

Complaint

IN THE MATTER OF

HYMAN MENDELS, TRADING AS J. J. HENDERSON

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

Docket 3179. Complaint, July 21, 1937—Decision, June 22, 1939

Where an individual engaged in sale and distribution of clocks to customers throughout the United States—

Furnished various devices and plans for selling his said merchandise which involved operation of game of chance through which same was distributed to ultimate consumer wholly by lot or chance, and the furnishing of his customers with push cards, order blanks, and circulars explaining his plan for selling his said products and allotting premiums or prizes to patrons of said cards under such plan, in accordance with which number pushed by chance determined amount paid by customer for his chance, and person securing certain number received fountain pen desk set, and person selecting feminine name corresponding to that concealed within card's master seal received "Venus Rotary Clock," and patrons pushing other disks received nothing, and operator of card was compensated through receipt for himself of one of such clocks; and

Placed thereby in the hands of others means of conducting lotteries in sale of his said products, contrary to the established public policy of the United States Government and in violation of the criminal laws, and in competition with many who do not use same or similar method of distribution as contrary to public policy;

With result that many persons were attracted by his said sales plan or method of distribution for his merchandise and by element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that offered by competitors, many of whom, as aforesaid, do not use such or similar methods, and trade was thereby unfairly diverted to said individual from such competitors:

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

Before *Mr. William C. Reeves*, *Mr. W. W. Sheppard*, and *Mr. Charles F. Diggs*, trial examiners.

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

Nash & Donnelly, 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 Hyman

Complaint

29 F. T. C.

Mendels, individually and trading as J. J. Henderson, 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 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. The respondent is an individual doing business under the name J. J. Henderson, with his principal office and place of business located at 113 Hudson Street, Jersey City, N. J. 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 products when sold to be shipped or delivered from his place of business in the State of New Jersey to purchasers thereof in New Jersey 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 merchandise, has furnished various devices and plans of merchandising which involve the operation of gift enterprises or lottery schemes and a distribution of such merchandise to the ultimate consumers thereof wholly by lot or chance. Said devices or plans of merchandising consist of a variety of push cards, the use of which, in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent, was and is substantially as follows:

The said push cards bear a number of girls' names. Concealed under each name is a number. Also, under a master seal there is a name corresponding to 1 of the names on the card. Prospective purchasers select 1 of the names 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 cents for the privilege of selecting 1 of the names. The push cards bear various legends informing purchasers and prospective purchasers of the plan or method by which said push card is operated and by which the merchandise described thereon is to be

distributed. Illustrative of a few, but not descriptive of all of such legends, is the following:

Select your favorite girl's name and receive a New Modern Rotary Clock—the latest clock sensation—\$5.00 value—Numbers under 29 pay what you draw—Numbers over 29 pay only 29¢—No higher—Write your name opposite name you select on reverse side.

When all the names have been purchased the master seal is removed, and the person who has selected the name corresponding to the name under the master seal receives the article of merchandise described without further charge, and the person, salesman, agent, or representative soliciting purchases of chances, as above described, also receives an article of merchandise 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 name removed. The name under the master seal is concealed from purchasers and prospective purchasers until all the names have been selected. Those customers selecting names which do not correspond to the name under the master seal receive nothing but the privilege of making a selection for the money which they pay. The purchasing public is thus induced and persuaded into purchasing pushes from said cards in the hope that they may select a prize-winning name and thus obtain an article of merchandise for a sum not in excess of 29 cents. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customers pay for a chance is determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnishes said devices 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 said clocks have a retail value greater than the cost of a single push, and the sale of said clocks to the purchasing public in the manner above alleged involves a game of chance or the sale

Findings

29 F. T. C.

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 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 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 A. D. 1937, issued and served its complaint in this proceeding upon the respondent, Hyman Mendels, individually and trading as "J. J. Henderson," 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 no answer being filed by the respondent, testimony and other evidence in support of the allegations of the complaint were introduced by Henry C. Lank, D. C. Daniel, A. S. Bradley, and P. C. Kolinski, attorneys for the Commission, before W. C. Reeves, W. W. Sheppard, and Charles F. Diggs, respectively, examiners 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. The testimony and other evidence introduced on behalf of the Commission were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing on the said

complaint, the 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, Hyman Mendels, trading under the name "J. J. Henderson," was engaged in selling and distributing clocks from July A. D. 1935, to March A. D. 1937. Respondent sold and distributed said clocks in commerce between and among the various States of the United States. Respondent received orders for his merchandise at his place of business located at 113 Hudson Street, Jersey City, N. J., and shipped the same from his place of business located at 221 West Forty-second Street, New York, N. Y., to customers located throughout the United States. Respondent, during the time he was so engaged, was in competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of like or similar articles of merchandise.

