

IN THE MATTER OF  
**HARRY CUTLER, INDIVIDUALLY, AND TRADING AS  
GENERAL SALES COMPANY**

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

*Docket 3568. Complaint, Aug. 31, 1938—Decision, May 3, 1939*

Where an individual engaged in sale and distribution of electric razors, cameras, radios, kitchen appliances, pencils, and pen and pencil sets to purchasers in other States—

Furnished to his customers various devices which involved the operation of games of chance, gift enterprise, or lottery schemes through which his said merchandise was distributed to the ultimate consumers thereof wholly by lot or chance, and which included the furnishing of push cards, order blanks, and circulars explaining his plan of selling his said products and allotting his premiums or prizes to the patrons of such push cards, in accordance with which amount paid for chance, if any, by customer was dependent upon number pushed by chance, and certain number entitled purchaser securing same to pen and pencil set, and receipt or failure to receive electric razor or article being thus disposed of was dependent upon success or failure in selecting from list of feminine names displayed on card, name corresponding to that concealed under card's large master seal, and persons who did not push winning number or name as above set forth, received nothing for the money paid by them, except right to push card; and

Placed thereby in hands of others means of conducting lotteries in the sale of his said merchandise through use of such cards as above described, and varying therefrom in minor details only, by which various other articles were sold and distributed by him solely by lot or chance, contrary to an established public policy of the United States Government, and in violation of criminal law and in competition with many who refrain from disposing of their merchandise by a method involving lottery or game of chance as contrary to public policy;

With result that many persons were attracted by his said sales plan or method of distribution of his merchandise, by element of chance involved therein, and were thereby induced to buy and sell such merchandise in preference to that offered and sold by his competitors who do not use same or similar methods of distribution, and trade was unfairly diverted to him from competitors aforesaid who, as above set forth, refrain from use of such method:

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

Before *Mr. Charles F. Diggs*, trial examiner.

*Mr. D. C. Daniel* and *Mr. P. C. Kolinski* for the Commission.

*Nash & Donnelly*, of Chicago, Ill., for respondent.

1554

## Complaint

## 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 Harry Cutler, individually and trading as General Sales 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 public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Harry Cutler, is an individual doing business under the trade name of General Sales Co., with his principal office and place of business located at 231 South Wells Street, Chicago, Ill. Respondent is now, and has, for some time last past been, engaged in the sale and distribution of electric razors, cameras, radios, kitchen appliances, pencils, combination pen and pencil, 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 his said products, when sold, to be shipped or transported from his principal place of business aforesaid to purchasers thereof in the various 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 said 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, furnishes and has furnished various push cards 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 sales plan or method adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public in commerce certain literature and instructions including, among other things, push cards, order blanks, illustrations of said products, and circulars explaining respondent's said plan or method of selling

28 F. T. C.

NAME UNDER SEAL RECEIVES A  
**GUARANTEED HAMILTON ELECTRIC DRY SHAVER**  
 NUMBERS Number 33 Receives  
 22, 25, 26, 27 **PACKARD**  
 ARE FREE Combination Pen and Pencil  
**NUMBERS 1 TO 29 PAY WHAT YOU DRAW**  
 Numbers Over 29 Pay Only 29¢—No Higher  
 Write your name opposite name you select on reverse side.  
**PUSH OUT WITH PENCIL**

**"How to Obtain Your Hamilton Electric Dry Shaver At No Cost  
SUGGESTIONS FOR USING SALES CARD**

Your friends select any name they choose and push out the corresponding hole. You write down your friends' names opposite the names they select in the space provided on the back of this card. When all have been pushed out, you will find that you will have collected \$9.95. Then remove the large seal at the top. Under it is the fortunate name. The person who selected that name is entitled to a Hamilton Electric Shaver. Now you can destroy the card—there is no need to return it to us.

Fill out the order blank (see other side). Send the order blank to us together with a Money Order or Bank Draft for \$9.95. Payment of this amount entitles you to two Hamilton Shavers, one for you and one for the fortunate person who selected the name under the seal. The two Hamilton Shavers and other gifts will be shipped to you prepaid. Thus, you will receive your Hamilton Electric Dry Shaver at No Cost to You, and the fortunate person will receive his or her Dry Shaver At Hardly Any Cost. Isn't this an easy way to obtain valuable gifts?

1554

## Complaint

You will have a lot of fun getting folks to push out names on the card. Everyone you know and come in contact with is a prospect. Show it to your fellow employees, friends, relatives and acquaintances. Then there is the grocer, butcher, baker, beauty parlor operator, barber, lodge and club member—and all the different stores where you trade. Whenever there is a party or gathering at your home or your friends' homes bring out your card. Everyone will find it as thrilling as any other game or pastime. You will have your card pushed out in no time.

If you mail the order within 20 days, we will include a Surprise Present for you Free. It's worth getting."

Sales of respondent's products by means of said push card 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 said articles of merchandise are thus distributed to the purchasing public 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 all of his said 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 in principle as the one 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 or method. 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 or method 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 the sort which is contrary to an established public policy of the Government of the United States and in violation of 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 without charge or at a price much less than the normal retail price thereof. Many persons, firms and corporations who sell and distribute merchandise in competition with respondent, as above 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 there-

## Findings

28 F. T. C.

from. 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 sales plan or 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 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 the 31st day of August 1938, issued and served its complaint in this proceeding upon the respondent, Harry Cutler, individually and trading as General Sales Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, no answer having been filed by the respondent, testimony and other evidence in support of the allegations of said complaint were introduced by D. C. Daniel and P. C. Kolinski, attorneys for the Commission, before Charles F. Diggs, an Examiner 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. No testimony or evidence were introduced by John A. Nash, attorney for the respondent. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, and brief of the attorneys for the Commission; and the Commission, having duly considered the same 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.

1554

## Findings

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Harry Cutler, doing business under the trade name General Sales Company, has his principal place of business at 231 South Wells Street, Chicago, Ill. Respondent is now and for the past year has been engaged in the sale and distribution of electric razors, cameras, radios, kitchen appliances, pencils and pen-and-pencil sets, all of which are sold and shipped by him to purchasers in States other than the State in which respondent's place of business is located and from which said shipments are made. In the course and conduct of his business respondent has been and is in competition with individuals, 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 said business, respondent furnishes and has furnished to his customers various devices which involve the operation of games of chance, gift enterprise, or lottery schemes, by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent is as follows:

Respondent furnishes his customers with push cards, order blanks and circulars explaining his plan of selling merchandise and allotting his premiums or prizes to the patrons of said push cards. On some of said push cards appear 40 partially perforated disks marked "Push," below each of which is printed one of the feminine names appearing on the reverse side of the push card. The push card also contains a large master seal, which conceals one of the feminine names. Respondent furnishes his representatives or customers with instructions for using said push card, the method outlined being as follows: The customer pushes the disk over the feminine name selected by him, thus disclosing a number which determines the amount to be paid by him in cents; but those pushing "29" or above are required to pay no more than 29 cents. The persons punching numbers 22, 25, 26, and 27 are not required to pay any amount. When all the disks have been punched, the master seal is broken and the person who has punched the disk over the same feminine name as that disclosed by the removal of the master seal receives an electric razor. The one who pushes the disk which discloses the number "33" receives a pen and pencil set. The person who does not push a winning name or number does not receive anything for the money paid by him except the right to push the card.

PAR. 3. Various other articles of merchandise sold and distributed by said respondent are sold by means of push cards similar to that hereinabove described, varying only in minor details, and all of the respondent's products are sold and distributed solely by lot or chance.

PAR. 4. Respondent, by the methods hereinabove described, places in the hands of others the means of conducting lotteries in the sale of his said merchandise, and the said method of sale and distribution of his product is contrary to the established public policy of the Government of the United States, and is in violation of the criminal law.

Many persons are attracted by respondent's sales plan or method of distribution of his merchandise by 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 respondent's competitors who do not use the same or similar methods of distribution. Many of respondent's competitors refrain from disposing of their merchandise by a method involving lottery or game of chance because such method is contrary to public policy and as a result, trade is unfairly diverted from such competitors to the respondent.

#### CONCLUSION

The practices of the respondent as set forth in the aforesaid findings of facts are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce in violation 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 (respondent having filed no answer thereto), testimony and other evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondent having offered no evidence), brief filed by counsel 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, Harry Cutler, individually and trading as General Sales Company, 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 electric razors, cameras, radios, kitchen ap-

1554

## Order

pliances, pencils, and pen-and-pencil 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 hands 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 the 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

AL B. WOLF AND MAX SCHWARTZ, INDIVIDUALLY AND  
DOING BUSINESS UNDER THE TRADE NAMES OF  
PARAMOUNT PRODUCTS COMPANY, AND PARAMOUNT  
GARMENT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3569. Complaint, Aug. 31, 1938—Decision, May 3, 1939*

Where two partners engaged in the sale and distribution of rotary clocks, watches, fountain pen desk sets, pencils, wearing apparel, cameras, and a variety of other articles of merchandise to purchasers in other States—  
Furnishing to their customers various devices and plans of merchandising which involved operation of games of chance for distribution of said merchandise to ultimate consumers thereof wholly by lot or chance, and under which they furnished their customers with push cards, order blanks, and circulars explaining their plan of selling said merchandise and allotting premiums or prizes to the patrons of said push cards under a plan in accordance with which amount, if any, paid by patron was dependent upon number pushed by chance, and chance selection of three numbers entitled customers securing said particular numbers to Eversharp pencils, and receipt or failure to receive electric razor or article being thus disposed of was dependent on success or failure in selecting from list of feminine names appearing on the card, name corresponding to that concealed under card's master seal, and operator of card was likewise entitled to such article; and

Placed thereby in the hands of others the means of conducting lotteries in the sale of their said merchandise under which the various articles were sold by means of push cards similar to those above described, and varying therefrom in minor detail only, and were sold and distributed solely by lot or chance; contrary to an established public policy of the United States Government and in violation of the criminal law, and in competition with many who refrain from disposing of their merchandise by a method involving a lottery or game of chance as contrary to public policy;

With result that many persons were attracted by their sales plan or method of distribution of their merchandise by element of chance involved therein, and were thereby induced to buy and sell their merchandise in preference to that offered and sold by their competitors who do not use the same or similar methods of distribution, and trade was thus unfairly diverted to them from competitors aforesaid who do not, as above set forth, use such method:

*Held*, That such acts and practices, under the circumstances set forth, were to the prejudice of the public and of competitors and constituted unfair methods of competition.

Before *Mr. Charles F. Diggs*, trial examiner.

*Mr. D. C. Daniel* and *Mr. P. C. Kolinski* for the Commission.

*Nash & Donnelly*, of Chicago, Ill., for respondents.