

Syllabus

IN THE MATTER OF

MODEL LINGERIE COMPANY, AND GERTRUDE LEITH,
INDIVIDUALLY AND AS AN OFFICER OF MODEL LIN-
GERIE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3659. Complaint, Dec. 7, 1938—Decision, Sept. 18, 1939*

Where a corporation and an individual, who was secretary and treasurer thereof and controlled and directed its sales policies and general business practices, engaged in sale and distribution of hosiery in interstate commerce, in soliciting sale of and selling their said merchandise—

Furnished therewith push cards, together with plans for merchandising same, which involved operation of a game of chance, gift enterprise, or lottery scheme for distribution thereof to consuming public wholly by lot or chance, and under which and in accordance with card's legend persons selecting by chance from a large number of feminine names displayed that corresponding with name concealed under card's red seal received two pairs of ladies' silk hosiery, and person selecting feminine name concealed under card's blue seal received one pair thereof, and person securing certain announced number received "Ladies' Beautiful Scarf or Compact or Cigarette Case," and cost of chance, if any, to customer was determined by particular number, as announced, secured under disk pushed, and under which provision was made for sale, if desired, of men's hosiery and for "Surprise Gift" for person sending order, if within 10 days, and for compensating operator by two pairs of ladies' or six pairs of men's hosiery; and

Supplied thereby and placed in the hands of others means of conducting lotteries or games of chance in the distribution of their merchandise in accordance with aforesaid or similar sales plan, varying therefrom in detail only, but involving, in case of all, push cards for use in distribution of their product through games of chance, gift enterprises, or lottery schemes, and involving game of chance or sale of chance to procure an article of merchandise at a price much less than normal retail price thereof, contrary to the established policy of the United States Government and in violation of the criminal laws and in competition with many who are unwilling to adopt and use such methods or any method involving game of chance or sale of a chance to win something by chance or by any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by them in the sale and distribution of their said merchandise and element of chance involved therein and were thereby induced to buy such merchandise in preference to that offered and sold by their competitors aforesaid who did not use such or similar method, and with effect of diverting trade unfairly to them from their said competitors who do not use such or similar method, to the substantial injury of competition in commerce:

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Held; That such acts and practices, under the circumstances set forth were, all to the injury and prejudice of the public and competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. D. C. Daniel and *Mr. L. P. Allen, Jr.* for the Commission.

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

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 Model Lingerie Co., a corporation, and Gertrude Leith, an individual, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Model Lingerie Company, is a corporation organized and existing under the laws of Illinois, having its principal place of business located at 529 South Franklin Street, Chicago, Ill. Respondent, Gertrude Leith, is secretary and treasurer of, and is principal stockholder in, the respondent corporation. Said individual respondent has her principal place of business at the aforementioned address of the Model Lingerie Company and controls and directs the sales policies and general business practices of said corporate respondent herein described. The aforesaid corporation is now, and for some time last past has been, engaged in the sale and distribution of hosiery in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause and have caused said products, when sold, to be transported from their aforesaid place of business in Illinois to purchasers thereof in the various States of the United States other than Illinois 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 respondents 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 said business, respondents are now and for some time last past have been in competition with other individuals and other corporations and with partnerships 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.

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PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof respondents, in soliciting the sale of and in selling and distributing their merchandise in commerce herein described, furnish, and have 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 sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondents was and is substantially as follows:

Respondents distribute and have distributed to the public through the United States mails and otherwise certain literature, instructions and sales outfits, including push cards, order blanks, and advertisements containing illustrations of hosiery, and circulars explaining respondents' plan of selling said merchandise and of allotting it and other articles as premiums or prizes to the operators of the push cards. In order to secure additional representatives, respondents include with the aforesaid literature, instructions, sales outfits, advertising and push cards, three more sales cards for distribution among the representative's friends. If these friends in turn mail in order, the aforesaid representative will receive a pair of hosiery free for each of such orders made.

Respondents' push cards bear 60 feminine names with a blank space opposite each for writing in the name of the customer. Said push card has sixty round partially perforated disks marked "Push," below each of which is printed one of the feminine names printed alphabetically elsewhere on the card. Concealed 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 red partially perforated disk and a large blue partially perforated disk, and concealed within each of these two disks is one of the feminine names appearing elsewhere on the said card. The push card bears printed legends or instructions as follows:

RED SEAL	NUMBERS	BLUE SEAL
	5-15-20	
	25-30-40	
	ARE FREE	
SELECT YOUR FAVORITE NAME		
LUCKY NAME UNDER RED SEAL		
RECEIVES		
TWO PAIRS		
LADIES' SILK HOSIERY		
LUCKY NAME UNDER BLUE SEAL		
RECEIVES		
ONE PAIR		

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LADIES' SILK HOSIERY

NO. 33 RECEIVES A LADIES' BEAUTIFUL
SCARF OR COMPACT OR CIGARETTE CASE

PAY ONLY WHAT YOU DRAW 1¢ TO 15¢

ANY NUMBER OVER 15 PAYS ONLY 15¢

NO CREDIT

NOTICE: If MEN'S HOSIERY are wanted we will send 3 Pair in place of each pair of Ladies'

If the order is sent us within ten days, we will include a SURPRISE GIFT for the person sending the order

WRITE YOUR NAME OPPOSITE

NAME YOU SELECT ON REVERSE SIDE

Sales of hosiery by means of said push cards are made in accordance with the above described legends or instructions. Each of said prizes or premiums is 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.

Respondents furnish two pairs of ladies' hosiery or six pairs of men's hosiery to their representative making sales by means of said push card. Respondents also furnish their representatives with additional printed instructions or suggestions for using their push cards. Respondents distribute and have distributed various push cards for use in the sale of their said products by means of a game of chance, gift enterprise or lottery scheme, but all of said push cards are similar to the card hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondents furnish the said push cards use the same in purchasing, selling, and distributing respondents' merchandise, in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a 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 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 normal retail price thereof. Many persons, firms, and cor-

porations, who sell or distribute merchandise in competition with the respondents 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 respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has a tendency and capacity to and does unfairly divert trade to respondents from their said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being done and has been done by respondents 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 respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices 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 the 7th day of December, A. D., 1938, issued its complaint and caused same to be served on Model Lingerie Co., a corporation, and Gertrude Leith, individually and as an officer of Model Lingerie Co., a corporation, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint (respondent having filed no answer thereto), testimony and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel and L. P. Allen, Jr., attorneys for the Federal Trade Commission, before Miles J. Furnas, an examiner of the Commission, theretofore duly designated by it, which testimony was reduced to writing and filed in the office of the Commission, together with one piece of documentary evidence received as an exhibit. No testimony or other evidence was introduced on behalf of the respondents.

Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the testimony and other evidence and brief in support of the complaint. No brief was filed by or on behalf of the respondents, and oral argument was waived. 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. For more than 1 year prior to the issuance of the complaint herein, said respondent Model Lingerie Co. was a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located in the city of Chicago, in said State. Respondent, Gertrude Leith, is the secretary and treasurer of said corporation and controls and directs its sales policies and general business practices. Said respondents have been engaged in the sale and distribution of hosiery in interstate commerce. In the course and conduct of said business, respondents caused said merchandise, when sold, to be transported from their place of business in the city of Chicago, State of Illinois, into and through, or into, other States of the United States. Said respondents did a substantial volume of business and in the course and conduct of said business were in active competition with various individuals, partnerships and corporations engaged in the sale and distribution of like merchandise in commerce between and among several of the States of the United States.

PAR. 2. Respondents, in the course and conduct of their business as described in paragraph 1 hereof, in soliciting the sale of and selling their said merchandise, furnished in connection with such merchandise a device designated as a "push card," together with plans for merchandising their product which involved the operation of a game of chance, gift enterprise, or lottery scheme, by which such merchandise was distributed to the consuming public wholly by lot or chance. One such device furnished by respondents to be used by their customers in the resale of hosiery to the consuming public was a push card bearing 60 disks to be pushed, beneath each of which was a feminine name, and a list of said feminine names was printed on the reverse of said card, with a blank space opposite each of said names for entering the name of the purchaser of the "chance" or "push." Concealed within each of the aforementioned disks was a number, which was disclosed when the disk was pushed or separated from the card. Said push card also bore a large red partially perforated disk

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and a large blue partially perforated disk; concealed within each of the two last mentioned disks was one of the feminine names appearing elsewhere on said card. The push card bore printed legends or instructions, as follows:

RED SEAL	NUMBERS	BLUE SEAL
	5—15—20	
	25—30—40	
	ARE FREE	
SELECT YOUR FAVORITE NAME		

LUCKY NAME UNDER RED SEAL RECEIVES
TWO PAIRS LADIES' SILK HOSIERY
LUCKY NAME UNDER BLUE SEAL RECEIVES
ONE PAIR LADIES' SILK HOSIERY

No. 33 Receives a Ladies' Beautiful Scarf or
Compact or Cigarette Case

PAY ONLY WHAT YOU DRAW 1¢ TO 15¢
Any Number over 15 pays only 15¢
NO CREDIT

NOTICE: IF MEN'S HOSIERY are wanted we will send 3 Pair in place of each pair of Ladies'. If the order is sent us within ten days, we will include a SURPRISE GIFT for the person sending the order

WRITE YOUR NAME OPPOSITE NAME
YOU SELECT ON REVERSE SIDE

The distribution of hosiery by means of said push cards was made in accordance with the above-stated legend or instructions, and the said articles of merchandise were thus distributed to the consumer customers wholly by lot or chance. Respondents furnished two pairs of ladies' hosiery, or six pairs of men's hosiery, to representatives who made sales by means of said push cards. Respondents distributed various push cards for use in the distribution of their merchandise by means of games of chance, gift enterprises, or lottery schemes, but all of such cards were of character similar to the one hereinabove described, and varied only in detail.

PAR. 3. The Commission finds that respondents, by use of the push cards, instructions and methods of distribution of their said merchandise, as described in paragraph 2 hereof, supplied and placed in the hands of others the means of conducting lotteries or games of chance in the distribution of respondents' merchandise in accordance with said sales plan. The use by respondents of said push cards and said sales plan or method, and the sale and distribution of said merchandise by and through the use thereof, is practice of a sort which is contrary to the established public policy of the Government of the United States and in violation of the criminal law.

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PAR. 4. The Commission finds that 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 normal retail price thereof. Many persons, firms, and corporations who sold or distributed merchandise in competition with respondents were unwilling to adopt and use such methods, or any method involving a game of chance or the sale of a chance to win something by chance, or by any other method that is contrary to public policy; and such competitors refrained from said practices. Many persons were attracted by the sales plan or method employed by respondents in the sale and distribution of said merchandise and the element of chance involved therein, and were thereby induced to buy respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who did not use the same or a similar method. The use of said method by respondents, because of said element of chance, had the tendency and capacity to, and did, unfairly divert trade to respondents from their competitors who did not use the same or a similar method, and as a result thereof, substantial injury has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondents, as hereinbefore found, are all to the injury and prejudice of the public and of competitors of respondents, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the provisions 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 (respondents having filed no answer), testimony and other evidence taken before Miles J. Furnas, 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 (respondents 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Model Lingerie Co., a corporation, its officers, and Gertrude Leith, individually and as an officer of

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Order

Model Lingerie Company, their respective representatives, agents, and employees directly or through any corporate or other device in connection with the offering for sale, sale and distribution of hosiery 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 so as to enable 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 respondents shall within 60 days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Complaint

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IN THE MATTER OF
MORBEN HAT WORKS, INC., AND MORRIS S. ALTMAN

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

Docket 3838. Complaint, June 28, 1939—Decision, Sept. 18, 1939

Where a corporation and an individual, who was an officer thereof and principal stockholder therein, and managed, controlled, and dominated its affairs and activities, engaged in manufacture of hats from old, worn, and used felt hats purchased by them, and so treated and processed, through cleaning, steaming, ironing, and shaping and, in some instances, fitting same with new trimmings, sweat bands, and size labels, that they had the appearance of new products made from felts which had never been worn—
Sold said products, with appearance aforesaid, and with no label, marking, or designation stamped thereon to indicate to purchasing public that they were made from old, worn, and previously used felt hat bodies which had been cleaned and renovated by them, to jobbers, wholesalers, and retailers who sold, as buyers direct or from said jobbers and wholesalers, to purchasing public said products, without disclosing fact that such hats were made as aforesaid, and under such circumstances as to indicate that they were in fact new hats;

With effect of misleading and deceiving substantial number of wholesalers, jobbers, retailers, and members of purchasing public into erroneous and mistaken beliefs that said products were made from either new and unused materials or from new, but shopworn hat bodies, cleaned, steamed, and renovated by manufacturers thereof in manner similar to that employed in connection with those made from old, worn, and previously used felt bodies, and into purchase of substantial number of such hats because of said erroneous and mistaken belief:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Robert Mathis, Jr. 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 Morben Hat Works, Inc., a corporation, and Morris S. Altman, individually and as an officer of said Morben Hat Works, Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof