

Syllabus

IN THE MATTER OF

MAX BERGMAN, TRADING AS INTERSTATE PREMIUM
NOVELTY COMPANY

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

Docket 3577. Complaint, Sept. 8, 1938—Decision, July 11, 1939

Where an individual engaged in sale and distribution of dresser sets, watches, bedspreads, cameras, silverware, and numerous other articles of merchandise to purchasers in the various States and in the District of Columbia—

Sold and distributed said articles by means of a game of chance, gift enterprise or lottery scheme under which he distributed to representatives and prospective representatives certain advertising literature including a sales circular listing number of items of merchandise and prices thereof, and including pull card for use in distribution and sale of products in question under plan in accordance with which item of merchandise secured and price paid therefor and value or apparent value secured were determined by chance, in accordance with item and price disclosed by separation of particular tab selected from said card, and person operating card was compensated, after sale of all tabs or chances and remission of amounts, by premium; and

Supplied thereby and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with aforesaid or similar plans varying therefrom in detail only and under which members of purchasing public were induced by apparent greater value and regular prices of some of said articles as compared to price prospective purchaser would be required to pay in event he secured one, to purchase tabs or chances in hope of receiving article of merchandise of far greater value than designated price to be paid therefor, and under which fact as to whether purchaser of said tabs received article of apparent greater value and higher regular price than that designated on such tab and which of said articles purchaser was to receive and amount to be paid therefor were determined wholly by lot or chance, and involving game of chance or sale of a chance to procure an article of merchandise at price much less than apparent normal price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws 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 a chance or any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by his said method and by element of chance involved in sale of such merchandise as above described and were thereby induced to buy and sell such merchandise in preference to that offered and sold by competitors aforesaid who do not use such or equivalent method and with effect, by reason of the use of said method and because of said game of chance, of unfairly diverting trade and

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custom to him from his competitors aforesaid who do not use such or equivalent method, to the substantial injury of competition in commerce:
Held, That such acts and practices were all to the prejudice of the public and competitors and constitute unfair methods of competition.

Before *Mr. Randolph Preston* and *Mr. Miles J. Furnas*, trial examiners.

Mr. D. C. Daniel for the Commission.

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 Max Bergman, individually and trading as Interstate Premium Novelty Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the 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 Max Bergman is an individual trading under the name of Interstate Premium Novelty Co. Respondent's principal office and place of business was for some time located at 689 Broadway, Brooklyn, N. Y. Since respondent discontinued the operation of his business at the address set out hereinabove, he has conducted his business from 700 Glenmore Avenue, Brooklyn, N. Y. Respondent is now and for some time last past has been engaged in the sale and distribution of dresser sets, watches, bedspreads, quilts, cameras, dolls, kitchenware, silverware, razors, razor blades, fountain pen and pencil sets, jewelry, cigarette lighters, cosmetics, pocket knives, mirrors, men's and women's clothing, 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 shipped or transported from his places of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia, at their respective points of location. There is now and has been for some time last past 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.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular.

Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull card tabs receives an article which has apparent greater value and higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributed various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of such

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merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull 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 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 is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above 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 apparent normal retail price thereof. Many persons, firms, and corporations who sell or 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 method which 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 of such merchandise 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 capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method and, as a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, 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 September 8, 1938 issued and

thereafter served its complaint in this proceeding upon respondent Max Bergman, individually and trading as Interstate Premium Novelty Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of the said act. On the 20th day of June 1939, the respondent filed an answer in which answer he admitted all the material allegations of fact set forth in the 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 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 Max Bergman is an individual trading under the name of Interstate Premium Novelty Co. Respondent's principal office and place of business was for some time located at 689 Broadway, Brooklyn, N. Y. Since respondent discontinued the operation of his business at the address set out hereinabove, he has conducted his business from 700 Glenmore Avenue, Brooklyn, N. Y. Respondent is now and for some time last past has been engaged in the sale and distribution of dresser sets, watches, bedspreads, quilts, cameras, dolls, kitchenware, silverware, razors, razor blades, fountain pen and pencil sets, jewelry, cigarette lighters, cosmetics, pocket knives, mirrors, men's and women's clothing, 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 shipped or transported from his places of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia, at their respective points of location. There is now and has been for some time last past 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.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular. Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull card tabs receives an article which has apparent greater value and higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributes various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull 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 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 is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above described, 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 method which 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 of such merchandise 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 capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method and, as a result thereof, substantial injury is being and has been done by the respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, 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.

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, Max Bergman, in which answer respondent admits all

material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearings as to the 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 the respondent, Max Bergman, individually and trading under the name of Interstate Premium Novelty Co. or trading under any other name, his representatives, agents, and employees, directly or indirectly, or through any corporate or other device in connection with the offering for sale, sale and distribution of dresser sets, watches, bedspreads, quilts, cameras, dolls, kitchenware, silverware, razors, razor blades, fountain pen and pencil sets, jewelry, cigarette lighters, cosmetics, pocket knives, mirrors, men's and women's clothing, or any other articles or merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Mailing, shipping, or transporting to his agents or to distributors or to members of the public pull cards or circulars having pull tabs thereon or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

2. Selling or otherwise disposing of any merchandise by the use of pull cards or circulars having pull tabs thereon or any other lottery device.

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

IN THE MATTER OF
CHENILLE CORPORATION OF AMERICACOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3201. Complaint, Aug. 10, 1937—Decision, July 21, 1939*

Where a corporation engaged in manufacture of chenille yarns and of loom rugs and hooked rugs for sale to jobbers and department stores, and, in selling same to purchasers in various States, in substantial competition with those engaged in manufacture and sale of hooked rugs similar thereto—

Represented as "hand-hooked" or "hand-made" rugs, machine-made rugs sold by it to department stores, and, in other instances, left with buyer, without direct representation, impression that such rugs, cost of which to it was lower than that of its former genuine hand-made rugs, were hand hooked or hand made;

Notwithstanding fact said rugs, thus represented by it and advertised by department store purchasers, thus misled, in newspapers, as "Hand-hooked, Requiring Hours and Hours to Produce," and "Hand-Made," etc., were not, as aforesaid, fashioned and produced by craftsmen expert in the art of making rugs by hand, as long understood in the rug industry from term "hand-hooked" as meaning "hand-made," and as similarly associated by purchasing public with former term and latter meaning, with their valuable good will as thus applied;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such rugs were genuine hand-made or hand-hooked rugs, purchased and used by many among the public, and especially decorators and antique collectors, in preference to the machine-made product, as much superior in quality and in durability, and into purchase of such rugs because of such erroneous and mistaken belief, and of thereby diverting trade unfairly to it from its competitors aforesaid who truthfully represent the manner of manufacture of their respective products:

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

Before *Mr. Arthur F. Thomas* and *Mr. Miles J. Furnas*, trial examiners.

Mr. DeWitt T. Puckett, *Mr. Joseph C. Fehr*, and *Mr. R. A. McQuat* for the Commission.

Mr. Samuel R. Wittelle, 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