

Complaint

27 F. T. C.

IN THE MATTER OF
WALTER C. ELLY TRADING AS THE POSTAL COMPANY

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

Docket 3574. Complaint, Aug. 31, 1938—Decision, Dec. 7, 1938

Where an individual engaged in sale and distribution, among other things, of books and booklets dealing with fortune telling, dream interpretation, and kindred subjects, to members of the purchasing public in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of books, booklets, and other literature dealing with subjects like and similar to those for which he recommended use of his said products, and including those who do not in any manner misrepresent the nature, merit, and value of their said books, booklets, and literature and make any other false statements in connection with sale and distribution thereof—

Represented that such books and booklets would enable the reader thereof to solve accurately and truthfully their most intimate and personal problems, tell their fortunes, and interpret their dreams, and take the guesswork out of life, and correctly advise the readers thereof how to win a husband and what they could and could not do in order to obtain happiness and success in life, through such statements as "reveals the art of fortune telling by cards, dice, and dominoes," "sure guide to lucky dreams and lucky policy numbers," "how to win a husband—win the man you want," "* * * win him for yourself in spite of all obstacles. The simple clear directions in this book tell you how," etc., facts being they would not bring about such results, and said representations were grossly exaggerated, misleading, and untrue;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said false statements, representations, and advertisements were true, and that said books and booklets were effective in aiding the reader thereof to solve the problems of life as above set forth, and of causing substantial portion of such public, because of such erroneous and mistaken belief, to purchase substantial quantities of his said products, and of thereby diverting unfairly trade to him from his competitors in commerce who truthfully advertise and represent the merit and value of their books, booklets, and other literature:

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

Mr. Joseph C. Fehr 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 Walter C. Elly, an individual trading as The Postal Co., 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:

PARAGRAPH 1. Respondent, Walter C. Elly, is an individual trading as The Postal Co., with its principal office and place of business located at 25 Vanderbilt Avenue, in the city of New York, in the State of New York. Respondent is now, and has for some months last past been, engaged in the sale and distribution, among other things, of booklets dealing with the subjects of fortune telling, dream interpretation, and kindred subjects. Said booklets are variously entitled "Fortune Telling with Cards, Dice, and Dominoes," "Aunt Sally's Policy Players' Dream Book," "Napoleon's Dream Book," and "How to Win a Husband."

When said booklets are sold, respondent transports same from his place of business in the State of New York to the purchasers thereof located at points in the various States of the United States other than the State of New York and in the District of Columbia. There is now, and has been at all times herein mentioned, a course of trade in said booklets so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia. Respondent is now, and for some months last past has been, engaged in substantial competition with other individuals and with partnerships, firms, and corporations engaged in the sale and distribution of books and booklets dealing with like and similar subjects, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in the course and conduct of his business, as aforesaid, and in soliciting the sale of and in selling said booklets, and for the purpose of creating a demand upon the part of the purchasing public for said booklets, now causes, and for some months last past has caused, advertisements to be published, issued, and circulated to and among the general public of the United States in various newspapers having interstate circulation and in other forms of printed matter, and in other ways. In said ways and by said means respondent makes, and has made, to the general public many unfair, false, and misleading statements with reference to the alleged merit and value of said booklets, a portion of which are as follows:

FORTUNE-TELLING WITH CARDS, DICE, and DOMINOES

* * * this book reveals the art of fortune-telling by cards, dice, and dominoes. * * *

Price only-----50¢

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AUNT SALLY'S POLICY-PLAYERS' DREAM BOOK

This book is a Sure Guide to Lucky Dreams and Lucky Policy Numbers. It gives you the true Interpretation of Dreams * * * Do you dream of love or gold, or of friendship, or of foes, or of life, or of death? This book will explain everything clearly to you. * * *

Price Only-----50¢

NAPOLEON'S DREAM BOOK

* * * contains full, plain, and accurate explanations of fortune-telling by DREAMS, VISIONS, and REVERIES. * * *

Price Only-----50¢

HOW TO WIN A HUSBAND

WIN
THE MAN
YOU WANT

HOW MUCH WOULD YOU PAY FOR THE LOVE OF THE MAN YOU WANT?

