

IN THE MATTER OF

J. C. ROBERTSON, INDIVIDUALLY, AND TRADING AS
NOVELTY DISTRIBUTING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3178. Complaint, July 21, 1937—Decision, May 20, 1939*

Where an individual engaged in sale and distribution of clocks in commerce between the various States; in soliciting sale of and in selling and distributing his said product—

Furnished his customers and prospective customers with push card involving sale and delivery to purchasing public of his said merchandise by means of a lottery scheme or gift enterprise through use of method or plan in accordance with which amount paid by purchaser for chance was dependent upon number secured from card by chance, and receipt or failure to receive clock was dependent upon success or failure in selecting from list of girl's names on card, name corresponding to that concealed under card's master seal, and persons not thus selecting received nothing other than privilege of making selection for money paid, and operator of card was compensated by receipt of clock; and

Supplied thereby and placed in hands of others means of conducting lotteries in the sale of his merchandise in accordance with such sales plan under which said clocks were distributed to purchasing public wholly by lot or chance and amount which customer paid for chance was similarly determined, and involving game of chance or sale of a chance to procure a clock at a price much less than normal retail price thereof; contrary to the public policy as long recognized in the common law and criminal statutes and to an established policy of the United States Government, 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 method contrary to public policy and refrain therefrom;

With result that purchasing public was thus induced and persuaded into buying punches from said cards in hope of securing prize winning name and thus obtain clock for price of 29¢ or less, and many persons were attracted by his said method and by element of chance involved in sale thereof as above described, and were thereby induced to buy and sell his said merchandise in preference to that offered and sold by said competitors who do not use same or equivalent method, and result that, through use of such method and because of said game of chance, trade and custom were diverted to him from competitors aforesaid who do not use such methods:

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

Before *Mr. William C. Reeves* and *Mr. Miles J. Furnas*, trial examiners.

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

1638

Complaint

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 J. C. Robertson, individually and trading as Novelty Distributing Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the 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 is an individual doing business under the trade name and style of Novelty Distributing Co., with his principal office and place of business located at 117 West Harrison Street, Chicago, Ill. He is now, and for some time last past has been, engaged in the sale and distribution of clocks in commerce between and among the various States of the United States. He causes and has caused said merchandise when sold to be transported from his principal place of business in the State of Illinois to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of and in selling and distributing the said clocks, has furnished his customers and prospective customers with a device commonly called a "push card," the use of which in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent involves the distribution of such merchandise to the purchasing public by means of a lottery scheme or gift enterprise. The method or sales plan suggested by respondent was and is substantially as follows:

The said push card has a number of partially perforated disks, and under each disk is a number; above each disk is a girl's name. The said push card also has two partially perforated master seals under each of which appears a girl's name corresponding to one of

Complaint

28 F. T. C.

the names above the partially perforated disks. Purchasers select one of the disks and remove the same disclosing the number thereunder. Persons selecting numbers from 1 to 29 pay in cents the amount of such number, and persons selecting numbers over 29 pay 29¢ for the privilege of selecting one of the disks and names. The push card bears a legend informing purchasers and prospective purchasers of the plan or method by which said push card is operated and by which the clocks described thereon are to be distributed. When all of the names have been purchased and the master seals removed, the persons who selected the names corresponding to the names under the master seals receive one of the clocks heretofore referred to without further charge, and the person, salesman, agent, or representative soliciting purchases of chances, as above described, also receives one of said clocks without further charge or additional service. The numbers under the names are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting one of the names until the selection has been made and the disk removed. The names under the master seals are concealed from purchasers and prospective purchasers until all the disks have been selected or purchased. Thus, customers selecting names which do not correspond with the names under the master seals receive nothing but the privilege of making the selection for the money they pay. Persons selecting the names corresponding to the names under the seals receive one of the clocks for a price not exceeding 29¢, which is less than the normal retail price of such clocks. The purchasing public is thus induced and persuaded into purchasing pushes from said card in the hope of selecting a prize-winning name and thus obtaining a clock for a price of 29¢ or less. The said clocks are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is determined wholly by lot or chance.

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 method in the sale of his merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States.

1638

Findings

PAR. 4. The sale of clocks to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a clock at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute such 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 therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale thereof in the manner above described, 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 the tendency and capacity to, and does, divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid acts and practices of respondent are all to the injury and prejudice of the public and of respondent's competitors, and constitute 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 July 21, 1937, issued and served its complaint in this proceeding upon respondent, J. C. Robertson, individually, and trading as Novelty Distributing Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On May 3, 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 the 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, J. C. Robertson, is an individual doing business under the trade name and style of Novelty Distributing Co., with his principal office and place of business located at 117 West Harrison Street, Chicago, Ill. He is now, and for some time last past has been, engaged in the sale and distribution of clocks in commerce between and among the various States of the United States. He causes and has caused said merchandise when sold to be transported from his principal place of business in the State of Illinois to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There is now, and has been for some time last past, a course of trade in commerce by said respondent in such merchandise between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of and in selling and distributing the said clocks, has furnished his customers and prospective customers with a device commonly called a "push card," the use of which in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent to said customers involves the distribution of such merchandise to the purchasing public by means of a lottery scheme or gift enterprise. The method or sales plan suggested by respondent was and is substantially as follows:

The said push card has a number of partially perforated disks and under each disk is a number; above each disk is a girl's name. The said push card also has two partially perforated master seals under each of which appears a girl's name corresponding to one of the names above the partially perforated disks. Purchasers select one of the disks and remove the same disclosing the number thereunder. Persons selecting numbers from 1 to 29 pay in cents the amount of such number, and persons selecting numbers over 29 pay 29¢ for the privilege of selecting one of the disks and names. The push card bears a legend informing purchasers and prospective purchasers of the plan or method by which said push card is operated and by which the clocks described thereon are to be distributed. When all of the names have been purchased and the master seals removed, the persons who selected the names

corresponding to the names under the master seals receive one of the clocks heretofore referred to without further charge, and the person, salesman, agent, or representative soliciting purchases of chances, as above described, also receives one of said clocks without further charge or additional service. The numbers under the names are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting one of the names until the selection has been made and the disk removed. The names under the master seals are concealed from purchasers and prospective purchasers until all the disks have been selected or purchased. Thus, customer selecting names which do not correspond with the names under the master seals receive nothing but the privilege of making the selection for the money they pay. Persons selecting the names corresponding to the names under the seals receive one of the clocks for a price not exceeding 29¢, which is less than the normal retail price of such clocks. The purchasing public is thus induced and persuaded into purchasing pushes from said card in the hope of selecting a prize-winning name and thus obtaining a clock for a price of 29¢ or less. The said clocks are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is determined wholly by lot or chance.

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 method in the sale of his merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of clocks to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a clock at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute such merchandise in competition with 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 com-

Order

28 F. T. C.

petitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale thereof in the manner above described, 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 the tendency and capacity to, and does, divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

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 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 respondent, J. C. Robertson, individually, and trading as Novelty Distributing Co., 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 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 his agents or to distributors or to members of the public push or pull cards, punchboards

1638

Order

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 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.

Complaint

28 F. T. C.

IN THE MATTER OF
**ABRAHAM TABACHNICK, TRADING AS UNEEDA UNDER-
WEAR COMPANY**

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

Docket 3686. Complaint, Jan. 10, 1939—Decision, May 20, 1939

Where an individual engaged in manufacture, sale, and distribution of ladies' knitted undergarments, to wholesale and retail dealers and other customers in various other States and in the District of Columbia—

- (a) Represented that certain of his said garments were composed of a mixture of silk and wool, through labels, tags, and markers attached thereto which described same, as case might be, as containing "33½% silk and wool" and "15% silk and wool," facts being neither garment thus referred to was composed of silk mixed with wool, but said products were composed, respectively, of 92 percent cotton and 8 percent rayon, and 90 percent cotton and 10 percent rayon, and contained no silk, product of cocoon of silkworm, as long understood by purchasing and consuming public generally from said word, and held in high esteem in products made thereof for their preeminent qualities; and
- (b) Represented certain of said garments as "30% wool and rayon," through use of statements in which word "wool" was accentuated by use of large type and word "rayon" was printed in much smaller type, on labels, tags, and markers, notwithstanding fact that they were not composed of admixture of wool and rayon in proportion represented, but were composed of 78 percent cotton, 9 percent rayon and 13 percent wool;

With capacity and tendency to mislead and deceive trade, including wholesale and retail dealers and substantial portion of purchasing public, into erroneous belief that such representations were true, and that said garments were composed of silk and wool, products of which have established reputation as possessing superior cold resistant qualities over those made from cotton or other material, and for which there is decided preference on part of purchasers and prospective purchasers of undergarments over other, and of causing such trade and public to purchase said products as result of such erroneous belief thus engendered:

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. Edward E. Reardon*, trial examiner.

Mr. James L. Fort for the Commission.

Mr. Bernard Austin, of New York City, 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 Abraham Tabach-