

IN THE MATTER OF
PAULINE ROTHMAN, INDIVIDUALLY; AND TRADING AS
CROWN MAIL ORDER HOUSE

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

Docket 3540. Complaint, Aug. 17, 1938—Decision, Oct. 25, 1938

Where an individual engaged in the sale and distribution of electric lamps, cosmetics, hot water bottles, cutlery sets, clocks, and various other articles of merchandise, and in the distribution, in said connection, to representatives and prospective representatives of advertising literature, including sales circular designating number of items of merchandise and prices thereof—

- (a) Supplied to her representatives and prospective representatives, as part of sales circular aforesaid and opposite listing of items and prices of merchandise as above described, pull card for use in distribution and sale of products in question under a plan in accordance with which article of merchandise obtained and price paid therefor and value, or apparent value, secured, were determined by chance in accordance with item and price disclosed under tab selected, and person or representative operating card was compensated, after sale of all tabs or chances and remission of amounts, by premium, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of her merchandise, in accordance with aforesaid and other similar plans in varying detail, contrary to established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt game of chance to win by chance or any method contrary to public policy, and refrain therefrom;

With result that many were attracted by her said method and element of chance involved in sale of merchandise, offering opportunity to procure by chance article of merchandise at price much less than apparent normal retail price thereof, and thereby induced to buy and sell her said products in preference to those offered and sold by competitors who do not use such or equivalent method, and with effect, by reason thereof, of unfairly diverting trade and custom to her from competitors who do not use such or equivalent method; and

- (b) Made such false and deceptive and misleading statements in her advertising matter as "Pick Your Gift," "Now Everyone can get a Valuable Prize Absolutely Free," "Free Gift," "Extra Surprise Gift," "Amazing New Give-Away Plan Drops Gifts Right in Your Lap," facts being none of her so-called premiums or gifts were given away free or without cost, but were purchased either with labor of representatives, or prices thereof were included in those of other articles which representatives had to sell or procure sale of before they could obtain such so-called premiums or gifts, and, in a number of cases, certain money payments were required in addition to labor performed or services rendered;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such statements and representations were true, and into purchase of substantial quantities of her said products as a result thereof, and of unfairly diverting trade to her from competitor manufac-

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turers and distributors of like and similar products who do not make such false, deceptive and misleading statements and representations concerning the same:

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. 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 Pauline Rothman, individually, and trading as Crown Mail Order House, hereinafter referred to as respondent, has violated the provisions of 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. Respondent, Pauline Rothman, is an individual trading under the name of Crown Mail Order House, with her principal office and place of business located at 15 East Eighteenth Street, New York, N. Y. Respondent is now, and for some time last past has been, engaged in the sale and distribution of electric lamps, handkerchiefs, cosmetics, jewelry, hot-water bottles, kitchenware, cutlery sets, silverware, clocks, electric toasters, electric irons, cameras, clothing, sport goods, blankets, bedspreads, leather wallets, 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 or transported from her place of business aforesaid to purchasers thereof located in the various States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such 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 said business, respondent is and has been in competition with individuals and partnerships and with 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 and in the District of Columbia.

PAR. 2. In the course and conduct of her business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature including a sales cir-

cular. Respondent's merchandise is and has been distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induce members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributed various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise or lottery

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scheme. Such plan or method varies in detail, but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull cards use and have used the same in purchasing, selling and distributing respondent's merchandise 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 her merchandise, in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of her merchandise and the sales of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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 an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute 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 method which 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 of such merchandise in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or any equivalent method. The use of said method by respondent, because of said game of chance, has the capacity and tendency to, and does, unfairly divert trade and custom to respondent from her said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of her business, as hereinabove related, respondent causes and has caused various false, deceptive and misleading statements to appear in her advertising matter, as aforesaid, of which the following are examples, but are not all-inclusive:

Pick Your Gift

Now Everyone can get a Valuable Prize

Absolutely Free

Free Gift

Extra Surprise Gift

Amazing New Give-Away Plan Drops Gifts Right
in Your Lap.

Findings

27 F. T. C.

The effect of the foregoing false, deceptive and misleading statements or representations of the respondent in selling and offering for sale such items of merchandise as hereinabove referred to, is to mislead and deceive a substantial part of the purchasing public in the several States of the United States and in the District of Columbia, by inducing them to mistakenly believe that respondent gives away certain of her said articles of merchandise without cost to her said representatives.

PAR. 6. In truth and in fact none of respondent's so-called gifts or premiums are given away "free" but said so-called premiums or gifts, which are represented as being "free" to said representatives, are either purchased with labor by them or the prices of said so-called premiums or gifts are included in the prices of other articles of merchandise which said representatives must sell or procure the sale of before said so-called premiums or gifts can be procured by them. For a number of said so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered.

PAR. 7. The use by respondent of the false, deceptive, and misleading statements and representations aforesaid, has had and now has the capacity and tendency to mislead and deceive and has misled a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief. There are, among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and as a result thereof substantial injury is being done and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 17, 1938, issued and there-

after served its complaint in this proceeding upon respondent, Pauline Rothman, charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act. On September 19, 1938, the respondent filed her answer in which answer she admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to 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 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, Pauline Rothman, is an individual trading under the name of Crown Mail Order House, with her principal office and place of business located at 15 East Eighteenth Street, New York, N. Y. Respondent is now, and for some time last past has been, engaged in the sale and distribution of electric lamps, handkerchiefs, cosmetics, jewelry, hot water bottles, kitchenware, cutlery sets, silverware, clocks, electric toasters, electric irons, cameras, clothing, sporting goods, blankets, bed spreads, leather wallets, 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 or transported from her place of business aforesaid to purchasers thereof located in the various States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such 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 said business, respondent is and has been 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 and in the District of Columbia.

