

Syllabus

IN THE MATTER OF
LEOPOLD SPIELDOCK AND SAMUEL FINEBERG, DOING
BUSINESS AS GOODYEAR ASSOCIATES
COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3475. Complaint, July 8, 1938—Decision, Aug. 25, 1938

Where two individuals, engaged as partners in sale of storm coats, bed comforters, steamer rugs, umbrellas, electric irons, and a variety of articles of merchandise to clubs, fraternal organizations, hospitals, charitable institutions, and associations, for resale or distribution to the purchasing public under their so-called "Club Plan," and in advertising, through printed cards, circulars, letters, and by personal solicitation, their said merchandise and their said plan, under which in each club the member whose name or number was drawn at weekly drawings received, without payment of further weekly dues for which members obligated themselves, one of articles of merchandise being thus distributed through said lottery scheme or gift enterprise, and thereby paid in accordance with such chance determination for particular articles concerned, value of which was greater than the payment of one, two, or three weeks' dues, but which were sold by said partner individuals to their customers for less than dues collected—

Sold and offered said various articles to aforesaid purchasers, along with said plan or method, and furnished therewith to such purchasers the necessary paraphernalia and materials for carrying the same into effect, and thus supplied to and placed in the hands of others means of conducting lotteries in the sale or distribution of their said merchandise in accordance with plan or method hereinabove set forth, and aided and abetted such various purchaser organizations, associations, and the like, through the furnishing of advertisements, circulars, cards, and paraphernalia, in thus disposing of their said products, in violation of the established public policy of the United States Government, and in competition with many who are unwilling to offer or sell their merchandise together with a sales plan or method involving a lottery scheme or gift enterprise and refrain therefrom;

With result that many associations, organizations, societies, and ultimate purchasers, attracted by said plan and method and element of chance involved in sale or distribution of merchandise, were thereby induced to buy articles sold and distributed by said individuals in preference to like articles offered and sold by competitors who do not use same or an equivalent method, and with tendency and capacity unfairly to divert to them trade and custom from their said competitors above set forth, exclude from said trade all competitors who are unwilling to and do not use such practice or method as unlawful, lessen competition in such trade, deprive purchasing public of benefit of free competition therein, and eliminate therefrom

Complaint

27 F. T. C.

all actual and exclude therefrom all potential competitors who do not adopt and use such or equivalent method:

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

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

Mr. Marvin Farrington, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Leopold Spiedock and Samuel Fineberg, individually, and as copartners doing business under the firm name and style Goodyear Associates, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the 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. The respondents are individuals doing business as a copartnership under the firm name and style Goodyear Associates, with their principal office and place of business located at 3543 Germantown Avenue, in the city of Philadelphia, State of Pennsylvania. Respondents are now and for some time last past have been engaged in the business of selling storm coats, zipper jackets, bed comforters, blankets, bedspreads, steamer rugs, table covers, sheets and pillow cases, umbrellas, overnight cases, electric irons, coffee makers, carving sets, electric toasters, cutlery sets, electric waffle irons, linen dinner sets, men's shirts, electric clocks, and various other articles of merchandise to clubs, fraternal organizations, hospitals, charitable institutions and associations for resale or distribution to the purchasing public. Respondents' customers are located in various States of the United States and in the District of Columbia, and respondents cause said products, when sold, to be transported from their place of business in the city of Philadelphia, State of Pennsylvania, to the purchasers thereof in other States of the United States and in the District of Columbia at their respective addresses. There is now and has been for some time last past a course of trade in commerce by said respondents in such articles of merchandise between and among the various States of the United States and in the District of Columbia. In the course and conduct of their business respondents are in competition with other partnerships, individuals, and with corporations engaged in the sale and distribution of similar or like 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 their business as described in paragraph 1 hereof, respondents have offered for sale and sold their said articles of merchandise to said purchasers, along with a sales plan or method by which the said articles of merchandise are to be resold or distributed to the purchasing public, and has furnished said purchasers the necessary paraphernalia and materials for carrying said sales plan or method into effect. Said sales plan or method involves the use of a lottery scheme or gift enterprise in the sale or distribution of said merchandise to the ultimate purchasers thereof. Respondents have advertised their said merchandise and their said sales plan or method by means of printed cards, circulars, letters, and by personal solicitation. The sales plan or method as suggested and advertised by respondents is substantially as follows:

The sales plan or method is described as the "Club Plan." Each club has a fixed number of members and each member of a club pays a fixed amount each week (sometimes 10 cents, sometimes 25 cents) for a period not to exceed a given number of weeks (sometimes 20, sometimes 25). At the end of the first week a drawing is held and the member whose name or number is drawn receives one of the articles of merchandise being distributed for the payment of one week's dues and such winner or member is then dropped from the club. Each succeeding week the same procedure is followed and thus one member receives an article of merchandise for the payment of 1 week's dues, another for the payment of 2 weeks' dues, another for the payment of 3 weeks' dues, and so to the end of the fixed period. At the end of the fixed period each remaining member receives one of the articles of merchandise but such members have paid their dues for each week for the full period. Thus by means of the sales plan or method offered by respondents, the amount which an ultimate purchaser pays for an article of merchandise is determined wholly by lot or chance. The said articles of merchandise have a value greater than the payment of 1, 2 or 3 weeks' dues but are sold by respondents to their customers for an amount less than the dues collected.

PAR. 3. The clubs, fraternal organizations, hospitals, charitable institutions, and other purchasers to whom respondents sell their said articles of merchandise expose the same for sale or distribution and sell or distribute the same to the purchasing public in accordance with the aforesaid sales plan or method. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale or distribution of their articles of merchandise in accordance with the sales plan or method hereinabove set forth. The purchasing public is induced and persuaded to purchase respondents' articles of merchandise in preference to similar articles of merchandise offered for

Complaint

27 F. T. C.

sale and sold by respondents' competitors because of said lottery scheme or gift enterprise.

PAR. 4. Respondents, by furnishing advertisements, circulars, cards, and paraphernalia, aid and abet organizations, associations, and the like, in disposing of respondents' merchandise by means of a lottery or gift enterprise, and the furnishing of such advertising material, circulars, cards, and paraphernalia has the effect of inducing such organizations and associations and the like to purchase respondents' merchandise and to distribute the same to the consuming public in accordance with such sales plan or method.

PAR. 5. The sale of merchandise to the purchasing public in the manner above alleged involves a lottery scheme or gift enterprise.

The use by respondents of said sales plan or method in the sale or distribution of their merchandise and the sale by and through the use thereof and by the aid of said sales plan or method is a practice of the sort which has long been contrary to an established public policy of the Government of the United States. The use by respondents of said sales plan or method has the tendency to unfairly hinder competition.

Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondents as above alleged are unwilling to offer for sale or sell their said merchandise together with a sales plan or method which involves a lottery scheme or gift enterprise as above alleged and such competitors refrain therefrom.

PAR. 6. Many associations, organizations, societies, and ultimate purchasers of merchandise are attracted by respondents' said sales plan or method and by the element of chance involved in the sale or distribution thereof in the manner above described and are thereby induced to purchase articles of merchandise sold and distributed by respondents in preference to like articles of merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said sales plan or method by the respondents has the tendency and capacity because of said lottery or gift enterprise unfairly to divert to respondents trade and custom from their said competitors who do not use the same or an equivalent method; to exclude from said trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said trade; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by the 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 said method or an equivalent method.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 8, 1938, issued, and thereafter served, its complaint in this proceeding upon the respondents Leopold Spieldock and Samuel Fineberg, individually, and as copartners doing business under the firm name and style Goodyear Associates, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 29, 1938, respondents, by their attorney, Marvin Farrington, filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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 respondents, Leopold Spieldock and Samuel Fineberg, are individuals doing business as a copartnership under the firm name and style Goodyear Associates, with their principal office and place of business located at 3543 Germantown Avenue, in the city of Philadelphia, State of Pennsylvania. Respondents are now and for some time last past have been engaged in the business of selling storm coats, zipper jackets, bed comforters, blankets, bedspreads, steamer rugs, table covers, sheets and pillow cases, umbrellas, overnight cases, electric irons, coffee makers, carving sets, electric toasters, cutlery sets, electric waffle irons, linen dinner sets, men's shirts, electric clocks, and various other articles of merchandise to clubs, fraternal organizations, hospitals, charitable institutions and associations for resale or distribution to the purchasing public. Respondents' customers are located in various States of the United States and in the District of Columbia, and respondents cause said products, when sold, to be transported from their place of business in the city of Philadelphia, State of Pennsylvania, to the purchasers thereof in other States of the United States and in the District of Columbia at their respective addresses. There

is now and has been for some time last past a course of trade by said respondents in such articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their business respondents are in competition with other partnerships and individuals and with corporations engaged in the sale and distribution of similar or like 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 their business as described in paragraph 1 hereof, respondents have offered for sale and sold their said articles of merchandise to said purchasers, along with a sales plan or method by which the said articles of merchandise are to be resold or distributed to the purchasing public, and have furnished said purchasers the necessary paraphernalia and materials for carrying said sales plan or method into effect. Said sales plan or method involves the use of a lottery scheme or gift enterprise in the sale or distribution of said merchandise to the ultimate purchasers thereof. Respondents have advertised their said merchandise and their said sales plan or method by means of printed cards, circulars, letters, and by personal solicitation. The sales plan or method as suggested and advertised by respondents is substantially as follows:

The sales plan or method is described as the "Club Plan." Each club has a fixed number of members and each member of a club pays a fixed amount each week (sometimes 10 cents, sometimes 25 cents) for a period not to exceed a given number of weeks (sometimes 20, sometimes 25). At the end of the first week a drawing is held and the member whose name or number is drawn receives one of the articles of merchandise being distributed for the payment of 1 week's dues and such winner or member is then dropped from the club. Each succeeding week the same procedure is followed and thus one member receives an article of merchandise for the payment of 1 week's dues, another for the payment of 2 weeks' dues, another for the payment of 3 weeks' dues, and so to the end of the fixed period. At the end of the fixed period each remaining member receives one of the articles of merchandise but such members have paid their dues for each week for the full period. Thus by means of the sales plan or method offered by respondents, the amount which an ultimate purchaser pays for an article of merchandise is determined wholly by lot or chance. The said articles of merchandise have a value greater than the payment of 1, 2 or 3 weeks' dues but are sold by respondents to their customers for an amount less than the dues collected.

PAR. 3. The clubs, fraternal organizations, hospitals, charitable institutions, and other purchasers to whom respondents sell their said

articles of merchandise expose the same for sale or distribution and sell or distribute the same to the purchasing public in accordance with the aforesaid sales plan or method. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale or distribution of their articles of merchandise in accordance with the sales plan or method hereinabove set forth. The purchasing public is induced and persuaded to purchase respondents' articles of merchandise in preference to similar articles of merchandise offered for sale and sold by respondents' competitors because of said lottery scheme or gift enterprise.

PAR. 4. Respondents, by furnishing advertisements, circulars, cards, and paraphernalia, aid and abet organizations, associations, and the like, in disposing of respondents' merchandise by means of a lottery or gift enterprise, and the furnishing of such advertising material, circulars, cards, and paraphernalia has the effect of inducing such organizations and associations and the like to purchase respondents' merchandise and to distribute the same to the consuming public in accordance with such sales plan or method.

PAR. 5. The sale of merchandise to the purchasing public in the manner above found involves a lottery scheme or gift enterprise.

The use by respondents of said sales plan or method in the sale or distribution of their merchandise and the sale of such merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of the sort which has long been contrary to an established public policy of the Government of the United States. The use by respondents of said sales plan or method has the tendency to unfairly hinder competition.

Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondents are unwilling to offer for sale or sell their said merchandise together with a sales plan or method which involves a lottery scheme or a gift enterprise and such competitors refrain therefrom.

PAR. 6. Many associations, organizations, societies, and ultimate purchasers of merchandise are attracted by respondents' said sales plan or method and by the element of chance involved in the sale or distribution thereof in the manner above described and are thereby induced to purchase articles of merchandise sold and distributed by respondents in preference to like articles of merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said sales plan or method by the respondents has the tendency and capacity because of said lottery or

Order

27 F. T. C.

gift enterprise unfairly to divert to respondents trade and custom from their said competitors who do not use the same or an equivalent method; to exclude from said trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said trade; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by the 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 said method or an equivalent method.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of respondents' 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

It is ordered, That the respondents, Leopold Spieldock and Samuel sion upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Leopold Spieldock and Samuel Fineberg, individually, and trading as Goodyear Associates, or trading under any other name, their agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of storm jackets, zipper jackets, bed comforters, blankets, bed spreads, steamer rugs, table covers, sheets, pillow cases, umbrellas, overnight cases, electric irons, coffee makers, carving sets, electric toasters, cutlery sets, men's shirts, electric waffle irons, linen dinner sets, and electric clocks or any other articles of merchandise in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Offering for sale and selling said merchandise to purchasers together with a sales plan or method involving the use of a lottery scheme, gift enterprise, or game of chance, by which said merchandise or other articles of merchandise are to be, or may be, resold to the purchasing public.

811

Order

2. Advertising by means of printed cards, circulars, letters, or by any other means, the sale of such merchandise under any plan involving the use of a lottery scheme, gift enterprise, or game of chance.

3. Aiding and inducing the purchasers of such merchandise to dispose of same by means of any lottery scheme, gift enterprise, or game of chance.

It is further ordered, That the respondents, and each of them, shall within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
SPRINGFIELD MILLING CORPORATION

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

Docket 3436. Complaint, May 21, 1938—Decision, Aug. 27, 1938

Where a corporation engaged in manufacture of flour and sale and distribution thereof to dealers—

Supplied dealer-purchasers with lithographed posters or lottery cards containing blank spaces for 50 signatures, and master seal, under which was concealed winning number entitling to clothes hamper particular consumer-purchaser who had selected and recorded thereon such number, and signature, and thereby supplied to and placed in the hands of others means of conducting lottery in sale of its said product, in accordance with aforesaid plan, contrary to established policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to offer or sell their products by such or any other method involving game of chance or lottery and refrain therefrom;

With result that many dealers in and ultimate purchasers of flour, attracted by said method of selling such product and by element of chance involved in sale thereof, were thereby induced to purchase its said product, thus sold by it, in preference to that offered and sold by aforesaid competitors who do not use same or equivalent methods, and with capacity and tendency, by reason of such scheme of chance, to divert to it trade and custom from such competitors, exclude from trade in question all competitors who are unwilling to and do not use such practice or methods as against public policy and unlawful, lessen competition in said trade and create a monopoly thereof in it and in such other distributors of flour as use same or similar or equivalent methods, and deprive purchasing public of benefits of free competition, and with capacity and tendency to eliminate from such trade all actual, and exclude therefrom all potential competitors, who do not adopt such or equivalent practice or methods:

Held, That such acts and practices were 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 the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Springfield Milling Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the 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: