

Syllabus

IN THE MATTER OF

CORNELIUS P. VAN SCHAAK, JR., TRADING AS THE
INK COMPANY OF AMERICA AND PIONEER ADVERTISING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3261. Complaint, Nov. 6, 1937—Decision, May 15, 1939*

Where an individual engaged in offer and sale of sales promotion cards and certificates, fountain pen and pencil sets, and ink and pencil leads, to retailers and other consumers in various States and in the District of Columbia, and, as thus engaged, in (1) entering into written contracts with retail merchants contacted by his agents, which provided for purchase by merchant, at 10 cents apiece, of pen and pencil certificates, to be distributed to merchant's customers upon purchase by customer of \$5 worth of merchant's goods, as registered upon purchase cards supplied by said individual to merchant, and entitling customer to have same redeemed for pen and pencil set, as therein described, upon forwarding same to said individual with 80 cents for ink and pencil leads, and in (2) furnishing such merchants with various display posters and advertisements to be employed by them in distribution and use of such cards—

- (a) Represented, in the course and operation of his said business, and to induce said merchants to purchase his said pen and pencil certificates and use plan above set forth, that the Ink Co. of America was carrying on a national campaign designed to advertise its "Ticoa" ink and pencil leads, and that such campaign was being conducted by the Pioneer Advertising Co. as a separate organization, so as to permit retail merchants to give away nationally advertised pen and pencil sets free;

Facts being said individual was not engaged in carrying on such a campaign to advertise products of said first-named company, use of said names or trade names constituted a subterfuge by said individual to carry his plan into effect to lead merchants to believe that they were separate and distinct organizations, and he was not interested in sale of such "Ticoa" ink and "Ticoa" pencil leads for use in the fountain pen and pencil sets distributed by him, but was principally and primarily interested in sale of such promotional cards and certificates, to obtain the profits resulting therefrom, and he did not enable retail merchants to give away nationally advertised pen and pencil sets free, but cost thereof was included in price paid by merchants' customers for ink and pencil leads which they were required to purchase when redeeming certificates in question, and before receiving set involved;

- (b) Represented that pen and pencil sets furnished to customers were nationally advertised products and had retail value and usual selling price of \$3.50, and set forth statements to such effect on certificates in question, and that such certificate entitled holder to a matched pen and pencil set absolutely free when sent, as hereinabove set forth, with 80 cents for the four bottles of "Ticoa" ink and four tubes of "Ticoa" leads;

Complaint

28 F. T. C.

Facts being sets delivered to merchants' customers were not nationally advertised brand, but were a brand not nationally known or nationally advertised, did not have a retail value or price of \$3.50 each, but value and usual selling price substantially less than represented by individual, and cost of which to him was covered by sum of 80 cents which customers were required to send for redemption of their said certificates, as above set forth;

- (c) Represented that retail merchant would receive free and without cost 3 pen and pencil sets, 12 tubes of lead, as many bottles of ink, and advertising material, upon entering into contract, and might designate therein nationally advertised brand of pen and pencil sets to be delivered to merchant's customers absolutely free in fulfillment of contract, and that adoption thereof by merchant would be without cost to him and would operate to his profit, in that said individual would refund amount paid for such certificates, together with additional amount for each certificate sent to him for redemption by merchant's customers;

Facts being adoption of such plan was not without cost to merchants, and did not operate to their profit, and said individual did not make cash refunds represented as above set forth, but offer thereof was a lure and snare devised and intended solely to secure execution of agreement by merchant in expectation of being able, through cooperation of said individual, to comply with terms of agreement and secure refunds from him for certificates sent in by his customers for redemption, as above set forth, and above statements and representations were otherwise false and misleading; and

- (d) Represented, in advertisements in various newspapers and periodicals for agents to sell his merchandise, that \$25 a day was usual and customary commission that would be earned by such agents through such sale;

Facts being his said salesmen did not, in ordinary and usual course of business, earn said amount or any other sum of money closely approximating it, but usually and customarily made substantially less;

With effect of misleading substantial number of retail merchants and of purchasing public into erroneous and mistaken belief that such false and misleading representations were true, and of inducing thereby substantial number of such merchants to purchase his said certificates and execute contracts in connection therewith, and with effect that trade was thereby diverted unfairly to him from his competitors in commerce as aforesaid, and who truthfully represent their products:

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. Arthur F. Thomas* and *Mr. Edward E. Reardon*, trial examiners.

