

Syllabus

IN THE MATTER OF

JAMES I. SILVER, TRADING AS SILVER MANUFACTURING COMPANY, SILVER SALES COMPANY, AND WORLD-WIDE RADIO COMPANY

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

Docket 3211. Complaint, Aug. 24, 1937—Decision, July 7, 1939

Where an individual engaged in offer, sale, and distribution of various articles of merchandise and novelties, including, among others, clocks, radios, silverware sets, and other products, to purchasers in various States and in the District of Columbia—

(a) Represented, through use of trade name including word "Manufacturing," under which he carried on portion of his business, and otherwise to customers and prospective customers, that he was manufacturer of the merchandise offered, notwithstanding fact he neither owned, controlled nor operated a factory, but purchased products dealt in from others, and was not, as represented, a manufacturer, for purchase of products of which direct there is preference on part of substantial portion of purchasing public and wholesale and retail dealers as affording, in their opinion, lower prices, merchandise of superior quality and other advantages not obtainable in purchasing from selling agency or middleman;

With effect of misleading and deceiving many of his customers and causing them to purchase merchandise offered by said individual in the erroneous belief that he owned, controlled, or operated a factory in which such merchandise was made, and with result of diverting trade to him from competitors who sell like or similar merchandise;

(b) Represented, in advertisements to secure agents or representatives in newspapers and periodicals of general circulation, that agents or representatives could give away, free of charge, R. C. A. licensed radios and make \$13.92 on each deal, and that by obtaining such products from him they could secure same at factory prices and save up to 50 percent, notwithstanding fact he was not, as aforesaid, manufacturer of radios offered, did not sell same at factory prices, was only a middleman or dealer, purchasers did not save any such amount as above set forth, and he required his agents or representatives in all instances to sell to members of public chances on pull cards, push cards, or punchboards, or to render other services in payment for same, or to pay cash therefor;

(c) Represented, in advertisements, as aforesaid, that radios offered for sale by him were R. C. A. radios or those made by the Radio Corporation of America, through featuring letters "R. C. A." as descriptive thereof in large type, followed by word "license" or "licensed," or abbreviation thereof, in much smaller type, notwithstanding fact products in question, with tubes or other parts made by manufacturer operating under limited license from the Radio Corporation of America, had not been made by said company, products of which display prominently said letters, and for which there is a preference on the part of substantial portion of purchasing public and

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wholesale and retail dealers, and which, in advertising such products, makes use of said letters as descriptive thereof;

With effect of misleading and deceiving many customers and inducing them to purchase radios offered by said individual in erroneous belief that they had been made and sold by said company, and with effect of diverting trade to him from many competitors who did not falsely represent that their radios were manufactured by corporation aforesaid; and

- (d) Mailed and supplied to those replying to his advertisements for agents or representatives, circular letter and circulars descriptive of articles which he was offering, and push cards for use in sale and distribution of his said products, under a plan in accordance with which selection, or failure to select, from number of girls' names displayed on card, that name corresponding to name concealed under card's seal, determined whether or not person taking chance on card secured article being thus disposed of, and amount, if any, paid for chance was dependent upon number pushed by chance, and supplied thereby to and placed in the hands of others means whereby such persons might conduct lotteries in the sale and distribution of his said articles through plans involving games of chance or sales of chances to procure articles of merchandise, contrary to the public policy long established in the common law and criminal statutes and contrary to an established public policy of the United States Government, and in competition with others engaged in sale and distribution of articles of same general nature and in same trade territory, and who do not sell the same through the use of games of chance, gift enterprises, or lottery schemes;

With the result that many purchasers of articles of merchandise from him were attracted by element of chance involved in his sales plan and thereby induced to purchase such articles in preference to like or similar merchandise offered by competitors who did not and do not use same or similar sales plan, and with further result that members of public, by reason of such preference, purchased substantial volume of merchandise from him and trade was unfairly diverted to him from competitors:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel* 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 James I. Silver, individually and trading as Silver Manufacturing Co., Silver Sales Co., and World-Wide Radio 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 is an individual doing business under the trade names and styles of Silver Manufacturing Co., Silver Sales Co., and World-Wide Radio Co., and has his principal office and place of business located at 2868 Elston Avenue, Chicago, Ill. Respondent also has a mail address at 612 North Michigan Avenue, Chicago, Ill. He is now, and for some time last past has been, engaged in the sale and distribution of radio receiving sets, silverware sets, clocks, fountain pens, fountain pen and pencil sets, bedspreads, blankets, electric irons, wrist watches, luggage, bathroom scales, baseball gloves, dishes, beverage sets, lamps, card tables, electric fans, smoking sets, cameras, and various other articles of merchandise, to wholesale dealers, jobbers, retail dealers, and to the purchasing public. Respondent's customers are located at points in the various States of the United States, and respondent causes his said products when sold to be transported from his principal place of business in the city of Chicago, State of Illinois, to purchasers thereof in the State of Illinois and in other States of the United States at their respective places of business. 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, 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 games of chance, gift enterprises, or lottery schemes by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. Said devices or plans of merchandising consist of a variety of pull cards, punchboards, and push cards. The methods and practices adopted and used by respondent are substantially as follows:

Respondent distributes and has distributed to the public through the United States mails in interstate commerce certain literature, instructions, and sales outfits, including paper pull cards, punchboards, and push cards, order blanks, advertisements, and catalogs containing illustrations of his merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as

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premiums or prizes to the consuming public and to the operators of the said pull cards, punchboards, or push cards. Said pull cards bear a number of feminine names arranged alphabetically, with a blank space opposite each for writing in the name of the customer. Said pull cards have a corresponding number of partially perforated "pulls," on each of which is printed 1 of the feminine names printed alphabetically elsewhere on the card. Concealed under each pull is a number, which is disclosed when the pull is separated from the card. The pull cards have a master seal, concealed within which is 1 of the feminine names appearing elsewhere on the said cards. Purchasers and prospective purchasers select 1 of the names and remove the pull, disclosing the number thereunder. Persons selecting numbers from 1 to 39 pay in cents the amount of such number, and persons selecting numbers over 39 pay 39 cents for the privilege of selecting 1 of the names. Persons selecting certain specified numbers receive the same free of charge. 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 a specified article of merchandise or the choice of certain specified articles of merchandise without further charge. The person, salesman, agent, representative, or retail dealer soliciting purchases of chances, as above described, also receives a specified article of merchandise or the choice of certain specified articles of merchandise or a cash commission or profit 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 1 of the names, or whether the same will be free of charge, 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, and the customers or purchasers do not know what they will receive, if anything, until after the master seal has been removed. 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 pull cards bear various legends informing purchasers and prospective purchasers of the plan or method by which said pull card is being operated and by which the merchandise described thereon is being distributed.

The articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is of a greater value than the cost of a single pull from said pull cards. The purchasing public are thus induced and persuaded into purchasing pulls

from said cards in the hope that they may select a prize-winning name and thus obtain an article of merchandise of a greater value than the amount paid. 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, or whether the same is free of charge, is also determined wholly by lot or chance.

As stated above, respondent sells and distributes various assortments of merchandise, and furnishes or sells various devices for use in the sale and distribution of such merchandise by means of a game of chance, gift, enterprise, or lottery scheme. Such plans or methods vary in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. Respondent, in selling said merchandise in connection with the sale or distribution of the aforesaid pull cards, punchboards, or push cards, conducts lotteries or 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, and respondent's merchandise is sold or distributed to the consuming public in accordance therewith. The sale of respondent's merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondent's merchandise free or at a price much less than the normal retail price thereof. The use by respondent of said method in the sale of his merchandise, and the sale of his 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. Many persons, firms, and corporations who sell or distribute 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.

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PAR. 5. In the course and conduct of his business, as described in paragraph 1 hereof, respondent has caused and causes the representation to be made to his customers and prospective customers, by the use of the trade name and style of Silver Manufacturing Co. and by other means, that he is the manufacturer of the merchandise which he sells and distributes. A substantial portion of the purchasing public, including also wholesale dealers, jobbers, and retail dealers, have expressed and have a preference for dealing direct with the manufacturer of the products being purchased, such purchasers believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from a selling agency or middleman.

The use by respondent of said representation that he is a manufacturer of the merchandise which he sells and distributes, has the capacity and tendency to and does mislead and deceive many of respondent's said customers into the erroneous belief that respondent is a business concern which controls operates or owns a factory in which the merchandise sold by respondent is manufactured, and that persons dealing with respondent are buying said merchandise directly from the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various advantages, including advantages in price, service, delivery, and adjustment of account, that are not obtained by persons purchasing goods from middlemen. The truth and fact is that respondent neither owns, controls, nor operates any factory whatsoever and does not manufacture any of the merchandise sold by him, but on the contrary purchases such merchandise from others. There are many competitors of respondent who do not falsely represent that they manufacture the merchandise sold by them. The use of said representation by respondent has the tendency and capacity to and does unfairly divert trade to respondent from his said competitors.

PAR. 6. In the course and conduct of his business, respondent has caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States, containing, among others, statements and representations of which the following are typical illustrations:

Give away free R. C. A. lic. radios. Buy at factory prices.

CARDMEN: Give away radios free. The sweetest deal you ever saw. Send 10¢ for sample pushcard, and plan. Give radio illustrated away free and make \$13.92 on every deal.

R. C. A. lic. radios. Factory prices. Save up to 50%.

Respondent inserted and caused to be published these advertisements in newspapers, magazines, and other periodicals of general cir-

ulation, with the intent and knowledge that the advertising would be displayed before and read by the public. The advertisements referred to above are false and misleading in that the radios are not given away, they are not free, salesmen and agents do not make money giving away radios free, respondent is not a manufacturer and does not sell at factory prices, and persons purchasing radios from respondent do not save 50 percent. Respondent requires persons receiving radios to sell chances on pull cards, punchboards, or push cards, or to render other service, or to pay cash for said radios. It is necessary for somebody to buy or sell something before the radios are delivered. Respondent, in the sale and distribution of radios and other merchandise, is a middleman or dealer and does not sell or distribute radios or other merchandise at factory prices or at a 50 percent saving.

PAR. 7. In the course and conduct of his business, respondent has caused and causes the representation to be made to his customers and prospective customers, by means of advertisements inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States, that certain of the radios sold and distributed by him are R. C. A. radios, thereby meaning radios manufactured and distributed by the Radio Corporation of America. These representations are made by the use of the letters R. C. A. in large type, and the words license or licensed, or lic. as an abbreviation for license or licensed, in much smaller type or print. A substantial portion of the purchasing public, including also wholesale and retail dealers, have expressed and have a preference for radio receiving sets manufactured or distributed by the Radio Corporation of America, and the Radio Corporation of America, in selling and distributing its radios, uses the letters R. C. A. prominently in its advertisements and on its radios. Said letters have, in the minds of the purchasing public, including also wholesale and retail dealers, come to mean radios manufactured and distributed by the Radio Corporation of America.

The use by respondent of the letters R. C. A. has the capacity and tendency to and does mislead and deceive many of respondent's customers into the erroneous belief that the said radios are manufactured, sold, and distributed by the Radio Corporation of America. The truth and fact is that said radios are not manufactured, sold or distributed by the Radio Corporation of America, but the tubes or certain other features of the said radio sets are manufactured by others under a limited license from the Radio Corporation of America. There are many competitors of respondent who do not falsely represent that the radios which they are selling and distributing are made and distrib-

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uted by the Radio Corporation of America. The use of said representations by respondent has the tendency and capacity to and does unfairly divert trade to respondent from his said competitors.

PAR. 8. The aforesaid acts and practices of respondent are all to the injury and prejudice of the public and respondent's competitors, as hereinabove alleged. Said acts and practices 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 August 24, 1937, issued its complaint in this proceeding and caused same to be served upon the respondent, James I. Silver, individually and trading as Silver Manufacturing Co., Silver Sales Co., and World-Wide Radio 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by John A. Nash, attorney for the respondent, before William C. Reeves, an examiner for the Commission, theretofore duly designated by it, and said testimony was reduced to writing and filed in the office of the Commission together with numerous pieces of documentary evidence received as exhibits. Thereafter a stipulation was made and entered into by and between William T. Kelley, chief counsel for the Commission, and John A. Nash, counsel for the respondent, as to certain additional facts material to the issues herein, which stipulation was approved by the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, the stipulation as to certain of the facts, briefs in support of the complaint (respondent not having filed brief and oral argument not having been requested); 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, James I. Silver, is an individual and at various times prior to the issuance of the complaint herein and subsequent thereto, has carried on business under the names and styles of Silver Manufacturing Co., Silver Sales Co., World-Wide Radio Co., and World-Wide Distributing Co., with his principal place of business located at 2868 Elston Avenue in the city of Chicago, State of Illinois. Since the latter part of the year 1936 respondent has been engaged in the business of offering for sale, selling, and distributing various articles of merchandise and novelties including, among others, clocks, radios, silverware sets, fountain pens, fountain pen and pencil sets, bedspreads, blankets, and electric irons, to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent has caused said articles of merchandise, when sold, to be transported from his place of business in the State of Illinois to the respective purchasers thereof located at various points in States of the United States other than the State of Illinois and in the District of Columbia. Respondent has been, and is now, in substantial competition with various partnerships and corporations and other persons likewise engaged in the sale and distribution of similar articles of merchandise in commerce among 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, by use of the trade name, Silver Manufacturing Co., under which he carried on a portion of his business, and by other means, has caused the representation to be made to customers and prospective customers that he was the manufacturer of the merchandise which he was offering for sale, although respondent did not own, control, or operate a factory but purchased the merchandise in which he dealt from others. A substantial portion of the purchasing public, also wholesale and retail dealers, have a preference for dealing direct with manufacturers of articles which they desire to purchase and believe that by so doing they will be able to purchase at lower prices and will receive merchandise of superior quality and obtain other advantages not obtainable when purchases are made from a selling agency or middleman. The use by respondent of such representations has the capacity and tendency to mislead and deceive and has misled and deceived many of his customers and has caused them to purchase merchandise offered for sale by respondent in the erroneous belief that respondent owned, controlled, or operated a factory in which such merchandise had been

manufactured. Many competitors of respondent do not falsely represent that they manufacture merchandise sold by them, and the use of such representations by respondent has the capacity unfairly to divert and has diverted trade to respondent from such competitors who sell like or similar merchandise to that sold by respondent, in commerce between and among various States of the United States.

PAR. 3. Respondent further in the course and conduct of his business, for the purpose of obtaining agents or representatives through whom radios offered for sale by him might be distributed, has caused advertisements to be inserted in newspapers, magazines, and other periodicals having general circulation in various States of the United States, in which advertisements statements and representations were made to the effect that agents or representatives of respondent could give away, free of charge, R. C. A. licensed radios and make \$13.92 on each deal; that by obtaining radios from respondent, agents and representatives of respondent could obtain such radios at factory prices and save up to 50 percent although respondent was not the manufacturer of the radios offered for sale by him and did not sell same at factory prices, but in the distribution of such radios, respondent was only a middleman or dealer and purchasers of such radios from respondent did not save up to 50 percent. That in all instances, respondent required his agents or representatives to sell to members of the public chances on pull cards, push cards, or punchboards, or to render other services in payment for said radios or to pay cash for same.

PAR. 4. Respondent, in the course of his business, in advertisements which he caused to be published, as set out in paragraph 3 hereof, has represented that the radios offered for sale by him were R. C. A. radios or radios manufactured by the Radio Corporation of America; that such representation was made by the use by respondent of the letters R. C. A. as descriptive of such radios, which letters appeared in large type followed by the word "license" or "licensed," or an abbreviation of one of these words printed in much smaller type. A substantial portion of the purchasing public, also wholesale and retail dealers, have expressed a preference and have a preference for radios manufactured by the Radio Corporation of America, which corporation in selling and distributing radios, makes use of the letters R. C. A., as descriptive of such radios, which letters are displayed prominently in its advertisements and upon the radios sold by it and as a result the purchasing public and dealers in radios have believed that radios so described had been manufactured and sold by the Radio Corporation of America, and the use by respondent of said letters as descriptive of the radios offered for sale by him has the capacity and tendency to

mislead and deceive and has misled and deceived many customers of respondent and has induced such customers to purchase the radios offered for sale by respondent in the erroneous belief that they had been manufactured and sold by the Radio Corporation of America, although such radios had not been manufactured by the Radio Corporation of America, but the tubes or other parts of the radios had been made by a manufacturer which was operating under a limited license from the Radio Corporation of America. Many competitors of respondent do not falsely represent that radios offered for sale by them were manufactured by the Radio Corporation of America and the use by respondent of such representation has the capacity and tendency unfairly to divert and has diverted trade to respondent from said competitors in commerce between and among various States of the United States.

PAR. 5. As a means of obtaining agents or representatives through whom he might sell radios and other articles of merchandise dealt in by him, respondent has caused advertisements to be published in numerous periodicals of general circulation in various States of the United States. When responses to such advertisements were received by respondent, he mailed to those making inquiries a circular letter and circulars descriptive of articles of merchandise which he was offering for sale. For a period of about 2 months in 1937, respondent mailed to a number of prospective customers devices described as "pull cards." These cards had printed thereon a number of girls' names and under each name was a concealed number. Near the upper right-hand corner of the card was a disk in the form of a seal which concealed a name which was the same as 1 of the names displayed on the cards; accompanying each of the cards were instructions as to the use to be made of the cards in the distribution of articles of merchandise. Members of the public were to be solicited to select one or more of the numbers on the card and to pay the number of cents indicated by the number concealed beneath each of the names selected, except that selectors of numbers higher than 39 paid only 39 cents and some of the numbers were designated as free and selectors of those numbers paid nothing. When all names had been selected and collections made, the seal was then opened and the name concealed thereby disclosed and the article of merchandise involved was then awarded to the person who had selected the name which was the same as that concealed by the seal. Other cards of the same general nature but which contained fewer names, and which provided that selectors of numbers higher than 29 paid only 29 cents, also were distributed by respondent. In the

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use of these cards the selection of a name which might entitle the selector to the article of merchandise involved and the amount which each of the selectors was required to pay, was wholly a matter of chance.

PAR. 6. The Commission finds that the persons to whom respondent furnished the cards described in paragraph 5 hereof, used same in purchasing, selling, and distributing the articles of merchandise sold by respondent in accordance with the sales plan described in said paragraph 5, and that by so furnishing such cards respondent thereby supplied to and placed in the hands of others the means whereby such persons might conduct lotteries in the sale and distribution of such articles of merchandise; that sales of such articles of merchandise to the purchasing public by means of the sales plan described in said paragraph 5, involved games of chance or the sales of chances to procure articles of merchandise sold by respondent and that the use of such sales plan constituted a lottery and was and is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and was and is contrary to an established policy of the Government of the United States.

PAR. 7. There are among the competitors of respondent persons, partnerships, and corporations engaged in the sale and distribution of articles of merchandise of the same general nature as those sold by respondent and in the same trade territory as that reached by respondent, in commerce among various States of the United States, which competitors do not sell such articles of merchandise by the use of games of chance, gift enterprises, or lottery schemes. Many purchasers of articles of merchandise from respondent were attracted by the element of chance involved in the sales plan of the respondent and were thereby induced to purchase the articles of merchandise from respondent in preference to like or similar articles of merchandise offered for sale by competitors of respondent, which competitors did not and do not use the same or a similar sales plan and because of this preference members of the public have purchased a substantial volume of merchandise from respondent with the result that trade has been unfairly diverted to respondent from his competitors.

CONCLUSION

The acts and practices of respondent as hereinbefore found 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 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, the answer of respondent, testimony and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by counsel for the Commission (respondent having 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, James I. Silver, individually and trading under the names of Silver Manufacturing Co., Silver Sales Co., and World-Wide Radio 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, radios, silverware sets, fountain pens, fountain pen and pencil sets, bedspreads, blankets, electric irons, 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 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.

4. Representing that respondent is a manufacturer of said products or sells said products at factory prices which eliminate the middleman, unless and until he owns and operates or directly and absolutely controls the factory or plant wherein said products are manufactured by him.

5. Representing, directly or by inference, through the use of the trade name "R. C. A.," or any colorable simulation thereof, or in any other manner, that radios manufactured by manufacturers other than Radio Corporation of America are "R. C. A." radios or are made by the Radio Corporation of America.

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6. Representing that the purchasers of respondent's products obtain a saving of 50 percent, or any other amount, when such is not the fact.

7. Using the term "free" or any other term or terms of similar import or meaning to describe or refer to merchandise furnished by respondent to his agents or representatives for distribution to their customers when said agents or representatives are required to pay for such merchandise or to procure the sale of other articles of merchandise or to perform other services in connection with obtaining such merchandise.

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
SHAW & DAVIS, INC., AND ABNER SHAW AND JANET
SHAW

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

Docket 3635. Complaint, Oct. 25, 1938—Decision, July 7, 1939

Where a corporation and two individuals, officers thereof and in control of its advertising policies and business activities, engaged in importing diamonds for resale, and in purchasing, from manufacturers or jobbers in this country, jewelry, silverware, diamonds, watches, clocks, leather goods, and kindred products, and in selling such various items or articles to consuming public by mail order; acting in cooperation and in concert with one another in the below set forth acts and things—

- (a) Described themselves as "wholesalers" in their catalogs and thereby represented that they were wholesalers engaged in sale and distribution of merchandise to trade for resale, notwithstanding fact substantially all of their sales were made to members of buying and consuming public who do not purchase for resale purposes, and they were not wholesalers of jewelry, sellers to trade for resale, but seldom, if ever, to consumer or purchasing public, and were not "wholesalers," marked and distinguished by character of sales to trade, but constituted corporate mail-order house engaged in sale to consuming public; and
- (b) Quoted, in connection with each of items listed in aforesaid catalogs, "list prices", so-called, and advised prospective customers and members of consuming public, through catalog insert, that such "list prices" for dealers of all items in such catalogs were "subject to discounts of 50% and 2% additional for cash" on the remaining 50 percent, making total discount on "list prices" of 51 percent, notwithstanding fact said prices were not list prices or retail prices in connection with sales to retail trade, as understood from trade term as used by manufacturers, jobbers, and wholesalers to designate such price, but figures which, reduced by discount aforesaid, would show prices of articles as offered to members of purchasing public, and their said prices were not wholesale prices thereof, but usual and customary prices charged by them in usual course of business;

With result of causing consuming public to buy their merchandise under belief that said corporation was wholesaler engaged in selling to retail dealer trade, and that consuming public was buying from it at retail dealer prices, and with capacity and tendency to mislead and deceive substantial portion of purchasing public into belief that products offered and sold by them were sold at wholesale prices and that such persons as purchased from them might buy at such prices and save retail dealer's profit, and to induce purchase of their said products by members of purchasing public through reliance upon such erroneous belief, and with effect of diverting trade unfairly to it from competitors engaged in distribution and sale in commerce of products aforesaid:

Held, That such acts and practices, under the conditions and circumstances set forth, were all to the prejudice and injury of the public and constituted