

Syllabus

IN THE MATTER OF

A. LASKEY, J. SAMUELS AND J. P. SHEEHAN, TRADING
AS INLAND SALES CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3846. Complaint, July 13, 1939—Decision, Oct. 18, 1939*

Where three partners engaged in sale and distribution of sport jackets, pens, pencils, and other articles of merchandise to purchasers in various other States and in the District of Columbia; in soliciting and in selling and distributing their said products—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for sale and distribution of said merchandise to ultimate consumers wholly by lot or chance, and involved distribution by them to purchasing public of certain literature and instructions, including push cards, order blanks, illustrations of their products, and circulars explaining their plan of selling their said merchandise, and allotting it as premiums or prizes to operators of said push cards, under plan in accordance with which person selecting by chance, from list of feminine names displayed on card, name corresponding to that concealed under card's master seal received sport jacket or article of merchandise being thus disposed of, and person pushing by chance certain number secured "De Luxe Pen and Pencil," and amount paid was dependent upon number pushed by chance; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of their merchandise in accordance with aforesaid, or similar, sales plan involving various push cards for sale and distribution of products in question by means of game of chance, gift enterprise, or lottery scheme, and varying in detail only from that described, under which fact as to whether purchaser received article of merchandise or nothing for amount of money paid and which of articles, if any, purchaser was to receive, was 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 lower than normal retail price thereof, contrary to an established public 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 said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and who refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by them in sale and distribution of their merchandise and by element of chance involved therein, and were thereby induced to buy and sell their products in preference to merchandise offered and sold by competitors aforesaid who do not use same or equivalent method, and with effect, through use of such method and because of said game of chance, of diverting unfairly trade in commerce among the various States and in

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the District of Columbia to them from their competitors aforesaid who do not use such or equivalent method:

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

Mr. L. P. Allen, 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 A. Laskey, J. Samuels, and J. P. Sheehan, individually, and trading as Inland Sales Corporation, 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. Respondents A. Laskey, J. Samuels, and J. P. Sheehan are individuals and copartners trading as Inland Sales Corporation, with their principal office and place of business located at 1719 West Division Street, Chicago, Ill. Respondents are now and for some time last past have been engaged in the sale and distribution of sports jackets, pens, pencils, and other articles of merchandise 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, at their respective points of location in the various States of the United States, other than Illinois, and in the District of Columbia. There is now, and has been for some time last past, a course of trade by 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, and have been, in competition with other partnerships and with individuals and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof respondents in soliciting the sale of and in selling and distributing their merchandise 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

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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 purchasing public certain literature and instructions including, among other things, push cards, order blanks, illustrations of their said merchandise and circulars explaining respondents' plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondents' push cards bears 35 small, partially perforated disks on the face of each of which is printed the word "push," and immediately below each of said disks is printed a feminine name. 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 master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legend or instructions as follows:

NAME UNDER SEAL RECEIVES A

BILTMORE

Sport Jacket

Latest Style for
MEN and WOMENNo. 29 Wins a
DE LUXE Pen and
Pencil Nos. 1 to
29—Pay what you
draw—Nos. over
29 pays 29¢—none
higher

Push it Out With Pencil

Write Your Name Opposite
Name You Select on Reverse Side

Sales of respondents' merchandise by means of said push cards are made in accordance with the above-described legend and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legend and instructions. The fact as to whether, a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondents furnish and have furnished various push cards accompanied by said order blanks, instructions, and other printed mat-