PAR. 2. Respondent, in the course and conduct of his said 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 furnishes his customers with push cards, order blanks, and circulars explaining his plan for selling his said merchandise and allotting premiums or prizes to patrons of said push cards. One of said push cards has 24 partially perforated disks marked "Push," above each of which is printed one of the 24 feminine names which appear 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 one of the said feminine names. The method of operating this push card is as follows:

The consumer customer pushes one of the said disks and the number disclosed determines the amount in cents to be paid therefor by him, but the maximum amount to be paid for 1 push is not to exceed 29 cents. In the event the number disclosed is "33," the patron of the push card receives a fountain pen desk set, and the one who pushes the disk over which appears the feminine name concealed

Order

29 F. T. C.

within the master seal receives a "Venus Rotary Clock." Nothing is received by the patrons pushing the other disks.

After all the disks have been pushed, the person who sold the pushes pays the respondent \$6.50 and receives from him two clocks and a fountain pen desk set; one of which clocks he retains as compensation for his services, and the other clock and the fountain pen desk set are delivered to the persons who pushed the winning disks.

PAR. 3. The respondent, by the sales method hereinbefore described, placed in the hands of others the means of conducting lotteries in the sale of said merchandise, and said method of sale and distribution of his merchandise is contrary to the established public policy of the Government of the United States and is in violation of the criminal law.

PAR. 4. Many persons were attracted by respondent's sales plan or method of distribution for 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 a similar method 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 William C. Reeves, W. W. Sheppard, and Charles F. Diggs, examiners 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, Hyman Mendels, individually and trading as J. J. Henderson, 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 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.

IN THE MATTER OF

ARTHUR R. PATTERSON, ALBERT C. KEHR, ARTHUR W. EDSON, EVA O. BROWN, AND MINNETHA COE, DOING BUSINESS AS PATTERSON SCHOOL

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

Docket 3228. Complaint, Sept. 18, 1937—Decision, June 23, 1939

Where four individuals engaged in conducting correspondence course of instruction to prepare persons for examinations for positions in the classified civil service of the United States, and a fifth individual, principal of said school under arrangement and agreement with the others, and former owner of the business and school involved and, for a time long theretofore, Government employee in the local post office and local representative, as below set forth, of the United States Civil Service Commission; engaged, as above set forth, in selling their said courses through advertisements and salesmen and solicitors employed for the purpose, and through district managers under contract with them—

- (a) Represented, directly and indirectly, that they had civil service positions at their disposal and could assist applicants for such positions, and were in a particularly advantageous or unique position with respect to information pertaining to examinations for such positions, and stressed and featured supposed advantages and status of said principal as former Civil Service Commission employee and expert of long experience in the subject and field in question, through advertisements in the "Help Wanted" columns of the newspapers and elsewhere therein, and in periodicals of general circulation in the various States, containing such statements as "\$1,260 to \$2,100 year, to start working for the United States Government * * *," "* * * No special education or experience usually required * * *," "Get one of these new jobs with the U. S. Government. * * *," "* * * (former gov't examiner) Principal * * * We will advise you where your examination will be held, and how to pass it with a high rating for early appointment," "* * * The only help given by former U. S. examiner * * *," "* * * Let our expert (former Government examiner) prepare you for a position * * *," and, in some advertisements, invited those replying to send for free book, "How to Secure a Government Position," and, in others, for free list of Government jobs, salaries paid, etc., and set forth, on catalogs mailed to those replying, purported facsimile of certificate of appointment of said principal as member and secretary of the local board of civil service examiners, with date of appointment omitted in case of some, and words, in large type, "I was a Gov't Civil Service Examiner for years" and, below, "Proof of my former connection with the Civil Service Commission," and, on letterheads, set forth that such individual was civil service expert with 34 years' civil service experience;

Facts being they had no jobs at their disposal, could not in any way influence or control appointments to positions in classified civil service of the United States, nor be of assistance to prospective appointees other than by instructing them so that they might be better prepared for the