

IN THE MATTER OF
SAMUEL COHEN, INDIVIDUALLY, AND TRADING AS
S. & C. SALES

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

Docket 3698. Complaint, Feb. 3, 1939—Decision, Mar. 21, 1939

Where an individual engaged in sale and distribution of cameras, sports jackets, pencils, and other articles of merchandise; in soliciting sale of and in selling and distributing his said merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for sale and distribution of said products to ultimate consumers, wholly by lot or chance, and which involved distribution to purchasing public of certain literature and instructions, including push cards, order blanks, illustrations of said merchandise and circulars explaining his plan of selling same and allotting it as premiums or prizes to operators of said push cards, by which and in accordance with said card's explanatory legends amount, if any, paid for chance by customer was dependent upon number selected by chance, certain numbers secured selectors Eversharp pencil thus disposed of, and receipt by customer of camera or other article being thus disposed of was dependent upon success or failure in selecting from list of feminine names displayed, name corresponding with that concealed under card's master seal, and by which, failing such contingency, customer received nothing; and

Supplied thereby and placed in the hands of others means of conducting lotteries in sale of his merchandise in accordance with sales plan above described, under which receipt by purchaser of article or nothing for amount of money paid, and which article, if any, purchaser was to receive, and whether person receiving such article received same without cost was determined wholly by lot or chance, and 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 a chance to win something by chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his merchandise and were thereby induced to buy or sell same in preference to buying or selling like or similar articles of merchandise offered by competitors who do not use such or equivalent method, and with effect, by reason of use of such method and game of chance of unfairly diverting trade to him from his competitors, who do not so do, to the substantial injury of competition in commerce;

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

Mr. D. C. Daniel for the Commission.

Zukernick & Zukernick, of Miami Beach, Fla., for respondent.

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 Samuel Cohen, individually and trading as S. & C. Sales, 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Samuel Cohen, is an individual trading as S. & C. Sales, with his principal office and place of business located at 4949 D Street, Philadelphia, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of cameras, sports jackets, pencils, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products when sold to be transported from his aforesaid place of business in Pennsylvania to purchasers thereof 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 such 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 said business, respondent is, and has been, in 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 and in the District of Columbia.

PAR. 2. In the course and conduct of his business in said commerce as described in paragraph 1 hereof, respondent in soliciting the sale of and in selling and distributing his merchandise furnishes, and has furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method of sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions including, among other things, push cards, order blanks, illustrations of his said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push

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cards. One of respondent's push cards bears 54 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 54 small, partially perforated disks on the face of which is printed the word "push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

NAME UNDER SEAL RECEIVES A CANDID CAMERA

S P A R T U S

Do not remove until all sold.

Nos. 1 to 25, Pay 1 to 25. Nos. over 25, Pay only 25.

Numbers 31 and 41 Each Receive a Guaranteed Eversharp PENCIL.

NUMBERS 11-12-13-14-16 are FREE!

Write Your Name on Reverse Side Opposite Name You Select.

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends and instructions. Said prices or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, or whether a person receives an article of merchandise without cost, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push card is the same as that hereinabove described, varying 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 or method 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 or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and 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 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 said sales plan or method 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 an equivalent method. The use of said method 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 an equivalent method, 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 and unfair and deceptive acts and practices 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 February 3, 1939, issued and served its complaint in this proceeding upon respondent, Samuel Cohen, individually and trading as S. & C. Sales, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 1, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. Thereafter, the proceeding

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regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter and now being 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, Samuel Cohen, is an individual trading as S. & C. Sales, with his principal office and place of business located at 4949 D Street, Philadelphia, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of cameras, sports jackets, pencils, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products when sold to be transported from his aforesaid place of business in Pennsylvania to purchasers thereof 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 such 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 said business, respondent is, and has been, in 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 and in the District of Columbia.

PAR. 2. In the course and conduct of his business in said commerce, as described in paragraph 1 hereof, respondent in soliciting the sale of and in selling and distributing his merchandise furnishes, and has furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions including, among other things, push cards, order blanks, illustrations of his said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of the respondent's push cards bears 54 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push

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card has 54 small, partially perforated disks on the face of which is printed the word "push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

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Numbers 31 and 41 Each Receive a Guaranteed Eversharp PENCIL

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Write Your Name on Reverse Side Opposite Name You Select.

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, or whether a person receives an article of merchandise without cost, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push card is the same as that hereinabove described, varying 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 described. The use by respondent of said sales plan or method 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 or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and 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 or distribute merchandise in competition with the respondent as above found, 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 said sales plan or method 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 an equivalent method. The use of said method 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 an equivalent method, 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 prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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, Samuel Cohen, individually and trading as S. & C. Sales, or under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale

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and distribution of cameras, sports jackets, pencils 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 punchboards, push or pull cards, 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 punchboards, push or pull cards, 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 punchboards, push or pull cards, 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

JACK KING, ALIAS ORRIS DeMATTEIS, TRADING AS
ARTISTIC TAILORING COMPANY AND ARTISTIC
UNIFORM & TAILORING CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3621. Complaint, Oct. 4, 1938—Decision, Mar. 22, 1939*

Where an individual engaged in sale and distribution of workmen's service suits, uniforms, shirts, caps, and other wearing apparel to purchasers thereof in other States and in the District of Columbia, in substantial competition with others engaged in sale of apparel similar in kind and character to that sold and distributed by him, and including many who do not in any manner misrepresent the nature, character, and equipment of their business and the quality of their products, and do not make any other false statements in connection with sale and distribution thereof—

- (a) Represented, through statements disseminated in advertisements in newspapers and other periodicals, leaflets, pamphlets, and other printed matter distributed among prospective purchasers in various States and in said District, that products which he sold and distributed were made or manufactured by him, and that he owned, operated, and maintained tailoring plants for manufacture of clothing, and latest up-to-date tailoring equipment and machines, and employed workmen or tailors who were thoroughly experienced in use of such machinery or equipment, through use of word "Tailoring" in trade names employed by him, and statements therein made, and "Our workmanship is unsurpassed by machine or human hands. Every member of our organization is thoroughly experienced in the use of our latest up-to-date machinery and equipment," and "Mail orders direct to factory now," and "We guarantee every garment to be * * * tailored the size as your order specifies"; and—
- (b) Represented, as aforesaid, that he had branch offices in various localities and was manufacturer of "the world's finest Shield Brand Uniforms, caps, trousers," etc., and that he or his business were "Tailors of the world's finest uniforms," through statements aforesaid and such statements, among others, as "We guarantee every garment to be exactly as described and illustrated in our catalog," and "Shipment to be made from Kansas City or your nearest branch factory";

Facts being he did not own, operate, or maintain tailoring plant or establishment at which products sold and distributed were made or manufactured, own, operate, or maintain latest up-to-date tailoring equipment, etc., or any tailoring equipment and machinery, or have in his employ expert workmen or tailors, or own or operate or maintain clothing factories or branch factories in Kansas City, Los Angeles, or New York, did not tailor garments sold and distributed by him to individual size and measurement of purchaser, and his products were not of quality or nature illustrated and described in his catalog or other advertisements, but were inferior thereto in quality and material, and his statements and representations as above set forth were otherwise false and misleading;