

Complaint

28 F. T. C.

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:

PARAGRAPH 1. Respondent, Jacob Rothman, is an individual trading under the name of New York Sales Co. with his principal office and place of business located at 873 Broadway, New York, N. Y. Respondent is now and for some time last past has been engaged in the sale and distribution of watches, clocks, men's jackets, sets of china, silver sets, lamps, carving sets, smoking stands, stockings, tooth brushes, tooth paste, men and boys' ties, hair clippers, cigarette lighters, 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 shipped or transported from his aforesaid place of business in the State of New York to purchasers thereof in the various other 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 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 and has been 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 referred to in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, the said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes certain advertising literature, including a sales circular, to representatives and prospective representatives. Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list in 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." The 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

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of said articles of merchandise have purported retail values 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, induce 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 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 the purchaser is to receive, and the amount of money which he 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 amount called for, and remitted the said sums to respondent, said respondent thereupon ships 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 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 and has sold and distributed various assortments of said merchandise and furnishes and has 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, but all of said cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said pull 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 the means of conducting lotteries in the sale of his said 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 an established public policy of the Government of the United States, and in violation of the criminal laws.

PAR. 4. Many persons, firms, and corporations, who sell and distribute merchandise in competition with respondent, as above alleged.

are unwilling to adopt and use said method 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 such merchandise in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the capacity and tendency to and does unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method and as a result thereof substantial injury is being done, and has been done, by respondent 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 respondent, as herein alleged, are all to the 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 14, 1938, issued and on September 15, 1938, served its complaint in this proceeding upon respondent, Jacob Rothman, individually and trading as New York Sales Co., 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 the 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 its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Jacob Rothman, is an individual trading under the name of New York Sales Co., with his principal office and place of business located at 873 Broadway, New York, N. Y. Respondent is now and for some time last past has been

engaged in the sale and distribution of watches, clocks, men's jackets, sets of china, silver sets, lamps, carving sets, smoking stands, stockings, tooth brushes, tooth paste, men and boys' ties, hair clippers, cigarette lighters, 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 shipped or transported from his aforesaid place of business in the State of New York to purchasers thereof in the various other 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 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 and has been 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 referred to in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, the said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes certain advertising literature, including a sales circular, to representatives and prospective representatives. Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list in 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." The 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 retail values 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, induce 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 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 the purchaser is to receive, and the amount of money which he 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 amount called for, and remitted the said sums to respondent, said respondent thereupon ships 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 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 and has sold and distributed various assortments of said merchandise and furnishes and has 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, but all of said cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said pull 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 the means of conducting lotteries in the sale of his said 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 an established public policy of the Government of the United States, and in violation of the criminal laws.

PAR. 4. Many persons, firms, and corporations, who sell and distribute merchandise in competition with respondent, as above found, are unwilling to adopt and use said method 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 such merchandise in the

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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 capacity and tendency to and does unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method and as a result thereof substantial injury is being done, and has been done, by respondent 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 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, Jacob Rothman, individually, and trading as New York Sales Co., or trading under any other name, his representatives, agents, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of watches, clocks, men's jackets, sets of china, silver sets, lamps, carving sets, smoking stands, stockings, tooth brushes, tooth paste, men and boys' ties, hair clippers, 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 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.

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

FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., AND THEIR RESPECTIVE OFFICERS, DIRECTORS AND MEMBERS

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

*Docket 2769. Complaint, Apr. 16, 1936—Decision, Feb. 8, 1939*¹

Where a membership corporation which—

- (1) Was composed of manufacturers of women's garments and of textiles used in manufacture thereof, engaged in selling and shipping their products to dealers in other States and, as thus engaged, in competition among themselves and with other manufacturers who likewise sell and ship similar products; and
 - (2) Garment manufacturing members of which constituted a dominant factor in the women's garment manufacturing industry, with their products in such demand by the trade and the purchasing public that all retail dealers in women's garments, in order to meet competition and demand of consuming public, were compelled to stock and handle some of the lines made by said members; and
 - (3) Initial purpose or program of which, namely, the preventing of the copying for sale in commerce of alleged original creations in fashions and styles of women's garments, was later expanded and enlarged to cover designs of textiles used in manufacture of such garments and other practices and policies as below set forth; and
 - (4) Which instituted, as a part of its said program, a Design Registration Bureau for the registration of alleged original designs and styles of its women's garment manufacturer members, who were required to submit, on blank application forms furnished them, description of design and style of garments to be registered, together with sketch thereof and affidavit setting forth that it was applicant's original design, appointed so-called "piracy committee" to pass on issue of garments challenged as copies of styles and designs registered by its members, and employed "shoppers" in the principal cities to visit stores of cooperating retailers, check sale of garments declared by its aforesaid committee as such copies, request removal thereof from sale on the part of the particular retailer, and report failure so to do, and to visit also stores of noncooperating retailers, without disclosing identity, to ascertain whether or not such dealers have on sale copies of alleged original designs and styles of its members, and, if so, to report thereon;
- (a) Entered into and carried out agreements with three local guilds, members of which were respectively composed of retail dealers in women's wearing apparel located in the cities of Chicago, Minneapolis, and Baltimore, co-

¹ Order published as modified by Commission order dated March 29, 1939, which deleted one of the paragraphs in the original order.