

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.

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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 Master Distributing Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of the 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. The respondent is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 18 East Forty-eighth Street, New York, N. Y. Respondent is now, and for some time last past has been, engaged in offering for sale and selling compacts, flashlights, clocks, cameras, cigarette cases, razors, watches, and other articles of merchandise, to purchasers thereof located in the various States of the United States and in the District of Columbia. It causes and has caused said merchandise when sold to be shipped or transported from its place of business in the State of New York into and through the various States of the United States and the District of Columbia, to 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 various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is in competition with other corporations, and with individuals 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 its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing its merchandise through 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 method and sales plan adopted and used by respondent was, and is, substantially as follows:

Respondent causes and has caused to be distributed to the purchasing public in interstate commerce certain advertising literature, including, among other things, push cards, order blanks, advertise-

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ments containing illustrations of merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to operators of the push cards. Such 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 discs, on each of which is printed one of the feminine names printed alphabetically elsewhere on the cards. Concealed within each disc is a number, which is disclosed when the disc is pushed or separated from the card. The push cards have a master seal, 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:

Push out squares with pencil

The only ALL PURPOSE CAMERA

Takes 16 M. M. movies.

Takes Snapshots

Takes Movie Books

do not remove
seal until all
are punched
[SEAL]

IT'S SENSATIONAL

\$17.50
nothing like
it at any
price!

Name under seal receives
\$17.50 Movie Camera
11¢ to 35¢ numbers over
35 pay only 35¢

\$2.00 value
numbers 25, 50
and last punch
receive pen set

WRITE YOUR NAME OPPOSITE NAME YOU SELECT IN SPACE ON
BACK OF CARD

Sales of respondent's products by means of said push cards are made in accordance with the specified legends or instructions. Said articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is of greater value than the cost of a single push from said push cards. The purchasing public is thus induced and persuaded to purchase pushes from said cards in the hope that they may select a prize winning name or number and thus obtain an article of merchandise of greater value than the amount paid therefor. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is determined wholly by lot or chance.

Respondent furnishes his representatives with additional printed instructions or suggestions for using such push cards. One of the printed instructions bears the following legend, to wit:

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INSTRUCTIONS

There are 76 numbers in this card printed from 11 upward. Numbers 11 to 35 pay what numbers call for. All numbers over 35 pay only 35 cents. When card is completely sold, open large seal and party who selected the corresponding name receives one \$17.50 3-in-1 Moviematic Camera.

Respondent furnishes or sells various push cards for use in the sale and distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme. Said push cards are similar, varying only in detail, and the above-described sales plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes the said push cards 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 its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its 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 the 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 without cost or at a price much less than the 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 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 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 tendency and capacity to, and does, unfairly divert substantial trade and custom in said commerce to respondent from its 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 prejudice of the public and of respondent's competitors and constitute unfair methods of competition 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 May 5, 1938, issued, and on May 7, 1938, served its complaint in this proceeding upon respondent, Master Distributing Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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. The respondent is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 18 East Forty-eighth Street, New York, N. Y. Respondent is now, and for some time last past has been, engaged in offering for sale and selling compacts, flash-lights, clocks, cameras, cigarette cases, razors, watches, and other articles of merchandise, to purchasers thereof located in the various States of the United States and in the District of Columbia. It causes and has caused said merchandise when sold to be shipped or transported from its place of business in the State of New York into and through the various States of the United States and the District of Columbia, to purchasers thereof 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 its business, respondent is in competition with other corporations, and with individuals 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 its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling

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and distributing its merchandise, 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 method and sales plan adopted and used by respondent was, and is, substantially as follows:

Respondent causes and has caused to be distributed to the purchasing public certain advertising literature, including, among other things, push cards, order blanks, advertisements containing illustrations of merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to operators of the push cards. Such 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 discs, on each of which is printed one of the feminine names printed alphabetically elsewhere on the cards. Concealed within each disc is a number, which is disclosed when the disc is pushed or separated from the card. The push cards have a master seal, 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:

Push out squares with pencil

The only ALL PURPOSE CAMERA

Takes 16 M.M. movies

Takes Snapshots

Takes Movie Books

do not remove
seal until all
are punched
[SEAL]

IT'S SENSATIONAL

\$17.50
Nothing like
it at any
price!

Name under seal receives
\$17.50 Movie Camera
11¢ to 35¢ numbers over
35 pay only 35¢

\$2.00 value num-
bers 25, 50 and
last punch receive
pen set

WRITE YOUR NAME OPPOSITE NAME YOU SELECT IN SPACE ON BACK OF CARD

Respondent furnishes his representatives with additional printed instructions or suggestions for using such pushcards. One of the printed instructions bears the following legend, to wit:

INSTRUCTIONS

There are 76 numbers in this card printed from 11 upward. Numbers 11 to 35 pay what numbers call for. All numbers over 35 pay only 35 cents. When card is completely sold, open large seal and party who selected the corresponding name receives one \$17.50 3-in-1 Moviematic Camera.

Sales of respondent's products by means of said push cards are made in accordance with the specified legends or instructions. Said articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is of greater value than the cost of a single push from said push cards. The purchasing public is thus induced and persuaded to purchase pushes from said cards in the hope that they may select a prize-winning name or number and thus obtain an article of merchandise of greater value than the amount paid therefor. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is determined wholly by lot of chance.

Respondent furnishes or sells various push cards for use in the sale and distribution of its merchandise by means of a game of chance, gift enterprise or lottery scheme. Said push cards are similar, varying only in detail, and the above-described sales plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes the said push cards 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 its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its 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 the 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 without cost or at a price much less than the 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 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 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, be-

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cause of said game of chance, has the tendency and capacity to, and does, unfairly divert substantial trade and custom in said commerce to respondent from its said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of respondent are all to the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition 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 substitute answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Master Distributing Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of, compacts, flashlights, clocks, cameras, cigarette cases, razors, watches, 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 cards 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 its agents or to distributors, or to members of the public, push cards 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 cards or other lottery devices.

It is further ordered, That within 60 days from the date of the service of this order upon said respondent, it 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
AARON N. SAUER TRADING AS NATION-WIDE
DISTRIBUTORS

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

Docket 3407. Complaint, May 6, 1938—Decision, Feb. 7, 1939

Where an individual engaged in sale and distribution of electric razors, pen and pencil sets, leather wallets, chinaware, and various other articles of merchandise, to purchasers in other States and in the District of Columbia, in competition with others engaged in sale and distribution of like and similar articles of merchandise in commerce and in said District—

- (a) Advertised in magazines of interstate circulation, and distributed or caused to be distributed to representatives and prospective representatives, in selling and distributing his said articles by means of a game of chance, gift enterprise, or lottery scheme, among other advertising literature, sales circulars including list of number of items of merchandise and pull cards for distribution of said products under a plan or scheme in accordance with which particular article of merchandise and price to be paid therefor and value or apparent value to be secured were dependent upon legend revealed by removal of tab of card selected by chance by purchaser and under which operator of card was compensated by premium for sale of merchandise, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of his said products in accordance with aforesaid or similar plans as above set forth, involving game of chance or sale of a chance to procure articles of merchandise at a price much lower than apparent normal retail price thereof, contrary to established public policy of the United States Government, and in violation of the 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 win 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 said products as above described, and thereby induced to buy and sell such merchandise in preference to that offered and sold by competitors who do not use same or equivalent method, and with effect of unfairly diverting trade and custom to him from his said competitors, and with tendency and capacity to exclude from novelty merchandise trade all competitors who are unwilling to and do not use such or equivalent methods as unlawful; to the substantial injury of competition in commerce; and

- (b) Made such false, deceptive, and misleading statements and representations in his aforesaid advertising matter as "Gifts or cash yours *absolutely* without cost," "Extra Surprise Gift," "Special Offer—2 Extra Gifts Free," and thereby misled and deceived substantial part of purchasing public in the several States and in said District, through inducing them mistakenly to believe that he was giving away certain articles of merchandise without cost to such representatives, facts being none of said premiums or so-called