

Syllabus

IN THE MATTER OF

**SIDNEY A. WEITZMAN, INDIVIDUALLY, AND TRADING AS
CERTIFIED SALES SERVICE**

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

Docket 3245. Complaint, Oct. 20, 1937—Decision, Mar. 15, 1939

Where an individual engaged in offer and sale of various articles of merchandise, including clocks, cameras, electric dry shavers, and other articles; in soliciting sale of and in selling and distributing his said products—

Furnished various devices and plans of merchandising, which involved operation of games of chance, gift enterprises, or lottery schemes for distribution of said articles to members of public, wholly by lot or chance, and which consisted of push cards for use in sale and distribution of his said products under a plan and in accordance with said cards' explanatory legends by which amount paid for chance, or receipt of free chance, as case might be, by purchaser or customer was dependent upon number pushed by chance, and receipt by customer of article being thus disposed of was dependent upon success or failure in selecting from list on card, girl's name corresponding to that concealed under card's master seal, and under which, in case of some, person selecting by chance certain number received secondary prizes, and maker of last purchase, and under which, failing the aforesaid contingencies, customer received nothing, and operator of card was compensated for services by one of articles being thus disposed of; and Supplied and placed thereby in hands of others means by which games of chance, gift enterprises, or lottery schemes were conducted through distribution to public wholly by lot or chance of such articles, and ascertainment, similarly, of amount, if any, paid for chance, and involving game of chance or sale of a chance to procure one of said articles without cost, or by expenditure of a sum much less than price at which one of said articles would sell 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 articles of merchandise of like or similar type, grade, and quality, and are unwilling to sell such articles by any method or sales plan involving game of chance, gift enterprise, or lottery scheme and refrain from use thereof;

With result that many persons were attracted by element of chance involved in sales plan or method by which articles dealt in by him were distributed to public by use of such cards and induced to purchase such articles from him in preference to like or similar articles of competitors who do not furnish with their merchandise any push card or other device or devices by which such articles can be distributed to public by lot or chance, and he sold, as result, substantial quantities of his merchandise and trade was thus diverted unfairly to him from competitors:

Held, That such acts and practices were all to the 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.

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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 Sidney A. Weitzman, individually and trading as Certified Sales Service, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual trading under the name and style of Certified Sales Service, with his principal office and place of business located at 357 West Sixty-third Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in offering for sale and selling various articles of merchandise including, among others, clocks, cameras, automatic vibro shavers, Marvel dry shavers, fountain pen and desk sets, to purchasers thereof located in various States of the United States. He causes said merchandise when sold to be shipped or transported from his place of business in the State of Illinois to purchasers thereof in the State of Illinois and in other States of the United States at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the States of the United States. In the course and conduct of his business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent has caused and causes the representation to be made to his customers and prospective customers by his salesmen and agents, and to be set forth on his business stationery, billheads, invoices, and other printed literature, that he is a manufacturer's distributor of the merchandise which he sells, making among other representations the following:

Certified Sales Service—Manufacturers' Distributors

By the representation that he is a manufacturer's distributor, respondent represents that he is the direct distributor of the concern or concerns manufacturing the merchandise which he sells. A substantial portion of the purchasing public have expressed, and have,

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a preference for purchasing merchandise direct from the manufacturer or his distributors, such persons believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from an independent selling agency or middleman.

PAR. 3. The use by respondent of said representation that he is a manufacturer's distributor has the capacity and tendency to and does mislead and deceive many of respondent's said customers and prospective customers into the erroneous belief that respondent is the direct distributor of a business concern or business concerns which control and operate a factory or factories in which the merchandise sold by respondent is manufactured and that persons dealing with the respondent are buying such merchandise from the direct agent of the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various advantages, including advantages in service, delivery, and adjustment of account, that are not obtained by persons purchasing goods from middlemen. The truth and fact is that respondent is not the direct distributor for the manufacturer or manufacturers of the merchandise which he sells, but on the contrary only purchases from others the merchandise which he sells.

