

Syllabus

IN THE MATTER OF

JACOB GOLDBERG, TRADING AS CROWN NOVELTY
HOUSECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914*Docket 3484. Complaint, July 12, 1938—Decision, Feb. 8, 1939*

Where an individual engaged in sale and distribution of watches, cameras, razor blades, clocks, and various other articles of merchandise—

- (a) Distributed or caused to be distributed to representatives and prospective representatives, in selling and distributing his said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme, among other advertising literature, a sales circular consisting of a list on which were designated 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 particular tab selected by chance by purchaser, and representative was compensated by 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 said merchandise in accordance with aforesaid or 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 methods or any method involving game of chance or sale of a chance to win by chance or any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by his said method and by element of chance involved in sale of such merchandise as above described, and were thereby induced to buy and sell his said merchandise in preference to that offered and sold by said competitors who do not use such or equivalent method, and of unfairly diverting by reason of said game of chance trade and custom to him from his competitors aforesaid;

- (b) Caused such statements to appear in his advertising matter as "Free Gifts—Valuable Premiums Free," "How to Get Your Gifts Without Any Cost to You," and "2 Extra Surprise Gifts Free," facts being none of his so-called premiums or gifts were given away "free" or "without cost" but said so-called premiums or gifts which were represented as being "free" or "without cost" to said representatives were either purchased with their labor or the 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, and in the case of a number thereof, certain sums of money were required to be paid by said representatives in addition to the labor performed or services rendered;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such statements and representations

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were true, and into the purchase of substantial quantities of his said products as a result thereof, and of unfairly diverting trade to him from competitor manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning the 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. 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 Goldberg an individual trading as Crown Novelty House, 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 Goldberg is an individual trading under the name of Crown Novelty House, with his principal office and place of business located at 65 Suffolk Street, New York, N. Y. Respondent is now, and for some time last past has been, engaged in the sale and distribution of watches, cameras, china and silverware, lamps, razor blades, clocks, cigaret lighters, jewelry, cosmetics, bedding, kitchenware, 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 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 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 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 its business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold

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and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular. Respondent's merchandise is 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 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 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.

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. Such plan or method varies in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes 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 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 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 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 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 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.

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

Free Gifts—Valuable Premiums Free.

How to get your gifts without any cost to you.

2 extra surprise gifts free.

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PAR. 6. In truth and in fact, none of respondent's 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. For a number of said so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered.

PAR. 7. The use by respondent of the false, deceptive, and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief. There are, among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and, as a result thereof, substantial injury is being done, and has been done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. 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 July 12, 1938, issued, and thereafter served its complaint in this proceeding upon respondent, Jacob Goldberg, an individual trading as Crown Novelty House, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 7, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. There-

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after, 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 Goldberg is an individual trading under the name of Crown Novelty House, with his principal office and place of business located at 65 Suffolk Street, New York, N. Y. Respondent is now, and for some time last past has been, engaged in the sale and distribution of watches, cameras, china and silverware, lamps, razor blades, clocks, cigarette lighters, jewelry, cosmetics, bedding, kitchenware, 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 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 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 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 its business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives, certain advertising literature, including a sales circular. Respondent's merchandise is 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 a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, 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 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.

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. Such plan or method varies in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes 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 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 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 respondent, as above found, are unwilling to adopt and use said methods, or any methods involving a game of chance or the sale of a chance to win something by chance, or any method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale of 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.

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

Free Gifts—Valuable Premiums Free.

How to get your gifts without any cost to you.

2 extra surprise gifts free.

PAR. 6. In truth and in fact, none of respondent's 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. For a number of said so-called premiums or gifts

certain sums of money must be paid by said representatives in addition to the labor performed or services rendered.

PAR. 7. The use by respondent of the false, deceptive, and misleading statements and representations set forth herein has had, and now has the capacity and tendency to mislead and deceive, and has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are, among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and, as a result thereof, substantial injury is being done, and has been done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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 Commisison 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 Goldberg, individually, and trading as Crown Novelty House, 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 watches, cameras, china and silverware, lamps, razor blades, clocks, cigarette lighters, jewelry, cosmetics, bedding, kitchenware, or any other articles of merchandise, in commerce,

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as commerce is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, pull cards or circulars having pull tabs thereon, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to his agents or to distributors or to members of the public pull cards or circulars having pull tabs thereon, or other lottery devices so prepared or printed as to enable 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.

4. Using the terms "free" or "without cost" or any other terms of similar import or meaning to describe or refer to merchandise offered as compensation for distributing respondent's merchandise unless all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the terms "free" or "without cost" or any other terms of similar import or meaning and there is no deception as to the price, quality, character, or any other feature of such merchandise or as to the services to be performed in connection with obtaining such merchandise.

It is further ordered, That the respondent shall, within 60 days after the 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.

Syllabus

IN THE MATTER OF
MIAMI WHOLESALE DRUG CORPORATION ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (f) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3377. Complaint, Apr. 11, 1938—Decision, Feb. 9, 1939

Where a corporation engaged in wholesale drug business and in purchasing, as thus engaged, goods, wares, and merchandise from manufacturers and sellers in the various States, in competition with others similarly engaged and in similar purchase, and in publishing, along with certain individuals, its officers, and in pursuance of a purchasing policy and practice designed and intended to induce favorable discriminatory prices for it on its purchases of goods, wares, and merchandise of like grade and quality to those bought by competitor purchasers, and not as an independent business operated in good faith, a magazine—

Induced and persuaded manufacturers and sellers to enter into contracts with it for insertion of advertisements therein under agreements or understandings that charges therefor, for which no substantial benefits and considerations accrued to manufacturers and sellers, would be credited on the purchase price of the goods, wares, and merchandise bought by it from such manufacturers and sellers, and thus obtained substantial discriminations in price, amounting to differentials in favor of it of from 33½ percent to 50 percent over other wholesalers competing with it and with customers of it, through credits, discounts, and allowances made on purchases of goods, wares, and merchandise bought by it, by virtue of such contracts and agreements for advertising space in periodical aforesaid, value of which as advertising medium was not substantial;

With result that it was thereby enabled to and did offer and sell to other wholesalers at prices lower than competitors of its wholesaler-customers could purchase the same commodities or those of like grade and quality from the manufacturers, and as said wholesaler-customers were enabled to and did offer and sell such commodities to retailers at prices lower than other wholesalers competing with it and its said customers could profitably sell such commodities to such dealers, effect of such discriminations in price induced and received by them was substantially to lessen competition and to tend to create a monopoly in the sale and distribution of drug products, and to injure, destroy, and prevent competition between and among it and its customers on the one hand, and their competitors on the other, and between and among customers of each:

Held, That such acts and practices, as above set forth, constituted violation of Section 2 (f) of act of Congress approved October 15, 1914, as amended by act of Congress approved June 19, 1936.

Mr. John Darsey for the Commission.

Mr. Aaron M. Kanner, of Miami, Fla., for respondents.