

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.

Complaint

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Before *Mr. William C. Reeves* and *Mr. Charles F. Diggs*, trial examiners.

Mr. D. C. Daniel and *Mr. William L. Pencke* for the Commission.

Mr. Sam A. Kessler, of St. Louis, Mo., for respondent.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that *Yale I. Glubok*, individually and trading as *Reliable Sales Co.*, hererinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said 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. The respondent is an individual doing business under the name and style of *Reliable Sales Co.*, with his principal office and place of business located at 5244 Enright Avenue, St. Louis, Mo. He is now, and for some time last past has been, engaged in the sale and distribution of various articles of merchandise including, among others, clocks, lamps, cameras, watches, cooking sets, tableware sets, and zipper bags in commerce between and among the various States of the United States. He causes and has caused such articles when sold to be shipped or transported from his place of business in the State of Missouri to purchasers thereof in Missouri and in other States of the United States at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of and in selling and distributing the said merchandise, has furnished his customers and prospective customers with a device commonly called a "push-card," the use of which in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent involves the distribution of said articles of merchandise to the purchasing public by means of a lottery scheme or gift

enterprise. The method or sales plan suggested by respondent was and is substantially as follows:

The said push card has a number of partially perforated discs, and concealed within each disc is a number. In immediate proximity to each disc is a girl's name. The said push card also has a master seal, and concealed within such master seal is a name corresponding to one of the names on the card. Purchasers select one of the discs and remove the same, disclosing the number thereunder. Persons selecting numbers from 1 to 17 pay in cents the amount of such number, except that persons selecting certain specified numbers receive their selection free of charge. Purchasers selecting numbers over 17 pay 17 cents. The push card bears a legend or legends informing purchasers and prospective purchasers of the plan or method by which said push card is operated, and by which the articles of merchandise described thereon are to be distributed. When all of the discs have been selected and the master seal removed, the person who selected the name corresponding to the name under the master seal receives one of the specified articles of merchandise heretofore referred to without further charge, and the person, salesman, agent, or representative soliciting sales by means of said card, as above described, receives one of the specified articles of merchandise without further charge or additional service. The numbers under the names are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting a particular name or whether the selection will be free of charge until the selection has been made and the disc removed. The name under the master seal is concealed from purchasers and prospective purchasers until all of the discs have been selected. Thus, customers selecting names which do not correspond with the name under the master seal receive nothing but the privilege of making a selection for the money they pay. The value of the various articles of merchandise varies, but each of said articles of merchandise has a retail value in excess of 17 cents. The person selecting the name corresponding to the name under the master seal receives one of the articles of merchandise for a price not exceeding 17 cents, which is much less than the normal retail price of said article. The purchasing public is thus induced and persuaded into purchasing pushes from said card in the hope of selecting a prize-winning name and thus obtaining an article of merchandise for a price of 17 cents or less. 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.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's

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merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States.

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 respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to, and does, divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of his said business respondent, in the sale of said merchandise, has caused and causes the representations to be made to his customers and prospective customers:

- (a) That certain cameras have a retail value of \$5; and
- (b) That certain electric ship-model lamps have a retail value of \$6.50.

The truth and fact are that said cameras and lamps do not have a reasonable retail value or price as represented, but said purported retail value or price is grossly exaggerated and purely fictitious. A substantial portion of the purchasing public has been, and is, induced to purchase said cameras or lamps because of its reliance on said representations. The use by respondent of said representations has the capacity and tendency to, and does, mislead and deceive many of respondent's customers into the erroneous belief that said cameras and lamps have the retail value and price represented. There are many competitors of respondent who do not falsely represent the value or

price of the merchandise sold by them. The use of said representations by the respondent has the tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors, all to the injury of competition in commerce among and between the various States of the United States.

