

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

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gifts were given away free or without cost, but they were either purchased by said representatives with labor or price thereof was included in that of other articles which representatives were required to sell or procure sale of before said premiums or so-called gifts could be secured by them; With effect of misleading and deceiving substantial portion of purchasing public into the erroneous belief that such statements and representations were true, and into purchase of substantial quantities of said products as a result of such erroneous belief, and of unfairly diverting trade to him from competitor manufacturers and distributors of like and similar products who do not make such false, deceptive and misleading statements and representations concerning the method of sale and distribution of their goods; 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.

Before *Mr. Randolph Preston*, trial examiner.

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

Mr. Bernard Austin, of New York City, for respondent.

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 Aaron N. Sauer, individually and trading as Nation-Wide Distributors, hereinafter referred to as respondent, has violated the provisions of the 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 Aaron N. Sauer is an individual doing business under the trade name of Nation-Wide Distributors, with his principal office and place of business located at 401 Broadway, New York City, N. Y. Respondent is now, and for some time last past has been, engaged in the sale and distribution of electric toasters, watches, pen and pencil sets, jewelry ensembles, leather wallets, silverware sets, chinaware, dresser sets, cameras, cosmetics, razor blades, cigarette lighters, and other articles of novelty 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 place of business in the State of New York to purchasers thereof located in the various States of the United States other than the State of New York 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 said business, respondent is in competition with other individuals and with partnerships and corporations likewise engaged in the sale and distribution of like or 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 sells and distributes said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondent inserts advertisements in magazines of interstate circulation and distributes or causes to be distributed to representatives and prospective representatives, certain advertising literature, including, among other things a sales circular. Respondent's merchandise is distributed to purchasers thereof 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 respective 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 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 the 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 higher 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 fact as to whether a purchaser of one of said pull card tabs receives an article of greater value 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

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amounts called for and remitted the said sums to the respondent, the said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium which the representative receives 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 cards in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes various assortments of said merchandise and furnishes 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 the said pull 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 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 said 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 which is in violation of the 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 commerce in competition with respondent as alleged above 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 said products 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 trade and custom to respondent from his said competitors and to exclude from the novelty merchandise trade all com-

petitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful. As a result thereof substantial injury is being and has been done to competitors of said respondent.

PAR. 5. In the course and conduct of his business as hereinabove related, respondent has caused various false, deceptive, and misleading statements and representations to appear in his advertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Gifts or cash yours *absolutely* without cost.

Extra Surprise Gift.

Special Offer—2 Extra Gifts Free.

The effect of the foregoing false, deceptive and misleading statements, and representations of the respondent in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the several States of the United States and in the District of Columbia, by inducing them to mistakenly believe that respondent is giving away certain of its said articles of merchandise without cost to the said representatives.

In truth and in fact, none of the respondent's premiums or so-called "gifts" are given away "free" or without cost, but said premiums or so-called "gifts" which are represented as being "free" to said representatives are either purchased with labor by them or the price of said premiums or so-called "gifts" is included in the price of other articles of merchandise which the representatives must sell or procure the sale of before said premiums or so-called "gifts" can be procured by them.

PAR. 6. The use by respondents of the false, deceptive, and misleading statements and representations set forth herein, has had and now has the capacity and tendency to mislead and deceive, and has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondent's products as the result of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning the method of sale and distribution of their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and as a result thereof substantial injury is being done and has been done by

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respondent to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors, and constitutes unfair methods of competition 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 May 6, 1938, issued, and on May 13, 1938, served its complaint in this proceeding upon Aaron N. Sauer, individually and trading as Nation-Wide Distributors, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 7, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Aaron N. Sauer is an individual doing business under the trade name of Nation-Wide Distributors, with his principal office and place of business located at 401 Broadway, New York City, N. Y. Respondent is now, and for some time past has been, engaged in the sale and distribution of electric toasters, watches, pen and pencil sets, jewelry ensembles, leather wallets, silverware sets, chinaware, dresser sets, cameras, cosmetics, razor blades, cigarette lighters, and other articles of novelty 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 place of business in the State of New York to purchasers thereof located in the various States of the United States other than the State of New York 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 said business,

respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or 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 sells and distributes said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondent inserts advertisements in magazines of interstate circulation and distributes or causes to be distributed to representatives and prospective representatives, certain advertising literature, including, among other things a sales circular. Respondent's merchandise is distributed to purchasers thereof 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 respective 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 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 the 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 higher 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 fact as to whether a purchaser of one of said pull card tabs receives an article of greater value 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, the said respondent thereupon ships to said representative the mer-

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chandise designated on said card, together with a premium which the representative receives 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 cards in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes various assortments of said merchandise and furnishes 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 the said pull 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 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 said merchandise 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 which is in violation of the 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 said commerce in competition with respondent as found above 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 respondents said method and by the element of chance involved in the sale of said products 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 trade and custom to respondent from his said competitors and to exclude from the novelty merchandise trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful. As a result thereof substantial injury is being and has been done to

competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of his business as hereinabove described, respondent has caused various false, deceptive, and misleading statements and representations to appear in his advertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Gifts or cash yours *absolutely* without cost.

Extra Surprise Gift.

Special Offer—2 Extra Gifts Free.

The effect of the foregoing false, deceptive, and misleading statements and representations of the respondent in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the several States of the United States and in the District of Columbia, by inducing them to mistakenly believe that respondent is giving away certain of its said articles of merchandise without cost to the said representatives.

In truth and in fact, none of the respondent's premiums or so-called "gifts" are given away "free" or without cost, but said premiums or so-called "gifts" which are represented as being "free" to said representatives are either purchased with labor by them or the price of said premiums or so-called "gifts" is included in the price of other articles of merchandise which the representatives must sell or procure the sale of before said premiums or so-called "gifts" can be procured by them.

PAR. 6. The use by respondent of the false, deceptive, and misleading statements and representations set forth herein, has had and now has the capacity and tendency to mislead and deceive, and has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondent's products as the result of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive and misleading statements and representations concerning the method of sale and distribution of their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and as a result thereof substantial injury is being done and has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of respondent as herein 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 and the answer of respondent, in which answer respondent admits all the material allegations of fact 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 conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Aaron N. Sauer, individually and trading as Nation-Wide Distributors, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of electric toasters, watches, pen and pencil sets, jewelry ensembles, leather wallets, silverware sets, chinaware, dresser sets, cameras, cosmetics, razor blades, cigarette lighters, 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 to 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.

4. Using the terms "free" or "without cost" or any other terms of similar import or meaning to describe or refer to merchandise offered as compensation for distributing respondent's merchandise unless all of the terms and conditions of such offer are clearly and unequivocally stated.

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cally stated in equal conspicuousness and in immediate connection or conjunction with the terms "free" or "without cost" or any other terms of similar import or meaning and there is no deception as to the price, quality, character, or any other feature of such merchandise or as to the services to be performed in connection with obtaining such merchandise.

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.

IN THE MATTER OF
**LINWOOD SALES CO., INC., AND BERNARD ABRAMS AND
ABE S. WILLNER**

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

Docket 3414. Complaint, May 10, 1938—Decision, Feb. 7, 1939

Where a corporation and two individuals, officers thereof and in direction and control of its sales policies and business activities, acting together and in cooperation, and engaged in sale and distribution of razor blades, watches, china and silverware, umbrellas, and other articles of novelty merchandise to purchasers in other States and in the District of Columbia, in competition with others engaged in sale and distribution of similar and like articles in commerce and in said District—

- (a) Distributed or caused to be distributed to representatives and prospective representatives, in selling and distributing said products 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 respective prices thereof, and pull cards for distribution of said merchandise to purchasers under a plan or scheme in accordance with which particular article of merchandise and price to be paid therefor and apparent value to be secured, and additional article to be possibly received therewith as prize without additional cost, were dependent upon legend or disclosure 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 thereby, and thereby supplied to and placed in the hands of others the means of conducting a lottery in the sale of their merchandise in accordance with aforesaid or other similar plans involving game of chance or sale of a chance to procure article of merchandise at price much less than apparent normal retail price thereof, and to procure additional article as prize without additional cost, contrary to the 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 win by chance, or any other method contrary to public policy and refrain therefrom;

With the result that many persons were attracted by their said method and by element of chance involved in the sale of such merchandise as above described, and were thereby induced to buy and sell same in preference to that offered and sold by said competitors who do not use such or equivalent method, and with effect of unfairly diverting trade and custom to them from their said competitors, and with capacity and tendency to exclude from novelty merchandise trade all competitors who are unwilling to and do not use such or equivalent methods as unlawful; to their substantial injury;

- (b) Made and caused to be made such statements and representations in their advertising matter as "Free—Beautiful and Useful Gifts—Free," "Beautiful, Useful Household Gifts at Absolutely No Cost," and others of similar tenor,