

IN THE MATTER OF

ALBERT A. BACH AND JACK WALD, INDIVIDUALLY AND
TRADING AS NU-DEAL PREMIUM CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3578. Complaint, Sept. 9, 1938—Decision, Feb. 7, 1939*

Where two individuals engaged as partners in sale and distribution of bedding, clothing, dolls, chinaware, and numerous other articles of merchandise—
Distributed or caused to be distributed, in selling and distributing their said products by means of a game of chance, gift enterprise, or lottery scheme, to representatives and prospective representatives, among other advertising literature, sales circulars including list of number of items of merchandise and prices thereof and pull cards for use in distribution and sale of said products 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 by purchasers of chance were dependent upon matter disclosed by removal of particular tab of cards selected by chance by purchaser and representative was compensated with premium for operation of card and 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 sales plan involving game of chance or sale of a chance to procure article of merchandise at price much less than apparent normal retail price thereof, contrary to 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 chance to win by chance or any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by their said method and by element of chance involved in sale of their said merchandise as above described and were thereby induced to buy and sell such merchandise in preference to that offered and sold by their said competitors who do not use such or equivalent method, and of thereby unfairly diverting trade and custom to them from their competitors aforesaid; 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. Jack Desner, of New York City, for respondents.

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 Albert A. Bach

and Jack Wald, individually, and trading as copartners under the name of Nu-Deal Premium Co., hereinafter referred to as respondents, have violated the provisions of 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. Respondents, Albert A. Bach and Jack Wald, are individuals doing business as copartners under the name of Nu-Deal Premium Co., with their principal office and place of business located at 2 West Twentieth Street, New York, N. Y. Respondents are now, and for some time last past have been, engaged in the sale and distribution of bedding, clothing, dolls, aluminum ware, tableware, chinaware, kitchenware, jewelry, cosmetics, watches, clocks, cameras, scales, suitcases, dresser sets, smoking stands, manicure sets, razor sets, lamps, ashtrays, cigarette cases, leather wallets, 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 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 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 partnerships and individuals and with 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 their business, as described in paragraph 1 hereof, respondents sell and distribute and have sold and distributed said products 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

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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 facts as to whether a purchaser of one of said pull card tabs receives an article which has an apparent greater value and 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 said 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 a 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 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 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 and 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 other 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 by respondents of said method, because of said games 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, and as a result thereof substantial injury is being 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. 5. 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 and unfair and deceptive acts and practices 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 September 9, 1938, issued and thereafter served its complaint in this proceeding upon respondents Albert A. Bach and Jack Wald, individually and trading as copartners under the name of Nu-Deal Premium Co., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of

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the provisions of the said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order issued herein, granted respondents' 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. Respondents, Albert A. Bach and Jack Wald, are individuals doing business as copartners under the name of Nu-Deal Premium Co., with their principal office and place of business located at 2 West Twentieth Street, New York, N. Y. Respondents are now, and for some time last past have been, engaged in the sale and distribution of bedding, clothing, dolls, aluminum ware, tableware, chinaware, kitchenware, jewelry, cosmetics, watches, clocks, cameras, scales, suitcases, dresser sets, smoking stands, manicure sets, razor sets, lamps, ashtrays, cigarette cases, leather wallets, 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 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 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 partnerships and individuals and with 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 their business, as described in paragraph 1 hereof, respondents sell and distribute and have sold and distributed said products 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 facts as to whether a purchaser of one of said pull card tabs receives an article which has an apparent greater value and 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.

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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 said 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 a 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 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 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 and 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 other 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 by respondents of said method, because of said games 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, and as a result thereof substantial injury is being 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 com-

merce and unfair and deceptive acts and practices 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 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 hearings 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 respondents Albert A. Bach and Jack Wald, individually and trading as copartners under the name of Nu-Deal Premium Co. or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of bedding, clothing, dolls, aluminum ware, tableware, chinaware, kitchenware, jewelry, cosmetics, watches, clocks, cameras, scales, suitcases, dresser sets, smoking stands, manicure sets, razor sets, lamps, ashtrays, cigarette cases, leather wallets, 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 their 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 such 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.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
JACOB ROTHMAN TRADING AS NEW YORK SALES
COMPANY

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

Docket 3584. Complaint, Sept. 14, 1938—Decision. Feb. 7, 1939

Where an individual engaged in sale and distribution of watches, clocks, silver sets, smoking sets, and various other articles of merchandise—

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, a sales circular including a list of a number of items of merchandise and prices thereof and pull card for use in sale and distribution of said products under a plan or scheme in accordance with which particular article of merchandise and price to be paid and apparent value to be secured by purchaser were dependent upon matter disclosed by removal of particular tab selected by chance by customer and representative was compensated by premium for operation of card and sale of said merchandise, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his said merchandise in accordance with aforesaid or similar sales plan, 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 contrary to public policy and refrain therefrom;

With result that many persons were attracted by his said method and by element of chance involved in the sale of his said merchandise as above described and were thereby induced to buy and sell such merchandise in preference to that offered and sold by said competitors who do not use such or equivalent methods; 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 Jacob Rothman, individually, and trading as New York Sales Co., 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: