

Complaint

IN THE MATTER OF

JACK BECKER, INDIVIDUALLY AND TRADING AS
TRU-VALU HOME SUPPLY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3582. Complaint, Sept. 12, 1938—Decision, Feb. 4, 1939

Where an individual engaged in sale and distribution of aluminum ware, table ware, lamps, beauty kits, jewelry, and a variety of other articles of merchandise, in commerce among the States and in the District of Columbia—
Sold and distributed said articles by means of game of chance, gift enterprise or lottery scheme, in accordance with which it distributed to representatives and prospective representatives sales circulars and pull cards designating number of items of merchandise and prices thereof, for use in sale and distribution of said products under plan in accordance with which item and price disclosed by legends variously displayed by removal of card's tabs by purchaser of chances thereon determined by chance which article of merchandise purchaser was to receive, price to be paid, and value he was thus to secure, and under which operator was compensated by premium for operation of card and sale of merchandise, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with sales plan above set forth, involving game of chance or sale of chance to procure article of merchandise at a price much less than apparent normal retail price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to secure something by chance, or any method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by said method and by element of chance involved in sale of such merchandise as above set forth, and were thereby induced to buy and sell his said goods in preference to those offered and sold by competitors aforesaid who do not use such or equivalent methods, and with effect, by reason of use of such method, of unfairly diverting trade and custom to him from his competitors aforesaid; to the substantial injury of competition in commerce:

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

Before *Mr. Randolph Preston*, trial examiner.

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 Jack Becker,

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individually and trading as Tru-Valu Home Supply, 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, Jack Becker, is an individual trading under the name of Tru-Valu Home Supply, with his principal office and place of business located at 611 Broadway, New York, N. Y. Respondent is now and for some time last past has been engaged in the sale and distribution of aluminum ware, tableware, dresser sets, dinner sets, doll sets, lamps, ash trays, cigarette lighters and cases, beauty kits, dresser sets, salt and pepper sets with trays, watches, clocks, cameras, carving sets, bedding, clothing, jewelry, cosmetics, bill folds, suit cases, carpet sweepers, toasters, waffle irons, electric grills, 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 his aforesaid place of business in the State of New York to the purchasers thereof in the various other 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 his said business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar products 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 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 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

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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, induces 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 facts as to whether a purchaser of one of said pull card tabs receives an article which has apparent greater value and 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 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 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 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 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 his said competitors who do not use the same or an equivalent method and, as a result thereof, substantial injury is being 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. 5. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce 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 September 12, 1938, issued, and on September 13, 1938, served, its complaint in this proceeding upon respondent Jack Becker, individually and trading as Tru-Valu Home Supply, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 13, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived

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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, Jack Becker, is an individual trading under the name of Tru-Valu Home Supply, with his principal office and place of business located at 611 Broadway, New York, N. Y. Respondent is now and for some time last past has been engaged in the sale and distribution of aluminum ware, tableware, dresser sets, dinner sets, doll sets, lamps, ash trays, cigarette lighters and cases, beauty kits, salt and pepper sets with trays, watches, clocks, cameras, carving sets, bedding, clothing, jewelry, cosmetics, bill folds, suit cases, carpet sweepers, toasters, waffle irons, electric grills, 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 his aforesaid place of business in the State of New York to the purchasers thereof in the various other 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 his said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar products 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 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 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.

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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, induces 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 facts as to whether a purchaser of one of said pull card tabs receives an article which has apparent greater value and 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 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 the same, and have used the same, in

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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 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 found 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 his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, 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 the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce 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 alle-

gations of facts set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Jack Becker, individually and trading as Tru-Valu Home Supply, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of aluminum ware, tableware, dresser sets, dinner sets, doll sets, lamps, ash trays, cigarette lighters and cases, beauty kits, salt and pepper sets with trays, watches, clocks, cameras, carving sets, bedding, clothing, jewelry, cosmetics, bill folds, suit cases, carpet sweepers, toasters, waffle irons, electric grills, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, 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 any merchandise by the use thereof;

2. Mailing, shipping, or transporting to his agents or distributors 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 any merchandise by the use thereof;

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

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.

Syllabus

IN THE MATTER OF
MORETRENCH CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3262. Complaint, Nov. 9, 1937—Decision, Feb. 6, 1939*

Where a corporation engaged in the manufacture of well points, pumps, and equipment used in dewatering wet soil during excavation work, and in sale and distribution thereof in commerce among the various States, and in substantial competition with others engaged in such sale and distribution of similar products—

- (a) Represented, by means of catalogs and other literature distributed by it to potential customers throughout the United States, that its well points had an unobstructed water-passing screen area of 350 square inches, and that its competitors' well points had only from 20 to 25 square inches, facts being such representations were misleading and deceptive in that method used for arriving at area of its said product was not used with respect to those of its competitors, quantity of discharge of water in operations involved is limited to diameter of riser pipe through which water must pass, regardless of speed with which same is pumped into well point, diameter of riser pipes of two of its competitors at time in question was larger than its own, and unobstructed water-passing screen areas of products of said two competitors was much greater than stated by it in its said catalog;
- (b) Represented, as aforesaid, that one of its well points was equal to five of those of its competitors, and that its own well points were much easier to get down than competitors', and never clogged up, facts being its well point was less efficient than that of one of its competitors, ease of sinking or jetting a well point is dependent upon many factors, including nature of soil, depth of excavation and other conditions, one well point may be more easily jetted than another under certain conditions, and more difficult under certain other conditions, both its well points and those of others, under certain conditions, will become clogged, and its various representations aforesaid were misleading and deceptive;
- (c) Represented, as aforesaid, that its well points had two valves, and that such fact added to their efficiency, and that those of its competitors had but one, facts being said circumstances do not affect relative efficiency of several well points, due to their construction upon different mechanical principles, and its statement aforesaid concerning increased efficiency thereof for reason set forth, was false and misleading; and
- (d) Represented, as aforesaid, that contractors all over the world testified that the operation costs of its well points were always 50 percent lower than those of its competitors, facts being contractors all over the world had not thus testified, though some had furnished it with testimonials containing statements attributed to them prior to the placing upon the market of such competitors' well points illustrated in its catalog;