associated in the public mind with words "Satin," "Crepe," and "Taffeta" used alone to designate or describe dress goods and other similar products, but were made wholly or in part of rayon, and word "Celanese" was not sufficiently understood by a substantial portion of purchasing public as only a trade name used in connection with certain rayon fabrics or to place such purchasers on notice that fabric thus designated was in fact rayon and not silk, even though used by a corporation of that name as a proprietary trade name to designate and describe its product and registered in Patent Office and employed by said manufacturer and retailer as correctly describing materials from which said dresses were made;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous belief that such dresses were made wholly from silk, product of the cocoon of the silkworm, and were not made in whole or part of rayon, and with capacity and tendency to divert trade to such manufacturer and retailer from their competitors, among whom there are those engaged in the sale of dresses who accurately describe and brand their products by terms properly descriptive of the fabric content thereof; to the substantial injury of such competitors in commerce between and among the several States and in the District of Columbia:

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

*Mr. George W. Williams* for the Commission.

*Mr. Henry W. Freeman*, of New York City, for Jane Engel, Inc.

*Daru, Hellman & Winter*, of New York City, for Kallman & Morris, Inc.