

Complaint

IN THE MATTER OF

S. C. ROSS DOING BUSINESS AS IDEAL GIFT COMPANY

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

Docket 3205. Complaint, Aug. 16, 1937—Decision, Jan. 25, 1939

Where an individual engaged in offer, sale, and distribution of various articles of merchandise, including rotary clocks, fountain pen sets, and fountain pen and pencil combinations, to purchasers in the various States, in soliciting sale of and selling and distributing said products—

Furnished various types of merchandising plans which involved operation of games of chance, gift enterprises, or lottery schemes for distribution thereof to consumers wholly by lot or chance, and consisted of certain literature and circular letters together with paper push cards, order blanks, and advertisements depicting his aforesaid merchandise, for use in offer and sale thereof by operators of said cards under scheme in accordance with which persons paid for chance secured varying amount in accordance with number revealed by particular disk selected and punched, and person purchasing chance received article of merchandise being thus disposed of in accordance with his selection of, or failure to select, feminine name corresponding with that concealed under card's master seal, and other article in accordance with success or failure in securing from cards certain number, and others secured nothing other than privilege of making selection for money paid, and thereby conducted lotteries in sale and distribution of his said products, and placed in hands of others means of conducting lotteries in sale thereof, contrary to the common law and criminal statutes and to an established public policy of the United States Government, and in competition with many engaged in sale and distribution in similar commerce of like and similar articles of merchandise who do not sell the same through use of lotteries or games of chance;

With result that many purchasers of his said products were attracted by games of chance involved in his said sales method and thereby induced to purchase his merchandise in preference to same or similar goods of competitors who did not and do not use same or equivalent method, and thereby substantial volume thereof was bought by public and trade was unfairly diverted to him from competitors aforesaid:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the

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Federal Trade Commission having reason to believe that S. C. Ross, individually and trading as the Ideal Gift Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style of the Ideal Gift Co., with his principal office and place of business located in Room 825, Garrick Building, 64 West Randolph Street, Chicago, Ill. He is now, and for some time last past has been, engaged in the sale and distribution of various articles of merchandise, including among others, rotary clocks, fountain pen sets, and fountain pen and pencil combinations, in commerce between and among the various States of the United States. He causes and has caused said products when sold to be transported from his principal place of business in the State of Illinois to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise as he is selling or distributing between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent in soliciting the sale of and in selling and distributing the said merchandise has furnished various devices and plans of merchandising which involve the operation of gift enterprises or lottery schemes and a distribution of such merchandise to the ultimate consumers thereof wholly by lot or chance. Said devices or plans of merchandising consist of a variety of push cards, the use of which, in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent, was and is substantially as follows:

The said push cards bear a number of girl's names, concealed under each name is a number. Also, under a master seal there is a name corresponding to one of the names on the card. Prospective purchasers select one of the names and remove the same disclosing the number thereunder. Persons selecting numbers from 1 to 29 pay in cents the amount of such number, and persons selecting numbers over 29 pay 29 cents for the privilege of selecting one of the names. The push cards bear various legends informing purchasers and prospective purchasers of the plan or method by which said push card is operated

and by which the merchandise described thereon is to be distributed. When all the names have been purchased the master seal is removed, and the person who has selected the name corresponding to the name under the master seal receives the article of merchandise described without further charge, and the person, salesman, agent, or representative soliciting purchases of chances, as above described, also receives an article of merchandise without further charge or additional service. The numbers under the names are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting one of the names until the selection has been made and the name removed. The name under the master seal is concealed from purchasers and prospective purchasers until all the names have been selected. Those customers selecting names which do not correspond to the name under the master seal receive nothing but the privilege of making a selection for the money which they pay. The said articles of merchandise vary in value, but each of said articles of merchandise is of a greater value than the cost of a single push from said push card. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customers pay for a chance is determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnished said devices use 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 his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his 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 the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States.

PAR. 4. The 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 articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who make or sell merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy and sell respondent's merchandise in

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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 tendency and capacity to, and does, divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. 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 August 16, 1937, issued, and on August 18, 1937, served its complaint in this proceeding upon the respondent, S. C. Ross, individually and trading as Ideal Gift 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 the said complaint, testimony, and other evidence in support of the allegations of the complaint were introduced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by John A. Nash, attorney for the respondent, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and the said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and other evidence, briefs in support of the complaint, respondent not having filed brief and oral argument not having been requested; 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 S. C. Ross is an individual trading under the name and style of Ideal Gift Co. with his principal office and place of business located at 64 West Randolph Street, city of Chicago, State of Illinois.

Respondent is now, and for some time last past has been, engaged in the business of offering for sale, selling, and distributing various articles of merchandise, including, among others, rotary clocks, fountain pen sets, and fountain pen and pencil combinations to purchasers thereof located in the various States of the United States.

Respondent causes said merchandise, when sold, to be transported from his place of business in the State of Illinois to the purchasers thereof located at various points in the States of the United States other than the State from which said shipments are made.

Respondent is now, and has been, in substantial competition with other individuals and with partnerships and with corporations likewise engaged in the sale and distribution of similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In soliciting the sale of and selling and distributing his merchandise, respondent furnishes various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is distributed to the consumers wholly by lot or chance.

The methods used by respondent to sell his merchandise are as follows:

Respondent distributes to the public certain literature and circular letters together with paper push cards. Along with the foregoing, respondent also encloses order blanks and advertisements which contain illustrations or pictures of his merchandise. The circulars enclosed by respondent set forth respondent's plan of selling the merchandise and of allocating it as premiums or prizes to the operators of the push cards.

In said circulars, respondent refers to the enclosed push card as a "sales card."