PAR. 6. The aforesaid acts and practices of respondent are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 3, 1937, issued its complaint in this proceeding and caused same to be served upon the respondent, Yale I. Glubok, individually and trading as Reliable Sales Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of an answer thereto by said respondent, testimony and other evidence in support of the allegations of said complaint were introduced by D. C. Daniel and William L. Pencke, attorneys for the Commission, before William C. Reeves and Charles F. Diggs, examiners for said Commission, theretofore duly designated by it, which testimony was reduced to writing and filed in the office of the Commission, together with numerous pieces of documentary evidence received as exhibits. No testimony or other evidence was introduced or tendered by or on behalf of said respondent. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, and briefs in support of the complaint. No briefs were filed by or on behalf of respondent and oral argument was waived by him, 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, Yale I. Glubok, has carried on business under the name and style of Reliable Sales Co., which business has been conducted from his residence at 5244 Enright Avenue, in the city of St. Louis, State of Missouri. The business carried on

Findings

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by respondent consisted of the sale of various articles of merchandise, including blankets, bed spreads, silk hose, silverware, clocks, and novelties of various kinds. Respondent caused some of the articles of merchandise and novelties sold by him to be transported, when sold from his said place of business in St. Louis, in the State of Missouri, through and into other States of the United States to the respective purchasers thereof, and in the course and conduct of his said business respondent has been in active competition with various partnerships and corporations and other persons also engaged in the sale of similar articles of merchandise and novelties in commerce among several of the States of the United States.

PAR. 2. Respondent, in the course of his business as set out in paragraph 1 hereof, has mailed from his place of business in St. Louis, Mo., to persons in States of the United States other than the State of Missouri, cards, sometimes described as push cards. Each of these cards was accompanied by a circular descriptive of the several articles of merchandise and novelties offered for sale by respondent and an order blank which the person addressed was requested to use. Distribution of these cards, circulars, and order blanks in some instances was made from door to door by the respondent in person or by a messenger. Directions for the use to be made of the cards and order blanks were printed upon the back of each of the order blanks. Each of the cards had printed thereon in plain view a number of girls' names and above or below each name was a disc which concealed a number. Near the upper right-hand corner of each of the cards was a larger disc in the form of a seal, which disc concealed a name which was the same as one of the names printed elsewhere on the card. Members of the public were to be solicited to select one or more of the names on the card and to pay the number of cents indicated by the number or numbers concealed by the disc or discs above or below each of the names so selected, except that with one type of the cards, five of the numbers were free and selectors of these numbers paid nothing and selectors of numbers higher than 17 paid only 17 cents and with another type of card selectors of numbers higher than 10 paid only 10 cents. When all names on one of the cards had been selected and collection made of the various amounts, the large disc or seal was then opened and the name concealed by it was disclosed and the person who had selected the name which was concealed by the seal was given his choice of several of the articles of merchandise, and the person who had sold the chances upon one of the cards also was given his choice of such articles but the persons who had selected the other names on

the card received nothing. The order blank was then filled out by the person who had sold the chances on the card and the articles of merchandise selected were indicated thereon and a money order for the amount required was inclosed with the order blank and mailed to respondent.

PAR. 3. The Commission finds that numerous persons to whom respondent furnished push cards, as set out in Paragraph 2 hereof, used same in purchasing, selling, and distributing articles of merchandise and novelties offered for sale by respondent in accordance with the sales plan described in said paragraph 2. Respondent in this manner supplied to, and placed in the hands of others, the means by which lotteries were conducted in the sale of such articles of merchandise and novelties. The Commission further finds that the articles of merchandise and novelties offered for sale and sold by respondent were distributed to the purchasing public wholly by lot or chance, and that the amount which each of the customers paid for a chance also was determined wholly by lot or chance; that the sale of such articles in such a manner involved a game of chance or the sale of a chance to procure such articles of merchandise and novelties at prices much lower than the normal retail prices therefor, and that the use of said method in the sale and distribution of articles of merchandise and novelties is a practice of the sort which is contrary to the established policy of the Government of the United States.

PAR. 4. There are among the competitors of respondent persons, partnerships, and corporations engaged in the sale and distribution of articles of merchandise and novelties of the same general nature as those sold by respondent and in the same trade territory as that reached by respondent in various States of the United States, which competitors do not sell such articles of merchandise and novelties by means of any game of chance, gift enterprise, or lottery scheme. Many purchasers of articles of merchandise or novelties from respondent were attracted by the element of chance involved in the sales method by which such articles of merchandise and novelties were distributed by respondent and on that account were induced to purchase such articles of merchandise and novelties from respondent in preference to similar articles of merchandise and novelties offered for sale and sold by competitors of respondent who did not and who do not use similar methods, and on account of such preference members of the public have purchased a substantial volume of merchandise and novelties from respondent with the result that trade has been diverted unfairly to respondent from such competitors.

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CONCLUSION

The acts and practices of the respondent, as herein set out have been, and are, to the prejudice and injury of the public and to competitors of respondent, and constitute unfair methods of competition 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, the answer of respondent, testimony and other evidence taken before William C. Reeves and Charles F. Diggs, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondent having offered no testimony or other evidence in opposition to the allegations of said complaint), brief of counsel for the Commission filed herein (respondent having 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Yale I. Glubok, individually and trading as Reliable 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 blankets, bed spreads, silk hose, silverware, clocks or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing any merchandise so packed and assembled that sales of such merchandise to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of others any merchandise, together with push or pull cards, punchboards, or any other lottery devices which said push or pull cards, punchboards or other lottery devices are to be used or may be used in selling or distributing said merchandise to the public.

3. Supplying to or placing in the hands of others push or pull cards, punchboards, or any other lottery devices either with assortments of merchandise or separately, which said push or pull cards, punchboards, or other lottery devices are to be used or may be used in selling or distributing such merchandise to the public.

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4. Selling or otherwise distributing any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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.

IN THE MATTER OF
B & T FLOOR COMPANY

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

Docket 3541. Complaint, Aug. 17, 1938—Decision, Dec. 19, 1939

Where a corporation engaged in sale and distribution of extruded aluminum trimmings and metal products for trimming wall and floor covering materials; in advertising, under trade-mark "Chromedge," its said trimmings in circulars, folders, catalogs and stationery circulated generally throughout the United States, and through agents sent into various States—

- (a) Represented that it manufactured such trimmings, through use of such statements as "manufactured only by," etc.; and
- (b) Represented that its said trimmings were made of an alloy, one of the principal component parts of which was chromium, and that such trimmings, thus made, could be obtained only from it, and that so-called "Chromedge" was metal of superior quality, having attributes of chromium, and was preferable to extruded aluminum, through such statements as "can be obtained ONLY from ourselves or through an authorized distributor. Do not accept inferior imitations. * * *" and "* * * manufactured from a special white metal alloy in which we have incorporated chromium, magnesium, * * *";

Facts being it did not manufacture metal in question sold by it under trade name "Chromedge," nor manufacture the extruded aluminum alloy trimmings sold by it as aforesaid, so-called "Chromedge" was not a metal of superior quality having attributes of chromium, etc., but was in fact an extruded aluminum alloy purchased by it from aluminum manufacturer, by whom same was also sold to numerous competitors of said corporation for trimmings, as aforesaid;

With tendency and capacity to mislead and deceive substantial portion of purchasing public, and with effect of causing number of such public, many of whom prefer to purchase trimmings and metal products made of chromium because of durability and inherent qualities thereof, and on the part of which there has long existed preference for buying direct from manufacturer by reason of advantages thus had, as believed, in matter of better goods at lower prices, to purchase substantial volume of such trimmings from it, and of thereby causing trade to be diverted unfairly to it from its competitors who truthfully advertise and represent their metal trimmings, and of whom many sell and distribute such products of same general nature without in any way misrepresenting quality thereof or nature of material from which made, or that they are manufacturers of their products; to prejudice and injury of competitors and public:

Held, That such acts, practices, statements and representations, 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.