

Syllabus

IN THE MATTER OF

MEYER EDELSON, INDIVIDUALLY, AND TRADING AS
UNITED ADVERTISING SERVICECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3738. Complaint, Mar. 16, 1939—Decision, May 9, 1939*

Where an individual engaged in selling and distributing clocks, desk lighters and other articles of merchandise in commerce among the various States and in the District of Columbia; in soliciting the sale of and in selling and distributing his merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprise, or lottery schemes through which said merchandise was sold and distributed to ultimate consumers wholly by lot or chance and in accordance with which he distributed to the purchasing public certain literature and instructions including, among other things, push cards, order blanks, illustrations of his merchandise and circulars explaining his plan of selling same and of allotting it as premiums or prizes to the operator of said cards for use in sale of his products under a plan and in accordance with cards' explanatory legend, pursuant to which amount paid, if any, for chance by customer was dependent upon number pushed by chance, and two numbers and last sale entitled purchaser securing numbers or making sale to "chrome desk lighter", and receipt or failure to receive "numerical clock" 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 under 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 aforesaid or similar sales plans under which fact as to whether purchaser received an article of merchandise or nothing for amount of money paid and which of aforesaid articles, if any, he was to receive was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure article of merchandise at a price much less than normal retail price thereof; contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance or any other methods contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan involved in sale and distribution of his merchandise and element of chance involved therein and were thereby induced to buy and sell such merchandise in preference to that offered and sold by said competitors who do not use such or equivalent method, and with effect, through use of such method and because of such game of chance of diverting unfairly trade to himself from his competitors aforesaid who do not use such or equivalent method; to the substantial injury of competition in commerce:

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

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

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 Meyer Edelson, individually and trading as United Advertising Service, 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, Meyer Edelson, is an individual trading as United Advertising Service with his principal office and place of business located at 5715 Florence Avenue, Philadelphia, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of clocks, desk lighters 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 the city of Philadelphia, Pa., 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 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 furnishes, and has furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions, including, among other

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things, push cards, order blanks, illustrations of his said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of 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:

This 20th Century
NUMERICAL CLOCK

E		M
L		O
E	(Picture	D
C		E
T	of a	R
R		N
I	Clock)	I
C		S
		T
		I
		O

To the Person
Selecting the Name Under the Seal
Nos. 1 to 29—Pay 1¢ to 29¢
Nos. over 29—Pay only 29¢

Nos. 31, 41, and Last Sale
Each Receive
A Beautiful Chrome
Desk Lighter

Write Your Name on Reverse Side
Opposite Name You Select

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

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matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push card is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's merchandise, in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 16, 1939, issued, and on March 17, 1939, served, its complaint in this proceeding upon respondent, Meyer Edelson, individually, and trading as United Advertising Service, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. On April 11, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further 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 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, Meyer Edelson, is an individual trading as United Advertising Service with his principal office and place of business located at 5715 Florence Avenue, Philadelphia, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of clocks, desk lighters, 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 the city of Philadelphia, Pa., 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 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 furnishes, and has furnished, various devices and plans of merchandising which involve the opera-

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tion of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent was and is substantially as follows:

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

This 20th Century

NUMERICAL CLOCK

E		M
L		O
E	(Picture	D
C		E
T	of a	R
R		N
I	Clock)	I
C		S
		T
		I
		C

To the Person

Selecting the Name Under the Seal

Nos. 1 to 29—Pay 1¢ to 29¢

Nos. over 29—Pay only 29¢

Nos. 31, 41, and Last Sale

Each Receive

A Beautiful Chrome

Desk Lighter

Write Your Name on Reverse Side

Opposite Name You Select

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push card is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's merchandise, in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute merchandise in competition with the respondent, as above found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade to respondent from his

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said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and 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 procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Meyer Edelsohn, individually and trading as United Advertising Service, or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of clocks, desk lighters 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 such merchandise by the use thereof.

2. Mailing, shipping or transporting to his agents or to distributors or to 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 within 60 days from the service of this order upon said respondent he shall file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with.

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IN THE MATTER OF
MIDWEST STUDIOS, INC., IMPERIAL SALES COMPANY,
AND B. E. YOUMANS

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

Docket 3011. Complaint, Dec. 9, 1936—Decision, May 11, 1939

Where a corporation engaged in offering and selling tinted or colored enlargements of photographs, and frames therefor, to members of the public through large number of solicitors and salesmen who worked together in crews under supervision of crew managers and traveled throughout the various States, and who were supplied by it, and carried and presented, credential cards certifying that they were duly accredited representatives of said corporation, authorized to show or demonstrate samples and to take orders, and with samples and with contract forms or order blanks directed and addressed to said corporation, and who acted as its agents and were accepted and dealt with as such by purchasing public;

In selling, through such various agents and representatives, and for the purpose of thus selling said products as aforesaid, and inducing purchasers thereof to sign contracts without understanding or being able to learn the nature, terms and conditions thereof or to obtain complete details regarding the transaction into which they were entering, and with the active cooperation of a second corporation, to which notes for balances due on products sold by former were, for a time, made payable, and stock of which was owned by the individual who was the president thereof, as of said former corporation, and large stockholder therein, and in control of the operation and management of both, and with other actively cooperated also in matters herein set forth through standardized sales talks furnished its said representatives, and with the knowledge, acquiescence and active cooperation of said corporations and said individual, and knowing false and misleading character thereof, and through its order blanks or contracts, and, as thus engaged in competition with those who sell colored enlargements of photographs and frames therefor in commerce among the various States and in the District of Columbia, and do not employ and maintain the practices below enumerated, but truthfully represent and honestly vend their products, and those engaged in painting and selling paintings in commerce as aforesaid, and who truthfully represent as paintings their said products—

- (a) Exhibited to prospective purchasers various samples of attractively colored specimens of work of aforesaid corporation, glass enclosed, and informed prospective customer that the company, in order to advertise their paintings, was anxious to select a few customers who would display them in a prominent place in their homes, and represented that such offer constituted a special or introductory one to a selected few members of the community, available only for a short period of time, and represented and referred, in such connection, to their pictures as "paintings," "fine paintings," "free hand-painted portrait valued at \$20," "oil painting worth \$20," etc., and, in the contract form referred to product as a "\$20 high grade painting, * * * future price \$20 and up," and informed customers that the com-