* * * THEN DON'T SIT BACK AND LET THE OTHER GIRL HAVE HIM. Win him for yourself in spite of all obstacles. The simple clear directions in this book tell you how.

* * * * *

But a few spare minutes of your time and all these secrets of power are yours, POWER WHICH YOU NEVER DREAMED YOU POSSESSED—POWER BY WHICH YOU CAN WIN AND HOLD ANY OR ALL MEN!

ONLY ONE DOLLAR * * *

PAR. 3. The statements and representations set forth in paragraph 2 hereof, and many others similar thereto, have the capacity and tendency to mislead and deceive, and do mislead and deceive, purchasers and prospective purchasers of respondent's said booklets into the erroneous belief that said booklets will enable readers to accurately and truthfully answer their most intimate and personal problems, tell their fortunes, interpret their dreams, take the guesswork out of life, correctly advise them what they can do or what they cannot do in order to have happiness and success in life, and how to win a husband.

In truth and in fact the representations made by respondent as to the value and effectiveness of said booklets in arriving at an adequate solution of life's manifold problems, are grossly exaggerated, deceptive, misleading, false, and untrue. Said booklets will not enable readers to accurately and truthfully answer their problems, tell their fortunes, interpret their dreams, take the guesswork out of life, correctly advise them what they can do or what they cannot do in order to have happiness and success in life, and how to win a husband.

PAR. 4. There are among the competitors of the respondent in commerce, as herein set out, sellers and distributors of books and booklets

upon like and similar subjects, who truthfully advertise and represent the nature, merit, and value of such books and booklets.

PAR. 5. The acts and practices of respondent as above alleged have the capacity and tendency to mislead and deceive, and do mislead and deceive, purchasers and prospective purchasers into the erroneous belief that respondent's representations set out herein are true and into the purchase of respondent's said booklets on account of such belief. Thereby trade is unfairly diverted to respondent from those competitors referred to in paragraph 4 hereof. As a consequence thereof substantial injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices 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 the 31st day of August 1938, issued and served its complaint in this proceeding upon respondent, Walter C. Elly, an individual, trading as The Postal Co., charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 17th day of September A. D. 1938, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in such 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 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. Respondent Walter C. Elly is an individual trading as The Postal Co. and having his office and principal place of business at 25 Vanderbilt Avenue, in the city of New York, State of New York. Respondent is now, and has been for a number of months last

past, engaged in the sale and distribution, among other things, of books and booklets which deal with fortune telling, dream interpretation, and kindred subjects. Respondent sells said books and booklets to members of the purchasing public situated in various States of the United States and in the District of Columbia, and causes said books and booklets, when sold by him, to be transported from his aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States, other than the State of New York, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said books and booklets among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other individuals and with firms, partnerships, and corporations selling and distributing books, booklets, and other literature dealing with like and similar subjects for which the respondent recommends the use of his books and booklets. Among such competitors in said commerce are many who do not in any manner misrepresent the nature, merit, and value of their books, booklets, and literature, and who do not make any other false statements in connection with the sale and distribution of their books, booklets, and literature.

PAR. 3. In the course and conduct of his said business and for the purpose of inducing the purchase of his said books and booklets, the respondent has caused false advertisements containing representations and claims with respect to said books and booklets, and of their effectiveness and value in aiding the readers thereof to solve many of the problems of life, to be disseminated in commerce through the use of advertisements in newspapers, publications, and other printed matter having a circulation among and between the various States of the United States and through other means. Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

FORTUNE-TELLING WITH CARDS, DICE and DOMINOES

* * * this book reveals the art of fortune-telling by cards, dice and dominoes. * * *

Price only----- 50¢

AUNT SALLY'S POLICY-PLAYERS' DREAM BOOK

This book is a Sure Guide to Lucky Dreams and Lucky Policy Numbers. It gives you the true Interpretation of Dreams * * * Do you dream of love or gold, or of friendship, or of foes, or of life, or of death? This book will explain everything clearly to you. * * *

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Price only----- 50¢

HOW TO WIN A HUSBAND—WIN THE MAN YOU WANT

HOW MUCH WOULD YOU PAY FOR THE LOVE OF THE MAN YOU WANT?