PAR. 2. In the course and conduct of her business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature including a sales circular.

Respondent's merchandise is and has been distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induce members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributed various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lot-

tery scheme. Such plan or method varies in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull cards use and have used the same in purchasing, selling, and distributing respondent's merchandise 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 her merchandise, in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of her merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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 an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute 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 method which 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 of such merchandise in the manner above described, and are thereby induced to buy and sell 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 capacity and tendency to, and does, unfairly divert trade and custom to respondent from her said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of her business, as hereinabove related, respondent causes and has caused various false, deceptive and misleading statements to appear in her advertising matter, as aforesaid, of which the following are examples, but are not all-inclusive:

Pick Your Gift

Now Everyone can get a Valuable Prize

Absolutely Free

Free Gift

Extra Surprise Gift

Amazing New Give-Away Plan Drops Gifts Right
in Your Lap.

Conclusion

27 F. T. C.

The effect of the foregoing false, deceptive, and misleading statements or representations of the respondent in selling and offering for sale such items of merchandise as hereinabove referred to, is to mislead and deceive a substantial part of the purchasing public in the several States of the United States and in the District of Columbia, by inducing them to mistakenly believe that respondent gives away certain of her said articles of merchandise without cost to her said representatives.

PAR. 6. In truth and in fact none of respondent's so-called gifts or premiums are given away "free" but said so-called premiums or gifts which are represented as being "free" to said representatives, are either purchased with labor by them or the prices of said so-called premiums or gifts are included in the prices of other articles of merchandise which said representatives must sell or procure the sale of before said so-called premiums or gifts can be procured by them. For a number of said so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered.

PAR. 7. The use by respondent of the false, deceptive, and misleading statements and representations aforesaid, has had and now has the capacity and tendency to mislead and deceive and has misled a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and as a result thereof substantial injury is being done and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent as herein found are all to the prejudice and injury 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 answer of respondent, in which answer respondent admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Pauline Rothman, individually and trading as Crown Mail Order House, or trading under any other name, her representatives, agents, or employees, in connection with the offering for sale, sale, and distribution of electric lamps, handkerchiefs, cosmetics, jewelry, hot water bottles, kitchenware, cutlery sets, silverware, clocks, electric toasters, electric irons, cameras, clothing, sporting goods, blankets, bedspreads, and leather wallets, or any 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 pull cards or circulars having pull tabs thereon or other lottery devices for the purpose of enabling such persons to dispose of or sell such merchandise by the use thereof;

2. Mailing, shipping, or transporting to her agents or to dealers or to members of the public pull cards or circulars having pull tabs thereon or other lottery devices so prepared or printed as to enable said persons to sell or distribute such merchandise by the use thereof;

3. Selling or otherwise disposing of such merchandise by the use of pull cards or circulars having pull tabs thereon or any other lottery device;

4. Representing directly or indirectly that her merchandise is distributed free or without cost when such is not the fact.

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

IN THE MATTER OF

PITTSBURGH PLATE GLASS COMPANY ET AL.

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

Docket 3491. Complaint, July 14, 1938—Decision, Dec. 2, 1938

Where various corporations, individuals, and organizations engaged or concerned in distribution and sale of glass and glazing contracting business in St. Louis trade area, namely—

- (1) A corporation engaged in manufacturing glass and in selling and distributing same, and in conducting glass glazing contracting business throughout that part of the United States east of the Rocky Mountains, with manufacturing plants in 5 States and with some 70 warehouses or jobbing branches in many different States through which it sold and distributed its glass to dealers, and including among such jobbing branches 1 in city of St. Louis through which it sold and distributed its products in St. Louis trade area and conducted its glazing contracting business therein; (2) a second concern engaged in sale and distribution of said product and in said glazing contracting business in various States, and with 5 jobbing branches in different States, including St. Louis branch, through which latter it sold and distributed said product in aforesaid trade area and conducted its said glazing contracting business therein; and, (3) and (4), two others similarly engaged in aforesaid glazing contracting business and in sale and distribution of such products in aforesaid area; and, as incident to their said businesses, engaged, in case of all 4, in obtaining or purchasing glass from the various manufacturers with their factories in many different States and causing same to be transported from States of origin to State of Missouri, and in reselling same to dealers, processors, and users in said State and in Illinois, and, in some cases, in other States in trade area adjacent thereto, and in contracting for supply and installation of glass in buildings and structures in said St. Louis trade area and in supplying and installing glass in such structures therein, and, as thus variously engaged, in competition with one another in sale of glass in glazing contracting business in area in question, except insofar as their competition had been hindered, restricted or restrained, or potential competition in said glazing business among them forestalled, by said practices and policies below set forth, and in competition with other distributors likewise competitively engaged with one another in businesses and area aforesaid, except insofar as said competition had been hindered, etc., as hereinbefore described, by practices and policies involved;

Four individuals, managers, or officers of said four corporate distributors, in charge of said concerns' St. Louis branches or businesses serving area in question;

Secretary of the Southwest Division of the National Glass Distributors' Association, employed by such distributors on a part time basis (1) to police glazing contracting jobs in the St. Louis trade area to secure strict adherence