

Syllabus

IN THE MATTER OF

PHILIP H. KOOLISH, JR., INDIVIDUALLY AND TRADING
AS PACIFIC COAST SPECIALTY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3246. Complaint, Oct. 20, 1937—Decision, Feb. 24, 1939*

Where an individual engaged in sale and distribution of clocks, cameras, and electric shavers; in soliciting sale of and in selling and distributing his said merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes by which said merchandise was to be distributed to members of consuming public by lot or chance, and which involved distribution of descriptive literature, order blanks, and circular letters and instructions and push cards for distribution of said products under plan, in accordance with which customer paid for chance varying amount, dependent upon number pushed by chance, and received article being thus disposed of or nothing other than chance, in accordance with success or failure in selecting from list of feminine names, name, or names, as case might be, corresponding to name or names concealed under card's master seal or under card's two master seals, as case might be, and

Supplied thereby to and placed in the hands of others, means of conducting lotteries in sale of his merchandise in accordance with such plans under which said merchandise was distributed to the purchasing public, and amount which customer paid for chance was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure his said merchandise at prices much less than normal retail prices thereof, contrary to an established public policy of the United States Government and in violation of the laws of several States, and in competition with those engaged in the sale and distribution of like or similar articles of merchandise who do not sell the same by use of games of chance, gift enterprises, or lottery schemes;

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 such products in preference to same or similar merchandise offered and sold by competitors who do not use such or similar methods, and public purchased, by reason of such preference, substantial volume of his said goods, and trade was unfairly diverted to him from his competitors aforesaid:

Held, That such acts and practices were all to the prejudice and injury 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

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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 Philip H. Koolish, Jr., individually and trading as Pacific Coast Specialty Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style of Pacific Coast Specialty Company with his principal office and place of business located at 1232 Westchester Place in the city of Los Angeles, State of California. He is now, and for several months last past has been, engaged in the sale and distribution of various articles of merchandise, including, among others, clocks, cameras, and razors, to purchasers thereof located at points in the various States of the United States. Respondent causes and has caused such merchandise when sold to be transported from his principal place of business in the city of Los Angeles to purchasers thereof in the State of California and in other States of the United States at their respective places of location. There is now, and has been for several months last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States. In the course and conduct of said business respondent is 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.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing the said merchandise, 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 wholly by lot or chance. Said devices and plans of merchandising consist of push cards, the use of which, in connection with the sale and delivery to the purchasing public, was and is substantially as follows: The push cards have a number of partially perforated disks, and when a push is made and the disk is separated from the card a number is disclosed. There are as many separate numbers as there are disks on the card, but the num-

bers are varied or assorted and are not arranged in numerical sequence. The numbers on said disks are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disk separated from the card. The price of sales varies, depending upon the number obtained. Numbers from 1 to 29 pay the amount of the number in cents. Numbers over 29 pay 29¢. Directly below each disk there is printed a girl's name, and the card has a space prepared for recording the name of each purchaser of a disk opposite the corresponding girl's name. The card also has a master seal which, when removed, exposes a girl's name corresponding to one of those appearing under said disks. The purchaser who pushed the disk corresponding to the name under the master seal is entitled to a specified article of merchandise. The name under the master seal is effectively concealed from purchasers and prospective purchasers until all sales have been made and the master seal removed. Purchasers who select names other than the name appearing under the master seal do not receive anything for their money other than the privilege of pushing a disk from said card. The said articles of merchandise are of a greater value than the cost of a single push from said card. The fact as to whether a purchaser receives a specified article of merchandise or nothing for his money is thus determined wholly by lot or chance. Other push cards furnished and distributed by respondent for use in the sale and distribution of his merchandise involve the same principle but vary in detail.

PAR. 3. Respondent forwards his push cards, together with various descriptive literature and with instructions as to how to operate said push cards or explaining what to do in order to obtain said articles of merchandise, to various members of the public, and a substantial amount of such merchandise is sold or distributed by such persons by means of said pushcards and in accordance with the instructions furnished by respondent. 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.

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 articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who make or sell 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 methods and by the element of

Findings

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chance involved in the sale or distribution thereof in the manner above described, and are thereby induced to buy and sell or distribute respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. 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 equivalent methods.

PAR. 5. The aforesaid acts and practices of respondent 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 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 October 20, 1937, issued and served its complaint in this proceeding upon the respondent, Philip H. Koolish, Jr., individually, and trading as Pacific Coast Specialty Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by Henry C. Lank and D. C. Daniel for the Commission, and in opposition to the allegations of said 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 not having filed brief or requested oral argument), and the Commission having duly considered the matter, and being now 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, Philip H. Koolish, Jr., is an individual, doing business under the trade name of the Pacific Coast Specialty Co., with his principal office and place of business located in

the city of Los Angeles, State of California. Respondent is now and for some time last past has been engaged in the business of selling and distributing clocks, cameras, and electric shavers. During the time above-mentioned respondent has caused said merchandise when sold to be transported from his place of business in the State of California to purchasers thereof located in various points in States of the United States other than the State from which said shipments were made.

Respondent has been at all times mentioned herein, and now is, 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 various States of the United States.

PAR. 2. In so carrying on his said business as described in paragraph 1 hereof, respondent in soliciting the sale of, and in selling and distributing his merchandise, furnishes, and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise was to be distributed to members of the consuming public wholly by lot or chance. The methods used by respondent to sell his merchandise were as follows: Respondent distributes and has distributed to the purchasing public devices commonly known as push cards. Printed and set out on said push cards were detailed instructions for the operation thereof and accompanying said push cards were certain descriptive literature, order blanks and circular letters. The said order blanks and circular letters contained additional instructions explaining in detail the manner in which said push cards were to be used in the sale and distribution of said merchandise. Each of the push cards has printed thereon a number of feminine names, together 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 has a corresponding number of perforated disks marked "push," and immediately 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. Each card had either one or two master seals, concealed within each of which was one of the feminine names. When all the names had been selected by the customers, and the master seal removed, the person who had selected the name corresponding to the name concealed within the master seal received the article of merchandise specified, without further charge. The customer paid in cents the number indicated when the disk was removed or pushed from the card. The customer who pushed or removed the disks on said cards which revealed numbers higher than 29 cents, paid only 29 cents.

Customers who selected names which did not correspond with the name revealed by removal of the master seal received nothing for their money but the privilege of making a selection, or pushing the disk from said card. In this manner the respondent has sold and distributed a substantial number of his said articles of merchandise to members of the general public.

The Commission finds that respondent's merchandise was distributed to the purchasing public wholly by lot or chance, and the amount which the customer paid for a chance was determined wholly by lot or chance.

PAR. 3. The Commission finds that the persons to whom respondent furnished his said push cards used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent has thus supplied to, and placed in the hands of others, the means of conducting lotteries in the sale of his merchandise in accordance with his sales plan hereinabove described. The Commission further finds that the sale of respondent's merchandise to the purchasing public as hereinabove described 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 lottery method in the sale and distribution of merchandise is a practice of the sort which is contrary to the established public policy of the Government of the United States.

PAR. 4. There are among the competitors of respondent, individuals, firms, 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 who do not sell their merchandise by the use of games of chance, gift enterprises, or lottery schemes. 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 offered for sale, and sold by respondent's competitors, who did not, and who do not use the same or similar methods. Because of the 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 William 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 attorneys for the Commission (respondent having filed no brief nor 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, Philip H. Koolish, Jr., individually and trading as Pacific Coast Specialty Co., 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 clocks, cameras, and electric shavers, 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 device, 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 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 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
ALBERT E. BERGER TRADING AS RUN-PROOF
LABORATORIES, INC.

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

Docket 3366. Complaint, Mar. 30, 1938—Decision, Feb. 24, 1939

Where an individual engaged in advertising, selling, and distributing a preparation for treatment of silk and rayon hosiery and lingerie, under trade name "Run-Proof," to dealers and purchasers in other States and in the District of Columbia, in competition with others engaged in similar sale and distribution of similar preparations or other products intended and used for same purposes and uses, and including those who do not in any way misrepresent the character and nature of their respective businesses or nature and character of their respective products, and do not make use of such misleading representations as below set forth—

- (a) Represented, through use of words "Run-Proof," "Run-Proof Laboratories, Inc.," "Run-Proof Laboratories, Manufacturers of Run-Proof," that said product, when applied to silk and rayon apparel, would render the same proof against runs, rips, snags, breaks, and ladders, facts being it would not accomplish such results; with tendency and capacity to mislead, deceive, and influence a substantial portion of purchasing public into erroneous belief that it would render apparel aforesaid proof against runs, etc.; and
- (b) Represented, through use of corporate name "Run-Proof Laboratories, Inc.," "Manufacturers," and "Run-Proof Laboratories, Manufacturers of Run-Proof," that he made said preparation, or owned, operated, or controlled a laboratory in which such product was analyzed and tested, facts being he neither owned nor operated plant, factory or laboratory in which same was made, and did not directly or indirectly control such plant, factory, or laboratory, but filled orders from purchasers with quantities of preparation made in a plant, factory or laboratory which he did not own, operate, or control; with tendency and capacity to mislead and deceive substantial portion of purchasing public into the belief that he was the manufacturer thereof and maintained a laboratory and employed the same in connection with such manufacture;

With effect of misleading and deceiving members of the purchasing public into the erroneous and mistaken belief that said representations were true, and into purchase of substantial quantities of said product on account of such erroneous and mistaken beliefs thus induced, and of thereby unfairly diverting trade to him from competitors who do not, in sale and distribution of their respective products, make use of same or similar misrepresentations; to the injury of competition in commerce:

Held, That such acts and practices, under the conditions and circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. John N. Wheelock* for the Commission.

Mr. William Jaffe, of Chicago, Ill., for respondent.