

Syllabus

IN THE MATTER OF

MATTHEW A. WILLIS, TRADING AS ROGERS REDEMPTION BUREAU AND THE THOMPSON POTTERY COMPANY ADVERTISING DEPARTMENT

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 15 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3198. Complaint, Aug. 9, 1937—Decision, Mar. 1, 1939

Where an individual engaged in sale and distribution of silverware in commerce among the various States by means of sales-promotional plans which included premium certificates redeemable in said ware as sent in by customers of the retail merchants and others to whom it sold said plans, through salesmen employed to solicit such merchants and furnished by him with forms of contract for execution by particular merchant in purchase of plan, and with folders and catalogs illustrating such ware and samples of premium certificates or gift cards, and, as thus engaged, in substantial competition with others similarly engaged in sale and distribution of sales promotional plans and silverware in commerce among the various States, and including many who do not in any manner misrepresent their business status or terms and conditions of their said plans or make any other false representations in regard to the sale and distribution of their respective products—

- (a) Made use of words "Rogers Redemption Bureau" in trade name employed by him in his said business, and printed on the face of his said contract forms, in conspicuous large red letters, words "Wm. A. Rogers Silverware" and "Wm. A. Rogers, Ltd.," with capacity and tendency, through use of term "Rogers" in his trade name as aforesaid, and statements on contract form, to cause members of purchasing public to have erroneous and mistaken belief that he was connected with or a part of the manufacture of Wm. A. Rogers silverware, and represented to retail merchants and others, through his said salesmen, that he, trading as aforesaid, was connected with or a part of "Oneida, Ltd.," manufacturer of Wm. A. Rogers silverware, facts being he had no connection, direct or indirect, with said Oneida, Ltd., manufacturer of said long and favorably known, high-grade silverware, except as purchaser through jobber of its products;
- (b) Made statements on reverse side of said contract relative to number of premium certificates or gift cards required to redeem the various items of silverware, there referred to as "free," through reference to "NUMBER OF CARDS REQUIRED FOR VARIOUS FREE ITEMS LISTED BELOW," and represented, through salesmen, to prospective purchasers of such sales plans that the retail dealer's customers would receive silverware without additional cost upon sending to him designated number of certificates or cards, facts being such items were not given away free, but there was a charge of 1 cent for each card redeemed in silverware, and his said agents, in many instances, did not show form of certificate or card to retail merchants, who discovered, after shipment to them of such certificates, that on reverse side thereof there was statement making the card redeemable in silverware aforesaid as per schedule below, provided holder had received card in regular course of trade and "encloses one cent for each card";

Complaint

28 F. T. C.

- (c) Provided, in said contract, and represented through his said salesman, that 26-piece set of silverware with buffet case would be furnished free of charge to every dealer purchasing minimum quantity of 10,000 certificates or cards, and that such set would become property of dealer, and also, through such representatives, that he would refund to dealer purchase price for certificates or cards when 25 percent of those purchased from him by the dealer had been sent in for redemption by customers thereof, facts being he refused, in many instances, to furnish to retailers such sets after their purchase of aforesaid minimum quantity of certificates or cards, and did not refund to them purchase price of the certificates or cards after 25 percent thereof, purchased by dealer, had been redeemed by customers of latter; and
- (d) Made statement on reverse side of his said contracts, "BUILD UP A COMPLETE SILVER SERVICE FREE," and provided in his said sales plan and through his said salesman that other articles of silverware would be redeemed by him for various numbers of the premium certificates, and set forth on gift catalogs, consisting of one sheet of paper, which his salesman furnished to purchaser of the cards for distribution among his customers, and which illustrated knives, forks, and spoons purported to be free of charge, and showed number of cards required to redeem such "free" items, statement "Build up a complete silver service free. Teaspoons packed in units of six items—75 cards each," facts being only teaspoons, tablespoons, dinner forks, and dinner knives were redeemable by said certificates or cards, all other articles had to be purchased outright from him, and last above statement as to teaspoons packed in units of six, etc., was likewise misleading and deceptive in that 75 cards were accepted in redemption of one only, and not the six teaspoons, redemption of which required 450 cards;

With effect of misleading and deceiving members of the purchasing public and retail dealers in the various States into erroneous and mistaken belief that he was connected with "Oneida, Ltd.," manufacturers of Wm. A. Rogers silverware, and that aforesaid false and misleading statements relative to his said sales promotional plan and premium certificates were true, and into purchasing quantities of his said product because of such erroneous and mistaken belief, and of thereby diverting unfairly trade to him from his competitors in commerce among the various States who truthfully advertise and represent their respective products; to the injury of competition in commerce:

Held, That aforesaid acts and practices were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Marvin A. Farrington, of Washington, D. C., 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 Matthew

A. Willis, 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, Matthew A. Willis, is an individual, trading and doing business under the respective firm names and styles of Rogers Redemption Bureau and The Thompson Pottery Co., Advertising Department, with his principal office and place of business as to both of said firms at 419-427 Lumber Exchange Building, in the city of Minneapolis and State of Minnesota.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the business of offering for sale and selling silverware and earthenware or chinaware in commerce among and between the various States of the United States. Respondent has not been and is not a manufacturer of either silverware or earthen or chinaware but has purchased and is now purchasing said products from wholesalers or manufacturers thereof.

In the course and conduct of his business, it has been and is the practice of respondent, as is hereinafter more fully shown, to offer for sale and sell said products by means of the sale of premium certificates, redeemable in silverware or earthen or chinaware, to merchants and dealers of various kinds or others engaged in the class or type of business in which such premium certificates could or can be used. Respondent causes said products, when sold, to be transported from his place of business in the State of Minnesota to purchasers thereof located in the various other States of the United States.

PAR. 3. In the course and conduct of his business as aforesaid, respondent is now, and for several years last past has been, in substantial competition with other individuals, corporations, firms, and partnerships likewise engaged in the business of selling premium certificates, silverware, and earthen or chinaware to purchasers thereof in commerce among and between the several States of the United States and the District of Columbia.

"Wm. A. Rogers" silverware has been well and favorably known for many years by the consuming public. It is manufactured by Oneida, Ltd., New York. On the back of each piece of silverware are imprinted the words "Wm. A. Rogers, Oneida, Ltd." Respondent has not had and does not have any connection with or relationship to said Oneida, Ltd., except as a purchaser of its products through a jobber in Minneapolis.

Complaint

28 F. T. C.

In the course and conduct of his business, respondent, trading as Rogers Redemption Bureau, uses the premium certificate or "sales stimulator" plan of selling silverware through the agency of salesmen. Said salesmen are supplied with forms of a contract for the purchase of gift cards or premium certificates. Conspicuous on the face of said contract, printed in large red letters, appear the words "Wm. A. Rogers Silverware" and "Wm. A. Rogers, Ltd." As an inducement for the purchase of such premium certificates, respondent falsely represents to said local merchants and others that said Rogers Redemption Bureau is connected with, or is a part of, Oneida, Ltd., manufacturers of Wm. A. Rogers Silverware; that a 26-piece set of silverware with buffet case will be furnished free to every dealer purchasing the minimum quantity of 10,000 gift cards; that each merchant or dealer will be refunded the purchase price of said premium certificates after a certain number of them have been redeemed by customers of said merchant; that such customers can build up a complete silver service free; that such customers will receive silverware and earthenware or chinaware without any additional cost upon sending in a designated number of certificates; that such dealer or merchant would be given an exclusive territory for the distribution of said premium certificates.

There is also furnished to said merchants for distribution among the customers of the latter, a so-called gift catalog, consisting of one sheet of paper on which are illustrated the patterns of the knives, forks, and spoons purported to be given away free and showing the number of cards or premium certificates required for the "Free Items" in the following manner:

Build up a Complete Silver Service Free Teaspoons Packed in Units of Six 75 cards each,

and listing the other items in the same manner.

Respondent represents to said merchants or dealers, and said sales agreement specifically recites, that said gift cards will be redeemed absolutely free for articles listed in the gift catalog, postage prepaid. No samples of said gift cards or premiums certificates are shown to the merchant and such dealer has no opportunity to examine the cards and know the full terms of redemption actually stated thereon. Said cards are shipped to said merchant from respondent's place of business in Minneapolis after the execution of said sales agreement. Said cards contain the advertisement of the merchant; and many of them contain the following instruction:

Wm. A. Rogers Silverware to our Customers

This card is redeemable in Rogers Silverware as per schedule below, providing the holder has received this card in the regular course of trade and encloses one cent for each card. Shipping and packing charges fully prepaid.

In truth and in fact the said sales contract is ambiguous and misleading because of the appearance of the words "Wm. A. Rogers Silverware" and "Wm. A. Rogers, Ltd.," in that the prospective purchaser is led into the erroneous belief that respondent is connected with the manufacturer, namely, Oneida, Ltd., of New York. Likewise the name under which respondent does business, to wit, Rogers Redemption Bureau, is misleading in the use of the word "Rogers" because it implies that respondent in some manner is connected with the manufacture of Rogers silverware, which silverware has for many years been known throughout the United States by the consuming public as a high grade reliable product.

In truth and in fact the respondent has no connection whatever with Oneida, Ltd., except as an indirect purchaser of its merchandise. In many instances, the respondent has not furnished, or has refused to furnish, the 26-piece set of silverware after the purchase by a merchant of the minimum quantity of 10,000 gift cards. Contrary to the representations made by respondent's salesmen or agents, the respondent has not refunded to said merchants the purchase price paid for the gift cards after the number of cards required to be redeemed have in fact been redeemed by customers of such merchant. Customers of said merchants cannot build up a complete silverware service free, as represented in the advertising matter, in that only spoons, forks, and knives are redeemable with gift cards and all other articles necessary to constitute the complete set of silverware have to be purchased from respondent at prices substantially the same as those charged by regular retailers of silverware. A dealer or merchant is not given an exclusive territory for the distribution of gift cards, but on the contrary respondent has made it a practice to sell said gift cards to a number of merchants doing business in the same territory.

The language "Teaspoons packed in units of six 75 cards each" is ambiguous and misleading in that the consumer mailing in to the respondent 75 cards does so in the belief that a unit of 6 spoons will be sent in return for said 75 cards, whereas in truth and in fact the respondent furnishes only 1 spoon for each 75 cards sent in; therefore requiring 450 cards for each unit of 6 spoons.

Although the advertisements state that silverware will be redeemed absolutely free to customers of merchants to whom respondent sells said gift cards, said customers find in many instances that they are required to send 1 cent with each card given to them before they are entitled to any silverware.

PAR. 4. In the course and conduct of his business, respondent, trading as Thompson Pottery Advertising Department, uses the premium

Complaint

28 F. T. C.

certificate of "sales stimulator" plan of selling earthen or chinaware through the agency of salesmen. Said salesmen are supplied with forms of a contract for the purchase of gift cards or premium certificates. Conspicuous on the face of said contract, printed in large red letters, appear the words "The Thompson Pottery Company," in smaller letters "Advertising Department," and directions are given that checks be made payable to "The Thompson Pottery Company, Advertising Department." The contract further contains the following statements:

Reference any mercantile agency and Potteries E. Liverpool, Ohio, established 1868.

IMPORTANT NOTICE

Inasmuch as this is purely a campaign to be used as a furtherance of our business, kindly do not enter into this agreement unless convinced of its efficiency as a sales stimulant and intending to cooperate with us. The name Thompson on chinaware is world known. Only genuine Thompson China USA will be used. The C. C. Thompson Pottery Company.

together with the facsimile signature "Geo. C. Thompson, President." Respondent agrees "to make refund to dealer at the rate of \$4.00 per thousand on all of these cards redeemed upon redemption of 25%." In addition to furnishing circulars and other advertising matter, respondent agrees to furnish to any dealer purchasing said cards, without any charge whatever, a set of chinaware consisting of various numbers of pieces depending upon the number of cards purchased.

In connection with the solicitation by respondent's salesmen or orders for said gift cards from merchants or dealers, said salesmen exhibit to such merchants a photostatic copy of a page of Dun & Bradstreet's financial rating book. A large and conspicuous arrow points to the name "Thompson C. C. Pottery Company, the mfrs. B 1," indicating that The C. C. Thompson Pottery Co. has a very high credit rating. Under the terms of said contract, respondent agrees to redeem said advertising cards according to the terms printed on the back of each card. It was and is the practice of respondent's salesmen in soliciting orders for such advertising cards, and as an inducement to the merchant to purchase said cards, to represent to such merchant that there would be no expense whatever connected with the redemption of said cards by the customers of said merchant, but that the chinaware would be sent free and without any additional cost upon receipt of a requisite number of cards; and at the time of soliciting such sales as aforesaid, the salesman would not exhibit any sample card to the prospective purchaser.

In truth and in fact the use of the name "Thompson Pottery Company, Advertising Department," and the phrase "Potteries East

Liverpool, Ohio, established 1868," together with the use of the name The C. C. Thompson Pottery Co. and the facsimile signature of the president is false and misleading in that it implies to the merchant or dealer purchasing said advertising cards that respondent's business is, in fact, a part or branch of The C. C. Thompson Pottery Co., and induces such merchant or dealer to purchase said cards because The C. C. Thompson Pottery Co. is, and for many years has been, well and favorably known throughout the country. The use of the reference contained in the financial rating book "Dun & Bradstreet" and the giving as a reference of any mercantile agency is false and misleading, because the respondent's firm, to wit, "The Thompson Pottery Company Advertising Department," has no rating of any nature whatever in any mercantile agency nor is it rated by Dun & Bradstreet.

The chinaware sent to merchants in accordance with said agreement is not of the same grade and quality as the chinaware exhibited to them at the time of the solicitation of orders, but in truth and in fact is of a much inferior quality. The respondent does not refund to the dealer the purchase price of said advertising cards after 25 percent thereof has been redeemed by said merchant's customers, but on the contrary refuses to make such refunds until all the said cards have been redeemed.

In truth and in fact, said chinaware is not sent free, but on the back of each card appears a condition to the effect that the holder of said card is required to enclose 1 cent for each card before he can receive said chinaware.

PAR. 5. There are, among respondent's competitors, many individuals, partnerships, and corporations offering for sale and selling in interstate commerce in competition with respondent's silverware and earthen or chinaware and similar products under similar advertising or business-stimulating plans, who do not mislead prospective purchasers and purchasers by falsely using names of firms whose products they sell, who do not use ambiguous and misleading contracts, and who do not in any manner misrepresent the products and merchandise which they offer for sale and sell.

PAR. 6. The acts and practices of respondent hereinabove described have had, and do have, the capacity and tendency to mislead and deceive the purchasing public into the erroneous and mistaken belief that the respondent is directly or indirectly connected with the manufacturers of Wm. A. Rogers Silverware, to wit, Oneida, Ltd., or with The C. C. Thompson Pottery Co., and that in entering into agreements or contracts with the respondent they are entering into contracts or agreements with Oneida, Ltd., or The C. C. Thompson

Pottery Co., and that the representations of respondent relative to the redemption of the premium or advertising certificate have been and are true; and they are led into the purchase of such certificates redeemable in silverware or chinaware in reliance upon such erroneous belief.

As a result of the aforesaid false and misleading statements, advertisements, and representations by the respondent with respect to said products, trade has been unfairly diverted to him from his said competitors, whose ability to compete successfully with respondent has been, and is, lessened and injured by the methods of the respondent hereinbefore set forth.

PAR. 7. The above acts and things done, or caused to be done, by the respondent, were and are each and all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 9th day of August 1937, issued and thereafter served its complaint in this proceeding upon respondent, Matthew A. Willis, trading as Rogers Redemption Bureau and The Thompson Pottery Co., Advertising Department, 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, testimony, and other evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of the complaint by Marvin L. Farrington, attorney for the respondent, before Miles J. Furnas, 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 said complaint, testimony, and other evidence, brief in support of the complaint, respondent not having filed brief, and the oral arguments of counsel aforesaid; 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, Matthew A. Willis, is an individual trading and doing business under the firm name and style of "Rogers Redemption Bureau," and having his principal office and place of business at 419-427 Lumber Building in the city of Minneapolis, State of Minnesota.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the business of selling and distributing silverware in commerce among and between the various States of the United States by means of the sale and distribution of sales promotional plans, including premium certificates redeemable in silverware, to retail merchants and others situated in various States of the United States. Respondent has caused said products, when sold by him, to be transported from his aforesaid place of business in the State of Minnesota to the purchasers thereof at their respective points of location in various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said products among and between various States of the United States.

PAR. 3. In the course and conduct of his business as aforesaid, respondent is now, and has been during all of the times mentioned herein, in substantial competition in commerce among and between various States of the United States with other individuals and with corporations, firms, and partnerships engaged in the business of selling and distributing sales-promotional plans and silverware in commerce among and between various States of the United States. Among said competitors of respondent are many who do not in any manner misrepresent their business status, the terms and conditions of their sales promotional plans, or make any other false representations in regard to the sale and distribution of their respective products.

PAR. 4. In the course and conduct of his business as aforesaid, respondent sells and distributes to retail merchants and others a sales promotional plan in which the merchant agrees to purchase from the respondent a minimum number of premium certificates or gift cards redeemable in respondent's silverware, on which certificates is printed the name of the retail merchant, together with such other advertising matter as the merchant may desire. The said premium certificates or gift cards are distributed by the merchant to his customers, the number of cards so distributed to each customer being dependent upon the amount of the customer's purchases from the merchant. Respondent furnishes to such merchants catalogs describing respondent's silver-

Findings

28 F. T. C.

ware for which such premium certificates will be redeemed by respondent. After the customer of the retail merchant has accumulated a specified number of premium certificates or gift cards, the customer sends such certificates to the respondent for redemption in the articles of silverware selected by the customer from respondent's catalog. Respondent thereafter distributes the silverware selected to the customer of the retail merchant.

PAR. 5. In the course and conduct of his business as aforesaid, respondent sells said sales promotional plan to retail merchants through the medium of salesmen. Approximately 16 salesmen are employed by respondent, and such salesmen sell such sales-promotional plan to the purchasers thereof in approximately three-fourths of the States of the United States. Respondent furnishes his salesmen with forms of a contract to be executed by the retail merchants in the purchase of such plan, folders, and catalogs illustrating said silverware and samples of the premium certificates or gift cards. There is printed on the face of said contract in conspicuous, large red letters the words, "Wm. A. Rogers Silverware" and "Wm. A. Rogers, Ltd." As an inducement for the purchase of said sales-promotional plan, respondent's salesmen represent to retail merchants and others that the respondent, Matthew A. Willis, trading as Rogers Redemption Bureau, is connected with or is a part of "Oneida, Ltd.," the manufacturer of Wm. A. Rogers Silverware. Said contract further provides and respondent's salesmen represent to prospective purchasers that a 26-piece set of silverware with a buffet case will be furnished free of charge to every dealer purchasing the minimum quantity (10,000) of premium certificates or gift cards, and that said display set of silverware will become the property of the dealer. On the reverse side of said contract there appear statements relative to the number of premium certificates or gift cards required to redeem the various items of silverware, which are referred to by respondent as "free" items. Such statements read, in part, as follows:

Number of Cards Required for Various Free Items Listed Below.

Build Up a Complete Silver Service Free.

Teaspoons Packed in Units of Six—75 Cards Each.

The sales plan further provides and respondent's salesmen represent that other articles of silverware will be redeemed by respondent for various numbers of the premium certificates. The salesmen of respondent represent to prospective purchasers of said sales plan that the customers of the retail dealer will receive silverware without any additional cost upon sending to the respondent a designated number of premium certificates or gift cards; that the dealer or merchant will be given exclusive territory for the distribution of such premium

certificates or gift cards, and that the respondent will refund to the dealer the purchase price for the premium certificates or gift cards when 25 percent of the premium certificates purchased from the respondent by such dealer had been sent in for redemption by customers of the dealer. The salesmen of respondent also furnish to purchasers of said plan, for distribution among their customers, gift catalogs consisting of one sheet of paper illustrating the knives, forks, and spoons purported to be given away free of charge, and showing the number of gift cards required to redeem such "free" items. There is printed on such sheet the following statement:

Build up a complete silver service free.

Teaspoons packed in units of six items—75 cards each.

In truth and in fact such items are not given away free of charge. There is a charge of 1 cent for each gift card redeemed in silverware. In many instances the agents of respondent do not show the form of premium certificate or gift card to the retail merchants, who discover after the said premium certificates have been shipped to them by respondent that on the reverse side thereof there is the following statement:

This card is redeemable in Rogers Silverware as per schedule below, provided the holder has received this card in the regular course of trade and encloses one cent for each card. Shipping and packing charges fully prepaid.

PAR. 6. Wm. A. Rogers Silverware is now, and has been for many years, known by members of the purchasing public situated in various States of the United States as manufacturers of high-grade silverware. All silverware manufactured by said Wm. A. Rogers Silverware is branded "Oneida, Ltd., Oneida, N. Y." The Commission finds that salesmen of the respondent have falsely represented to prospective purchasers of respondent's sales plan that respondent is connected with or is a part of the manufacturer of Wm. A. Rogers Silverware. The Commission further finds that the use by the respondent of the term "Rogers" in his trade name "Rogers Redemption Bureau" and the aforesaid statement relative to the manufacturer of Wm. A. Rogers Silverware contained on the form of contract used by respondent in selling his sales plan have the tendency and capacity to cause members of the purchasing public, to have the erroneous and mistaken belief that respondent is connected with or is a part of the manufacturer of Wm. A. Rogers Silverware.

In truth and in fact, respondent is not directly or indirectly connected with Oneida, Ltd., manufacturers of Wm. A. Rogers Silverware, except as a purchaser of its products through a jobber located in Minneapolis, Minn.

Findings

28 F. T. C.

PAR. 7. In truth and in fact, respondent has in many instances refused to furnish to retail dealers the 26-piece set of silverware after the purchase by the dealers from the respondent of the minimum quantity of 10,000 premium certificates or gift cards. Respondent has not refunded to the retail dealers the purchase price for said premium certificates or gift cards after 25 percent of the cards purchased by the dealer had been redeemed by customers of the merchants. The aforesaid statement and representation by respondent that customers of the retail merchants could build up a complete silver service free of charge is false and misleading for the reason that only teaspoons, tablespoons, dinner forks, and dinner knives are redeemable by said premium certificates or gift cards, all other articles having to be purchased outright from respondent. The aforesaid statement by respondent that "Teaspoons packed in units of six—75 cards each" is misleading and deceptive in that holders of said premium certificates or gift cards are and were thereby led to erroneously believe that 75 gift cards would be required to redeem 6 teaspoons, when in truth and in fact 75 gift cards were required to redeem 1 teaspoon, thus requiring 450 cards to redeem each unit of 6 teaspoons.

It appears from the record that many complaints were received by various Better Business Bureaus and that when such complaints were called to the attention of the respondent he found that in most cases the misrepresentations complained of were made by his salesmen. After repeated complaints had been made respondent, subsequent to the issuance of the complaint, rewrote and reformed his said sales contract on several different occasions within the space of 10 months eliminating certain objectionable features and clarifying the language of said contract.

PAR. 8. The aforesaid statements and representations by respondent, used and disseminated as aforesaid, have the capacity and tendency to, and do, mislead and deceive members of the purchasing public and retail dealers situated in various States of the United States into the erroneous and mistaken belief that respondent is connected with Oneida, Ltd., manufacturers of Wm. A. Rogers silverware, and that the aforesaid false and misleading statements and representations relative to respondent's sales promotional plan and premium certificates are true, and into purchasing quantities of respondent's products because of said erroneous and mistaken belief. As a result, trade has been diverted unfairly to the respondent from his competitors, in commerce among and between various States of the United States, who truthfully advertise and represent their

respective products. In consequence thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury 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 Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission, and by Marvin Farrington, counsel for the respondent, 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 respondent, Matthew A. Willis, trading as Rogers Redemption Bureau, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of silverware or sales-promotional plans, including premium certificates, gift cards, or coupons, redeemable in silverware or other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through use of the word "Rogers," either alone or in connection with any other word or words, in a corporate or trade name, or through statements in advertising, or in any other manner, that respondent has an interest in, forms a part of, or has any connection with Onedia, Ltd., manufacturer of Wm. A. Rogers silverware; provided, however, that this order shall not be construed to prohibit the respondent from dealing in Wm. A. Rogers silverware.

2. Representing that certificates, gift cards, or other similar device can be redeemed in silverware or other merchandise unless and until all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connec-

Order

28 F. T. C.

tion or conjunction with such offer and there is no deception as to the services or other actions to be performed or the price to be paid in connection with obtaining such silverware or other articles of merchandise.

3. Representing that the purchase price for said certificates or gift cards will be refunded to the dealer purchasers thereof or that the respondent will supply to such dealer purchasers without charge display sets of silverware, to become the property of such dealers, unless and until such are the facts and unless all of the terms and conditions of such offer or offers are clearly and unequivocally stated in equal conspicuousness and immediate connection or conjunction with such offer or offers and there is no deception as to the services or other actions to be performed by the dealer purchasers in connection with obtaining such refund and display set of silverware.

4. Representing that a complete set of silverware or any specific item of silverware can be acquired through the redemption of such certificates, gift cards, or similar devices unless and until such is the fact.

5. Using any representations with respect to the number of certificates or gift cards required to be redeemed in order to obtain any specific merchandise, which representations do not clearly and accurately disclose the number of such certificates or gift cards actually required to obtain such merchandise.

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

AMBROSIA CANDY COMPANY, AND SAMUEL R. BLOCK,
INDIVIDUALLY, AND AS AN OFFICER OF AMBROSIA
CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3315. Complaint, Jan. 26, 1938—Decision, Mar. 1, 1939*

Where a corporation and an individual engaged in manufacture and sale of candy, including bar and 5-cent candy but principally packaged or boxed chocolates in $\frac{1}{2}$ -pound, 2-pound, and 5-pound sizes, and in furnishing with about one-half their output on request and without additional charge, punchboards for distribution and sale of their product to consumer under plan by which selection of number which might entitle selector to a box of candy and whether charge for selection would cost customer 1 cent, 2 cents, 3 cents, 4 cents, 5 cents, or nothing at all, was wholly matter of chance, and in selling also number of assortments of packaged chocolates suitable for use in operation of such boards and some of which assortments had added thereto as a premium a lamp; and including—

(1) Boards having 300 holes, in sections of 100 each, for sale and distribution of candy under a plan and in accordance with board's invitation, 5 cent purchaser of chance received or failed to receive 1-pound box of chocolates in accordance with success or failure in selecting number ending with numeral 5, those securing number 50 and multiples of 50 received fancy 1-pound box of chocolates, and last sale in each of board's three sections entitled purchaser to one fancy 2-pound box of chocolates, and holders of other numbers received nothing; and

(2) Other boards of the same general nature having as many as 30 or 40 free numbers, and for which selectors paid nothing, and on some of which charge to members of public ranged from 1 cent to 5 cents for each number selected—

Sold to wholesalers and jobbers, along with punchboards thus furnished, their said candy for distribution by retail dealer buyers thereof to purchasing public through use of said boards as above set forth and wholly by lot or chance and under plan by which amount which members of public paid for chance to obtain one of prizes thus distributed by use of such boards or whether or not chance was free was determined wholly by lot or chance; and

Supplied thereby to and placed in the hands of such purchasers means by which lotteries and games of chance might be conducted in sale and distribution of candy as above set forth involving game of chance or sale of a chance to procure such candy without cost or for much less than price at which such candy is sold in usual course of retail trade, contrary to an established policy of the United States Government and in violation of the laws of several of the States, and in competition with many who sell candy of like or similar grade and quality and are unwilling to sell their said product by any method or sales plan which involves game of chance, gift enterprise, or lottery scheme, and refrain from use thereof;