One of respondent's circulars contains the following:

THE PLAN

The Salescard, you will notice, has an illustration of this recently invented clock. The person selecting the name corresponding with the name under the large seal will receive one of these new Venus Rotary Clocks. The person selecting number 33 receives a beautiful Fountain Pen Desk Set, useful for home and office.

You Also Will Receive One of These Clocks Absolutely Free for Disposing of This Salescard.

The numbers on the Salescard are extremely low priced. Persons selecting numbers from 1 to 29 pay what they draw and those selecting numbers over 29 pay only 29¢—No More.

Upon completion of this card, fill in and mail us the enclosed order blank and we will send you Two of these new Venus Rotary Clocks in your choice of colors, and also the beautiful Fountain Pen Desk Set.

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Each of the aforesaid push cards or "sales cards" bears a number of feminine names and on the reverse side of each card is a number of blank spaces opposite an alphabetical list of feminine names for writing in the names of customers who purchase chances on the card.

Each card has a corresponding number of partially perforated disks, marked "Push." Above each disk is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disk is a number which is disclosed when the disk is punched or separated from the card. Each push card has a master disk, concealed within which is one of the feminine names.

When all the disks have been selected and the master disk removed, the person selecting the name corresponding to the name under the master disk receives the article of merchandise specified without further charge. In this manner, respondent's merchandise is distributed to the public. Among the items which respondent distributes by means of push cards are the following: Venus rotary clocks, fountain pen desk sets, and fountain pen and pencil combinations.

Customers purchasing chances on the push cards pay in cents the amount of money indicated by the number revealed when the disk is punched or pushed by them, and customers selecting numbers higher than 29 pay only 29 cents. On some of the cards which respondent distributes, additional merchandise is offered by respondent to customers selecting certain numbers. On one of such cards, the customer pushing the number 33 receives a fountain pen desk set. This prize is offered in addition to the principal prize which is the Venus rotary clock. The person winning the Venus rotary clock on said card must select the feminine name which is concealed under the master disk.

Customers selecting names which do not correspond with the name under the master disk receive nothing but the privilege of making a selection for the money which they pay, except the customer selecting the number which entitles him to the fountain pen desk set.

In this manner, the public is induced and persuaded to purchase chances from said push card in the hope of selecting a prize-winning name or number and thus obtaining an article of merchandise for the price of 29 cents or less.

Respondent's merchandise is thus distributed to the purchasing public wholly by lot or chance, and the amount which a customer pays for a chance is determined wholly by lot or chance.

Sales by respondent of said merchandise have averaged approximately \$3,200 annually.

PAR. 3. The Commission finds that the respondent, in selling and distributing his merchandise in connection with the above-described

push cards, conducted lotteries and placed in the hands of others the means of conducting lotteries in the sale of his merchandise.

The Commission further finds that the sale of respondent's merchandise to the purchasing public, as hereinabove described, involves a game of chance, or the sale of a chance to procure respondent's merchandise, and that the use of said lottery method in the distribution of his merchandise is a practice of the sort which long has been deemed contrary to the common law and criminal statutes, and is contrary to an established policy of the Government of the United States.

PAR. 4. There are, among the competitors of respondent, individuals, firms, partnerships, and corporations also engaged in the business of selling and distributing in similar commerce, like and similar articles of merchandise, who do not sell their merchandise by use of lotteries or games of chance.

Many purchasers of respondent's 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 did not and do not use the same or equivalent methods.

Because of the said preference, the public has purchased a substantial volume of respondent's merchandise with the result that trade has been unfairly diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of respondent as hereinabove found 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 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, the answer of respondent, testimony and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief of counsel for the Commission (respondent having filed no brief and oral argument not having been requested) 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.

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It is ordered, That the respondent, S. C. Ross, individually and trading as Ideal Gift Co., or trading under any other name, his agents, representatives, and employees, in connection with the offering for sale, sale and distribution of rotary clocks, fountain pen sets and fountain pen and pencil combinations, or any other 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 or pull cards, punchboards, or other lottery devices for the purpose of enabling such persons to dispose of or sell such or any other merchandise by the use thereof.

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

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

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

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IN THE MATTER OF

IRVING SCHWARTZ DOING BUSINESS AS LLOYD'S
DISTRIBUTING COMPANY

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

Docket 3277. Complaint, Dec. 3, 1937—Decision, Jan. 25, 1939

Where an individual engaged in sale and distribution of various articles of merchandise, including electric shavers, radios, and fountain pens, to purchasers in other States; in soliciting sale of and in selling and distributing his said products to customers and prospective customers and salesmen solicited through advertisements in periodicals—

Furnished such customers, prospective customers, and salesmen with a pull card for use in distribution of his said products to purchasing public by means of a lottery scheme or gift enterprise and under sales plan in accordance with which purchasers of chances paid therefor varying amounts or nothing in accordance with particular numbers secured from card, and obtained article of merchandise in accordance with success or failure in selecting girl's name corresponding with that under master seal, and operators of cards were compensated by receipt of articles being thus disposed of, and thereby conducted lotteries and placed in the hands of others means of conducting lotteries in sale of his merchandise, contrary to long-established public policy of the United States Government and the common law and criminal statutes, and in competition with those engaged in sale and distribution in interstate commerce of like or similar articles of merchandise who do not sell the same through lotteries or games of chance;

With result that many purchasers of said products were attracted by game of chance involved in his said sales method and were thereby induced to purchase his products in preference to similar goods of competitors who did not and do not use equivalent methods, and substantial volume of his merchandise was bought by public, and trade was thereby unfairly diverted to him from his competitors aforesaid:

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

Before *Mr. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Irving