

IN THE MATTER OF

ROY B. DAVIS, INDIVIDUALLY AND TRADING AS GREAT LAKES NOVELTY COMPANY AND GREAT LAKES RADIO AND NOVELTY COMPANY¹

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

Docket 3323. Complaint, Feb. 3, 1938—Decision, July 21, 1938

Where an individual engaged in the sale and distribution of radios, washing machines, electric razors, other electrical appliances, and other articles of merchandise, in commerce among the various States and in the District of Columbia—

Sold said merchandise under a plan involving the sale of push card chances by operators compensated by premiums or prizes, and in accordance with which plan the number punched by chance determined the amount paid, if any, for his chance by the purchaser, and also whether or not by virtue of such chance selection of a number the person making such selection received certain merchandise, and in which chance selection of one of a large number of feminine names corresponding with name concealed under master seal, following sale of all chances, gave recipient choice of certain specified articles without further charge; and fact as to whether customer paid nothing or a sum of money ranging from 1 cent to 35 cents for article of merchandise included, value of which in any case exceeded said larger figure, or received nothing, and particular article received, were determined wholly by lot or chance; in violation of established public policy of United States, and contrary to criminal statutes of many of the States, and in competition with many who were unwilling to offer or sell their merchandise so as to involve game of chance, and refrained from so doing;

With result that many purchasers were attracted by element of chance involved in his said sales method, and thereby induced to buy his merchandise in preference to same or similar goods of competitors who do not use such or equivalent methods, and with tendency and capacity unfairly to divert to him, because of said game of chance, trade and custom from competitors who do not use such or equivalent methods, to exclude from said merchandise trade all competitors who are unwilling to, and do not, use same, lessen competition in said trade, tend to create a monopoly thereof in him and in such other competitors as use same or equivalent methods, and deprive purchasing public of benefits of free competition in said trade, and with tendency and capacity unfairly to eliminate therefrom all actual competitors, and exclude therefrom all potential competitors, who do not adopt and use such or any method involving game of chance or sale of chance thus to win merchandise, as contrary to public policy or criminal statutes as aforesaid, or as detrimental to public morals and to morals of purchasers:

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

¹ Through error respondent Roy H. Davis was named in the complaint as Roy B. Davis. See findings, *infra*, at p. 484.

Before *Mr. William C. Reeves*, 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 Roy B. Davis, individually, and trading as Great Lakes Novelty Co., and Great Lakes Radio and Novelty 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 Roy B. Davis is an individual doing business under the trade names and styles of Great Lakes Novelty Co. and Great Lakes Radio and Novelty Co., with his principal office and place of business located at 1737 Howard Street, Chicago, Ill. He is now, and for some time last past has been, engaged in the sale and distribution of radios, washing machines, electric razors, other electrical appliances, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused said products when sold to be shipped from his place of business in the State of Illinois to purchasers thereof, some located in the State of Illinois and others located in the various other States of the United States and in the District of Columbia. In the course and conduct of his business respondent is now, and for some time last past has been, in substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling his products in interstate commerce, has adopted and pursued and still continues the following methods and practices:

Respondent distributes to the public, through the United States mail in interstate commerce, certain literature and instructions, including paper push cards and order blanks and containing illustra-

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tions of his products, and circulars explaining respondent's plan of selling merchandise and of allotting it and other articles as premiums or prizes to the operators of the push cards. One of respondent's push cards bears 112 feminine names, with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 112 small, partially perforated discs marked "push," below each of which is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disc is a number, which is disclosed when the disc is pushed or separated from the card. The push card also has a large master seal, and concealed under this seal is one of the feminine names appearing on the reverse side of the card. The push card bears printed legends or instructions as follows:

PERSON SELECTING NAME UNDER SEAL RECEIVES
CHOICE OF ARTICLES

FOR 1¢ TO 35¢

FREE

Nos. 11—12—13—14

15—16—17—18—19

PAY NOTHING

Do not remove seal until entire card is sold.

4—EXTRA WINNERS—4

Nos. 23—33—43 and Last Sale

Each Receive

A GENUINE TARCO VACUUM PEN-PENCIL SET

\$2.50 Value

Numbers 1 to 35 Pay What You Draw

All Numbers over 35 Only Pay 35¢

NONE HIGHER

Write Purchasers Name on Back of Card—

Opposite Name Selected

U. S. Gov't tax of 10% has been paid
on this card

PUSH OUT DISC WITH PENCIL OR ANY POINTED OBJECT

Sales of respondent's products by means of said push cards are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The representative soliciting sales by means of said card receives a choice of certain specified articles of merchandise without further charge or additional service. The numbers under the discs are concealed from purchasers and

prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting a particular name, or whether the selection will be without charge, or what article of merchandise if any, they are to receive, until the selection has been made and the disc removed from the card. The name under the master seal is concealed from purchasers and prospective purchasers until all of the names have been selected and the discs removed from the card. The value of the various articles varies, but the retail value of each article is greater than 35 cents. The purchasing public is thus induced and persuaded to purchase pushes from said card in the hope of selecting a prize-winning name or number and thus obtaining an article of merchandise for a price of 35 cents or less, or without charge. The fact as to whether the customer pays nothing or a sum of money from 1 cent to 35 cents for an article of merchandise, and the fact as to whether a customer receives nothing or an article of merchandise, and the fact as to which article of merchandise the purchaser is to receive are determined wholly by lot or chance.

Respondent, in the sale and distribution of his said merchandise, has used various devices similar to the one hereinabove described and varying only in detail.

PAR. 3. Respondent, in selling his said merchandise in connection with the foregoing push cards, conducts lotteries or 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. The sale of respondent's said merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondent's merchandise, contrary to the established public policy of the United States, and contrary to criminal statutes of many of the States of the United States. By reason of said facts, many competitors of respondent are unwilling to offer for sale or sell their merchandise so as to involve a game of chance, and said competitors refrain therefrom. Many purchasers of said merchandise are attracted by the element of chance involved in respondent's sales method, as above described, and are thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors who do not use the same or equivalent methods.

PAR. 4. The use of said method by respondent has the tendency and capacity unfairly to divert to respondent, because of said game of chance, trade and custom from his competitors who do not use the same or equivalent methods, to exclude from said merchandise trade all competitors who are unwilling to, and who do not use the same or equivalent methods, to lessen competition in said trade, to tend to create a monopoly of said trade in respondent and in such other com-

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petitors as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by respondent has the tendency and capacity unfairly to eliminate from said trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the said method or any method involving a game of chance or the sale of a chance to win merchandise by chance because such method is contrary to public policy or to criminal statutes of certain of the States of the United States, or because they are of the opinion that such method is detrimental to public morals and to the morals of purchasers of said merchandise, or because of any other or all of such reasons.

PAR. 5. The aforesaid method, 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 February 3, 1938, issued and thereafter served its complaint in this proceeding upon the respondent Roy H. Davis, erroneously named in the complaint as Roy B. Davis, individually and trading as Great Lakes Novelty Co. and Great Lakes Radio and Novelty 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 the respondent filed an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and the answer of respondent, 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 Roy H. Davis (erroneously named in the complaint as Roy B. Davis) is an individual doing business under the trade names and styles of Great Lakes Novelty Co. and Great Lakes Radio and Novelty Co., with his principal office and

place of business located at 1737 Howard Street, Chicago, Ill. He is now, and for some time last past has been, engaged in the sale and distribution of radios, washing machines, electric razors, other electrical appliances, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped from his place of business in the State of Illinois to purchasers thereof, some located in the State of Illinois and others located in the various other States of the United States and in the District of Columbia. In the course and conduct of his business respondent is now, and for some time last past has been, in substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling his products in interstate commerce, has adopted and pursued and still continues the following methods and practices:

Respondent distributes to the public, through the United States mail in interstate commerce, certain literature and instructions, including paper push cards and order blanks and containing illustrations of his products, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of the push cards. One of respondent's push cards bears 112 feminine names, with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 112 small, partially perforated discs marked "push," below each of which is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disc is a number, which is disclosed when the disc is pushed or separated from the card. The push card also has a large master seal, and concealed under this seal is one of the feminine names appearing on the reverse side of the card. The push card bears printed legends or instructions as follows:

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FOR 1c TO 35c

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Nos. 11—12—13—14

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PAY NOTHING

Do not remove seal until entire card is sold.

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4—EXTRA WINNERS—4

Nos. 23—33—43 and Last Sale Each Receive

A GENUINE TARCO VACUUM PEN-PENCIL SET
\$2.50 Value

Numbers 1 to 35 Pay What You Draw

All Numbers over 35 only pay 35¢

NONE HIGHER

Write Purchaser's Name on Back of Card—
Opposite Name SelectedU. S. Gov't tax of 10% has been paid
on this cardPUSH OUT DISC WITH PENCIL OR ANY POINTED
OBJECT

Sales of respondent's products by means of said push cards are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The representative soliciting sales by means of said card receives a choice of certain specified articles of merchandise without further charge or additional service. The numbers under the discs are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting a particular name, or whether the selection will be without charge, or what article of merchandise, if any, they are to receive, until the selection has been made and the disc removed from the card. The name under the master seal is concealed from purchasers and prospective purchasers until all of the names have been selected and the discs removed from the card. The value of the various articles varies, but the retail value of each article is greater than 35 cents. The purchasing public is thus induced and persuaded to purchase pushes from said card in the hope of selecting a prize-winning name or number and thus obtaining an article of merchandise for a price of 35 cents or less, or without charge. The fact as to whether the customer pays nothing or a sum of money from 1 cent to 35 cents for an article of merchandise, and the fact as to whether a customer receives nothing or an article of merchandise, and the fact as to which article of merchandise the purchaser is to receive are determined wholly by lot or chance.

Respondent, in the sale and distribution of his said merchandise, has used various devices similar to the one hereinabove described and varying only in detail.

PAR. 3. The respondent, in selling his said merchandise in connection with the foregoing push cards, conducts lotteries or 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. The sale of respondent's said merchandise to the purchasing public as herein found involves a game of chance or the sale of a chance to procure respondent's merchandise, contrary to the established public policy of the United States, and contrary to criminal statutes of many of the States of the United States. By reason of said facts, many competitors of respondent are unwilling to offer for sale or sell their merchandise so as to involve a game of chance, and said competitors refrain therefrom. Many purchasers of said merchandise are attracted by the element of chance involved in respondent's sales method, and are thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors who do not use the same or equivalent methods.

PAR. 4. The use of said method by respondent has the tendency and capacity unfairly to divert to respondent, because of said game of chance, trade and custom from his competitors who do not use the same or equivalent methods, to exclude from said merchandise trade all competitors who are unwilling to, and who do not, use the same or equivalent methods, to lessen competition in said trade, to tend to create a monopoly of said trade in respondent and in such other competitors as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by respondents has the tendency and capacity unfairly to eliminate from said trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the said method or any method involving a game of chance or the sale of a chance to win merchandise by chance because such method is contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such method is detrimental to public morals and to the morals of purchasers of said merchandise.

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.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the 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, Roy H. Davis (erroneously named in the complaint as Roy B. Davis), individually and trading as Great Lakes Novelty Co. and Great Lakes Radio and Novelty Co., his agents, representatives, and employes, in connection with the offering for sale, sale, and distribution of radios, washing machines, electric razors, 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 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 such 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 device.

It is further ordered, That said respondent shall, within 60 days from the date of 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.

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IN THE MATTER OF

CELIA SARASIN, INDIVIDUALLY AND TRADING AS
UNIVERSAL ADVERTISERS SERVICE

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

Docket 3335. Complaint, Feb. 12, 1938—Decision, July 21, 1938

Where individual, engaged in sale and distribution of electric razors, pen and pencil sets, and other articles of merchandise in commerce, in soliciting, selling, and distributing said merchandise—

Furnished various devices and plans of merchandising, involving operation of games of chance, gift enterprises, or lottery schemes, through which such merchandise was distributed to ultimate consumers wholly by lot or chance, under sales plan pursuant to which, substantially, operators thereof, secured by her and compensated through receipt as premiums of articles of said merchandise, sell push card chances, number on which, secured by chance by person making selection, decides how much, if any, such person pays for chance, and whether or not such person receives article of merchandise also included, and chance selection of feminine name from large number displayed, corresponding with name concealed under card's large master seal, determines whether or not person receives article of merchandise announced as a prize for such selection;

With effect of thereby supplying to and placing in hands of others means of conducting lotteries in sale of her merchandise, in accordance with said plan, contrary to established public policy of the United States Government, and in violation of the criminal laws;

With result that many persons, attracted by said method and element of chance involved in sale of such articles, value of which exceeded cost of a chance, were induced to buy and sell such merchandise, in preference to that of competitors, many of whom are unwilling to adopt and use such a method, or any method involving a game of chance or sale of a chance to win by chance, or any method contrary to public policy, and refrain therefrom, and with effect of unfairly diverting custom and trade to her from her said competitors who do not use the same or an equivalent method:

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

Mr. D. C. Daniel 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 Celia