PAR. 4. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who manufacture the merchandise which they sell or who are direct distributors of such manufacturers and who rightfully represent that they are the manufacturers thereof or are the distributors of such manufacturers. There are others of said competitors who purchase the merchandise in which they deal and resell the same at a profit to themselves and who in no wise represent that they manufacture said merchandise or are the manufacturers' distributors. The above alleged acts and practices of respondent, as set out in paragraphs 2 and 3, tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 5. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing his merchandise in interstate commerce, has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The methods and practices adopted and used by respondent are substantially as follows:

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

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blanks, and advertisements containing illustrations of his merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of the push cards. Said push cards bear a number of feminine names with a blank space opposite each for writing in the name of the customer. Said push cards have a corresponding number of partially perforated 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 disk, 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:

SELECT YOUR FAVORITE GIRL'S NAME
AND RECEIVE AN

AUTOMATIC
VIBRO
SHAVER

"It soothes while it shaves"

Numbers Under 29
Pay What You draw

Numbers Over 29
Only Pay 29¢

NO HIGHER

(SEAL)

Write Your Name
Opposite Name
You Select on
Reverse Side

Do not remove
seal until
entire card
is sold

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

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PAR. 6. Respondent, in selling his said merchandise in connection with the aforesaid push cards, conducts lotteries or places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The sale of respondent's merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondent's merchandise at a price much less than the normal retail price thereof. The use by respondent of said method in the sale of his merchandise, and the sale of his merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States.

PAR. 7. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to and does divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 8. The aforesaid acts and practices of respondent are all to the injury and prejudice of the public and respondent's competitors, as hereinabove alleged. Said acts and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 20, 1937, issued and thereafter served its complaint in this proceeding upon the respondent, Sidney A. Weitzman, individually, and trading as Certified Sales Service, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issu-

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ance of said complaint and the filing of respondent's 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 before William C. Reeves, an examiner of the Commission theretofore duly designated by it (no testimony or other evidence was tendered for or on behalf of respondent), 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 a 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, Sidney A. Weitzman, is an individual trading under the name and style of Certified Sales Service, with his principal place of business at 357 West Sixty-third Street, Chicago, Ill. He has been engaged in the business of offering for sale and selling various articles of merchandise, including clocks, cameras, electric dry shavers, automatic vibro shavers, and fountain pen and desk sets. Respondent causes and has caused said articles of merchandise when sold to be shipped or transported from his aforesaid place of business in the State of Illinois to purchasers thereof in various other States of the United States at their respective points of location. There is now and has been for some time last past a course of trade by respondent in such merchandise in commerce between and among various States of the United States. In the course and conduct of his said business respondent has been and is now in active competition with various partnerships and corporations, and with other persons also engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among 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 the articles of merchandise dealt in by him, and in selling and distributing same, has furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes by which said articles of merchandise have been distributed to members of the public wholly by lot or chance. Said devices and

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plans of merchandising consisted of push cards which were operated in substantially the following manner:

Each of the cards had printed thereon a number of girls' names, and below each name was a partially perforated disk which concealed a number. Each of the cards also had stamped thereon a larger disk in the form of a seal which concealed a name which was the same as one of the names on the card. Members of the public were solicited to select one or more of the names on the card and pay the number of cents indicated by the number concealed by the disk below each of the names selected. When all of the names were selected the seal was removed and the name concealed thereby was disclosed and the article of merchandise involved in the operation of the card was given to the person who had selected the name which was the same as that concealed by the seal, and the agent or salesman in charge of each of some types of the cards, who had induced members of the public to select the names and to pay the amounts indicated by the concealed numbers, also was given, for his services in this regard, one of the articles of merchandise involved in each of the lotteries. With some of the types of cards so used selectors of numbers higher than 29 paid only 29 cents, and with one type of the cards used selectors of numbers higher than 25 paid only 25 cents, and some of the numbers were designated as "Free," and selectors of those numbers paid nothing; and the selectors of No. 33 and the person to whom the last sale was made on one of the cards each was given a secondary prize, but the selectors of all other numbers received nothing. Each of the articles of merchandise distributed by the use of one of the cards was of a value greater than the cost of the selection of any one of the names on one of the cards. By the use of these cards the articles of merchandise dealt in by respondent were distributed to the public wholly by lot or chance, and the amount that any member of the public was required to pay for a chance to participate in the lottery or whether such chance was free also was determined wholly by lot or chance. As a result of the use of these cards respondent has sold between 400 and 500 electric dry shavers in sets of two for which he obtained \$16.95 for each set; also about 100 vibro shavers in sets of two for which he obtained \$6.95 for each set; also about 200 cameras in sets of two for which he obtained \$7.95 for each set; also about 100 rotary clocks in sets of two for which he obtained \$6.45 for each set; also about 200 pendulum clocks for which he obtained \$8.95 each.

PAR. 3. The Commission finds that the persons to whom respondent furnished push cards and the sales plans as described in paragraph 2 hereof, used same in purchasing, selling, and distributing articles of merchandise obtained from respondent. Respondent in this manner

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has supplied to others, and placed in their hands the means by which games of chance, gift enterprises, or lottery schemes have been conducted. The sale and distribution of articles of merchandise by the use of such push cards and in accordance with such sales plans, is a practice of the sort which is contrary to an established public policy of the Government of the United States, and in violation of the laws of several of the States of the United States. Many competitors of respondent sell articles of merchandise of like or similar type, grade, and quality to those sold by respondent, and in competition with respondent, which competitors are unwilling to sell such articles of merchandise by any method or sales plan which involves a game of chance, gift enterprise, or lottery scheme, and refrain from the use of same, and as a result are placed at a disadvantage in competition.

PAR. 4. The sale and distribution of articles of merchandise to the purchasing public in the manner, and by the method hereinbefore found, involves a game of chance or the sale of a chance to procure one of such articles of merchandise without cost or by the expenditure of a sum of money much less than the price at which one of such articles of merchandise would sell in the usual course of retail trade. Many persons have been attracted by the element of chance involved in the sales plan or method by which articles of merchandise dealt in by respondent have been distributed to the public by the use of push cards, and have been induced to purchase such articles of merchandise from respondent in preference to like or similar articles of merchandise sold by competitors of respondent who did not and do not furnish with articles of merchandise sold by them any push card, or other device or devices by the use of which such articles of merchandise could be distributed to the public by lot or chance, and as a result respondent has sold substantial quantities of the articles of merchandise, which has caused trade to be diverted unfairly to respondent from his competitors.

CONCLUSION

The aforesaid acts and practices of respondent, as hereinbefore 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 sup-

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port of the allegations of said complaint and in opposition thereto, brief of the attorney for the Commission (respondent having filed no brief and oral argument not having been requested), 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, Sidney A. Weitzman, individually, and trading as Certified Sales Service, 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, electric dry shavers, automatic Vibro shavers, fountain pen and desk sets, 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 hand of others push or pull cards, punchboards, or other lottery devices, for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to 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
FRED W. HERRSCHNER, JR., INDIVIDUALLY, AND TRADING AS 20TH CENTURY SALES CO.

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

Docket 3251. Complaint, Oct. 25, 1937—Decision, Mar. 15, 1939

Where an individual, engaged in sale and distribution of cameras, vibro shavers, clocks, and pen and pencil sets; in soliciting sale of and in selling his said articles—

Furnished to purchasers and prospective purchasers of his said merchandise various devices and plans and methods 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 public wholly by lot or chance through use of push cards, under plan and in accordance with said cards' explanatory legends and instructions for use thereof by which amount paid by customer for chance or, in case of some, receipt of free chance was dependent upon particular number selected by chance, and customer's receipt of article being thus disposed of was dependent upon success or failure in selecting from list of girls' names displayed on card name corresponding to that concealed under card's master seal and under which, failing such contingencies, customer received nothing; and

Supplied thereby and placed in the hands of others means by which lotteries were conducted in the sale and distribution of articles of merchandise sold by said individual and under which distribution of such articles and amount, if any, which member of public was required to pay for chance to obtain such an article was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure articles for sum less than price at which such or similar articles were being sold in usual course of retail trade, 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 and similar articles and who do not make use of any game of chance, gift enterprise, lottery scheme, or other similar device or devices in sale of their products;

With result that many purchasers of articles sold by said individual were attracted by element of chance in sales plan and method used by him and thereby induced to purchase his articles in preference to like or similar products offered and sold by competitors who did not use same or similar sales plans and methods, and public, by reason of such preference, purchased substantial volume of merchandise from him, and trade was diverted unfairly to him from competitors:

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.