* * * THEN DON'T SIT BACK AND LET THE OTHER GIRL HAVE HIM. Win him for yourself in spite of all obstacles. The simple clear directions in this book tell you how.

* * *
But a few spare minutes of your time and all these secrets of power are yours. POWER WHICH YOU NEVER DREAMED YOU POSSESSED—POWER BY WHICH YOU CAN WIN AND HOLD ANY OR ALL MEN!

ONLY ONE DOLLAR * * * *

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto, not herein set out, all of which purport to be descriptive of the effectiveness and value of respondent's books and booklets in aiding the readers thereof to solve many of the problems of life, respondent has represented, directly and by implication, among other things, that said books and booklets will enable the readers thereof to accurately and truthfully solve their most intimate and personal problems, tell their fortunes, interpret their dreams, take the guesswork out of life and that said books and booklets will correctly advise the readers thereof what they can or cannot do in order to obtain happiness and success in life and how to win a husband.

PAR. 5. The aforesaid representations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading, and untrue and constitute false advertisements. In truth and in fact said books and booklets will not enable the readers thereof to accurately and truthfully solve their problems, tell their fortunes, interpret their dreams, take the guesswork out of life and said books and booklets will not correctly advise the readers thereof

what they can or cannot do in order to obtain happiness and success in life and how to win a husband.

PAR. 6. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said books and booklets has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that said books and booklets are effective in aiding the readers thereof to solve the problems of life, as aforesaid, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said books and booklets. As a result, trade has been diverted unfairly to the respondent from his competitors in said commerce who truthfully advertise and represent the merit and value of their books, booklets, and other literature.

CONCLUSION

The aforesaid acts and practices of respondent are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices 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 admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to the 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, Walter C. Elly, an individual, trading as The Postal Co., or under any other trade name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of his books and booklets in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, that said books and booklets will enable the readers thereof to accurately and truthfully solve their

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most intimate and personal problems, tell their fortunes, interpret their dreams, and take the guesswork out of life;

2. Representing, directly or indirectly, that said books and booklets will correctly advise the readers thereof how to win a husband and what they can and cannot do in order to obtain happiness and success in life;

3. Making any other representations of the same or similar tenor and meaning:

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

IN THE MATTER OF

JULEP BOTTLING COMPANY, INC.

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

Docket 3583. Complaint, Sept. 13, 1938—Decision, Dec. 7, 1938

Where a corporation engaged in sale and distribution of soda water, including certain bottle assortments thereof, so arranged and assembled as to constitute a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and including assortment which consisted of 24 bottles with numbers from 1 to 24 printed on inside of crowns thereof, for sale under a plan in accordance with which purchaser receiving bottle, crown of which contained number 7 or number 11 printed on inside, received additional bottle without further charge—

Sold to dealers, for display and resale by retailer-purchasers thereof to purchasing public, in accordance with aforesaid sales plan, such soda water, and thereby supplied to and placed in the hands of others means of conducting a lottery in the sale of its products, in accordance with aforesaid plan or method, involving game of chance or sale of a chance to procure additional bottle without additional cost, contrary to an established public policy of the United States Government, and in violation of the criminal laws, and in competition with many sellers and distributors of such products who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win by chance, or any other method contrary to public policy, and refrain therefrom;

With result that many were attracted by said plan or method employed in sale and distribution of its products because of element of chance involved therein, and thereby induced to buy and sell such products in preference to those offered and sold by competitors who do not use same or equivalent plan or method, and with tendency, because of said game of chance, to, and effect of, diverting trade unfairly to it from its said competitors who do not use such or equivalent sales plan or method; to the substantial injury of competition in commerce:

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.

Mr. Cecil D. Quillen, of Gate City, Va., for respondent.

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 Julep Bottling Co., Inc., a corporation, 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