

Complaint

IN THE MATTER OF

THEODORE H. KOOLISH, INDIVIDUALLY AND TRADING
AS UNIVERSAL SPECIALTIES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3184. Complaint, July 22, 1937—Decision, Feb. 7, 1939*

Where an individual engaged in offer and sale of various articles of merchandise, including, among others, rotary and pendulum clocks, radios, electric shavers, and cameras; in soliciting and distributing his said products through various devices and plans of merchandising which he furnished and which involved operation of games of chance, gift enterprises, or lottery schemes through which such merchandise was distributed to consumers wholly by lot or chance—

Distributed to public certain literature, instructions, and sales outfits including paper push cards, order blanks, and advertisements depicting his merchandise, and certain circulars explaining his plan of selling same, under which merchandise premiums or prizes were allotted to operators of the cards, and in accordance with which, as case might be, customers paid for chances amounts determined by numbers pushed, or nothing, and as extra winners, in case of some, received for certain numbers Ever Sharp Pencils, and received clock or other item being thus distributed, in accordance with success or failure in selecting feminine name corresponding to that concealed under card's master disk, and thereby conducted lotteries, and placed in the hands of others means of conducting lotteries, in sale of his said merchandise, contrary to public policy as long established by the common law and criminal statutes and to an established policy of the United States Government, and in competition with those engaged in sale and distribution in similar commerce of like and similar articles and who do not sell their merchandise by use of lotteries or games of chance;

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

Held, That such acts and practices were all to the injury and prejudice 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 Theodore H. Koolish, individually and trading as Universal Specialties Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, 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 trading under the name and style, Universal Specialties Co., with his principal office and place of business located at 538 South Dearborn Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in offering for sale and selling various articles of merchandise, including, among others, clocks, radios, food mixers, toasters, roasters, washing machines, cameras, and automatic razors, to purchasers thereof located in various States of the United States. He causes said merchandise when sold to be shipped and transported from his place of business in the State of Illinois into and through other States of the United States to the purchasers thereof 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 between and among the States of the United States. In the course and conduct of his business, respondent is in competition with other individuals and with partnerships and corporations 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 the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing his merchandise in interstate commerce, has furnished 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 ultimate consumers thereof wholly by lot or chance. The methods and practices adopted and used by respondent are substantially as follows:

Respondent distributes and has distributed to the public through the United States mails in interstate commerce certain literature, instructions, and sales outfits, including paper push cards, order blanks, and advertisements containing illustrations of his merchandise and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of the push cards. Said push cards bear a number of feminine names with a blank space opposite each for writing in the name of the customer. Said push-cards have a corresponding number of partially perforated disks marked "Push" below each of which is printed one of the feminine

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names printed alphabetically elsewhere on the cards. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the cards. The push cards have a master disk, concealed within which is one of the feminine names appearing elsewhere on the said cards. The push cards bear printed legends or instructions, one of which is as follows:

Name Under Seal Receives
VENUS ROTARY CLOCK
 A New Modern Time Piece

Rotary Clock

Beautiful
 Accurate
 Dependable

No Hands
 No Face

NUMBER 33 RECEIVES
 Fountain Pen Desk Set

A
 \$5.00
 VALUE

NUMBERS 1 TO 29
 Pay what you draw
NUMBERS OVER 29
 Pay Only 29¢
 NO HIGHER

(Desk Set)

(Seal)

The other push cards bear similar legends, but vary in detail. Such variations cover the merchandise to be distributed, the quantity thereof and the price to be paid therefor. Said articles of merchandise sold and distributed by respondent 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 cards. Sales of merchandise by means of said push cards are made in accordance with the specified legends or instructions. The fact as to whether a customer receives a specified article of merchandise or nothing for the amount paid is thus determined wholly by lot or chance, and the amount which a customer pays for a particular push is also determined wholly by lot or chance.

PAR. 3. Respondent, in selling his said merchandise in connection with the aforesaid push cards, 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 merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondent's merchandise at a price much less than

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the normal retail price thereof. The use by respondent of said method in the sale of his merchandise, and the sale of his 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. 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 other method that 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 thereof 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 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 acts and practices of respondent are all to the injury and prejudice of the public and respondent's competitors, as hereinabove alleged. Said acts and practices 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 July 22, 1937, issued, and on July 23, 1937, served its complaint in this proceeding upon the respondent, Theodore H. Koolish, individually and trading as Universal Specialties 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

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, brief 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 Theodore H. Koolish, is an individual trading under the name and style of Universal Specialties Co. with his principal office and place of business located at 538 South Dearborn Street, city of Chicago, State of Illinois.

Respondent is now and has been since September 1936, engaged in the business of offering for sale, selling, and distributing various articles of merchandise, including, among others, clocks, radios, food mixers, toasters, roasters, washing machines, cameras, and automatic razors, to purchasers thereof located in the various States of the United States and in the District of Columbia.

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 States of the United States other than the State of Illinois and in the District of Columbia.

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 and in the District of Columbia.

PAR. 2. In soliciting the sale of and selling and distributing his merchandise respondent furnishes various devices and plans of merchandising which involves 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, instructions, and sales outfits, including paper push cards. Along with the foregoing the respondent also encloses order blanks and advertisements which contain illustrations and pictures of his merchandise. Respondent also encloses certain circulars which explain his plan of

selling the merchandise and of allotting it as premiums or prizes to the operators of the push cards.

Each of the aforesaid push 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 girls names for writing in the names of customers who purchase chances on the card.

Each push card has a corresponding number of partially perforated disks marked "Push." Below 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 pushed 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 seal removed, the person who selected the name corresponding to the name under the master seal receives the article of merchandise specified without further charge. In this manner respondent's merchandise was distributed to the public. Among the items so distributed by means of the push card are the following: The New Roxboro Pendulum Clock, the Venus Rotary Clock, the Automatic Vibro Shaver, V-16 Candid Camera, and the Marvel Electric Dry Shaver.

Customers pay in cents the amount of money indicated by the number revealed when the disk is punched or "pushed" by them.

On some of the cards customers selecting numbers higher than 29 paid only 29 cents and on other cards customers selecting numbers higher than 35 paid only 35 cents.

Many of the cards also designated four numbers as "Extra Winners" and customers selecting any one of the four numbers so designated on the face of said cards received Wahl Ever Sharp Pencils and other items of merchandise.

Customers selecting names which do not correspond with the name under the master seal receive nothing but the privilege of making a selection for the money which they pay, except customers selecting those numbers which are "Extra Winners," or the numbers designated on the card as free numbers.

In this manner the public is induced and persuaded into purchasing chances from said push cards 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 35 cents or less, or free of charge.

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, or whether the same is free of charge is determined wholly by lot or chance.

By use of the method above described, the respondent has sold between 2,000 and 3,000 Rotary Clocks; between 1,000 and 1,200 Pendulum Clocks; between 300 and 400 Radios; between 2,000 and 3,000 Electric Shavers; and between 500 and 600 Cameras.

Sales by respondent of said merchandise have averaged between \$5,000 and \$6,000 monthly.

PAR. 3. The Commission finds that the respondent in selling his said 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 the 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 merchandise 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 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 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 who 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,

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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 filed herein by 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Theodore H. Koolish, individually and trading as Universal Specialties Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with offering for sale, sale, and distribution of clocks, radios, food mixers, toasters, roasters, washing machines, cameras, and automatic razors, 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 push or pull cards, punchboards, 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 to distributors or members of the public push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable such persons to sell or distribute any merchandise by the use thereof.

3. Selling, or otherwise disposing of any 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
MASTER DISTRIBUTING CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3401. Complaint, May 5, 1938—Decision, Feb. 7, 1939

Where a corporation engaged in offer and sale of compacts, flashlights, clocks, cameras, and various other articles of merchandise, to purchasers in the various States and in the District of Columbia; in soliciting sale of and selling its said products through various devices and plans of merchandising which it furnished and which involved operation of games of chance, gift enterprises, or lottery schemes through which such merchandise was distributed to ultimate consumers thereof wholly by lot or chance—

Distributed to purchasing public certain advertising literature including cards, order blanks, advertisements depicting its said products, and circulars and instructions and suggestions relative to and explaining its said plans of selling such products, under which merchandise was allotted as premiums or prizes to operators of the cards, and in accordance with which, and card's explanatory legend, customer paid for chance varying amounts in accordance with number pushed, and certain numbers and last push or push entitled customer to "\$2.00 value" pen set, and customer secured camera or other item being thus disposed of, in accordance with success or failure in selecting feminine name corresponding to that concealed under card's master seal, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its merchandise in accordance with such or similar plan involving game of chance or sale of a chance to procure an article of merchandise without cost or at a price much less than normal retail price thereof and of a value, in any event, exceeding cost of single push, and plan under which the various articles were distributed to purchasing public wholly by lot or chance and amount paid by customer was thus determined, 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 such 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 persons were attracted by its 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 its said products in preference to those offered and sold by such competitors who do not use such or equivalent methods, and with effect, by reason of such game of chance, of unfairly diverting substantial trade and custom in such commerce to it from its competitors aforesaid:

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

Before *Mr. Randolph Preston*, trial examiner.

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

Mr. Saul S. Goldman, of New York City, for respondent.