Mr. George Foulkes for the Commission.

Hickey, Hall & Junge, of Chicago, Ill., for respondent.

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 Cornelius P. Van Schaack, Jr., trading as The Ink Co. of America and Pioneer Advertising Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said 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, Cornelius P. Van Schaack, Jr., is now, and has been for more than 1 year last past, an individual doing business under the trade names The Ink Co. of America, located at 6 North Michigan Avenue, Chicago, Ill., and Pioneer Advertising Agency, located at 549 West Randolph Street, Chicago, Ill. Respondent is now, and has been during the time above mentioned, engaged in the business of offering for sale and selling sales promotion cards and certificates, fountain pen and pencil sets, ink and pencil leads, to retailers and other consumers located in various States of the United States and in the District of Columbia.

PAR. 2. Said respondent being engaged in business as aforesaid causes said sales promotion cards, and certificates, together with the advertising literature used in connection therewith and the various items of merchandise also used in connection therewith, when sold, to be transported from his office and principal places of business located in Chicago, Ill., to the purchasers thereof located in various points in States of the United States other than the State of Illinois. The respondent has at all times mentioned herein maintained a constant current of trade and commerce in said sales promotion cards and certificates and the merchandise sold in connection therewith between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his business the respondent is now and has been in substantial competition with other individuals, firms, partnerships, and corporations engaged in the business of selling and distributing promotional sales plans of various types, fountain pen and pencil sets, ink, pencil leads and similar commodities, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business respondent advertises in various newspapers, magazines, and periodicals for agents to sell his merchandise, and represents to such prospective salesmen that \$25 a day is the usual and customary commission that will be earned

Complaint

28 F. T. C.

by them through the sale of respondent's merchandise. Said advertising is as follows:

PREMIUM SALESMEN

\$25. commission daily.

Summer Special: Giving free
pen and pencil sets through
retailers. Ticoa, 6 North
Michigan, Chicago.

In fact, respondent's salesmen do not, in the ordinary and usual course of business, earn \$25 per day or earn any other sum of money closely approximating \$25 per day. The usual and customary earnings of such salesmen, in due course of normal business, is substantially less than \$25 per day.

PAR. 4. Further, in the course of operation of his business and in order to sell his products respondent enters into a form of agreement or written contract with retail merchants who are contacted by respondent's selling agents.

The written form of contract provides for the purchase by a merchant of so-called "pen and pencil certificates," for which the merchant pays 10 cents a piece, and distribution of the same to the merchant's customers by the merchant upon the purchase by the customers of \$5 worth of the merchant's goods. Each customer is supplied by the merchant with a purchase card upon which the amount of purchases are registered.

The certificate which the customer receives from the merchant upon the purchase of the required amount of merchandise is as follows:

\$3.50 VALUE

(Picture of Pen
and Pencil Set.)

**NATIONALLY ADVERTISED PEN and PENCIL SET
CERTIFICATE**

This Certificate is Given With Our
Compliments and Entitles Holder to a
MATCHED PEN AND PENCIL SET
"ABSOLUTELY FREE"

When sent with trial order for 4 bottles of TICOA Ink at 10¢ each and 4 tubes of TICOA Leads at 10¢ each. Total cost 80¢. Same being the regular price of TICOA "Super Quality" Ink and Leads. Postage, Handling and Packing Charges Fully Prepaid.

CHECK COLOR OF MATCHED SET DESIRED

----- Red ----- Green ----- Blue ----- Black ----- Brown
PIONEER ADVERTISING AGENCY 549 Randolph St. Chicago, Ill.
Name -----
Address ----- City and State -----

When the customer has received his certificate he may redeem the same by forwarding it to respondent with 80 cents for ink and pencil leads.

Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 5. In the course of the operation of his business and for the purpose of inducing retail merchants to purchase his pen and pencil certificates and to induce said retail merchants to use the plan above set forth, respondent makes the following representations:

1. That The Ink Co. of America is carrying on a national campaign designed to advertise its ink and pencil leads designated "Ticoa"; that the advertising campaign is carried on by the Pioneer Advertising Agency, a separate organization, so as to permit retail merchants to give away nationally advertised pen and pencil sets "free."

2. That the Ticoa ink and Ticoa pencil leads are of superior quality and have a regular retail price of 10¢ per package of leads and 10¢ per ounce of ink.

3. That the pen and pencil sets actually furnished to customers are nationally advertised products and have a retail value and usual selling price of \$3.50.

4. That the retail merchant will receive "free" and without cost 3 pen and pencil sets, 12 tubes of lead, 12 bottles of ink and advertising material upon entering into the contract.

5. That retail merchants may designate in said agreement a nationally advertised brand of pen and pencil set and that the same will be delivered by respondent to the merchant's customer absolutely free in fulfillment of the contract.

6. That the adoption of respondent's plan by retail merchants will be without cost to them and will operate to their profit in that respondent will refund the amount paid for the certificates together with an additional amount of money for each certificate sent to respondent for redemption by the merchant's customers.

7. That merchants will not be obliged to pay any postage, packing, or handling charges for the merchandise received by them from respondent.

PAR. 6. Respondent's representations as above set forth are grossly exaggerated, false, misleading, and untrue. In truth and in fact respondent has not been and is not engaged in carrying on a national campaign designed to advertise the products of The Ink Co. of America. The use of the trade names The Ink Co. of America and Pioneer Advertising Agency is a subterfuge by which respondent, in order to carry his plan into effect, leads the merchants to believe that the same are separate and distinct organizations. The respondent is in fact not interested in the sale of Ticoa ink and Ticoa pencil leads

Complaint

28 F. T. C.

to be used in the fountain pen and pencil sets distributed by him but is interested principally and primarily in the sale of said promotional cards and certificates for the purpose of obtaining the profits resulting therefrom. Respondent does not enable retail merchants to give away nationally advertised pen and pencil sets free, but in fact the cost of said sets is included in the price paid by the merchant's customers for the ink and pencil leads they must purchase when redeeming the pen and pencil certificates and before receiving the pen and pencil set. Ticoa ink and Ticoa pencil leads are not of superior quality and they do not have a retail price of 10 cents per package of leads and 10 cents per ounce of ink. The pen and pencil sets which the respondent delivers to the merchant's customers are not a nationally advertised brand and respondent in the conduct of his business supplies said customers with a brand of pen and pencil set not nationally known or nationally advertised. Further, the said pen and pencil sets do not have a retail value or price of \$3.50 each. In fact the retail value and the usual selling price of the sets is substantially less than represented by respondent and the sum of 80 cents which the customers send to respondent for redemption of their pen and pencil certificates covers the cost to respondent of said pen and pencil sets, together with 4 bottles of ink and 4 pencil lead sets. In fact, the retail merchant does not receive free of charge 3 pen and pencil sets, 12 tubes of lead, 12 bottles of ink and advertising material, but the cost of the same is included in the amount of money paid by the retail merchant to the respondent for the pen and pencil certificates. Further, when retail merchants designate their choice of a particular brand of pen and pencil set, their selection is disregarded by respondent and he systematically pursues the policy of substituting a cheaper pen and pencil set of a brand not nationally known. The adoption of respondent's plan by retail merchants does not operate without cost to them and does not operate to their profit. In fact, respondent does not make the cash refunds represented to merchants entering into such contracts. The purported cash refund to the merchants by the respondent is a lure and a snare devised and intended for the sole purpose of securing the execution of said agreement by retail merchants in expectation of being able, through the cooperation of respondent, to comply with the terms of the agreement and secure refunds from respondent for the pen and pencil certificates sent in for redemption to respondent by the said retail merchants' customers.

PAR. 7. The effect of the foregoing false and misleading representations on the part of respondent is to mislead a substantial number of retail merchants, as well as a substantial portion of the consuming

1607

Findings

public, by inducing them to believe that the representations made by the respondent and his representatives are true and that upon purchase of respondent's sales promotion cards and certificates said retail merchant will receive the benefits to accrue therefrom, and that upon sending in the pen and pencil certificates for redemption their customers will receive the merchandise represented.

The foregoing false and misleading representations on the part of respondent serve as inducements for substantial numbers of retail merchants to purchase respondent's pen and pencil cards and certificates and execute the contracts in connection therewith. As a result thereof, trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the sale and distribution of sales promotional plans, fountain pen and pencil sets, ink, pencil leads, and similar commodities, and who truthfully represent their products. As a consequence thereof, substantial injury has been done and is now being done by respondent in competition in commerce among and between the various States of the United States and in the District of Columbia.

The above alleged acts and representations of respondent have been and are now all to the prejudice of the purchasing public and of respondent's competitors as aforesaid, and have been and are now unfair methods of competition in commerce within the intent and meaning of Section 5 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 6, 1937, issued and on November 8, 1937 served its complaint in this proceeding upon respondent, Cornelius P. Van Schaack, Jr., trading as The Ink Co. of America and Pioneer Advertising 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 and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this procedure regularly came on for final hearing before the Commission on the said complaint and substitute answer, and

Findings

28 F. T. C.

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. The respondent, Cornelius P. Van Schaack, Jr., an individual, is now and for more than 1 year last past has been doing business under the trade names of The Ink Co. of America, located at 6 North Michigan Avenue, Chicago, Ill., and Pioneer Advertising Co., located at 549 West Randolph Street, Chicago, Ill.

Respondent is now, and has been during the time above mentioned, engaged in the business of offering for sale and selling sales promotion cards and certificates, fountain pen and pencil sets, ink and pencil leads, to retailers and other consumers located in various States of the United States and in the District of Columbia.

PAR. 2. The respondent being engaged in business as aforesaid causes said sales promotion cards, and certificates, together with the advertising literature used in connection therewith and the various items of merchandise also used in connection therewith, when sold, to be transported from his office and principal places of business located in Chicago, Ill., to the purchasers thereof located at various points in States of the United States other than the State of Illinois.

The respondent has at all times mentioned herein maintained a constant course of trade and commerce in said sales promotion cards and certificates and the merchandise sold in connection therewith between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his business the respondent is now and has been in substantial competition with other individuals and with firms, partnerships, and corporations engaged in the business of selling and distributing promotional sales plans of various types, fountain pen and pencil sets, ink, pencil leads, and similar commodities, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business respondent advertises in various newspapers, magazines, and periodicals for agents to sell his merchandise, and represents to such prospective salesmen that \$25 a day is the usual and customary commission that will be earned by them through the sales of respondent's merchandise. Said advertising is as follows:

1607

Findings

PREMIUM SALESMEN

\$25 commission daily. Summer Special: Giving free pen and pencil sets through retailers. Ticoa, 6 North Michigan, Chicago.

In fact, respondent's salesmen do not, in the ordinary and usual course of business, earn \$25 per day or earn any other sum of money closely approximating \$25 per day. The usual and customary earnings of such salesmen, in due course of normal business, is substantially less than \$25 per day.

PAR. 4. In the course of the operation of his business and in order to sell his products respondent enters into a form of agreement or written contract with retail merchants who are contacted by respondent's selling agents.

The written form of contract provides for the purchase by a merchant of so-called "pen and pencil certificates," for which the merchant pays 10 cents apiece, and distribution of the same to the merchant's customers by the merchant upon the purchase by the customers of \$5 worth of the merchant's goods. Each customer is supplied by the merchant with a purchase card upon which the amount of purchases are registered.

The certificate which the customer receives from the merchant upon the purchase of the required amount of merchandise is as follows:

\$3.50 VALUE

NATIONALLY ADVERTISED PEN and PENCIL SET CERTIFICATE

(Picture of
Pen and
Pencil Set.)

This Certificate is Given With Our
Compliments and Entitles Holder to a
MATCHED PEN AND PENCIL SET
"ABSOLUTELY FREE"

When sent with trial order for 4 bottles of TICOA ink at 10c each and 4 tubes of TICOA Leads at 10c each. Total cost 80c. Same being the regular price of TICOA "Super Quality" Ink and Leads. Postage, Handling and Packing Charges Fully Prepaid.

CHECK COLOR OF MATCHED SET DESIRED

_____ Red _____ Green _____ Blue _____ Black _____ Brown

PIONEER ADVERTISING AGENCY

549 Randolph St. Chicago, Ill.

Name _____

Address _____ City and State _____

When the customer has received his certificate he may redeem the same by forwarding it to respondent with 80 cents for ink and pencil leads.

Findings

28 F. T. C.

Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 5. In the course of the operation of his business and for the purpose of inducing retail merchants to purchase his pen and pencil certificates and to induce said retail merchants to use the plan above set forth, respondent makes the following representations:

1. That The Ink Co. of America is carrying on a national campaign designed to advertise its ink and pencil leads designated "Ticoa"; that the advertising campaign is carried on by the Pioneer Advertising Co., a separate organization, so as to permit retail merchants to give away nationally advertised pen and pencil sets "free."

2. That the pen and pencil sets actually furnished to customers are nationally advertised products and have a retail value and usual selling price of \$3.50.

3. That the retail merchant will receive "free" and without cost 3 pen and pencil sets, 12 tubes of lead, 12 bottles of ink and advertising material upon entering into the contract.

4. That retail merchants may designate in said agreement a nationally advertised brand of pen and pencil set and that the same will be delivered by respondent to the merchant's customer absolutely free in fulfillment of the contract.

5. That the adoption of respondent's plan by retail merchants will be without cost to them and will operate to their profit in that respondent will refund the amount paid for the certificates together with an additional amount of money for each certificate sent to respondent for redemption by the merchant's customers.

PAR. 6. Respondent's representations as above set forth are grossly exaggerated, false, misleading, and untrue. In truth and in fact respondent has not been and is not engaged in carrying on a national campaign designed to advertise the products of The Ink Co. of America. The use of the trade names The Ink Co. of America and Pioneer Advertising Co. is a subterfuge by which respondent, in order to carry his plan into effect leads the merchants to believe that the same are separate and distinct organizations. The respondent is in fact not interested in the sale of Ticoa ink and Ticoa pencil leads to be used in the fountain pen and pencil sets distributed by him but is interested principally and primarily in the sale of said promotional cards and certificates for the purpose of obtaining the profits resulting therefrom. Respondent does not enable retail merchants to give away nationally advertised pen and pencil sets free, but in fact the cost of said sets is included in the price paid by the merchant's customers for the ink and pencil leads they must purchase when redeem-

ing the pen and pencil certificates and before receiving the pen and pencil set.

The pen and pencil sets which the respondent delivers to the merchant's customers are not a nationally advertised brand and respondent in the conduct of his business supplies said customers with a brand of pen and pencil set not nationally known or nationally advertised. Further, the said pen and pencil sets do not have a retail value or price of \$3.50 each. In fact the retail value and the usual selling price of the sets is substantially less than represented by respondent and the sum of 80 cents which the customers send to respondent for redemption of their pen and pencil certificates covers the cost to respondent of said pen and pencil sets, together with 4 bottles of ink and 4 pencil lead sets. In fact, the retail merchant does not receive free of charge 3 pen and pencil sets, 12 tubes of lead, 12 bottles of ink and advertising material, but the cost of the same is included in the amount of money paid by the retail merchant to the respondent for pen and pencil certificates. Further, when retail merchants designate their choice of a particular brand of pen and pencil set, their selection is disregarded by respondent and he systematically pursues the policy of substituting a cheaper pen and pencil set of a brand not nationally known. The adoption of respondent's plan by retail merchants does not operate without cost to them and does not operate to their profit. In fact, respondent does not make the cash refunds represented to merchants entering into such contracts. The purported cash refund to the merchants by the respondent is a lure and a snare devised and intended for the sole purpose of securing the execution of said agreement by retail merchants in expectation of being able, through the cooperation of respondent, to comply with the terms of the agreement and secure refunds from respondent for the pen and pencil certificates sent in for redemption to respondent by the said retail merchants' customers.

PAR. 7. The use by the respondent of the foregoing false and misleading representations has had and now has the capacity and tendency to and does, mislead a substantial number of retail merchants as well as a substantial portion of the purchasing public, into the erroneous and mistaken belief that such false and misleading representations are true. The foregoing false and misleading representations on the part of respondent serve as inducements for a substantial number of retail merchants to purchase respondent's certificates and to execute the contracts in connection therewith.

As a result thereof, trade has been diverted unfairly to respondent from his competitors in commerce among and between the various States of the United States and in the District of Columbia, who truthfully represent their products.

Order

28 F. T. C.

CONCLUSION

The aforesaid acts and practices of the 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 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 of the material allegations of fact set forth in the complaint, and states that he waives all intervening procedure and further hearings as to said facts, 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, Cornelius P. Van Schaack, Jr., individually and trading as The Ink Co. of America and Pioneer Advertising Co., or 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 sales promotion plans, including cards and certificates, fountain pen and pencil sets, ink and pencil leads, or other articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the Pioneer Advertising Co., or the respondent trading under his own name or under any other trade name or names, has been or is conducting a national advertising campaign designed to advertise the products of The Ink Co. of America or of any person, firm, or corporation.

2. Representing that the Pioneer Advertising Co., The Ink Co. of America or any other instrumentalities owned and controlled by respondent and used by him in connection with the sale and distribution of said sales promotional plans, are organizations having separate ownership and control.

3. Using the term "free" or any other term of similar import and meaning to describe or refer to goods, wares or merchandise regularly offered in connection with the purchase of specified quantities of other merchandise.

4. Representing that the pen and pencil sets have a retail value and usual selling price of \$3.50 or any other amount in excess of the price at which said pen and pencil sets are regularly and customarily

1607

Order

sold in the ordinary course of business under normal conditions and circumstances.

5. Representing that the pen and pencil sets are nationally known or nationally advertised.

6. Representing that respondent refunds to his customers the purchase price for such certificates or makes additional payments to his customers in connection with the presentation of the certificates for redemption.

7. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors for any given period of time, which is not a true representation of the average net earnings or profits customarily made by respondent's active full-time agents, salesmen, representatives or distributors in the ordinary course of business under normal conditions and circumstances.

8. Representing that the participation by merchants in respondent's sales promotional plan is without cost to said merchants.

It is further ordered, That the respondent shall within 60 days from 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

CORNELIUS P. VAN SCHAAACK, JR., TRADING AS MID-WEST SALES SYNDICATE AND MID-WEST PORTRAIT SERVICE

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

Docket 3630. Complaint, Oct. 12, 1938—Decision, May 15, 1939

Where an individual engaged, as case might be, under names "Mid-West Sales Syndicate" and "Mid-West Portrait Service," in offer and sale of sales promotion cards and certificates, and also, respectively, of lanterns, batteries, and bulbs, and tinted photographic enlargements, and, as thus engaged, in entering into written contracts with retail merchants contacted by his selling agents, under which said individual agreed, for a specified sum, to furnish merchants with certificates to be distributed to merchants' customers purchasing certain amount of his merchandise and to be redeemed by him as below set forth—

- (a) Represented, in advertising for agents to sell his merchandise in various newspapers and periodicals circulating among the various States and in the District of Columbia, that \$25 a day was the usual and customary commission earned by his salesmen "Giving Away Free Electric Lanterns Through All Retail Dealers";

Facts being his said salesmen did not, in ordinary and usual course of business, earn such amount or any other amount of money closely approximating such sum, but, as usual and customary earnings in due course of normal business, substantially less;

- (b) Represented, under name "Mid-West Sales Syndicate," to retail merchants solicited to enter into contracts for purchase of his "Red Guard Electric Lantern Certificates," to be distributed by merchant and redeemed by said individual for customers upon being sent in, as thereon set forth, with 80 cents to cover, at 10 cents each, six Chicago "Super Quality" batteries and two bulbs, that he was carrying on a national campaign to advertise such batteries and bulbs, and that such campaign was being carried on by aforesaid syndicate, and separate organization, so as to permit retail merchants to give away such lanterns free, and that adoption of such sales promotion plan by merchant would be without cost to him and would operate to merchant's profit, in that he would refund amount paid for certificates together with additional amount for each certificate sent to him for redemption by customers of merchant;

Facts being he was not engaged in any such campaign, and his said plan did not enable the merchant to give away such lantern free, but cost thereof was included in price paid by merchant's customers for batteries and bulbs which they were required to purchase when redeeming such lantern certificates and before receiving lantern, and plan did not operate without cost to merchant, nor to his profit, and he did not make such refunds, which were lure and snare devised and intended solely to secure execution of agreement by merchant.