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ter for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying 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 corporations, 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 in commerce between and among the various States of the United States and in the District of Columbia 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, 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 and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce 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 July 14, 1939, issued and served its complaint in this proceeding upon the respondents, A. Laskey, J. Samuels, and J. P. Sheehan, individuals trading as Inland Sales 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. On September 22, 1939, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said 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 the 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. Respondents, A. Laskey, also known as A. Lasky, J. Samuels, and J. P. Sheehan are individuals and copartners trading as Inland Sales Corporation, with their principal office and place of business located at 1719 West Division Street, Chicago, Ill. Respondents are now and for some time last past have been engaged in the sale and distribution of sport jackets, pens, pencils, and other articles of merchandise 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, at their respective points of location, in the various States of the United States, other than Illinois, and in the District of Columbia. There is now, and has been for some time last past, a course of trade by 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, and have been, in competition with other partnerships and with individuals and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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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 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 purchasing public certain literature and instructions including, among other things, push cards, order blanks, illustrations of their said merchandise and circulars explaining respondents' plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondents' push cards bears 35 small, partially perforated disks on the face of each of which is printed the word "push," and immediately below each of said disks is printed a feminine name. 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 master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The person selecting the feminine name corresponding to the one under the master seal receives a premium or prize. The push card bears a legend or instructions as follows:

NAME UNDER SEAL RECEIVES A
BILTMORE
Sport Jacket
Latest Style for
MEN and WOMEN
No. 29 Wins a
DE LUXE Pen and
Pencil Nos. 1 to
29—Pay what you
draw—Nos. over 29
pays 29¢—none higher
Push it Out With Pencil
Write Your Name Opposite
Name You Select on Reverse Side

Sales of respondents' merchandise by means of said push card are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for

the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondents furnish and have furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The person 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 found involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute merchandise in competition with the respondents, as above found, 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 in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or an equivalent method.

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CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, A. Laskey, also known as A. Lasky, J. Samuels, and J. P. Sheehan, individuals and copartners trading as Inland Sales Corporation, or trading under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of sport jackets, pens, pencils, or any other articles of 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 their 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 within 60 days from the date of the service of this order upon the said respondents, they shall file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

JACK ROSENFELD, DOING BUSINESS AS J. ROSE & COMPANY

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

Docket 3212. Complaint, Aug. 24, 1937—Decision, Oct. 24, 1939

Where an individual engaged in sale of radios, clocks, watches, novelties of various kinds, and candy, to purchasers, chiefly jobbers, in various other States, and in contacting, as thus engaged, customers through use of form letter advising recipient that he specialized in premium merchandise for sales boards and sales cards; in soliciting the sale of and in selling the merchandise and novelties dealt in by him—

Furnished with such merchandise and novelties push cards and punchboards and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for distribution of articles in question to members of consuming public wholly by lot or chance, and which involved (1) one hundred and twenty-hole, 4-section punchboards for use under a plan in accordance with which members of public who secured 8 of said numbers received, for nickel paid, pound box of candy, and persons making last punch in each of 4 sections also received such a box, and selectors of the other 108 numbers received nothing, and (2) other types of boards of same general nature, involving operation of games of chance, gift enterprises, or lotteries, and push cards also, in operation of some of which cost to members of public ranged from 1 cent to 15 cents, depending upon concealed number selected by chance by customer, and in operation of which amount of cost to selector, as well as article of merchandise or novelty, if any, secured, were both subject to chance; and

Supplied thereby to and placed in the hands of others means by which games of chance, gift enterprises, and lotteries were conducted as aforesaid, and under which merchandise and novelties thus sold by said individual, and with which such cards and boards and devices were supplied, were distributed to purchasing public wholly by lot or chance, and under which, in some instances, amount which customer was required to pay was similarly thus determined, contrary to established public policy of the United States Government and in violation of the laws of several of the States, and in competition with those who are unwilling to employ in sale and distribution of their products any method or sales plan involving game of chance, gift enterprise, or lottery schemes, and who refrain therefrom;

With result that such competitors were placed at competitive disadvantage and many purchasers of merchandise and novelties dealt in by said individual were attracted by element of chance involved in sale and distribution thereof, as aforesaid, and thereby induced to purchase such products offered and sold by him in preference to similar merchandise and novelties offered by competitors who did not furnish with their products similar cards, boards, or other devices, and with consequence that jobbers purchased substantial amount of merchandise from said individual and trade was unfairly diverted to him from competitors aforesaid: