

Syllabus

IN THE MATTER OF

J. P. SHEEHAN, INDIVIDUALLY AND TRADING AS
NATIONAL ADVERTISERS COMPANY

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

Docket 3705. Complaint, Feb. 10, 1939—Decision Apr. 11, 1939

Where an individual engaged in sale and distribution of watches, radios, pipe sets, electric mixers, and a variety of other articles of merchandise to purchasers in various other states and in the District of Columbia; 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 by which said merchandise was sold and distributed to the ultimate consumers thereof wholly by lot or chance, and under which he distributed to purchasing public certain literature and instructions, including among other things push cards, order blanks, illustrations of his said products, and circulars explaining his plan of selling said push cards in accordance with which and explanatory legend set forth on cards, amount paid for chance by purchaser was dependent upon number pushed by chance, and receipt of certain number or making of last sale entitled purchaser securing said number or making such sale to fountain pen, and receipt or failure to receive electric shaver or article being thus disposed of was dependent upon success or failure in selecting from list of feminine names on card, name corresponding to that concealed within card's master seal; and

Supplied thereby and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with such or similar plan through which, by various push cards supplied by him, and varying from that described in detail only, sale of all his merchandise aforesaid was accomplished, and under which plan fact as to whether purchaser received an article of merchandise or nothing for amount of money paid, and which of said articles, if any, purchaser received, and whether article received was without cost to person, 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 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 a chance, or any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by his said sales plan or method employed by him in the sale and distribution of his merchandise and by 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 such or equivalent method, and with the result, through use of such method and because of said game of chance, of unfairly diverting trade to him from his competitors aforesaid who do not use such or equivalent method:

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

Mr. L. P. Allen, Jr. for the Commission.

Nash & Donnelly, of Chicago, Ill., 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 J. P. Sheehan, individually and trading as National Advertisers Co., 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, J. P. Sheehan, is an individual trading as National Advertisers Co., with his principal office and place of business located at 230 East Ohio Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of watches, radios, pipe sets, pen and pencil sets, electric mixers, silverware, electric roasters, vacuum cleaners, electric toasters, electric dry shavers, cameras, 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 Illinois 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 as described in paragraph 1 hereof, respondent in soliciting the sale of and in selling and distributing his merchandise in commerce, as hereinabove described, 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.

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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 in commerce, as hereinabove described, certain literature and instructions including, among other things, push cards, order blanks, illustrations of his said products 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 respondent's push cards bears 48 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 48 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:

Person Selecting Name Under Seal Receives A Guaranteed

\$15.00

STREAMLINER

Electric Dry Shaver

Numbers 1 to 29 Pay

What You Draw

Numbers Over 29 pay only 29¢

NO HIGHER

Number 33 and Last Sale

Each Receive a

TARCO FOUNTAIN PEN

Do not

remove seal
until entire
card is sold

Write Your Name Opposite Name You Select on Reverse Side

Push Out With Pencil

Sales of respondent's products 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 shall receive 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

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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 cards 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 10, 1939 issued and served its complaint in this proceeding upon the respondent, J. P. Sheehan, individually, and trading as National Advertisers Co., charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 20, 1939, the respondent filed his answer, in which answer he admitted that from on or about April 15, 1938 to on or about December 31, 1938, he was engaged in business as described in the complaint, and for further answer admitted all the material allegations of fact set forth in said complaint, and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto; and the Commission having duly considered the matter and 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 J. P. Sheehan is an individual trading as National Advertisers Co. with his principal office and place of business located at 230 East Ohio Street, Chicago, Ill. Respondent, within the period above set forth, was engaged in the sale and distribution of watches, radios, pipe sets, pen and pencil sets, electric mixers, silverware, electric roasters, vacuum cleaners, toasters, electric dry shavers, cameras, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent caused said products, when sold, to be transported from his aforesaid place of business in Illinois to purchasers thereof in various other States of the United States and in the District of Columbia at their respective points of location. There was within the period above set forth 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 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.

Findings

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PAR. 2. 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 commerce, as hereinabove described, furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes by which said merchandise was sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent was substantially as follows:

Respondent distributed to the purchasing public in commerce, as hereinabove described, certain literature and instructions including, among other things, push cards, order blanks, illustrations of his said products and circulars explaining respondent's plan of selling said push cards. One of respondent's push cards bears 48 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 48 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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Each Receive a

TARCO FOUNTAIN PEN

Do Not

remove seal

until entire

card is sold

Write Your Name Opposite Name You Select on Reverse Side

Push Out With Pencil.

Sales of respondent's products by means of said push cards were made in accordance with the above-described legends and instructions. Said prizes or premiums were allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser received an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise

the purchaser received, if any, or whether a person should receive an article of merchandise without cost, was thus determined wholly by lot or chance.

Respondent 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 cards was the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnished the said push cards used the same in purchasing, selling, and distributing respondent's merchandise, in accordance with the aforesaid sales plan. Respondent thus supplied to, and placed 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 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 sold or distributed 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 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 were 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, had a tendency and capacity to, and did, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method.

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 the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening proceeding 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, J. P. Sheehan, individually and trading as National Advertisers Co., 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 and distribution of watches, radios, pipe sets, pen and pencil sets, electric mixers, silverware, electric roasters, vacuum cleaners, electric toasters, electric dry shavers, cameras, 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.

Syllabus

. IN THE MATTER OF

REEVES PARVIN & COMPANY, TRI-STATE BROKERAGE
COMPANY, FRANCIS B. REEVES, JR., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. (C) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3129. Complaint, May 15, 1937¹—Decision, Apr. 15, 1939

Where six corporations engaged in manufacture of various commodities, and in sale and shipment thereof to a wholesale grocer and to other purchasers, and individual engaged as broker in sale of such commodities in their behalf, and others engaged in such sale, and as thus engaged in competition one with the other; in selling such products—

- (a) Granted, paid, transmitted and delivered so-called brokerage fees or commissions ranging from 1 to 5 percent of the amount of each purchase on sales on orders placed with such various sellers by such wholesale grocer through the medium of a certain brokerage company, which (1) was the corporate affiliate of such wholesale grocer, (2) was under identical control with it through common stock ownership and control by the president and active chief executive of both, (3) distributed, in the form of dividends, all the profits resulting from the receipt of such so-called brokerage fees or commissions, to said president, by whom such amounts, in accordance with agreement theretofore entered into, were transmitted and paid over to said wholesale grocer, and, (4) in connection with such various transactions, acted for and in behalf of said wholesale grocer only, and under its control, and did not represent said sellers as their agent or act for or in their behalf or under their control, or render or intend to render them any services in connection with sale of commodities to such wholesale grocer; and

Where said wholesale grocer, engaged in active competition with other wholesale grocers doing business in territories served by it, and purchasing commodities for resale to the retail trade from manufacturers, producers, and distributors located in various States, and the aforesaid individual, its president and chief executive officer, as of said brokerage company, and latter itself—

- (b) Accepted and received, on purchases on orders placed by said wholesale grocer through such brokerage company and buyer-controlled intermediary, so-called brokerage fees or commissions, as above set forth, in connection with which said brokerage company neither rendered nor intended to render to sellers any services in connection with sale of such commodities to said wholesale grocer, and in connection with which said individual and common officer and stockholder was possessed of no knowledge with regard to customer or consumer demand, requirements of said wholesale grocer or obligations thereof to such various sellers, while acting in his capacity as president and chief executive officer of said wholesale grocer, which was not equally available to him while acting in his capacity as such

¹ Complaint published as amended by order of the Commission amending complaint and record, dated September 15, 1937.