

Complaint

28 F. T. C.

IN THE MATTER OF

CHARLES M. BREGSTONE DOING BUSINESS AS THE
VELTROLA COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3327. Complaint, Feb. 9, 1938—Decision, Jan. 26, 1939*

Where an individual engaged in sale and distribution of electric razors, wrist watches, silverware sets, and other articles of merchandise; in soliciting and selling his said products—

Distributed to 15,000 persons in the various States along with descriptive and explanatory circular letters and order blanks, push cards for sale, and distribution of his said goods to public under a plan and in accordance with said cards' explanatory legend by which purchasers paid for chances in accordance with particular number punched or secured varying amount or nothing, three of numbers and last sale entitled those securing or making same to Eversharp pencils, and person selecting that 1 of 75 names of girls corresponding to that under card's master seal was entitled to choice of merchandise being thus disposed of, as was operator of card, and thereby conducted lottery and placed in hands of others means of conducting lotteries in sale of his products through game of chance or sale of chance to procure by chance said products; contrary to an established public policy of the United States Government and to the criminal statutes of many of the States, and in competition with those similarly engaged who do not sell their merchandise through use of lotteries or games of chance;

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

Held, That such acts and practices were all to the 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 Federal Trade Commission, having reason to believe that Charles M. Bregstone, individually, and trading as The Veltrola 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 Charles M. Bregstone is an individual doing business under the trade name and style of The Veltrola Co., with his principal office and place of business located at 180 North Wacker Drive, Chicago, Ill. He is now, and for some time last past has been, engaged in the sale and distribution of electric razors, wrist watches, silverware sets, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped from his place of business in the State of Illinois to purchasers thereof, some located in the State of Illinois and others located in various other States of the United States and in the District of Columbia. In the course and conduct of his business respondent is now, and for some time last past has been, in substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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

Respondent distributes to the public, through the United States mail in interstate commerce, certain literature and instructions, including paper push cards and order blanks, and containing illustrations of his said products, and circulars explaining respondent's plan of selling merchandise and of allotting it and other articles as premiums or prizes to the operators of the push cards.

Respondent's push card bears 75 feminine names, with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 75 small, partially perforated discs marked "push," below each of which is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disc is a number, which is disclosed when the disc is pushed or separated from the card. The push card also has a large master seal, and concealed under this seal is one of the feminine means appearing on the reverse side of the said card. The push card bears printed legends or instructions as follows:

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PERSON SELECTING NAME UNDER SEAL RECEIVES
CHOICE OF ARTICLES

6—FREE NUMBERS—6

Nos. 2-3-5-10-14 and 16 are Free

4—EXTRA WINNERS—4

Nos. 20-40-60 and Last Sale Each Receive

A \$1.00 Guarantee Wahl Eversharp Pencil

Nos. 1 to 35 Pay What You Draw

Numbers Over 35 Pay Only 35¢

Write Purchaser's Name Opposite the
Name Selected in Space Provided On
the Back of this Card.Do not remove seal
until entire card
is sold.PUSH OUT DISCS BELOW WITH PENCIL OR
ANY POINTED OBJECT

Sales of respondent's products by means of said push card are made in accordance with the above described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The fact as to whether the customer pays nothing or a sum of money from 1 cent to 35 cents for an article of merchandise, and the fact as to whether a customer receives nothing or an article of merchandise, and the fact as to which article of merchandise the purchaser is to receive are determined wholly by lot or chance. Respondent furnishes his representatives with additional printed instructions or suggestions for using said push cards. One of said printed instructions bears the following legend, to wit:

HOW SALES CARD CAN BE USED

There is a number under each girl's name. This number represents the amount the person selecting that name is to pay as shown on the face of the card. Be sure to write the customer's name on the line opposite the name he has selected.

Persons selecting numbers that are designated as Free Numbers on the face of the card Pay Nothing, yet they have an equal opportunity with the others for selecting the winning name shown under the seal. The persons selecting the numbers shown as extra winners are to be given those awards.

When all names have been taken and collections made the Large Seal is opened. The person who has selected the name corresponding to the name under the large seal has his choice of any one of the premium articles illustrated. The person selling the card also receives his choice.

Fill out the order blank and mention the articles desired. Return to us with a money order or bank draft. The articles selected, plus the four Eversharp

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Pencils will be shipped, all shipping charges prepaid. In this way the person running off the card gets an article without actually being out a penny of his own money.

Respondent furnishes or sells various push cards or punchboards for use in the sale and distribution of his said merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such push cards or punchboards are similar to the push card hereinabove described and vary only in detail.

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

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

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PAR. 5. The aforesaid method, acts, and practices of respondent are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 9, 1938, issued, and on February 10, 1938, served its complaint in this proceeding upon respondent, Charles M. Bregstone, individually and trading as The Veltrola Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, testimony, and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel and Henry C. Lank, 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 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 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, Charles M. Bregstone, is an individual doing business under the trade name and style of The Veltrola Co., with his principal place of business located at 180 North Wacker Drive, Chicago, Ill.

Respondent for several months prior to October 1937, was engaged in the business of selling and distributing in commerce as herein set out, electric razors, wrist watches, silverware sets, and other articles of merchandise.

Said products, when sold, were shipped by respondent from his place of business in the State of Illinois to purchasers thereof located at

various points in States of the United States other than the State from which said shipments were made and in the District of Columbia.

Respondent was at the time hereinabove mentioned in substantial competition with other individuals and with corporations and partnerships likewise engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent solicited the sale of and sold his products in the following manner:

Respondent distributed to 15,000 persons located in the various States of the United States a card described as a "push card." Each "push card" was accompanied by a circular letter descriptive of the merchandise which the respondent was offering for sale. The letter also suggested to purchasers and prospective purchasers a plan to be followed by them for the disposition of the merchandise. An order blank was also enclosed with each "push card" for use by the person who received a set of respondent's literature.

On the reverse side of each order blank respondent set forth the plan for use of the "push cards" as follows:

HOW SALES CARD CAN BE USED

There is a number under each girl's name. This number represents the amount the person selecting that name is to pay as shown on the face of the card. Be sure to write the customer's name on the line opposite the name he has selected.

Persons selecting numbers that are designated as Free Numbers on the face of the card Pay Nothing, yet they have an equal opportunity with the others for selecting the winning name shown under the seal. The persons selecting the numbers shown as extra winners are to be given those awards.

When all names have been taken and collections made the Large Seal is opened. The person who has selected the name corresponding to the name under the large seal has his choice of any one of the premium articles illustrated. The person selling the card also receives his choice.

Fill out the order blank and mention the articles desired. Return to us with a money order or bank draft. The articles selected, plus the four Eversharp Pencils will be shipped, all shipping charges prepaid. In this way the person running off the card gets an article without actually being out a penny of his own money.

Each "push card" had printed thereon 75 feminine names and below each name was a partially perforated circular disc, which concealed a number. On the reverse side of each card were ruled columns for the purpose of writing in the name of the customer opposite the feminine name selected by the customer.

Each disc had printed thereon the word "Push." The concealed number under each disc was disclosed when the disc was pushed or separated from the card.

The push card also contained a large master seal and concealed under this seal was one of the feminine names appearing on the reverse side of the card. The cards contained the following legends or instructions:

PERSON SELECTING NAME UNDER SEAL RECEIVES
CHOICE OF ARTICLES

6—FREE NUMBERS—6

Nos. 2-3-5-10-14 and 16 are Free

4—EXTRA WINNERS—4

Nos. 20-40-60 and Last Sale Each Receive
a \$1.00 Guaranteed Wahl Eversharp Pencil.

Nos. 1 to 35 Pay What you Draw
Numbers Over 35 Pay only 35¢

Write Purchaser's Name Opposite the
Name Selected in Space Provided On
the Back of this Card.

Do not remove seal until entire card is sold.

PUSH OUT DISCS BELOW WITH PENCIL OR
ANY POINTED OBJECT

Members of the public were solicited to buy one of the names on the card and to pay the number of cents represented by the number concealed by the disc below the name selected by him. Six of said numbers were designated as free and selectors of these numbers paid nothing. Four of the numbers were designated as "Extra Winner" and the selectors of these numbers were given a Wahl Eversharp Pencil. Selectors of numbers higher than the number 35 paid only 35 cents.

When all numbers were selected and collections made, the large seal was then opened and the person who had selected the name above one of the discs which corresponded to the name concealed by the master seal was given his choice of the articles of merchandise offered, which articles are described in paragraph 1 hereof. The person who sold chances on the card also had his choice of such merchandise. Customers selecting names which do not correspond with the name under the master disc receive nothing but the privilege of making the selection for the money which they pay except the customers selecting numbers which entitle them to Wahl Eversharp pencils.

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 35 cents or less.

The testimony shows and the Commission finds that in the operation of said cards, the selection of a name which might entitle the selector to an article of merchandise was wholly a matter of chance.

PAR. 3. The Commission finds that the respondent in selling his said merchandise in connection with the above described "push card," 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 found, involved a game of chance or the sale of a chance to procure respondent's merchandise, which is contrary to the established public policy of the United States and contrary to the criminal statutes of many of the States of the United States.

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

Many purchasers of said merchandise were attracted by the element of chance involved in respondent's sales method and were 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 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 said 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 (respondent having filed no answer), 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 in support of the complaint (respondent not having filed brief and oral argument not having been requested)

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and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act,

It is ordered, That the respondent Charles M. Bregstone, individually and trading as The Veltrola Co., or trading under any other name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of electric razors, wrist watches and silverware, 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.

Syllabus

IN THE MATTER OF
THE NEWTON PRODUCTS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3599. Complaint, Sept. 21, 1938—Decision, Jan. 26, 1939.*

Where a corporation engaged in manufacture and sale of candy including certain assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof and which included assortments composed of (1) number of small penny pieces of uniform size and shape together with (a) number of candy bars for distribution without charge to those purchasers of said penny pieces securing by chance one of a relatively few thereof, enclosed colored centers of which differed from those of others, and (b) large piece to be given without charge to purchaser of last of said penny pieces, and (2) composed of number of penny pieces of uniform size and shape in small box enclosed, along with large candy piece, in larger box in which wholesaler, jobber, and retail purchasers included, along with other, number of candy bars for gifts as prizes to chance purchasers of said penny pieces, concealed colored centers of which differed from those of majority thereof and from which said large piece was given without charge to purchaser of last of penny pieces in assortment:

Sold to dealers for display and resale to purchasing public in accordance with aforesaid plans such assortments and thereby supplied to and placed in hands of others means of conducting lotteries in sale of its products in accordance with said plan, involving game of chance or sale of chance to procure additional pieces or bars of candy without additional cost; contrary to an 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 so packed and assembled as aforesaid described or otherwise arranged and packed for sale to purchasing public so as to involve a game of chance or any other method contrary to public policy and refrain therefrom;

With result that many dealers in and ultimate consumers of candy were attracted by its said method of packing same and by element of chance involved in sale thereof as above set out and thereby induced to purchase such candy thus packed and sold by it in preference to that offered and sold by said competitors who do not use such or equivalent sales plans or methods, and with tendency and capacity because of said game of chance to divert unfairly trade and custom to it from its competitors who do not use such or equivalent methods, exclude from candy trade all competitors who are unwilling to and do not use such or equivalent methods as unlawful, lessen competition in said trade, create a monopoly thereof in it and in such other distributors of candy as do use such methods, deprive purchasing public of benefit of free competition and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt or use such methods:

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

Mr. D. C. Daniel for the Commission.