

IN THE MATTER OF
**PREMIO SALES COMPANY, INC., AND ROSE SOMMERS,
INDIVIDUALLY AND AS AN OFFICER OF PREMIO
SALES COMPANY, INC.**

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

Docket 8489. Complaint, July 12, 1938—Decision, Feb. 7, 1939

Where a corporation and an individual, president and treasurer and principal stockholder thereof, who formulated, controlled, and directed its practices and policies, acting together and in cooperation and engaged in sale and distribution of clocks, watches, cameras, silverware, and various other articles of merchandise to purchasers in the various States and in the District of Columbia, in competition with others engaged in similar sale and distribution of similar or like articles—

- (a) Distributed to representatives and prospective representatives, in selling and distributing their said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme, among other advertising literature, sales circulars consisting of lists on which were designated a number of items of merchandise and prices thereof, and pull card 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 matter disclosed by removal of particular tab of card selected by chance by customer, and operator of card was compensated by premium for sale of merchandise, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their merchandise in accordance with aforesaid or other similar sales plan, involving game of chance or sale of a chance to procure an 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 win by chance, or any method contrary to public policy, and refrain therefrom;

With result that many were attracted by their said method and element of chance involved in sale of such merchandise as above described and were thereby induced to buy and sell their said merchandise in preference to that offered and sold by said competitors who do not use same or equivalent method and substantial trade and custom were unfairly diverted to them from their competitors aforesaid;

- (b) Caused to appear in their advertising matter such statements as "EXTRA SPECIAL SURPRISE GIFT WORTH HAVING FREE," "How to GET YOUR FREE GIFTS," and "FREE—GIFTS FOR ALL—FREE"; facts being none of their so-called premiums or gifts were given away free or without cost but such so-called premiums or gifts thus represented as free or without cost to the said representatives were either purchased with their labor or prices thereof were included in the prices of other articles of merchandise which they had to sell or procure sale of before said so-called premiums or gifts could be procured by them;

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With effect of misleading substantial portion of the purchasing public into the erroneous belief that such statements and representations were true and into purchase of substantial quantities of their products as a result of such erroneous belief, and with result that substantial trade was unfairly diverted to them from competitor manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning the same; 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.

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 Premio Sales Co., Inc., a corporation, and Rose Sommers, individually and as an officer of Premio Sales Co., Inc., hereinafter referred to as respondents, have 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 Premio Sales Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 427 Broadway, New York, N. Y. Respondent Rose Sommers is the president and treasurer of, and the principal stockholder in the respondent Premio Sales Co., Inc., and formulates, controls, and directs its practices and policies. Respondent Rose Sommers has her offices at the same address as that of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for some time last past have been engaged in the sale and distribution of clocks, watches, cameras, bedding, clothing, cigarette lighters and cases, silverware, chinaware, jewelry, dolls, kitchenware, pocketknives, pen and pencil sets, cosmetics, razor blades, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products when sold to be shipped or transported from their place of business aforesaid, to purchasers thereof located in the various 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

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by said respondents 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, respondents are and have been in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of similar or like 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 their business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondents distribute or cause to be distributed to representatives and prospective representatives certain advertising literature including a sales circular. Respondents' merchandise is and has been 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 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 fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a 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 respondents, said respondents thereupon ship 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.

Respondents sell and distribute and have sold and distributed various assortments of said merchandise and furnish and have 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 respondents furnish and have furnished the said pull cards use and have used the same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their merchandise and the sales 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 law.

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 respondents, 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 respondents' 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 respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the

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same or an equivalent method. The use of said method by respondents, because of said game of chance, has the capacity and tendency to, and does, unfairly divert trade and custom to respondents from their said competitors who do not use the same or an equivalent method.

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

EXTRA SPECIAL SURPRISE GIFT WORTH HAVING FREE
HOW TO GET YOUR FREE GIFTS
FREE—GIFTS FOR ALL—FREE

PAR. 6. In truth and in fact, none of respondents' so-called premiums or gifts are given away "free," or without cost, but said so-called premiums or gifts which are represented as being "free" or without cost to said representatives are either purchased with labor by said representatives or the prices thereof are included in the prices of other articles of merchandise which said representatives must sell or procure the sale of before said so-called premiums or gifts can be procured by them.

PAR. 7. The use by respondents of the false, deceptive, and misleading statements and representations aforesaid, has had and now has the capacity and tendency to mislead and deceive and has misled 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 respondents' products as a result of such erroneous belief. There are, among the competitors of respondents, 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 their products. By the statements and representations aforesaid, trade is unfairly diverted to respondents from such competitors, and as a result thereof substantial injury is being done, and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute 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 July 12, 1938, issued and thereafter served its complaint in this proceeding upon respondents, Premio Sales Co., Inc., a corporation, and Rose Sommers, individually and as an officer of Premio Sales Co., Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 7, 1939, the respondents filed their answer in which answer they 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, this 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 Premio Sales Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 427 Broadway, New York, N. Y. Respondent Rose Sommers is the president and treasurer of, and the principal stockholder in the respondent Premio Sales Co., Inc., and formulates, controls and directs its practices and policies. Respondent Rose Sommers has her offices at the same address as that of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for some time last past have been engaged in the sale and distribution of clocks, watches, cameras, bedding, clothing, cigarette lighters and cases, silverware, chinaware, jewelry, dolls, kitchenware, pocket-knives, pen and pencil sets, cosmetics, razor blades, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products when sold to be shipped or transported from their place of business aforesaid, to purchasers thereof located in the various 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 respondents in such merchandise in commerce between and

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among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are and have been in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of similar or like 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 their business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondents distribute or cause to be distributed to representatives and prospective representatives certain advertising literature including a sales circular. Respondents' merchandise is and has been 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 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 fact as to whether a purchaser of one of said pull-card tabs receives an article which has greater value and a 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 respondents, said respondents thereupon ship 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.

Respondents sell and distribute and have sold and distributed various assortments of said merchandise and furnish and have 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 respondents furnish and have furnished the said pull cards use and have used the same in purchasing, selling and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their merchandise and the sales 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 respondents, 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 respondents' 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 respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has the capacity and tendency

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to, and does, unfairly divert substantial trade and custom to respondents from their said competitors who do not use the same or an equivalent method.

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

EXTRA SPECIAL SURPRISE GIFT WORTH
HAVING FREE
HOW TO GET YOUR FREE GIFTS
FREE — GIFTS FOR ALL — FREE

PAR. 6. In truth and in fact, none of respondents' so-called premiums or gifts are given away "free," or without cost, but said so-called premiums or gifts which are represented as being "free" or without cost to said representatives are either purchased with labor by said representatives or the prices thereof are included in the prices of other articles of merchandise which said representatives must sell or procure the sale of before said so-called premiums or gifts can be procured by them.

PAR. 7. The use by respondents of the false, deceptive, and misleading statements and representations aforesaid, has had and now has the capacity and tendency to mislead and deceive and has misled 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 respondents' products as a result of such erroneous belief. There are, among the competitors of respondents, 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 their products. By the statements and representations aforesaid substantial trade is unfairly diverted to respondents from such competitors, and as a result thereof substantial injury is being done, and has been done by respondents 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 respondents as herein found are all to the injury and prejudice of the public and of respondents'

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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Premio Sales Co., Inc., a corporation, its officers, and Rose Sommers, individually and as an officer of Premio Sales Co., Inc., and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of, clocks, watches, cameras, bedding, clothing, cigarette lighters and cases, silverware, chinaware, jewelry, dolls, kitchenware, pocket-knives, pen and pencil sets, cosmetics, razor blades, 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 our placing in the hands of others, pull cards or circulars having pull tabs thereon or any other lottery device for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting, to their agents, or to distributors, or to members of the public, pull cards or circulars having pull tabs thereon or any other lottery device 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 respondents' merchandise unless all of the terms and conditions of such offer are clearly and unequivocally 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

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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 said respondents shall within 60 days from the date of the service of this order upon them, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied therewith.

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IN THE MATTER OF

THEODORE G. MILLER, INDIVIDUALLY, AND TRADING
AS AMERICAN SPORTSWEARCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3508. Complaint, July 22, 1938—Decision, Feb. 7, 1939*

Where an individual engaged in sale and distribution of clothing, radios, pen and pencil sets, and other articles of merchandise—

Furnished his customers with devices and plans involving operation of games of chance, gift enterprises, or lottery schemes in distribution of said merchandise to ultimate consumers wholly by lot or chance, and including explanatory circulars, order blanks, and push cards for use in distribution thereof under a plan or scheme in accordance with which customers paid for chance, amount determined by number pushed by chance, and person pushing certain number received certain pen and pencil set and person who succeeded in selecting from a list of 75 feminine names one corresponding to that concealed under card's master seal secured article of merchandise being thus disposed of, and operators of cards were compensated by premiums or prizes, and thereby placed in the hands of others means of conducting lotteries in the sale of his said merchandise, contrary to the established public policy of the United States Government and in competition with many who refrain from disposing of their merchandise by a method involving lottery or a game of chance as contrary to public policy;

With result that many persons were attracted by his said sales plan or method of distribution of his merchandise by element of chance involved therein, and were thereby induced to buy and sell his said products in preference to those offered and sold by his competitors who do not use such or similar methods of distribution and trade was thereby unfairly diverted to him from them:

Held, That such practices as above set forth were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Henry C. Lank and *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 Theodore G. Miller, individually, and trading as American Sportswear, has violated the provisions of 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: