

IN THE MATTER OF
**JOSEPH W. GRAFF, INDIVIDUALLY, AND TRADING AS
THE SYLVAN COMPANY**

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

Docket 3182. Complaint, July 22, 1937—Decision, Feb. 21, 1939

Where an individual engaged in offer and sale of clocks, pen and pencil sets, radios, traveling bags, and various other articles of merchandise to purchasers in various States; in soliciting sale of and in selling and distributing his said products—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes by which such merchandise was distributed to members of the consuming public wholly by lot or chance, and which involved distribution to members of purchasing public and to dealers of certain literature, order blanks, circular letters, instructions, and push cards for distribution of his said products under a plan or scheme and in accordance with card's explanatory legend by which purchaser paid for chance varying amount, dependent upon number pushed by chance, and received article or articles of merchandise being thus disposed of or nothing other than privilege of punch or push, in accordance with success or failure in selecting feminine name or names corresponding to that or those under card's master seal or two master seals, as case might be, and thereby supplied to and placed in the hands of others, means of conducting lotteries in the sale of his merchandise in accordance with the sales plan above described, under which such merchandise was sold and distributed to purchasing public and amounts paid for chances were determined wholly by lot or chance and involving game of chance or sale of a chance to procure merchandise at a price much less than normal retail prices thereof, contrary to an established public policy of the United States Government and in competition with those who do not sell their merchandise by use of lotteries or games of chance;

With result that many purchasers of his said merchandise were attracted by element of chance involved in his said sales method and were thereby induced to purchase his said products in preference to same or similar merchandise of competitors who do not use same or equivalent methods, and public purchased substantial volume of his said products and trade was unfairly diverted to him from his competitors aforesaid:

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. William C. Reeves*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Joseph W. Graff, individually and trading as The Sylvan Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, 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 is an individual trading under the name and style, The Sylvan Co., with his principal office and place of business located at 4224 Lincoln Avenue, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in offering for sale and selling various articles of merchandise including, among others, clocks, pen and pencil sets, tableware sets, radios, electric razors, traveling bags, waffle irons, coffee-making sets and comb and brush sets, to purchasers thereof located in various States of the United States. He causes said merchandise when sold to be shipped or transported from his place of business in the State of Illinois into and through other States of the United States to the purchasers thereof at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the States of the United States. 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 similar articles of merchandise in commerce between and among the various States of the United States.

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 his merchandise in interstate commerce, 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 methods and practices adopted and used by respondent are substantially as follows:

Respondent distributes and has distributed to the public through the United States mails in interstate commerce certain literature, instructions, and sales outfits, including paper push cards, order

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blanks, and advertisements containing illustrations of his merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of the push cards. Said push cards bear a number of feminine names with a blank space opposite each for writing in the name of the customer. Said push cards have a corresponding number of partially perforated discs marked "PUSH," below each of which is printed one of the feminine names printed alphabetically elsewhere on the cards. Concealed within each disc is a number which is disclosed when the disc is pushed or separated from the cards. The push cards have a master disc, concealed within which is one of the feminine names appearing elsewhere on the said cards. The push cards bear printed legends or instructions, one of which is as follows:

OWN THIS BEAUTIFUL

R O T A R Y C L O C K

The Modern Timekeeper
Tells Time Without Hands

Numbers Under 15 Pay What You Draw
Numbers over 15 Pay 15¢ Only

CLOCK	\$5.00 VALUE	Name Under Seal Receives Rotary Clock
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The other push cards bear similar legends, but vary in detail. Such variations cover the merchandise to be distributed, the quantity thereof and the price to be paid therefor. Said articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is to a greater value than the cost of a single push from said push cards. Sales of merchandise by means of said push cards are made in accordance with the specified legends or instructions. The fact as to whether a customer receives a specified article of merchandise or nothing for the amount paid is thus determined wholly by lot or chance, and the amount which a customer pays for a particular push is also determined wholly by lot or chance.

PAR. 3. Respondent, in selling his said merchandise in connection with the aforesaid push cards, conducts lotteries or 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 sale of respondent's merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondent's merchandise at a price much less than the normal retail price thereof. The use by respondent of said method in the sale of his merchandise, and the sale of his merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States.

PAR. 4. 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 other method that 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 thereof 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 tendency and capacity to and does divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid acts and practices of respondent are all to the injury and prejudice of the public and respondent's competitors, as hereinabove alleged. Said acts and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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, 1937, issued and thereafter served its complaint in this proceeding upon respondent Joseph W. Graff, individually, and trading as The Sylvan Co., charging him with the use of unfair methods of competition in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were intro-

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duced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by John A. Nash, attorney for the respondent, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, brief in support of the complaint (respondent having filed no brief nor requested oral argument), 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. The respondent, Joseph W. Graff, is an individual trading under the name The Sylvan Co., with its principal office and place of business located at 4224 Lincoln Avenue, Chicago, Ill. Respondent is now, and since November 1935, has been engaged in offering for sale and selling clocks, pen and pencil sets, tableware sets, radios, electric razors, traveling bags, waffle irons, coffee-making sets, comb and brush sets, and other articles of merchandise, to the purchasers thereof located in various States of the United States, at their respective points of location. During the time above mentioned, respondent has caused said merchandise, when sold, to be transported from his aforesaid place of business in the State of Illinois, to purchasers thereof located at various points in the various States of the United States other than the State from which said shipments were made. Respondent has been at all times mentioned herein in substantial 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.

PAR. 2. In so carrying on said business as described in paragraph 1 hereof, respondent, in soliciting the sale of, and in selling and distributing his merchandise, has furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise was distributed to members of the consuming public wholly by lot or chance.

The methods used by respondent in the sale and distribution of his merchandise were as follows: Respondent distributed to mem-

bers of the purchasing public, and to dealers, devices commonly known as push cards, together with certain literature, order blanks, and circular letters. On the face of said push cards are printed legends showing the manner in which said card is to be operated. The said order blanks and circular letters contained additional instructions concerning the operation of said card and the sale and distribution of said merchandise by the use thereof.

Each of the push cards had printed thereon a number of feminine names with blank spaces opposite an alphabetical list of the names for writing in the names of the customers who purchased chances on the push cards. Each push card had a corresponding number of partially perforated disks marked "Push." Either below or above each disk was printed one of the feminine names printed elsewhere on the card. Concealed within each disk was a number which was disclosed when the disk was pushed or separated from the card. One of said cards had one master seal and others of said cards had two master seals, but the master seal in each connection had concealed therein one of said feminine names. The cards contained legends or statements explaining that persons pushing certain designated numbers received articles of merchandise.

When all the disks had been selected or pushed by customers and the master seal or seals removed from the card, the person who had selected the name corresponding to the name concealed within the master seal, or 1 of the designated numbers, received specified articles of merchandise without further charge. The only difference between the card containing the 1 master seal and the card containing 2 master seals is that 1 more prize or article of merchandise was distributed by the card containing 2 master seals than was distributed by the card containing 1 master seal. Customers paid in cents the amount of money indicated by the number revealed when the disk was removed or pushed by them from the said card. On 1 of said cards purchasers securing numbers over 29 paid only 29 cents. On 2 of said cards, purchasers pushing numbers over 35 paid only 35 cents. Customers selecting names which did not correspond with the name revealed by the removal of the master seal, or customers pushing numbers which did not correspond to the numbers designated on said cards received nothing for their money other than the privilege of pushing or removing a disk from said card. In this manner the respondent sold and distributed substantial quantities of his said merchandise to members of the general public.

The Commission finds that respondent's merchandise was sold and distributed to the purchasing public wholly by lot or chance and that the amounts paid for chances on said cards were determined wholly by lot or chance.

PAR. 3. The Commission finds that the persons to whom respondent furnished his push cards used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove described. The Commission further finds that the sale of respondent's merchandise to the purchasing public as hereinabove found involved a game of chance or the sale of a chance to procure respondent's merchandise at prices much less than the normal retail prices thereof, and that the use of said method in the sale and distribution of merchandise was and is a practice of the sort which is contrary to an established public policy of the United States.

PAR. 4. There are among the competitors of respondent persons, firms, partnerships, and corporations engaged in the business of selling and distributing like or similar articles of merchandise, in commerce between and among the various States of the United States, who do not sell their merchandise by use of lotteries or games of chance. Many purchasers of respondent's merchandise were attracted by the element of chance involved in respondent's sales method, and were thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors who did not and do not use the same or equivalent methods. Because of said preference, the public has purchased a substantial volume of respondent's merchandise with the result that trade has been unfairly diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of respondent as hereinabove 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, the answer of respondent, testimony and other evidence taken before Wm. C. Reeves, an examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto brief filed by counsel for Commission (counsel for respondent not having filed brief or requested oral argument) and the Commission having

made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Joseph W. Graff, individually and trading as The Sylvan Co., or under any other trade 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 clocks, pen and pencil sets, tableware sets, radios, electric razors, traveling bags, waffle irons, coffee-making sets, comb and brush 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 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 he has complied with this order.

IN THE MATTER OF
**NORTH WESTERN PRINTING HOUSE, INC., IN ITS OWN
NAME AND RIGHT AND TRADING AS FEDERAL TRADE
BUILDERS; AND LOUIS ROVNER AND MORRIS LEAVITT
AS OFFICERS THEREOF; AND EDWIN J. PEARSON AS
EMPLOYEE THEREOF**

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

Docket 3429. Complaint, May 19, 1938—Decision, Feb. 21, 1939

Where a corporation and three individuals, officers thereof and in direction and control of its sales policies and business activities, acting together and in cooperation, and engaged in the manufacture, sale, and distribution of sales-promotion cards which were so designed and arranged as to involve use of a lottery scheme or gift enterprise when used by dealers in promoting and increasing sales of their merchandise to consuming public, and for the use of which, through their literature and representatives, they suggested various methods involving, in all cases, lottery scheme, game of chance, or gift enterprise, and which consisted of several groups of such sales-promotion cards involving, in all cases, lottery scheme or gift enterprise and varying only in detail, and which included, as illustrative—

(1) Group of cards arranged for punching out \$5 in trade, enclosed and concealed within so-called "Lucky Seal" of which cards were legends varying in amount from 20 cents to \$5, and entitling customer of merchant securing same to such varying amount as thus determined by chance, with other cards similarly arranged in principle, but providing for purchases up to \$10 worth of merchandise and the winning of amounts up to \$10 by legends under seal, and with still other cards prepared primarily for gasoline filling and service stations and providing for recording purchase of 100 gallons of gasoline and 10 quarts of oil by the numbers arranged around the border, and for the winning of from 1 to 25 quarts of oil by legends under seal; and—

(2) Group of "Bank Day" cards provided with number on detachable tag thereof, and place for insertion of holder's name and address, and providing for weekly or, in some cases, as arranged, for daily or semiweekly, biweekly, or monthly drawings and awards to the particular customer of the merchant involved securing by chance, along with purchase therefrom, card containing lucky number as thus determined wholly by lot or chance—
Sold, along with various display posters and circulars, and with advertisements for use by dealer customers in distributing and using such cards, such various assortments of sales-promotion cards as above described and suggested, to dealer purchasers for distribution to said dealer's customers and prospective customers, and the honoring of the awards as shown thereon as above set forth and indicated; contrary to the established public policy of the United States Government, and in competition with various manufacturers and distributors of sales-promotion cards, premium cards, price concession cards, coupons, and trading stamps which, when used by