

Complaint

IN THE MATTER OF
CYRIL J. CONRADCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3590. Complaint, Sept. 15, 1938—Decision, Mar. 8, 1939*

Where an individual engaged in sale and distribution of hosiery, watches, and other articles of merchandise; in soliciting the sale of and selling his said merchandise—

Distributed to public certain literature and instructions including push cards, order blanks, and circulars explaining plan of selling his said merchandise and of allotting it and other articles as premiums or prizes to operators of said push cards for use in distribution of his said products to the purchasing public, wholly by lot or chance, under a plan and in accordance with said card's explanatory legends by which amount paid was dependent upon number pushed by chance, as was customer's success or failure in securing article being thus disposed of or nothing other than chance, through selecting from list of feminine names displayed on card name, concealed number of which entitled selector to such article, or hosiery, as was maker of last sale; and

Supplied thereby and placed in hands of others means of conducting lotteries in sale of his said merchandise in accordance with aforesaid or similar sales plan involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance, or sale of chance to win by chance, or any other method contrary to public policy and in violation of criminal laws, and refrain therefrom;

With result that many persons were attracted by his said methods in sale and distribution of his merchandise, and element of chance involved therein, and were thereby induced to buy and sell his said products in preference to merchandise offered and sold by said competitors who do not use same or equivalent method and with effect of unfairly diverting trade to him from his said competitors; to the substantial injury of competition in commerce:

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

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Cyril J. Conrad,

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hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Cyril J. Conrad, is an individual with his principal office and place of business located at 2301 Sixth Avenue, Altoona, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of hosiery, watches, and other articles of merchandise to dealers. Respondent causes and has caused his products when sold to be transported from his aforesaid place of business in the State of Pennsylvania to purchasers thereof located in the various other States of the United States and in the District of Columbia at their respective points of location.

There is now and has been for some time last past a course of trade by respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent in soliciting the sale of and selling his merchandise in said commerce has adopted and pursued the following methods and practices:

Respondent distributes to the public certain literature and instructions including, among other things, push cards, order blanks, and circulars explaining respondent's plan of selling said merchandise and of allotting it and other articles of merchandise as premiums or prizes to the operators of said push cards. One of respondent's push cards bears 81 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the name of the feminine name selected. Said push card has 81 small partially perforated disks marked "push" and immediately beneath each of said disks is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each of said disks is a number which is disclosed when the disk is pushed or separated from the card. The push card bears printed legends or instructions as follows:

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Pay Only 1¢ to 10¢ for
 SILK HOSE— No Higher
 Nos. 5—16—27—38 get Silk Hose

LAST SALE gets Silk Hose

1 to 10 pay what you draw	This card contains
Nos. ending in 1 pay 1¢	8 1¢ numbers
Nos. ending in 2 pay 2¢, etc.	7 2¢ numbers
Nos. ending in 0 pay 10¢	7 3¢ numbers
	7 each up to 10¢

NO WAITING

Only 1¢ to 10¢
 All-American-made
 Guaranteed Silk Hose

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends or instructions. Said merchandise prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. Persons who are not successful in selecting a disk containing one of the said numbers or the last number on said card receive nothing for their money other than the privilege of pushing a disk from said card. The said hosiery is thus distributed to the purchasing public wholly by lot or chance.

Respondent distributes and has distributed various push cards for use in the sale of his said products by means of a game of chance, gift enterprise, or lottery scheme but all of said push cards are similar to the card hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards 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 sales plan in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan is a practice of the sort which is contrary to an established public policy of the Government of the United States and is in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and cor-

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porations who sell and distribute merchandise in competition with respondent as above alleged are unwilling to adopt and use said methods or any methods involving a game of chance or the sale of a chance to win something by chance or any other methods that are contrary to public policy and in violation of the criminal laws and such competitors refrain therefrom. Many persons are attracted by said methods employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 equivalent methods. The use of said methods by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or equivalent methods, and, as a result thereof, substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 15, 1938, issued and thereafter served its complaint in this proceeding upon respondent, Cyril J. Conrad, 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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 Cyril J. Conrad, is an individual with his principal office and place of business located at 2301 Sixth Avenue, Altoona, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of hosiery, watches, and other articles of merchandise to dealers. Respondent causes and has caused his products when sold to be transported from his aforesaid place of business in the State of Pennsylvania to purchasers thereof located in the various other States of the United States and in the District of Columbia at their respective points of location.

There is now and has been for some time last past a course of trade by respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent in soliciting the sale of and selling his merchandise in said commerce has adopted and pursued the following methods and practices:

Respondent distributes to the public certain literature and instructions including, among other things, push cards, order blanks, and circulars explaining respondent's plan of selling said merchandise and of allotting it and other articles of merchandise as premiums or prizes to the operators of said push cards. One of respondent's push cards bears 81 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the name of the feminine name selected. Said push card has 81 small partially perforated disks marked "push" and immediately beneath each of said disks is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each of said disks is a number which is disclosed when the disk is pushed

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or separated from the card. The push card bears printed legends or instructions as follows:

Pay Only 1¢ to 10¢ for	
SILK HOSE—	No Higher
Nos. 5—16—27—38 get	Silk Hose
LAST SALE gets Silk Hose	
1 to 10 pay what you draw	This card contains
Nos. ending in 1 pay 1¢	8 1¢ numbers
Nos. ending in 2 pay 2¢, etc.	7 2¢ numbers
Nos. ending in 0 pay 10¢	7 3¢ numbers
	7 each up to 10¢
NO WAITING	
Only 1¢ to 10¢	
All-American-made	
Guaranteed Silk Hose	

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends or instructions. Said merchandise prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. Persons who are not successful in selecting a disk containing one of the said numbers or the last number on said card receive nothing for their money other than the privilege of pushing a disk from said card. The said hosiery is thus distributed to the purchasing public wholly by lot or chance.

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PAR. 3. The persons to whom respondent furnishes the said push cards 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 sales plan in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan is a practice of the sort which is contrary to an established public policy of the Government of the United States and is in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations

who sell and distribute merchandise in competition with respondent as above found are unwilling to adopt and use said methods or any methods involving a game of chance or the sale of a chance to win something by chance or any other methods that are contrary to public policy and in violation of the criminal laws and such competitors refrain therefrom. Many persons are attracted by said methods employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 equivalent methods. The use of said methods by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or equivalent methods, and, as a result thereof, substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent as herein found are all to the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Cyril J. Conrad, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of hosiery, watches, 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 devices for the purpose of enabling

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such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to 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 or 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

W. M. JACOBSON DOING BUSINESS AS WONDER WOOD-
TEX COMPANY

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

Docket 3675. Complaint, Dec. 23, 1938—Decision, Mar. 8, 1939

Where an individual engaged in sale and distribution of wood pulp articles to retail dealers and operators of gift shops in the various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar articles in commerce and in said District, and including many who do not misrepresent their respective products, sales policies, or methods of doing business—

- (a) Represented, in statements which he caused to be disseminated in commerce among the various States and in said District, that his father was a wealthy retired citizen now engaged, as a hobby, in manufacture of said wood pulp articles sold and distributed by him, and that he was permitted by his father, and as latter's sole sales representative, to sell such articles with and on the understanding that he would not make any misrepresentations relative thereto and would not overcharge purchasers thereof, and invited prospective purchasers to visit his father's large Long Island estate, and gift show conducted by said individual in the Palmer House in Chicago, with all expenses paid by such individual;

Facts being said individual's father had been dead for many years prior to times mentioned, neither he nor his father ever made said articles, and his father did not have Long Island estate, nor did individual in question conduct gift shop, as aforesaid, at the Palmer House or elsewhere, and said statements and representations disseminated as above set forth were false, misleading, and untrue;

- (b) Represented that the prices for which purchasers from him could resell the articles which they thus bought were 50 to 100 percent more than the prices they paid therefor, and that such articles were similar to samples displayed to prospective purchasers, and that said individual had been referred to such prospects by satisfied customers of said individual;

Facts being purchasers could not thus resell such articles, but found it necessary to resell same at the prices paid therefor, articles shipped to purchasers were inferior to samples displayed prior to shipment, and said individual had not been referred to prospective purchasers by satisfied customers as above set forth; and

- (c) Represented that he exchanged articles purchased from him which were not sold readily for other articles which would thus sell, and that purchasers received from him exclusive territory for sale and distribution of his said articles, and that payment therefor could be made by deferred purchase plan whereby time of payment for articles not readily salable would be extended to conform to retail sales thereof, and that promissory notes signed by purchasers were merely evidence of the debt and in no case would be used by him as collateral for a loan or sold to third party;