

IN THE MATTER OF
SAM LUBER, TRADING AS DEARBORN SALES COMPANY

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

Docket 3870. Complaint, Aug. 15, 1939—Decision, Dec. 18, 1939

Where an individual engaged in sale and distribution of radios, coffee sets, roasters, and other articles of merchandise, to purchasers in various other States and in the District of Columbia; in soliciting and selling and distributing his said products—

Furnished customers and prospective customers with various devices, use of which, in connection with sale and distribution of said merchandise to purchasing public by method or plan suggested, involved sale and distribution thereof to such public by game of chance, gift enterprise, or lottery scheme, and distribution to purchasing public of pull cards, together with certain literature and instructions, including order blanks, depictions of products concerned, and circulars explaining plan in question, under which person selecting by chance, from list of 66 feminine names displayed on card, name corresponding with that concealed under card's large master seal, received choice of radio, coffee set, roaster, "34 piece set Wm. A. Rogers and Chest," waffle iron, or sandwich toaster tray set, and person securing two certain numbers concealed under card's various tabs received fountain pen desk set, and amount paid by customers was contingent upon numbers secured under tabs, as above set forth, and operator of card was compensated by same choice secured by person selecting winning feminine name, as above described; and

Supplied thereby to, and placed in hands of others, means of conducting lotteries in the sale of his said merchandise in accordance with aforesaid or similar sales plan, varying only in detail therefrom, and under which articles in question were distributed to purchasing public wholly by lot or chance, and amount which customer paid was similarly determined, and involving game of chance or sale of chance to procure article of merchandise at price much less 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 similar or any plan or method involving game of chance or sale of a chance to win something by chance, or any other sales plan or method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by said plan or method employed by such individual in sale and distribution of his merchandise, and by element of chance involved therein, and were thereby induced to buy and sell his said products in preference to those offered and sold by his competitors aforesaid, who do not use such or equivalent sales plan or method, and with effect, through use of such game of chance, of unfairly diverting substantial trade to him from his competitors aforesaid, who do not use such or equivalent method or plan:

Complaint

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.

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

Mr. D. C. Daniel for the Commission.

Mr. Jacob J. Chapman, 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 Sam Lubber, individually and trading as Dearborn Sales Co., has violated the provisions of the 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, Sam Lubber, is an individual trading under the name of Dearborn Sales Co., with his principal office and place of business located at 711 South Dearborn Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of radios, coffee sets, roasters, silverware, waffle irons, toaster tray sets, 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 merchandise, when sold, to be transported from his 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 the State of Illinois, and in the District of Columbia. There is now, and for some time last past has been, a course of trade by respondent in said 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, respondent is, and has been, in competition with other individuals and with partnerships 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 said business as described in paragraph 1 hereof, the respondent, in soliciting the sale of, and in selling and distributing his said merchandise, has furnished his customers and prospective customers with various devices, the use of which in connection with the sale and distribution of said mer-

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chandise to the purchasing public by the method or plan suggested by respondent involves the sale and distribution of said merchandise to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public devices commonly known as pull cards, together with certain literature and instructions, including among other things order blanks, illustrations of his said merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said pull cards. One of respondent's pull cards bears 66 feminine names with ruled columns for writing in the name of the customer opposite the feminine name selected. Said pull card has 66 small pull tabs on the face of each of which is printed a feminine name which appears elsewhere on said pull card. Concealed underneath each said pull tab is a number which is disclosed when that tab is pulled or separated from the card. The pull card also has a large master seal and concealed within the master seal is a feminine name which corresponds to one of the feminine names which appear elsewhere on said card. The pull card bears legends or instructions as follows:

Name Under Seal Receives Choice of

ANY ILLUSTRATED ARTICLE

Nos. 1 to 29 pay what you draw

Nos. over 29 pay only 29

2 Additional Awards

Nos. 29 and 32 each receive Beautiful Fountain Pen

Desk Set in Attractive Gift Box. Lifetime Guarantee Pen.

Write your name opposite name you select

Additional instructions are printed on an order blank which accompanies said pull card and such instructions are as follows:

SUGGESTIONS FOR USING SALES CARD

This Salesbook consists of 66 girls' names; under each girl's name is a concealed number. This number represents the amount the person selecting that particular name is to pay for participating in this opportunity.

These concealed numbers range from Number 1 upwards but your customers pay only 1¢ to 29¢, according to the number disclosed under the name pulled. For instance, if customer pulls Number 1, he pays 1¢. If Number 11 is pulled he donates 11¢, or if number 32 is pulled he pays only 29¢. NOTHING HIGHER THAN 29¢—29¢ is the maximum cost. (Total \$16.95.)

Be sure to write in person's name opposite name they have selected on opposite page in corresponding place.

When all names have been pulled and collections made, you then remove the large seal and disclose the winner—the person who pulled the corresponding name is awarded their choice of either the 5-TUBE ELLIS RADIO, CALIENTE

COFFEE SET, NESCO ROASTER, 34 PIECE SET WM. A. ROGERS AND CHEST, AUTOMATIC TWIN WAFFLE IRON, SANDWICH TOASTER TRAY SET. Numbers 29 and 33 each receive Combination Fountain Pen Desk Set with Manufacturers Life-time Guarantee.

AND FOR YOUR EFFORTS YOU RECEIVE YOUR CHOICE OF ANY OF THE ABOVE MENTIONED ITEMS WITHOUT COST.

Sales of respondent's merchandise by means of said pull cards are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to customers or purchasers in accordance with the above legends or instructions. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance and the amount which the customer pays for a chance is determined wholly by lot or chance.

Respondent furnishes and has furnished various pull cards, accompanied by said order blanks, instructions, and other printed matter for use in the sales and distribution of his 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 pull card is the same as that hereinabove described, varying only in detail.

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 or method. 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 or method hereinabove set forth. The use by the respondent of said sales plan or method in the sale of his 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 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 sell or distribute merchandise in competition with the respondent as above alleged are unwilling to adopt and use said sales plan or method, or any sales plan or method involving a game of chance, or the sale of a chance to win something by chance, or any other sales plan or method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and dis-

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tribution of his merchandise and by the element of chance involved therein, and have been and are 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 sales plan or method. The use of said sales plan or method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial trade to respondent from his said competitors who do not use the same or an equivalent sales plan or method.

PAR. 5. The aforesaid acts and practices of 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 15, 1939, issued and thereafter served its complaint in this proceeding upon respondent, Sam Lubber, individually and trading as Dearborn Sales Co., charging him 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 November 28, 1939, the respondent filed his answer in which answer he 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. Respondent, Sam Lubber, is an individual trading under the name of Dearborn Sales Co., with his principal office and place of business located at 711 South Dearborn Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of radios, coffee sets, roasters, silverware, waffle irons, toaster tray sets, 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 merchandise, when sold, to be transported from his 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 the State of Illinois, and in the District of Columbia. There is now, and for some time last past has been, a course of trade by respondent in said 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, respondent is, and has been, in competition with other individuals and with partnerships 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 said business as described in paragraph 1 hereof, the respondent, in soliciting the sale of, and in selling and distributing his said merchandise, has furnished his customers and prospective customers with various devices, the use of which in connection with the sale and distribution of said merchandise to the purchasing public by the method or plan suggested by respondent involves the sale and distribution of said merchandise to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public devices commonly known as pull cards, together with certain literature and instructions, including among other things order blanks, illustrations of his said merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said pull cards. One of respondent's pull cards bears 66 feminine names with ruled columns for writing in the name of the customer opposite the feminine name selected. Said pull card has 66 small pull tabs on the face of each of which is printed a feminine name which appears elsewhere on said pull card. Concealed underneath each said pull tab is a number which is disclosed when the tab is pulled or separated from the card. The pull card also has a large master seal and concealed within the master seal is a feminine name which corresponds to one of the feminine names which appear elsewhere on said card. The pull card bears legends or instructions as follows:

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Nos. 29 and 33 each receive Beautiful Fountain Pen. Desk Set in Attractive Gift Box. Lifetime Guarantee Pen. Write your name opposite name you select

Additional instructions are printed on an order blank which accompanies said pull card and such instructions are as follows:

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These concealed numbers range from number 1 upwards but your customers pay only 1¢ to 29¢, according to the number disclosed under the names pulled. For instance, if customer pulls Number 1, he pays 1¢. If Number 11 is pulled he donates 11¢, or if number 32 is pulled he pays only 29¢. NOTHING HIGHER THAN 29¢—29¢ is the maximum cost. (Total \$16.95.)

Be sure to write in person's name opposite name they have selected on opposite page in corresponding place.

When all names have been pulled and collections made, you then remove the large seal and disclose the winner—the person who pulled the corresponding name is awarded their choice of either the 5-TUBE ELLIS RADIO, CALIENTE COFFEE SET, NESCO ROASTER, 34-PIECE SET WM. A. ROGERS AND CHEST, AUTOMATIC TWIN WAFFLE IRON, SANDWICH TOASTER TRAY SET. Numbers 29 and 33 each receive Combination Fountain Pen Desk Set with Manufacturers Life-time Guarantee.

AND FOR YOUR EFFORTS YOU RECEIVE YOUR CHOICE OF ANY OF THE ABOVE MENTIONED ITEMS WITHOUT COST

Sales of respondent's merchandise by means of said pull cards are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to customers or purchasers in accordance with the above legends or instructions. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance and the amount which the customer pays for a chance is determined wholly by lot or chance.

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

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 or method. 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 or method hereinabove described. The use by the respondent of said sales plan or method in the sale of his 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 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 sell or distribute merchandise in competition with the respondent as above found are unwilling to adopt and use said sales plan or method or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other sales plan or method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and by the element of chance involved therein, and have been, and are, 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 sales plan or method. The use of said sales plan or method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial trade to respondent from his said competitors who do not use the same or an equivalent sales plan or method.

CONCLUSION

The aforesaid acts and practices of respondent as hereinabove found 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, 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

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that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Sam Lubber, individually and trading as Dearborn Sales Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of radios, coffee sets, roasters, silverware, waffle irons, toaster tray sets, 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 respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF

YALE I. GLUBOK, TRADING AS RELIABLE SALES
COMPANY

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

Docket 3278. Complaint, Dec. 3, 1937—Decision, Dec. 19, 1939

Where an individual engaged in sale of various articles of merchandise, including blankets, bedspreads, silk hosiery, and other items and novelties, to purchasers in other States—

Furnished, through the mails and in some instances by door-to-door distribution, push cards, circulars descriptive of the several articles and novelties offered by him, and order blanks with directions for use of said cards for sale and distribution of his said products under a plan in accordance with which, and as a result of solicitation of public, person selecting, from number of girls' names displayed on card, name corresponding with that concealed under card's seal, was given choice of several of the articles of merchandise being thus disposed of, and person making sale of chances was similarly compensated, and amount paid by members solicited for chance was dependent upon particular number concealed by disc selected on card, as was, in case of certain cards, receipt of free chances, and under which persons other than individual selecting lucky name and operator of card, received nothing; and

Supplied thereby to and placed in the hands of others means by which lotteries were conducted in sale of articles and novelties involved and offered, sold, and distributed to purchasing public in accordance with aforesaid sales plan, under which products in question, ordered and shipped to numerous operators thus supplied, were distributed to purchasing public wholly by lot or chance, and amount paid therefor by respective customers was similarly wholly determined, and under which there was involved game of chance or sale of a chance to procure such articles and novelties at prices much lower than normal retail prices therefor, contrary to the established public policy of the United States Government, and in competition with those who do not sell such articles and novelties through any game of chance, gift enterprise, or lottery scheme;

With result that many purchasers of such products from said individual were attracted by element of chance involved in sales method by which they were distributed by him, and thereby induced to purchase same from him in preference to similar products offered and sold by competitors who did not and do not use similar methods, and with result, by reason of such preference, that members of public purchased substantial volume of merchandise and novelties from individual in question and trade was thereby diverted unfairly to him from competitors aforesaid:

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