

IN THE MATTER OF
JOHN MILTON BREGSTONE, INDIVIDUALLY, AND TRADING AS J. M. BREGSTONE & COMPANY

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

Docket 3326. Complaint, Feb. 8, 1938—Decision, Feb. 28, 1939

Where an individual engaged in sale and distribution of radios, clocks, cock-tail sets, and other articles of merchandise to dealers and to members of the public; in soliciting sale of his said products—

Distributed to members of the public through the mails advertising literature depicting his said merchandise and push cards and instructions, and sold and distributed to purchasers such merchandise and cards for use in distribution thereof under a plan by which amount paid for chance or receipt of free chance were dependent upon particular number pushed by chance, and purchaser received or failed to receive article of merchandise being thus disposed of, or anything other than push or chance, in accordance with success or failure in selecting from feminine name that corresponding with name concealed under card's master seal; and

Supplied thereby to and placed in the hands of others, means of conducting lotteries in the sale and distribution of his said merchandise in accordance with such plan above described, involving distribution thereof to public wholly by lot or chance and determination wholly by lot or chance of amount paid for chance or securing of such chance without cost, and game of chance or sale of a chance to procure merchandise at prices much less than normal retail prices thereof or without cost, contrary to an established public policy of the United States Government and in competition with those engaged in sale and distribution of like or similar articles who do not sell and distribute their merchandise by use of lotteries or games of chance;

With result that he thereby sold and distributed substantial quantities of his said articles to members of the general public, and many purchasers of his said products were attracted by element of chance involved in his said sales plan or method and thereby induced to purchase his said products in preference to like and similar merchandise of his competitors who do not use same or equivalent methods, and public purchased substantial volume, by reason of such preference, of his said products, and trade was unfairly diverted to him from 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 John Milton Bregston, individually, and trading as J. M. Bregstone & 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. The respondent is an individual trading under the name and style of J. M. Bregstone & Co., with his principal office and place of business located at 538 South Clark Street, Chicago, Ill. Respondent is now, and, for some time last past, has been, engaged in offering for sale and selling radios and other articles of merchandise to purchasers thereof located in various States of the United States. He causes and has caused 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 various 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 through 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 method and sales plan adopted and used by respondent was, and is, substantially as follows:

Respondent has caused advertisements to be inserted in magazines of interstate circulation and has distributed to the purchasing 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 pushcards have a corresponding number of partially perforated disks marked "push," below each of which is printed one of the feminine names printed alphabetically elsewhere on the cards. Concealed within each disk is a number, which is disclosed when the disk is pushed or separated from the cards. The push cards have a master seal, 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:

Licensed
R C A ZEPHYR RADIO
TO PERSON SELECTING
NAME UNDER SEAL
Five Tube A. C.-D. C. Short
Wave Switch. Self Contained
Aerial. Full R. M. A. Guar-
antee. Large Airplane Dial.
Full 5'' Dynamic Speaker.
RCA Licensed Tubes. Gets
Police Calls, Aviation, Ama-
teur, Etc.

Fully Guaranteed	FREE
Do Not Remove (SEAL)	
Until All Sold	
Nos. 1 to 35 Pay	
Amount of No. Drawn	
Nos. Over 35 Pay Only	
35¢. No higher.	
FREE NUMBERS ARE:	
10—20—30—40—50—60—	
70—80—90—100	

WRITE YOUR NAME OPPOSITE THE NAME YOU SELECT
IN SPACE PROVIDED ON INSERT SHEET

Sales of respondent's products by means of said push cards are made in accordance with the specified legends or instructions. Said articles of merchandise sold and distributed by respondent are of greater value than the cost of a single push from said push cards. The purchasing public is thus induced and persuaded to purchase pushes from said cards in the hope of selecting a prize-winning name or number and thus obtaining an article of merchandise for a price of 35 cents, or less, or without charge. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance, or whether the chance is without charge, are determined wholly by lot or chance. Respondent furnishes his representatives with additional printed instructions or suggestions for using said push cards. One of said printed instructions bears the following legend, to wit:

DIRECTIONS

This catalog contains 150 girls' names. The amount to be paid for the sale of each name ranges from 1¢ to 35¢. No sale pays over 35¢. There are also 10 Free Numbers. Persons selecting names showing numbers 10—20—30—40—50—60—70—80—90—100 pay Nothing.

As each person "pushes" a name, the amount to be paid is the number which appears on the inside of the slip. For example: If the name "pushed" shows the inside number to be 3, then 3¢ is the amount to be paid; if a name is "pushed" showing the inside number 19, then 19¢ is to be paid.

DO NOT OPEN SEAL UNTIL ALL NAMES HAVE BEEN SOLD.

When the entire card has been sold, turn the receipts over to your distributor, and you will receive the radio illustrated.

One radio is given to the person who handles the sale of names on the card and another is given to the person who selected the name which corresponds to the name under the seal.

Respondent furnishes or sells various devices, including push cards and punchboards, for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. Said sales 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 the said push cards and punchboards use 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 sale of such 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. 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 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 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

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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 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 February 8, 1938, issued and thereafter served its complaint in this proceeding upon respondent John Milton Bregstone, individually and trading as J. M. Bregstone & 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 (respondent having filed no answer thereto), testimony and other evidence in support of the allegations of said complaint were introduced 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, testimony and other evidence, brief in support of the complaint (respondent not having filed brief and oral argument not having been requested), 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, John Milton Bregstone, is an individual doing business under the name of J. M. Bregstone & Co., with his principal office and place of business located at 538 South

Clark Street, Chicago, Ill. Respondent for several years last past has been engaged in the sale and distribution of radios, clocks, cocktail sets, toys, and other articles of merchandise to dealers and to members of the public located at points in the various States of the United States. 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 in the various States of the United States other than the State from which said shipments were made.

Respondent has been at all times hereinabove mentioned 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 his merchandise, has distributed through the United States mails, to members of the general public, circular letters, and advertising literature explaining the sales plan or method employed by the respondent in the sale and distribution of his merchandise. The advertising literature contained picturizations of respondent's merchandise and of respondent's devices commonly known as push cards and punchboards, by means of which devices respondent's merchandise was to be sold and distributed to the purchasing public. As a result of the distribution of such advertising literature and circular letters, members of the public have purchased respondent's said devices and used the same in purchasing, selling, and distributing respondent's said merchandise. The sales plan or method used in connection with respondent's said push cards is substantially as follows: On the face of said push cards are printed legends showing the manner in which said card is operated. The advertising literature and circular letters contained additional detailed instructions concerning the operation of said cards 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 customers who purchased chances on the push cards. Each push card had a corresponding number of partially perforated disks marked "push." Below 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 a master seal, concealed within which was one of the

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feminine names. Said cards also contained the legends or statements to the effect that purchasers punching certain designated numbers would receive those numbers without cost.

When all the disks had been selected or pushed by 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. Customers pushing numbers 1 to 35 paid in cents the amount indicated by the number pushed by them, with the exception of those numbers which were indicated as free numbers. Customers who pushed or removed disks from said card which revealed numbers higher than 35, paid only 35 cents. Customers selecting names which did not correspond with the name revealed by the removal of the master seal received nothing for their money other than the privilege of making a selection and pushing a disk from said board. In this manner the respondent sold and distributed substantial quantities of the 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 that the amount which a customer paid for a chance, or whether the same was without cost, was determined wholly by lot or chance.

The sales plan or method employed in connection with said punchboards was the same in principle, varying only in detail, as that used in connection with the said push cards and constituted the sale and distribution of merchandise by lot or chance.

PAR. 3. The Commission finds that the persons to whom respondent furnished his said push cards and punchboards 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 and distribution 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 or without cost, 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, individuals, 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 and distribute 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 plan or method and were thereby induced to purchase respondent's merchandise in preference to like 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 (respondent having filed no answer), 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 attorney 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, John Milton Bregstone, individually, and trading as J. M. Bregstone & 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 radios, cocktail sets, toys, or any other 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

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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.

Syllabus

IN THE MATTER OF

NATIONAL PUBLICITY BUREAU, INC., TRADING IN ITS OWN NAME AND AS NATIONAL PUBLICITY BUREAU AND ROGERS SILVERWARE DISTRIBUTORS, AND HUGH J. WANKE, INDIVIDUALLY AND AS PRESIDENT OF NATIONAL PUBLICITY BUREAU, INC., TRADING AS ROGERS SILVERWARE DISTRIBUTORS

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

Docket 2908. Complaint, Aug. 21, 1936—Decision, Mar. 1, 1939

Where an individual engaged, under trade name "National Publicity Bureau," in purchase of silverplated ware from Wm. A. Rogers at Oneida, N. Y., and under trade name "Rogers Silverware Distributors," in sale of trading cards redeemable in such silverplated ware, to retail merchants for distribution to their customers, and in selling said cards at \$1.50 a 1,000, with dealer customers under contracts entered into with him by them in which they agreed to cooperate with Rogers Silverware Distributors in distribution of Wm. A. Rogers Silverware for advertising purposes—

- (a) Represented, directly and by implication, that said Rogers Silverware Distributors trading cards were a method of advertising used by Wm. A. Rogers, maker of silverware, facts being he had no connection, either directly or through such Rogers Silverware Distributors, with Wm. A. Rogers, silverware maker, except as a customer for its wares:
- (b) Represented that said Rogers Silverware Distributors, for cooperation given by the merchant in distributing Wm. A. Rogers Silverware, would furnish him gratis display set of 26 pieces of said ware with the distribution of 25,000 cards, facts being he did not furnish such a set on such condition, but claimed that, under contract, dealer was not entitled to set until he had distributed cards for 6 months and had completely distributed that number of cards, which interpretation was not made clear and necessary by contract, dealer signatories to which expected to receive display set along with delivery of cards bought;
- (c) Represented that said Rogers Silverware Distributors in consideration of publicity and cooperation extended during life of agreement, would pay merchant buying cards cash refund at rate of \$1.50 for each and every 1,000 cards redeemed, facts being he did not pay such refund but claimed that dealer was not entitled to any refund until he had distributed cards for period of 6 months under contract, which did not make clear such interpretation, and dealer signatories of which expected refund to be made whenever thousand of such cards had been redeemed;
- (d) Represented that said Silverware Distributors would redeem said trading cards in Wm. A. Rogers Silverware for customers of dealers without cost to such customers, facts being he did not thus redeem said trading cards, but required customers to send in an amount of money therewith which approximated cost of the silverware to such Rogers Silverware Distributors; and