

Complaint

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:

PARAGRAPH 1. Respondent, Theodore G. Miller, is an individual doing business under the name of American Sportswear, with his principal office and place of business located at 216 West Jackson Boulevard, Chicago, Ill. He is now and for some time last past has been engaged in the sale and distribution of clothing, radios, pen and pencil sets, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be transported from his principal place of business aforesaid and from the city of Milwaukee, Wis., to purchasers thereof located in the various States of the United States and in the District of Columbia. There is now, and for some time last past has been, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his 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, in soliciting the sale of and in selling and distributing the merchandise in commerce, furnishes and 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 or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes, and has distributed, to the purchasing public in commerce certain literature and instructions including, among other things, push cards, order blanks, circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's push cards bears 75 feminine names with ruled columns on the reverse side thereof for recording the name of the customer opposite the feminine name selected. Said push card has 75 partially perforated disks marked "Push," below each of which 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. The push card also has a large master seal concealed in which is one of the feminine names appearing on the reverse side of said card. The push card bears printed legends or instructions as follows:

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Person Selecting
Name under Seal
Receives Choice of:

Do Not
Remove
Seal
Until
All
Sold

MEN'S GENUINE ELKSKEIN SPORT JACKET
or
LADIES' SPORT JACKET
With Beret to Match

Nos. 1 to 25 Pay What You Draw
Those Over 25 Pay Only 25¢

—EXTRA WINNER—

No. 33 Receives Fountain Pen and Pencil Set

Write Purchaser's Name Opposite Name Selected in Space Provided on the
Reverse Side of This Card

Respondent furnishes, and has furnished, his representatives with additional printed instructions or suggestions for using said push card which are as follows:

HOW TO USE SALES CARD

There is a number under each girl's name. These numbers range from one upwards but the person selecting the number pays only 1¢ to 25¢ according to the numbers selected. If 1 is punched 1¢ is paid. If 10 is punched 10¢ is paid, or if 50 is punched only 25¢ is paid. **NOTHING HIGHER THAN 25¢.** Total \$9.85.

When all names have been taken and collections made, the large seal at the top of the card is opened. The person who has selected the name corresponding to the name under that seal is entitled to one Ladies' or Men's Jacket.

The person selling the card also receives one Ladies' or Men's Jacket.

The person who has selected No. 33 receives the Fountain Pen and Pencil Set illustrated below.

Sales of respondent's products by means of said push card are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent furnishes, and has furnished, various push cards accompanied by a set of order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such push cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, said push cards use, and have used, the same in purchasing,

selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner 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 normal retail price thereof. Many persons, firms, and corporations who sell and 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein 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 a tendency and capacity to, and does, unfairly divert trade to the respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid acts and practices of the respondent, as alleged herein, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent of 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 22, A. D., 1938, issued and served its complaint in this proceeding upon the respondent, Theodore G. Miller, trading as American Sportswear, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint, the respondent filed his answer thereto, admitting all the material allegations of fact set forth in said complaint and waiving hearing and all intervening procedure.

Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the same 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, Theodore G. Miller, is an individual doing business under the trade name of American Sportswear, and having his principal office and place of business at 216 West Jackson Boulevard, Chicago, Ill. Respondent is now, and for some time past has been, engaged in the sale and distribution of clothing, radios, pen and pencil sets, and other articles of merchandise, all of which are sold and shipped by him to purchasers in States other than the State in which respondent's place of business is located and from which said shipments are made. In the course and conduct of his business respondent has been and is in competition with other individuals, 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 said business, respondent furnishes and has furnished to his customers various devices and plans of merchandising which involve the operation of games of chance, gift enterprise, or lottery schemes, by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by the respondent is as follows:

Respondent furnishes his customers with push cards, order blanks, and circulars explaining his plan of selling merchandise and allotting his premiums or prizes, to the operators of said push cards. On said push cards appear 75 partially perforated disks marked "Push," below each of which is printed one of the feminine names appearing on the reverse side of the push card. The push card also contains a large master seal which conceals one of the feminine names. Respondent furnishes his representatives or customers with instructions for using said push cards, the method outlined being as follows:

The customer pushes the disk over the feminine name selected by him, thus disclosing a number which determines the amount to be paid by him in cents. These numbers range from 1 to 50, but those punching 25 or above are required to pay no more than 25 cents.

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When all the disks have been punched the master seal is broken and the person who has punched the disk over the same feminine name as that disclosed by the removal of the master seal receives choice of a "Man's Genuine Elkskin Sport Jacket," or "Lady's Sport Jacket with Beret to Match." The one who has punched the disk which discloses the number 33 receives a fountain pen and pencil set, and the person operating the push board, or selling the pushes, receives a lady's or man's jacket.

PAR. 3. The various other articles of merchandise sold and distributed by the respondent are sold by means of push cards similar to that hereinabove described, varying only in minor detail, and all of respondent's products are sold and distributed solely by lot or chance.

PAR. 4. Respondent, by the methods hereinabove described, places in the hands of others the means of conducting lotteries in the sale of his said merchandise, and the said method of sale and distribution of his products is contrary to the established public policy of the Government of the United States and is in violation of the criminal law.

PAR. 5. Many persons are attracted by respondent's sales plan or method of distribution of his merchandise by the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by respondent's competitors who do not use the same or similar methods of distribution. Many of respondent's competitors refrain from disposing of their merchandise by a method involving a lottery or game of chance, because such method is contrary to public policy, and, as a result, trade is unfairly diverted from such competitors to the respondent.

CONCLUSION

The practices of the respondent, as set forth in the aforesaid finding of facts, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce in violation 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, Theodore G. Miller, individually and trading as American Sportswear, 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 clothing, radios, pen and pencil sets, 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 to members of the public push or pull cards, punchboards, 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 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.

IN THE MATTER OF
MILTON MEYER, TRADING AS REPUBLIC PRODUCTS
COMPANY AND INTER-COMMUNICATION SYSTEM OF
AMERICA

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

Docket 3537. Complaint, Aug. 16, 1938—Decision, Feb. 7, 1939

Where an individual engaged in sale and distribution in commerce of a line of dress materials, handkerchiefs, tableware, hosiery, quilting materials, and its "Flash-A-Call" intercommunicating system, to customers in other States and in the District of Columbia, in substantial competition with others likewise engaged in sale and distribution of such various goods and products in commerce among the various States and in said District, and including those who do not in any manner misrepresent their business status or the quality or character of the dress materials and other goods and articles dealt in by them, as aforesaid, but make truthful representations in connection with sale and distribution of their merchandise; in advertising his said goods and products through circulars, postcards, folders, and other media circulated throughout the United States, and through newspapers and periodicals of general interstate circulation—

- (a) Represented as a "Bargain Sale" and "Special Introductory Offer" to secure new customers, offer of certain designated merchandise, including, among other items, "5 YARDS" of "LOVELY LARGE PRINTS AND FLORAL DESIGN QUILT PIECES," and handkerchiefs, for \$1.23, and that, as "A Special Offer" and "AN EXTRA GIFT FOR PROMPTNESS" in sending order and including 10 names and addresses of friends living at a distance, he would include certain yardage of "DRESS MATERIAL EXTRA AS AN ADDED GIFT" and added further "LIMIT—NOT MORE THAN TWO ORDERS OF ABOVE TO ANY ONE PERSON," facts being said \$1.23 offer was not a special introductory one, but was a continuous and standing one, and such price was charged for designated merchandise at all times, and the dress material referred to was not included for prompt acceptance of the offer, but was sent to any and all customers and there was no limitation whatsoever on number of orders which one purchaser could obtain, and he did not include said print and floral design quilt pieces;
- (b) Represented as among the items and material included in aforesaid so-called special offer, "BEAUTIFUL SILK OR VELVET QUILT PIECES" and "EMBROIDERED HANDKERCHIEFS," facts being said pieces were not made up of silk or velvet materials, but were composed entirely of rayon, and handkerchiefs were not embroidered but were cheap, inexpensive, and unembroidered; and
- (c) Included in his said advertisements statement "We are the largest sole manufacturers of intercommunicating units" and "Formerly sold \$100.00 up," facts being he did not manufacture his said "Flash-A-Call" intercommunicating units, but purchased same from others who did, and said system never sold for \$100 or more, or for more than its current price of \$12.50;