

IN THE MATTER OF
PHILIP F. RUBENSTEIN, TRADING AS ASSOCIATED
SALES COMPANY

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

Docket 3496. Complaint, July 16, 1938—Decision, June 20, 1939

Where an individual engaged, as partner and through corporation, of which he was president and principal stockholder, in sale of various articles of merchandise, including clothing, clocks, glassware, and other items—

Furnished to his customers various devices and plans for selling his said merchandise, which involved operation of games of chance, for distribution thereof to ultimate consumer wholly by lot or chance, and the furnishing to customers of push cards, order blanks, and circulars explaining his plan of selling same and allotting premiums or prizes to patrons of said push cards, in accordance with plan by which amount paid for chance was determined by number pushed by chance, and person securing certain number received "Solid Copper Nip Cup," and person selecting from list of feminine names on card name corresponding to that concealed under card's master seal received choice of man's or woman's "Elkskein" jacket or "Roxboro" pendulum clock, and operator of card received from said individual, when pushes had all been sold, one of jackets aforesaid; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of his said merchandise through sale thereof by cards substantially similar to those above described, contrary to the established public policy of the United States Government, and in violation of the criminal law, and in competition with many who do not use same or similar methods of distribution as contrary to public policy;

With result that many persons were attracted by his said plan or method of distribution of his merchandise, by element of chance involved therein, and were thereby induced to buy and sell same in preference to that offered by his competitors aforesaid, and trade was thereby diverted unfairly to him from such competitors:

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

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

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

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

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 Philip F. Rubenstein, individually and trading as Associated Sales Co., has violated the provisions of said act, 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, Philip F. Rubenstein, is an individual doing business under the trade name and style of Associated Sales Co., with his principal office and place of business located at 605 South First Street, Milwaukee, Wis. He is now and for some time last past has been, engaged in the sale and distribution of clothing, glassware, humidors, trays, lamps, kitchenware, clocks, 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 his principal place of business aforesaid to purchasers thereof located in the various States of the United States and in the District of Columbia. There is now, and for some time last past has been, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing his merchandise in commerce, furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The method and sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes, and has distributed, to the purchasing public in commerce certain literature and instructions including, among other things, push cards, order blanks, pamphlets containing illustrations of his said products, 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 24 feminine names with ruled columns on the reverse side thereof for recording the name of the customer opposite the feminine name selected. Said push card has 24 small partially perforated disks marked "Push," below each of which is printed one of the feminine names printed alphabetically on the reverse side of the card. Con-

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cealed 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 concealed within which is 1 of the feminine names appearing on the reverse side of said card. The push card bears printed legends or instructions as follows:

Seller and Winner
Each Receive Choice
of
MEN'S
"ELKSKEIN" JACKET
LADIES'
"ELKSKEIN" JACKET
ROXBORO
PENDULUM CLOCK
4—EXTRA WINNERS—4

All numbers
ending in 5
each win a
beautiful
Solid Copper
Nip Cup. —
Numbers under
29 pay what
you draw.
Numbers over
29 pay only
29¢. No higher.

SEAL
Write your
name opposite
name you
select on
reverse side.

Total
\$6.50

Respondent furnishes, and has furnished, his representatives with additional printed instructions or suggestions for using said push card which are as follows:

What to do: There is nothing complicated about it. You merely show the jacket illustrations to your friends, neighbors, co-workers in the office, shop, etc.—explain to them how they may obtain a beautiful jacket for the small sum of 1¢ up to 29¢. The enclosed salescard has 24 girls' names and under each is a concealed number. Persons selecting numbers 1 to 29 pay amount they draw, all numbers over 29 pay only 29¢ * * * no higher. When all the names are sold, the amount collected will be \$6.50. Hold salescard for your record, do not return to us.

Fill out the order blank. Send the order blank to us together with a money order or bank draft for \$6.50. Payment of this amount entitles you to any two garments, one for you and one for the fortunate person who selected the name under the seal. The two garments and other gifts will be shipped to you prepaid. We will include an extra bonus gift if we receive your order in ten days.

Sales of respondent's products by means of said push card are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or

chance. Respondent furnishes, and has furnished, various push cards accompanied by a set of 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. Such push cards are similar to the push card hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, said push cards use, and have used, 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 a 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 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 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 and 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 the respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid acts and practices of the respondent, as alleged herein, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 16 A. D. 1938, issued and served its complaint in this proceeding upon the respondent, Philip F. Rubenstein, individually and trading as "Associated Sales Company," charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, no answer being filed by the respondent, 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 appointed by it. John A. Nash appeared as attorney for the respondent but 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 proceeding regularly came on for final hearing 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 this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Philip F. Rubenstein, from about November 1936, to April 1, 1938, was engaged in the business of selling merchandise under the trade name, "Associated Sales Company," his principal place of business being located at 605 South First Street, Milwaukee, Wis. Said articles of merchandise included clothing, glassware, humidors, trays, lamps, kitchenware, and clocks, which merchandise was sold and shipped by respondent to purchasers in States other than the State in which respondent's place of business was located and from which said shipments were made. In the course and conduct of his business, respondent was in competition with other individuals, partnerships, and corporations engaged in the sale and distribution of like or similar articles of merchandise in interstate commerce.

PAR. 2. The respondent, on April 1, 1938, caused to be incorporated under the laws of the State of Wisconsin, the Associated Sales and Bag Co., and on that date the respondent and his partner (whose name does not appear in the record) sold the aforesaid business to said corporation, since which time the corporation has owned and conducted the business at the same place and under the same trade

name, "Associated Sales Company." The respondent is president of said corporation and its principal stockholder.

PAR. 3. The respondent, in the course and conduct of his business, furnished to his customers various devices and plans for selling his merchandise which involved the operation of games of chance, by which said merchandise was distributed to the ultimate consumers thereof wholly by lot or chance. The method, or sales plan, adopted and used by respondent is as follows:

Respondent furnished his customers with push cards, order blanks, and circulars explaining his plan of selling merchandise and allotting premiums or prizes to patrons of said push cards. On one of the said push cards appear 24 partially perforated disks marked "Push," above each of which is printed 1 of a number of feminine names shown in alphabetical order on the reverse of the card. Concealed within each disk is a number which is not disclosed until the disk is pushed or separated from the card. The card also bears a large master seal, concealed within which is 1 of the said feminine names. The consumer customer pushes 1 of the disks and the number disclosed determines the amount to be paid in cents, but the maximum amount to be paid is not to exceed 29 cents. In the event the number disclosed ends in a "5," the customer receives a "Solid Copper Nip Cup," and the one who pushes the disk over which appears the feminine name concealed within the master seal receives choice of a man's or lady's "Elkskein" jacket, or a "Roxboro" pendulum clock. The person who purchased the merchandise and push card from respondent received from respondent 1 of the "Elkskein" jackets when all the pushes had been sold.

PAR. 4. The various other articles of merchandise which were sold and distributed by respondent were sold by means of push cards similar to that described in paragraph 3 hereof except in minor details, and all of respondent's merchandise was sold and distributed solely by lot or chance.

PAR. 5. The respondent, by the sales method hereinbefore described, placed in the hands of others the means of conducting lotteries in the sale of his said merchandise, and the said method of sale and distribution of his merchandise was contrary to the established public policy of the Government of the United States and in violation of the criminal law.

PAR. 6. Many persons were attracted by the respondent's sales plan or method of distribution of his merchandise by the element of chance involved therein, and were thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale by his competitors, many of whom do not use the same or similar

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methods of distribution, because such method is contrary to public policy; and as a result, trade has been unfairly diverted from such competitors to the respondent.

CONCLUSION

The practices of the respondent, as set forth in the foregoing findings as to the facts were to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, in violation of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (respondent having filed no answer), 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, brief filed herein by counsel for the Commission (respondent having offered no proof, filed no brief, and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Philip F. Rubenstein, individually and trading as Associated Sales 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 clothing, glassware, humidors, trays, lamps, kitchenware, clocks, or any other merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices, for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to agents, or to distributors, or to members of the public, push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

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

Syllabus

IN THE MATTER OF
THE KOLYNOS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3587. Complaint, Sept. 14, 1938—Decision, June 20, 1939*

Where a corporation engaged in manufacture of its "Kolynos" tooth paste or dentifrice, and in sale and distribution thereof in interstate commerce to purchasers in various points in States other than that from which shipment was made; in advertisements which it disseminated or cause to be disseminated through newspapers and other periodicals of general circulation in the various States and in the District of Columbia, and which were calculated to induce purchase of such cosmetic or tooth paste—

- (a) Represented, directly or by implication, that said dentifrice was an outstanding, competent, and effective germicidal or antiseptic agent which would kill all harmful bacteria in the oral cavity, through such statements, among others, as " * * * actually kills harmful germs * * *," "An antiseptic ingredient in that rich foam reaches every tiny crevice, and destroys the germs that cause tooth-decay," and "The use of an outstanding germicidal and economical tooth-paste is the basis for tooth care," facts being there is no germicidal agent which can be put into mouth which will kill all bacteria present and produce sterile condition, germs therein capable of producing harm are located principally in inaccessible areas of said cavity and are not reached by said preparation as used, which, while containing mild antiseptic with tendency to inhibit growth of some microorganisms with which it comes in contact on the teeth, will not kill or destroy all the harmful germs in oral cavity, and is not a competent or proved antiseptic or germicidal agent;
- (b) Represented, as aforesaid, that said dentifrice would remove all stains from teeth and keep teeth and mouth thoroughly clean and healthy, and assure user of sound teeth and bring out and restore brightness to teeth which were dull or discolored, through such statements, among others, as "The amazing scientific discovery that brings out the natural brightness," " * * * works on the yellowish looking dull coating that disfigures your teeth," " * * * gives them the gleaming dazzling brightness you have always wanted," and "Germicidal and cleansing ingredients literally fill each tube of Kolynos," and " * * * keeps teeth and mouth thoroughly clean * * *," facts being it will not accomplish result last set forth nor assure user of sound teeth, efficiency of tooth paste in cleaning teeth depends primarily upon method of application by individual, inefficient brushing will not clean teeth regardless of dentifrice used, and said tooth paste will not remove all types of stains from teeth or any stain other than ordinary surface stains, nor change or alter their natural color or bring out or restore brightness to teeth which are dull or discolored due to causes other than ordinary surface stains; and
- (c) Represented, as aforesaid, that said dentifrice was more concentrated or economical to use than competing products and would accomplish results which they could not, through such statements, among others, as " * * * is