

Syllabus

IN THE MATTER OF

BEN BRAUDE, TRADING AS SALES STIMULATORS AND
GLOBE CLOCK COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3873. Complaint, Aug. 18, 1939—Decision, Dec. 9, 1939*

Where an individual engaged in sale and distribution of a sales stimulator plan and, in connection therewith, in sale and distribution of tableware, electric shavers, clocks, and other merchandise, to purchasers thereof in various States other than the State of origin of shipment and in District of Columbia, in substantial competition with others engaged in sale and distribution of such plans or merchandise as above-described;

In selling, through salesmen or distributors, said plan to retail merchants and said articles or merchandise to such merchants for distribution to their customers as premium merchandise, for sale to customers of such merchants at prices represented by said individual, and by such merchants to their customers, as substantially lower than ordinary retail value thereof when customers had been credited on cards, supplied to merchant under plan and by merchant to customer, with the \$5, \$10, or \$20, or other sum, in trade as marked thereon—

- (a) Represented, in periodicals and other publications of general circulation among the various States, in furtherance of sale of his said plan and merchandise and in order to procure salesmen or distributors to sell same, that his salesmen were making up to \$32 daily and approximately \$350 a month in the ordinary course of their business of selling said plan and merchandise, through such statements as "Brand new guaranteed business plan * * * Sweeping the country. Inexperienced salesmen cleaning up * * *," "This means that the least you should make from an original \$4.95 sale is \$8.64 for repeat commissions plus \$2 original commission, or a total of \$10.64. Three sales a day should mean total earnings of \$32 daily for you," and "WHAT SALESMEN SAY. Thanks for the commission check for \$175.86. I know these twice-a-month checks are going to grow," facts being said distributors did not make any such sums in the ordinary course of their business of selling his plan and other merchandise, but amounts set forth were gross exaggerations of earnings made by his said salesmen in the ordinary course of their said business; and
- (b) Represented as the customary or regular prices for or values of premiums used by him in connection with his said plan, prices, or values which were fictitious and substantially exaggerated, through such statements as "\$2.50 value silverware set for only 59¢," "Guaranteed time piece, \$7.50 value," and statement that jewelers and department store executives had valued clock involved "all the way from \$25 down to \$10," and "Guaranteed. Has the quality, appearance, and performance of any \$15 shaver," facts being ordinary retail value of the set of premium merchandise known as "Lady Esther Silverware" was substantially less than \$2.50,

Complaint

30 F. T. C.

as were ordinary retail values of "Globe Pendulum Clock" and dry shaver involved substantially less than \$7.50 and \$15, respectively;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of substantial quantities of said plan and merchandise by reason thereof, and with result that trade in commerce among the various States and in the District of Columbia was diverted unfairly to him from his said competitors who do not misrepresent to purchasers value of their merchandise or cost of their plans:

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. Donovan Divet for the Commission.

Ryan, Condon & Livingston and *Mr. Henry Junge*, of Chicago, Ill., for respondent.

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 Ben Braude, an individual trading as Sales Stimulators and as Globe Clock 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 and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Ben Braude, is an individual trading as Sales Stimulators and as Globe Clock Co. and having his office and principal place of business at 337 West Madison Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the business of the sale and distribution of a sales stimulator plan and in the sale and distribution of tableware, electric shavers, clocks, and other merchandise in connection with the sale of said sales stimulator plan. Respondent causes said sales stimulator plan and the aforesaid various items of merchandise, when sold by him to be transported from his aforesaid place of business in the State of Illinois, or from the State or origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States, other than the State of origin of the shipment thereof, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said sales stimulator plan and the said

65

Complaint

various items of merchandise in commerce among and between the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent is now, and has been during all the times mentioned herein, in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other persons and with firms, corporations, and partnerships, some of whom are engaged in the sale and distribution of sales stimulator plans and others in the sale and distribution of tableware, electric shavers, or clocks or all of such merchandise.

PAR. 4. Respondent sells said sales stimulator plan to retail merchants and sells said tableware, electric shavers, clocks, and other merchandise to said retail merchants for distribution to their customers as premium merchandise in connection with the operation of said sales stimulator plan. The retail merchants who purchase said plan from the respondent, pay \$4.95 for advertising and other printed matter used in the operation of such plan, which includes cards bearing figures totaling \$5, \$10, \$20, or other sums. Customers of the merchants are credited on such cards with the amounts of their purchases from the merchant, and when such purchases total the sum of the figures on the cards, the customers may purchase the aforesaid premium merchandise from the retail merchant at a price or prices which respondent represents to the merchants who in turn represent to their customers, is substantially lower than the ordinary retail value of such merchandise.

PAR. 5. Respondent sells said sales stimulator plan and the various items of merchandise to retail merchants by means of distributors or salesmen. In the course and conduct of his aforesaid business and in furtherance of the sale of said sales plan and merchandise, and in order to procure salesmen or distributors to sell said sales plan and merchandise, respondent has caused various statements and representations relative to said sales plan and to the earnings of respondent's salesmen or distributors to be inserted in periodicals and other publications having a general circulation among and between various States of the United States. Among and typical of such representations are the following:

Brand new guaranteed business plan for gasoline stations. Sweeping the country. Inexperienced salesmen cleaning up. Big sales outfit free. Stimulators, 337 W. Madison St., Chicago.

This means that the least you should make from an original \$4.95 sale is \$8.64 for repeat commissions plus \$2 original commission, or a total of \$10.64. Three sales a day should mean total earnings of \$32 daily for you.

WHAT SALESMEN SAY—Thanks for the commission check for \$175.80. I know these twice-a-month checks are going to grow.

Complaint

30 F. T. C.

In various other of said advertisements the names of businesses other than gasoline stations are inserted.

In the course and conduct of his aforesaid business, the respondent has caused various other statements and representations relative to said sales plan and merchandise to be inserted in periodicals and other publications having a general circulation among and between various States of the United States and in circulars and other bulletins disseminated to members of the public situated in various States of the United States. Among and typical of the statements and representations relative to the premium merchandise known as "Lady Esther Silverware," and concerning that part of said sales plan under which said tableware is distributed, are the following:

Here is the most sensationally successful sales stimulator plan we have ever created and which actually puts \$5 into the cash register of any retailer at a total cost to him of only 1¢.

The merchant pays only \$4.95 for the complete campaign. And here's the best part. He gets his money back when he has purchased just a few dozen silverware sets.

Sales Stimulators guarantees to refund to the dealer the Entire Cost of this advertising campaign, less the resale value of the silverware sets furnished, as soon as a total of 8 dozen silverware sets has been purchased by the dealer.

\$2.50 value silverware set for only 59¢.

Among and typical of the statements and representations relative to the premium merchandise designated as Globe Pendulum Clock, and concerning that part of said sales plan under which said clocks are distributed, are the following:

Guaranteed time piece. \$7.50 value.

The Globe Pendulum Clock is the combined product of the most talented artists, engineers and skilled craftsmen. It's new. It's different. It's sensational.

There is no clock even remotely resembling it in all the world. The nearest thing to it is a French clock that retails at from \$125 upwards.

What do you think a clock like this would sell for? I asked this question of several jewelers and department store executives. The estimates ran all the way from \$25 down to \$10.

Under our plan, the retailer offers his customers an opportunity to secure a Globe Pendulum Clock for only \$1.99 after purchasing \$5 worth of merchandise. As the retailer pays only \$2 for the clock the actual cost of the plan to him is just 1¢ for each \$5 worth of business.

Retail value \$7.50.

Sales Stimulators agrees to refund to the dealer the Entire Cost of the advertising campaign, less the resale value of the Globe Pendulum Clock furnished, as soon as a total of 4 dozen clocks has been purchased.

Among and typical of the statements and representations relative to the electric dry shaver which is distributed as premium merchandise

65

Complaint

and concerning that part of said sales plan under which said electric dry shaver is distributed, are the following:

Guaranteed. Has the quality, appearance, and performance of any \$15 shaver.

Sales Stimulators guarantees to refund to the dealer the Entire Cost of this advertising campaign less the resale value of the electric dry shaver furnished, as soon as a total of three dozen electric dry shavers has been purchased by the dealer.

PAR. 6. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondent has represented directly or by implication, that respondent's salesmen or distributors make up to \$32 daily and approximately \$350 a month in the ordinary course of their business of selling said sales plan and merchandise, that said sales plan costs the retail merchant only 1 cent for each \$5 worth of business which the merchant receives from his customers under such plan, that the respondent refunds to the retail merchant the purchase price of said sales plan, less the value of the two initial sets of silverware, when the merchant has purchased just a few dozen silverware sets, that the aforesaid set of Lady Esther silverware has an ordinary retail value of \$2.50, that the aforesaid Globe pendulum clock has an ordinary retail value of from \$7.50 to \$25, and that the aforesaid electric dry shaver has an ordinary retail value of \$15.

PAR. 7. The aforesaid statements and representations by the respondent are false and misleading. In truth and in fact the respondent's salesmen or distributors do not make up to \$32 a day or \$350 monthly in the ordinary course of their business of selling said sales plan and other merchandise. Such amounts are gross exaggerations of the earnings made by said salesmen or distributors in the ordinary course of their business of selling said sales plan and merchandise. The cost of said sales plan to the retail merchant is in excess of 1 cent for each \$5 worth of business received by the merchant from his customers under such plan. The said 1 cent represents the difference between the cost of the various items of merchandise to the merchant and the price for which the merchant sells said merchandise to his customers. The merchant is required to pay to the respondent \$4.95 for the advertising matter and other literature relative to such plan in addition to losing 1 cent on each item of premium merchandise which he sells to his customers in connection with such plan. The respondent does not refund the purchase price of said sales plan, less the value of the initial sets of tableware, to the merchant when the merchant has purchased just a few dozen sets of tableware. In fact the

merchant is required to purchase 18 dozen sets of silverware before such amount is refunded.

In truth and in fact the ordinary retail value of the aforesaid set of Lady Esther silverware is substantially less than \$2.50. The ordinary retail value of the aforesaid Globe pendulum clock is substantially less than \$7.50 and substantially less than \$25, and the ordinary retail value of the aforesaid electric dry shaver is substantially less than \$15.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations has the capacity and tendency to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's said sales stimulator plan and merchandise because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from his said competitors who do not misrepresent the value of their merchandise, or the cost of their respective sales plans, to the purchasers thereof. In consequence thereof, substantial injury is being, and has been, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's 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 August 18, 1939 issued and on August 21, 1939 served its complaint in this proceeding upon respondent Ben Braude, an individual trading as Sales Stimulators and as Globe Clock Co., charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission by order entered herein granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint except a portion of the allegations of paragraph 7 of said complaint, with

respect to which no findings are made herein, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer 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. The respondent, Ben Braude, is an individual trading as Sales Stimulators and as Globe Clock Co. and having his office and principal place of business at 337 West Madison Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the business of the sale and distribution of a sales stimulator plan and in the sale and distribution of tableware, electric shavers, clocks, and other merchandise in connection with the sale of said sales stimulator plan. Respondent causes said sales stimulator plan and the aforesaid various items of merchandise, when sold by him to be transported from his aforesaid place of business in the State of Illinois, or from the State or origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States, other than the State of origin of the shipment thereof, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said sales stimulator plan and the said various items of merchandise in commerce among and between the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent is now, and has been during all the times mentioned herein, in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other persons and with firms, corporations, and partnerships, some of whom are engaged in the sale and distribution of sales stimulator plans and others in the sale and distribution of tableware, electric shavers, or clocks or all of such merchandise.

PAR. 4. Respondent sells said sales stimulator plan to retail merchants and sells said tableware, electric shavers, clocks, and other merchandise to said retail merchants for distribution to their customers as premium merchandise in connection with the operation of said sales stimulator plan. The retail merchants who purchase

Findings

30 F. T. C.

said plan from the respondent, pay respondent \$4.95 for advertising and other printed matter used in the operation of such plan, which includes cards bearing figures totalling \$5, \$10, \$20 or other sums. Customers of the merchants are credited on such cards with the amounts of their purchases from the merchant, and when such purchases total the sum of the figures on the cards, the customers may purchase the aforesaid premium merchandise from the retail merchant at a price or prices which respondent represents to the merchants who in turn represent to their customers, is substantially lower than the ordinary retail value of such merchandise.

PAR. 5. Respondent sells said sales stimulator plan and the various items of merchandise to retail merchants by means of distributors or salesmen. In the course and conduct of his aforesaid business and in furtherance of the sale of said sales plan and merchandise, and in order to procure salesmen or distributors to sell said sales plan and merchandise, respondent has caused various statements and representations relative to said sales plan and to the earnings of respondent's salesmen or distributors to be inserted in periodicals and other publications having a general circulation among and between various States of the United States. Among and typical of such representations are the following:

Brand new guaranteed business plan for gasoline stations. Sweeping the country. Inexperienced salesmen cleaning up. Big sales outfit free. Stimulators, 337 W. Madison St., Chicago.

This means that the least you should make from an original \$4.95 sale is \$8.64 for repeat commissions plus \$2 original commission, or a total of \$10.64. Three sales a day should mean total earnings of \$32 daily for you.

WHAT SALESMEN SAY—Thanks for the commission check for \$175.86. I know these twice-a-month checks are going to grow.

In various other of said advertisements the names of businesses other than gasoline stations are inserted.

In the course and conduct of his aforesaid business, the respondent has caused various other statements and representations relative to said sales plan and merchandise to be inserted in periodicals and other publications having a general circulation among and between various States of the United States and in circulars and other bulletins disseminated to members of the public situated in various States of the United States. Among and typical of the statements and representations relative to the premium merchandise known as "Lady Esther Silverware," and concerning that part of said sales plan under which said tableware is distributed, are the following:

\$2.50 value silverware set for only 59¢.

Among and typical of the statements and representations relative to the premium merchandise designated as Globe pendulum clock, and concerning that part of said sales plan under which said clocks are distributed, are the following:

Guaranteed time piece. \$7.50 value.

What do you think a clock like this would sell for? I asked this question of several jewelers and department store executives. The estimates ran all the way from \$25 down to \$10.

Retail value \$7.50.

Among and typical of the statements and representations relative to the electric dry shaver which is distributed as premium merchandise and concerning that part of said sales plan under which said electric dry shaver is distributed, are the following:

Guaranteed. Has the quality, appearance, and performance of any \$15 shaver.

PAR. 6. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondent has represented directly or by implication, that respondent's salesmen or distributors make up to \$32 daily and approximately \$350 a month in the ordinary course of their business of selling said sales plan and merchandise, that the aforesaid set of Lady Esther silverware has an ordinary retail value of \$2.50, that the aforesaid Globe pendulum clock has an ordinary retail value of from \$7.50 to \$25, and that the aforesaid electric dry shaver has an ordinary retail value of \$15.

PAR. 7. The aforesaid statements and representations by the respondent are false and misleading. In truth and in fact the respondent's salesmen or distributors do not make up to \$32 a day or \$350 monthly in the ordinary course of their business of selling said sales plan and other merchandise. Such amounts are gross exaggerations of the earnings made by said salesmen or distributors in the ordinary course of their business of selling said sales plan and merchandise.

In truth and in fact the ordinary retail value of the aforesaid set of Lady Esther silverware is substantially less than \$2.50. The ordinary retail value of the aforesaid Globe pendulum clock is substantially less than \$7.50 and the ordinary retail value of the aforesaid electric dry shaver is substantially less than \$15.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations has the capacity and tendency to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that

Order

30 F. T. C.

the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's said sales stimulator plan and merchandise because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from his said competitors who do not misrepresent the value of their merchandise, or the cost of their respective sales plans, to the purchasers thereof.

CONCLUSION

The aforesaid acts and practices of the respondent as herein set forth are all to the prejudice and injury of the public and of respondent's 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 the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint except a portion of the allegations of paragraph 7 of said complaint, with respect to which no order is made herein, and states that he waives 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Ben Braude, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of any sales stimulator plan, or any merchandise for use in connection therewith, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors, which is not a true representation of the average net earnings or profits consistently made by his active full-time agents, salesmen, representatives or distributors in the ordinary course of business under normal conditions and circumstances.

2. Representing any specified sum of money as earnings or profits of any specified agent, salesman, representative, or distributor for any given period of time which has not in fact been consistently earned net by such agent, salesman, representative, or distributor in the ordinary course of business under normal conditions and circumstances.

3. Representing as the customary or regular prices or values for premiums used by respondent in connection with any sales stimulator plan, prices or values which are in fact fictitious and substantially in excess of the actual prices or values of such premiums.

It is further ordered, That the respondent shall, within 60 days after the service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
ARABIAN TOILET GOODS COMPANY, INC.

MODIFIED CEASE AND DESIST ORDER

Docket 2981. Order, Dec. 16, 1939

Order, in response to motion, modifying cease and desist order of January 20, 1938, 26 F. T. C. 441, so as to require respondent, its officers, etc., in connection with offer, etc., in interstate commerce or in District of Columbia, of cosmetics, to cease and desist from using term "Certified Cosmetics," and from misrepresenting qualities or composition of its said products, or Government guarantee, or use thereof as in said order set forth.

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

Mr. DeWitt T. Puckett for the Commission.

Mr. George J. Crane, of Chicago, Ill., for respondent.

MODIFIED ORDER TO CEASE AND DESIST, ETC.

This matter having been heard by the Federal Trade Commission upon the motion of W. T. Kelley, chief counsel for the Federal Trade Commission, to modify the order to cease and desist issued in this proceeding on January 20, 1938, and it appearing to the Commission that the respondent was given proper notice and an opportunity to be heard on said motion, and the matter being now properly before the Commission for determination and the Commission having considered said motion and the record, and being now fully advised in the premises.

It is ordered, That the motion to modify the order to cease and desist issued herein on January 20, 1938, be, and the same hereby, is, granted.

It is further ordered, That the order to cease and desist issued herein on January 20, 1938, be, and the same hereby is, modified so as to read as follows:

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 John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs in support of the complaint and in opposition thereto (no oral argument 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 an act of Congress approved Septem-