

Syllabus

IN THE MATTER OF
TWENTIETH CENTURY BUSINESS BUILDERS, INC., AND
EDWIN I. GORDON

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

Docket 2774. Complaint, Apr. 20, 1936—Decision, Apr. 3, 1939

Where a corporation and an individual, its general manager who directed and controlled its sales activities and policies with respect to acts and practices herein set forth, engaged in sale and distribution of a sales promotional plan to retail merchants in the various States, under contracts entered into with such merchants, pursuant to which they—

(1) Furnished merchant with "count the dot" or "count the block" puzzle advertising mats for use by merchant in his local paper, covering merchant's trade area, and representing, and usually with headline streamers, that merchant was conducting a contest and upon a given day would give away free of charge, to person most closely approximating number of dots or blocks in picture, items of merchandise there described and depicted and represented as of stated value, such as "\$159 living room suite," etc., and that person submitting answers or solutions nearest correct answer or solution would receive vouchers or checks redeemable in merchandise of particular retailer, and that only stated number of such vouchers and checks were issued, and pursuant to which they—

(2) Undertook to furnish "an experienced manager who will prepare for this sale and supervise same during the period of the sale"; and—

In substantial competition in commerce with others engaged in sale and distribution of various sales promotional plans to stimulate trade, and who do not engage in practice of causing merchants with whom they contract to make false representations relative to values of their merchandise or to issue checks or credit vouchers for stated amounts, but which in fact have no monetary value in purchasing from such merchants, and do not make or cause to be made any other false statements and representations in connection with sale and distribution of their said sales promotional plans or of merchandise involved in use thereof;

In carrying on their said business and plan, purpose of which was not to make awards of cash credit slips to contestants who submitted correct and accurate answer or solution to number of dots in advertisements, but to issue cash credit slips to all persons who submitted answers or solutions without regard to accuracy of answers submitted, and thereby entice such contestants into stores of merchants for purpose of effecting sales of merchandise of such merchants, who, acting under their direction and advice and that of their agents and representatives, (1) increased the selling price and represented value of their merchandise, and represented same as of a value in excess of the real worth by an amount which approximated the purported value of the credit vouchers distributed to contestants submitting answers or solutions, (2) widely advertised such false and fictitious values by newspaper advertisements and otherwise throughout such merchants' respective trade areas, and (3) distributed indiscriminately credit vouchers or credit checks without regard to solutions submitted—

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Caused retail merchants with whom they contracted to represent aforesaid sales promotional advertisement and plan as a contest, and to make false representations relative to values of their merchandise, and to issue checks or credit vouchers for various stated amounts, but which in fact were of no monetary value in purchasing from such merchants their said merchandise, to which they had assigned, as above set forth, fictitious special or sale prices and values in excess of those at which it was regularly and customarily offered for sale;

With effect of misleading and deceiving substantial portion of purchasing public, through publication by such retail merchants, as thus caused by them, of such false and fictitious selling prices and values, and such indiscriminate issuance of credit vouchers or checks, into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that such false and fictitious selling prices and values were the usual selling prices and actual values for merchandise involved, and that by entering said "count the dot" contests and winning credit vouchers by accurately counting dots or blocks, they would receive special discounts in purchasing retailer's merchandise, and thereby effect savings to the extent of the amount of the credit vouchers won by them; and

With the result that substantial number of members of purchasing public, in reliance upon such erroneous and mistaken beliefs, entered such contests and purchased substantial quantities of the merchandise featured therein, and substantial number of merchants purchased such sales promotional plan of said corporation and individual and trade was diverted unfairly (1) to said merchants from their merchant competitors in commerce who do not make false representations relative to the value of their merchandise or issue checks or credit vouchers for various stated amounts, but in fact of no monetary value in purchasing merchandise from them, and (2) to said corporation and individual from competitors who, as hereinbefore set forth, do not, in sale and distribution of their various sales promotional plans, cause merchants with whom they contract to make false representations relative to values of their merchandise or to issue checks or credit vouchers as above set forth, or otherwise make or cause to be made other false statements and representations in connection with their said promotional sales plans or merchandise involved in use thereof:

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

Before *Mr. William C. Reeves*, *Mr. Robert S. Hall*, and *Mr. Arthur F. Thomas*, trial examiners.

Mr. Alden S. Bradley, *Mr. DeWitt T. Puckett*, and *Mr. George Foulkes* for the Commission.

Chritton, *Wiles*, *Davies*, *Hirschl & Dawson*, of Chicago, Ill., for respondents.

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 the Twentieth

Century Business Builders, Inc., a corporation, and Edwin I. Gordon, an individual, hereinafter called respondents, have been and are 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 thereto would be in the public interest, it hereby issues its complaint, stating its charges as follows in that respect.

PARAGRAPH 1. Respondent, Twentieth Century Business Builders, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Michigan and having its principal office and place of business at 917 Furniture Mart Building, in the city of Chicago and State of Illinois. Respondent Edwin I. Gordon is resident manager of Twentieth Century Business Builders, Inc., and maintains his principal office and place of business at 917 Furniture Mart Building, in the city of Chicago and State of Illinois.

Respondents, Twentieth Century Business Builders, Inc., in its entire corporate existence, to wit, since October 6, 1934, and Edwin I. Gordon, have been engaged in selling, and offering for sale, to retail merchants throughout the various States of the United States other than the State of Illinois a certain sales promotion plan, with the representation to the purchasers, and prospective purchasers thereof that the use of such plan, which is copyrighted, the copyright being owned by Edwin I. Gordon, is as follows:

Respondents procure contracts with various retail merchants throughout the various States of the United States as aforesaid under and by the terms of which, for a stated consideration, respondents agree, among other things, to furnish to such merchant advertising mats to be used in the manner hereinafter related, which said mats, however, remain at all times the property of respondents. Such mats, when used, reproduce what are known to the trade as "Count the Dot" and "Count the Block" puzzles, which consist of a reproduction or photograph of various merchandise and commodities featured by such retail merchant. Superimposed upon such reproduction or photograph are numerous blocks or dots. The retail merchant, when the contract is made, is instructed by the respondents to cause the insertion of such photograph in a paper or other periodical or periodicals of general circulation within the trade area of such merchant for a contracted and stated period of time. Accompanying such picture is a representation made by the dealer, acting under instructions by the respondents, that upon a given day the retail dealer will give free of charge to the person most closely approximating the number of dots or blocks in the picture certain described merchandise which is represented to be of considerable value.

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Further representations are made that a stated number of persons submitting answers or solutions to such puzzles nearest the correct answer or solution of the same will receive vouchers or checks redeemable in merchandise only and sold only at the store of such retail dealer.

PAR. 2. In truth and in fact such credit vouchers are indiscriminately distributed without regard to the solution submitted, and are used solely and only for the stimulation of trade, the object and purpose of the advertisements being that in connection with the sale of merchandise, which sale is widely advertised, increased number of patrons may be attracted.

PAR. 3. The contract between the respondents and retail merchant provides, among other things, that the merchant shall be entitled to the advice and business experience of the respondents. Acting under the direction and advice of the respondents, the retail merchant procures, in many instances, goods of an inferior character and of cheap manufacture, which, upon instruction of the respondents, he falsely represents to be of a value in excess of the real worth thereof; such increase in represented value amounting to approximately the purported value of said credit vouchers.

It is likewise the common practice of merchants, at the instance and advice of the respondents, to procure old or antiquated stock of little value and falsely to represent such stock to have a value in excess of its real worth; such increase in represented value amounting approximately to the purported value of said credit vouchers.

These false and fictitious values are widely advertised by circulars, handbills, in periodicals, magazines, newspapers, by radio broadcasts and other means throughout the trade area wherein such retail merchant operates, and the publishing of such false and fictitious prices has a capacity and tendency to, and does, mislead and deceive a substantial number of purchasers into the false belief that by purchasing the merchandise so advertised and represented during the period of the sale hereinbefore described, they effect economies and make pecuniary gains and savings. Relying upon such belief, a substantial number of the members of the purchasing public have so purchased said merchandise.

PAR. 4. The acts and practices of the respondents, as hereinabove described, have caused, and now cause, a substantial injury to a substantial number of retail merchants who are competitors of those retail merchants with whom respondents contract and who engage in the sale, transportation, and distribution throughout the various States of the United States other than the particular States wherein such competitors are located, of commodities similar in character, nature

and design to those in which such contracting retail merchants deal, and who do not use false and fictitious prices in the sale of the commodities vended by them, nor issue to customers, or prospective customers credit vouchers of a kind and in a manner herein before related. Such acts and practices have occasioned, and still occasion, a substantial diversion of trade from such competitors to those with whom respondents contract and who act in the manner above set out.

PAR. 5. In engaging in the business of stimulating trade and holding itself out as a business consultant, the respondents are in competition with a substantial number of other persons, firms, copartnerships, and corporations who likewise represent themselves to be business consultants and are engaged in the business of stimulating trade but who do not engage in the practice of fostering false or fictitious prices and who do not cause those with whom they contract falsely to represent to the purchasing public that the commodity offered for sale is new, or is of a superior quality at the price for which the same is offered and who do not mislead and deceive or cause a deception of members of the purchasing public by issuing, or causing to be issued, trade or credit vouchers for various stated amounts which are actually of no monetary value in purchasing from the merchants so issuing.

PAR. 6. The facts and practices of the respondents, as above set forth, have a tendency and capacity to, and do in fact, cause a substantial diversion of trade from its competitors, as above described, to the respondents.

PAR. 7. The acts and practices of the respondents are intended to, and do, cause the public to be misled and deceived, and cause a diversion of trade, as above related. In so doing, respondents furnish a method of deception and diversion to those with whom it contracts.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 28, 1936, issued and served its complaint in this proceeding upon respondents, Twentieth Century Business Builders, Inc., a corporation, and Edwin I. Gordon, an individual, charging them 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Alden S. Bradley, DeWitt T. Puckett, and George Foulkes, attorneys for the Commission, and in opposition to the allegations of the complaint by Horace Dawson, attorney for the respondents, before W. C. Reeves, Robert S. Hall, and Arthur F.

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Thomas, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto (respondent not having requested oral argument); 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, Twentieth Century Business Builders, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, and having its principal place of business located at 917 Furniture Mart Building, in the city of Chicago, State of Illinois.

Respondent, Edwin I. Gordon, is General Manager of respondent, Twentieth Century Business Builders, Inc., and as such directs and controls the sales activities and policies of said respondent corporation with respect to the acts and practices herein set forth.

Respondents, since the date of incorporation of respondent, Twentieth Century Business Builders, Inc., in the year 1934, have been and are now engaged in the business of the sale and distribution of a sales promotional plan to retail merchants situated in the various States of the United States.

Respondents enter into contracts with retail merchants doing business in various States of the United States, by the terms of which respondents agree, among other things, for a stated consideration, to furnish merchants with certain advertising mats for use by said merchants in conducting a "count the dot" contest.

The mats, when used, reproduce what is known to the trade as "count the dot" or "count the block" puzzles which consist of a reproduction or photograph of various merchandise and commodities upon which is superimposed many small "dots" or "blocks."

The retail merchant is instructed by respondents to cause the insertion of said reproduction or photograph in local newspapers which cover the merchant's trade area.

The mats furnished retail dealers by respondents usually contain headline streamers and other language which serve as representations that the retail dealer or merchant is conducting a contest and that upon a given day the retail dealer or merchant will give away free of

charge to the person most closely approximating the number of dots or blocks in the picture certain described items of merchandise which are represented to be of a stated value.

Following is a typical example of some of the representations appearing on a mat furnished to a retail furniture dealer by respondents:

More than \$10,000 worth of prizes to be given away free.

Introducing our Twentieth Century furniture exhibit.

Just count the dots in the living room suite picture below.

First prize a beautiful \$159 living room suite free.

Second prize two credit checks \$75 each redeemable on any Twentieth Century living room, dining room or bedroom suite.

How to win?

Just count the dots.

In the middle of the mat containing these representations is a picture of a davenport and large living room chair, upon which is superimposed a number of dots.

It is further represented that the person submitting answers or solutions to such puzzles nearest the correct answer or solution of the same will receive vouchers or checks redeemable in the merchandise sold at the store of such retail dealer.

Representations are made in the advertisements that only a stated number of these vouchers and checks are issued by the retail merchant.

PAR. 2. After written contracts have been entered into between the respondents and retail merchants, respondents supply merchants with the aforesaid mats.

These mats are shipped by respondents from their place of business in Chicago, Ill., across state lines to merchants and retail dealers who reside in States other than the State of Illinois.

PAR. 3. In truth and in fact the representations made by merchants and retail dealers, at the instance of respondents, that premiums and credit checks are awarded to persons submitting answers or solutions to the number of dots or blocks in advertisements, are false, misleading, and untrue.

The record shows, and the Commission finds, that credit vouchers or credit checks were indiscriminately distributed by retail merchants without regard to the solution submitted by contestants, and that this was done by retail merchants at the instance of respondents.

A retail furniture merchant, who entered into a contract with respondents and whose place of business is located in Gary, Indiana, distributed 3,000 cash credit slips to contestants, although the advertisement stated that only 234 cash credit slips in varying amounts would be awarded contestants who submitted the best solutions to the number of dots in the advertisements run in local newspapers

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by said merchant. This was done under the direction and supervision of respondents' representatives who were in constant attendance at the merchant's store during the period of time covered by the sale.

PAR. 4. The Commission further finds that the purpose of the plan is not to make awards of cash credit slips to contestants who submit correct and accurate answers or solutions to the number of dots in the advertisements, but to issue cash credit slips to all persons who submit answers or solutions to the number of dots without regard to the accuracy of the answers submitted, and thereby to entice said contestants into the stores of merchants for the purposes of effecting sales of merchandise.

PAR. 5. The contract entered into between respondents and retail merchants further provides among other things that respondents will furnish "an experienced manager who will prepare for this sale and supervise same during the period of the sale."

Acting under the direction and advice of respondents and their agents and representatives, the Commission finds that retail merchants increased the selling price and represented value of their merchandise and represented such merchandise to be of a value in excess of the real worth of the same. The increase in the selling price and represented value of the merchandise amounted to approximately the purported value of the credit vouchers distributed to contestants submitting answers or solutions to the number of dots or blocks in the puzzle.

These false and fictitious values were widely advertised by retail merchants in newspaper advertisements and other means throughout the trade area of the retail merchants.

PAR. 6. The use by respondents of the foregoing false and misleading statements, representations and advertisements, disseminated as aforesaid, by causing such retail merchants to publish statements containing such false and fictitious selling prices and values relative to such merchandise and the causing of such retail merchants to indiscriminately issue such credit vouchers or checks to contestants without regard to the answers or solutions submitted by them, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and that such false and fictitious selling prices and values are the usual selling prices and actual values for such merchandise, and that by entering said "count the dot" contests and winning a credit voucher by accurately counting the dots or blocks, they would receive special discounts in purchasing the retail dealer's merchandise and thereby effect savings to the extent of the

amount of the credit vouchers won by them. In reliance upon such erroneous and mistaken belief, a substantial number of members of the purchasing public entered into these contests and purchased substantial quantities of the merchandise featured in such contests. As a result, a substantial number of merchants have purchased the sales promotional plan of the respondents and trade has been diverted unfairly to said merchants from other merchants who are competitors in commerce of the merchants with whom respondents contract and who do not make false representations relative to the value of their merchandise or issue checks or credit vouchers for various stated amounts which are in fact of no monetary value in purchasing merchandise from them. Further, as a result trade has been diverted unfairly to the respondents from their competitors described in paragraph 7 hereof.

PAR. 7. Respondents are engaged in substantial competition in commerce among and between the various States of the United States with other corporations and individuals and with partnerships and firms who are engaged in the sale and distribution of various sales promotional plans for the stimulation of trade, and who do not engage in the practice of causing the merchants with whom they contract to make false representations relative to the values of their merchandise or to issue checks or credit vouchers for various stated amounts which are in fact of no monetary value in purchasing merchandise from such retail merchants, and who do not make, or cause to be made, any other false statements and representations in connection with the sale and distribution of their sales promotional plans or of the merchandise involved in the use thereof.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' 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 respondents, testimony and other evidence taken before W. C. Reeves, Robert S. Hall and Arthur F. Thomas, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein (respondent not having requested oral argument), and the Commission having

made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Twentieth Century Business Builders, Inc., a corporation, its officers, representatives, agents, and employees, and Edwin I. Gordon, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce as commerce is defined in the Federal Trade Commission Act of a sales promotional plan designated in the trade as a "count the dot" or "count the block" plan, or any other sales promotional plan, do forthwith cease and desist from:

1. Representing, or causing or assisting the purchasers of said plan to represent, that any sales promotional plan in which credit vouchers, checks, gifts, or any form of so-called prizes, are given to the entrants or contestants therein without regard to the relative correctness of the answers or solutions submitted by said entrants or contestants, is a contest.

2. Representing, or causing or assisting the purchasers of said plan to represent, that credit vouchers or checks, or any other form of prizes or gifts awarded in connection with such sales promotional plan, enable the recipients thereof to receive a "credit," "reduction" or other financial advantage in the purchase of merchandise when, in fact, said merchandise is offered for sale in the course of such sales promotional plan or so-called "contest" at a price in excess of the normal and customary price of said merchandise.

3. Representing, or causing or assisting the purchasers of said plan to represent, as "special" or "sale" prices of merchandise offered for sale in connection with said sales promotional plan, prices which are the same as or in excess of the regular and customary prices of said merchandise.

4. Representing, or causing or assisting the purchasers of said plan to represent, as the customary or regular prices or values of merchandise offered for sale in connection with the said sales promotional plan, prices or values which are in fact fictitious and in excess of the prices at which such merchandise is regularly and customarily offered for sale.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

WILLIAM W. CHAMBERS DOING BUSINESS AS THE
GREATER CHAMBERS COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3035. Complaint, Jan. 15, 1937—Decision, Apr. 3, 1939

Where an individual engaged in operating group of undertaking establishments and in selling and distributing line of caskets, vaults, accessories, and facilities usually connected with conduct of funerals and operation of such establishments, to purchasers in commerce among and between various States and in the District of Columbia, in competition with others engaged in sale and distribution of like and similar products in commerce among the various States and in said District; in advertising, through various circulars, folders, booklets, and newspapers and periodicals of national circulation, his complete funerals, caskets, vaults, accessories, and facilities—

- (a) Represented that certain undertaking facilities and merchandise were furnished free, through such statements, among others, as "The many extra services rendered by Chambers are given without charge. * * *," "Complete funerals, cars and all, use of our buildings and chapels free," "* * * None of the extra services offered * * * are charged for * * *," etc., facts being he did not furnish any articles of merchandise or undertaking facilities free, but price thereof was included in that charged on purchase of a casket or other similar merchandise;
- (b) Represented that prices charged by him were discounts or reductions from those ordinarily charged, through such statements among others, as "This \$500.00 service by Chambers for only \$265.00," and through representation that he furnished a \$300 funeral for \$165 and a \$150 funeral for \$75, and that such prices charged for complete funerals represented saving in discount to purchaser, facts being they did not represent such discount or reduction but his usual and customary prices; and
- (c) Represented that burial vaults sold by him for \$85 were of a value of \$150, and were waterproof and airtight and would answer the purpose of a "\$5,000.00 mausoleum" because of nature of their construction, facts being said vault was usually sold for sum of \$85, was not waterproof and airtight, and would not answer all the purposes of a mausoleum;

With a tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and with result, as direct consequence of such erroneous and mistaken belief induced by his advertising statements and representations, that number of purchasing public bought substantial quantities of his said products and trade was unfairly diverted to him from others likewise engaged in sale in commerce among the various States of complete funerals, caskets, vaults, accessories and facilities and who truthfully advertise their products and services: