

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.

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 Al B. Wolf and Max Schwartz, individually, and doing business under the trade names of Paramount Products Co. and Paramount Garment Co., hereinafter referred to as respondents, have violated the provisions of the 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. Respondents, Al B. Wolf and Max Schwartz, are individuals doing business under the trade names of Paramount Products Co. and Paramount Garment Co., with their principal office and place of business located at 637 West Roosevelt Road, Chicago, Ill. Respondent, Max Schwartz, resides at 269 Canal Street, New York City, N. Y. Respondents are now and for some time last past have been engaged in the sale and distribution of rotary clocks, watches, fountain pen desk sets, pencils, razors, bedroom sets, wearing apparel, kitchen appliances, aluminum sets, cameras, traveling cases, dresser sets, rifles, tableware, table linens, cosmetics, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their principal place of business in Illinois to purchasers thereof in the various States of the United States other than Illinois 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 respondents 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, respondents are, and have been, in competition with other partnerships and individuals, and with 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 their business as described in paragraph 1 hereof, respondents, in soliciting the sale of and in selling and distributing their merchandise in said commerce, furnish and have 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 sales plan

Complaint

28 F. T. C.

or method adopted and used by respondents was, and is, substantially as follows: Respondents distribute and have distributed to the purchasing public in said commerce certain literature and instructions, including among other things, push cards, order blanks, illustrations of said products, and circulars explaining respondents' plan or method of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of the respondents' push cards bears 63 feminine names with ruled columns on the reverse side of said card for writing in the name of the customers opposite the feminine name selected. Said push card has 63 small, partially perforated disks, and on the face of each of said disks is printed the word "Push." Immediately beneath each of said disks is printed one of the feminine names, printed alphabetically on the reverse side of the card. 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

(Cut)	Esquire Electric
Numbers 31—41—51	Dry Shaver
Each Receive a Guaranteed	The
EVERSHARP PENCIL	Winner
Nos. 1 to 25 Pay 1 to 25	(Do Not Remove)
Nos. Over 25 Pay Only 25	(Until All Sold)
Write Your Name Opposite Name You Select On Reverse Side	

Numbers
9—10—11
12—13—14
15—16
ARE FREE

Respondents furnish said representatives with additional instructions to be used in connection with the sale of their merchandise by means of said push card, some of which are as follows:

HOW SALES CARDS CAN BE USED

There is a number under each girl's name. This number represents the amount the person selecting that name is to pay as shown on the face of the card.

To avoid error it is advisable to write the customer's name on the line opposite the name they have selected.

Persons selecting numbers that are designated as Free Numbers on the face of the card Pay Nothing, yet they have an equal opportunity with the others for winning the name shown under the seal.

The numbers are so arranged as to total the amount shown on the back of the sales card. When all names have been taken and collections made the Large Seal is opened and the person who has selected the name corresponding to the name under the seal is declared the winner and is awarded their choice of any one of the awards.

The person selling the card also receives their choice of any one item.

If there are Extra Winners shown on the face of the card the person selecting the designated numbers are to be given those awards.

Prospects are to be found amongst co-workers in the office, store, or shop, friends, the grocer, butcher, beauty operator, barber, baker, fellow lodge or club members; uncles, aunts, cousins, nephews, nieces, neighbors. And many others.

Sales of respondents' 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.

Respondents furnish, and have furnished, various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of their 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 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 respondents furnish the said push cards use the same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan or method. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan or method hereinabove set forth. The use by respondents of said sales plan or method in the sale of their 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 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 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 respondents as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or

Findings

28 F. T. C.

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 respondents in the sale and distribution of their merchandise and the element of chance involved therein and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said sales plan or method by respondents, because of said game of chance, has a tendency and capacity to and does unfairly divert trade to respondents from their 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 respondents to competition in commerce between and among various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 31, 1938, issued and served its complaint in this proceeding upon the respondents, Al B. Wolf and Max Schwartz, individuals, doing business under the trade names of Paramount Products Co. and Paramount Garment Co., 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, no answer being filed by the respondents, testimony and other evidence in support of the allegations of the 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. Respondent's attorney, John A. Nash, introduced no testimony or other evidence in opposition to the complaint. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, and brief in support of the complaint, no brief being filed in opposition thereto; and the Commission having duly considered the matter and being now fully advised in the premises, finds that

1562

Findings

this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Al B. Wolf, and Max Schwartz, are copartners doing business under the trade names of Paramount Products Co. and Paramount Garment Co., having their principal place of business at No. 637 West Roosevelt Road, Chicago, Ill. The respondents are now, and for some time last past have been, engaged in the sale and distribution of rotary clocks, watches, fountain pen desk sets, pencils, razors, bedroom sets, wearing apparel, kitchen appliances, aluminum sets, cameras, traveling cases, dresser sets, rifles, tableware, linens, cosmetics, and other articles of merchandise, all of which are sold and shipped by them to purchasers in States other than the State in which respondents' place of business is located and from which said shipments are made. In the course and conduct of their business, respondents have been and are in competition with individuals, partnerships, and corporations also engaged in the sale and distribution of like or similar articles of merchandise in interstate commerce.

PAR. 2. In the course and conduct of their business, respondents furnish and have furnished to their customers various devices and plans of merchandising which involve the operation of games of chance, by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The method, or sales plan, adopted by respondents is as follows:

Respondents furnish their customers with push cards, order blanks, and circulars explaining their plan of selling merchandise and allotting premiums or prizes to the patrons of said push cards. On one of said push cards appear 63 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. Respondents furnish their representatives or customers with instructions for using said push cards, the method outlined being as follows:

The patron 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 punching "25," or above are required to pay no more than 25 cents. The persons punching numbers 9, 10, 11, 12, 13, 14, 15, or 16 are not required to make any payment. 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

Order

28 F. T. C.

by the removal of the master seal receives an electric razor; the person who has punched the disk which disclosed number 31, 41, or 51 receives an Eversharp pencil. The person operating the push board, or selling the pushes, receives an electric razor.

PAR. 3. The various other articles of merchandise sold and distributed by respondents are sold by means of push cards similar to those hereinabove described, varying only in minor detail, and all of respondents' products are sold and distributed solely by lot or chance.

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

PAR. 5. Many persons are attracted by respondents' sales plan or method of distribution of their merchandise by the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by respondents' competitors who do not use the same or similar methods of distribution. Many of the respondent's competitors refrain from disposing of their merchandise by a method involving a 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 respondents.

CONCLUSION

The practices of the respondents, as set forth in the aforesaid findings of facts, are to the prejudice of the public and of respondents' 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 (respondents 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 (respondents having offered no evidence), brief by counsel for the Commission (counsel for respondents 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 respondents have violated the provisions of the Federal Trade Commission Act.

1562

Order

It is ordered, That the respondents, Al B. Wolf and Max Schwartz, individually and doing business under the trade names of Paramount Products Co. and Paramount Garment Co. or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of rotary clocks, watches, fountain pen desk sets, pencils, razors, bedroom sets, wearing apparel, kitchen appliances and aluminum sets, cameras, traveling cases, dresser sets, rifles, tableware, linens, cosmetics, or any other articles of 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 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.

Complaint

28 F. T. C.

IN THE MATTER OF
ANYLITE ELECTRIC COMPANY

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

Docket 3704. Complaint, Feb. 10, 1939—Decision, May 8, 1939

Where a corporation engaged in manufacture, offer, and sale of an electric device consisting of a coil of wire, or solenoid, in container to be placed around patients, whereby, by means of alternating electric current, electromagnetic field of claimed therapeutic value was created—

Represented, through statements appearing on carton in which said product was packed and shipped, and which set forth "Theronold Therapeutic Solenoid The New Way to Health," that use of said device would restore to user thereof normal health, and that it had therapeutic value, facts being such representation and claim was grossly exaggerated, misleading, and untrue, and said "Theronold" did not possess any therapeutic, remedial, or curative value and would not restore user to normal health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said device would, in fact, restore user to normal health, and that it had therapeutic, remedial, or curative value, and of causing substantial portion of such public, because of said erroneous and mistaken belief thus engendered, to purchase same; to the substantial injury of a substantial portion of purchasing public in the various States and in the District of Columbia:

Held, That such acts and practices were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John J. Keenan*, trial examiner.

Mr. James L. Fort for the Commission.

Mr. Arthur W. Parry, of Fort Wayne, Ind., 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 Anylite Electric Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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 Anylite Electric Co., is a corporation organized and existing under the laws of the State of Indiana with its principal office and place of business located at 200 Murray Street in the city of Fort Wayne, within the State of Indiana. Said respondent is now and for more than 2 years last past has been engaged