

Syllabus

IN THE MATTER OF

MEYER R. EISENBROCK, TRADING AS MARHAR 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 3773. Complaint, Apr. 26, 1939—Decision, June 5, 1940

Where an individual engaged in sale and distribution of blankets, bedspreads and other articles of merchandise to churches, fraternal organizations, clubs, and other purchasers, in other States, for resale and distribution to the purchasing public in competition with others engaged in the sale and distribution of like or similar articles of merchandise in commerce among the various States and in the District of Columbia—

Sold his aforesaid products to purchasers as above set forth along with sales plan or method for resale thereof to purchasing public through use of a game of chance, gift enterprise, or lottery scheme in such sale and distribution of such purchases, and under which various club plans, as advertised by him, along with his said goods, through printed cards, circulars, samples, and by personal solicitation, members of particular club, as determined by weekly drawings, were singly relieved or failed to be relieved of further weekly dues undertaken, in accordance with chance selection in such weekly drawings of money or number of particular member; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with such sales plan under which amount paid by ultimate purchaser for article was determined wholly by lot or chance, and involving game of chance, or sale of a chance to procure an article 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 any method involving game of chance or sale of a chance to win something by chance or any other method or sales plan contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of merchandise and element of chance therein, and were thereby induced to buy and sell his said products in preference to those offered and sold by said competitors 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 to him from his competitors aforesaid who do not use same or equivalent method; to the injury of competition in commerce:

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. Randolph Preston*, trial examiner.

Mr. L. P. Allen, Jr., for the Commission.

Mr. Leonard J. Schwartz, of Philadelphia, Pa., for respondent.

Complaint

31 F. T. C.

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 Meyer R. Eisenbrock, individually and trading as Marhar Sales 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Meyer R. Eisenbrock is an individual trading as Marhar Sales Co., with his principal office and place of business located at 1322 West Girard Avenue, Philadelphia, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of blankets, bedspreads, and other articles of merchandise to churches, fraternal organizations, clubs, and others for resale and distribution to the purchasing public. Respondent causes and has caused said merchandise, when sold, to be transported from his said place of business in Pennsylvania to purchasers thereof located in the various other States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent 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 his 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 his business, as described in paragraph 1 hereof, respondent sells and has sold his said merchandise to said purchasers, along with a sales plan or method by which the said merchandise is to be, and is, resold to the purchasing public. Said plan or method involves the use of a game of chance, gift enterprise, or lottery scheme in the sale and distribution of said merchandise to the ultimate purchasers thereof. Respondent has advertised his said merchandise and his said sales plan or method by means of printed cards, circulars, samples of said merchandise, and by personal solicitation. The sales plan or method as suggested and advertised by respondent is substantially as follows:

The sales plan or method is described as the "Club Plan." Each club has a fixed number of members, usually either 30, 50, 60, 80, 100

or 125. Each member of a club pays a fixed amount each week, usually 25 cents, for a period not to exceed a given number of weeks, usually 22 weeks. At the end of the first week a drawing is held and the member whose name or number is drawn receives one of the articles of merchandise being distributed, for the payment of one week's dues, and such winner or member then is dropped from the club. Each succeeding week the same procedure is followed and thus one member receives an article of merchandise being distributed for the payment of 1 week's dues, another for 2 weeks' dues, another for 3 weeks' dues, and so on to the end of the fixed period. At that time all remaining members receive one of the articles of merchandise, but such members have paid the face value of such merchandise. Thus, the amount which an ultimate purchaser pays for an article of merchandise is determined wholly by lot or chance.

Respondent furnishes and has furnished various "Club Plans" for use in the sale 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 "Club Plans" is the same at that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent sells his said articles of merchandise expose for sale and sell the same to the purchasing public 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 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 is contrary to an established public policy of the Government of the United States, and is 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 and distribute merchandise in competition with the 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 a 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 respondent in the sale and distribution of his merchandise, and the element of chance involved therein, and are thereby

Findings

31 F. T. C.

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 a tendency and capacity to and does unfairly divert trade to the respondent from his said competitors who do not use the same or an equivalent method. As a result thereof injury is being, and has been, done by respondent 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 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 April 26, 1939, issued, and on April 27, 1939, served its complaint in this proceeding upon respondent Meyer R. Eisenbrock, an individual trading as Marhar 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. 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 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. Respondent Meyer R. Eisenbrock, otherwise known as Meyer Eisenbrock, is an individual trading as Marhar Sales Co., with his principal office and place of business located at 1322 West Girard Avenue, Philadelphia, Pa. Respondent was for more than

Findings

1 year prior to December 1937, engaged in the sale and distribution of blankets, bedspreads, and other articles of merchandise to churches, fraternal organizations, clubs, and others for resale and distribution to the purchasing public. Respondent caused said merchandise, when sold, to be transported from his place of business in Pennsylvania to purchasers thereof located in the various other States of the United States and in the District of Columbia, at their respective points of location. There was for more than 1 year prior to December 1937, a course of trade by said respondent 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 his said business, respondent was 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 his business, as described in paragraph 1 hereof, respondent sold his said merchandise to said purchasers, along with a sales plan or method by which the said merchandise was resold to the purchasing public. Said plan or method involved the use of a game of chance, gift enterprise or lottery scheme in the sale and distribution of said merchandise to the ultimate purchasers thereof. Respondent has advertised his said merchandise and his said sales plan or method by means of printed cards, circulars, samples of said merchandise, and by personal solicitation. The sales plan or method as suggested and advertised by respondent was substantially as follows:

The sales plan or method is described as the "Club Plan." Each club has a fixed number of members, usually either 30, 50, 60, 80, 100, or 125. Each member of a club pays a fixed amount each week, usually 25 cents, for a period not to exceed a given number of weeks, usually 22 weeks. At the end of the first week a drawing is held and the member whose name or number is drawn receives one of the articles of merchandise being distributed, for the payment of 1 week's dues, and such winner or member then is dropped from the club. Each succeeding week the same procedure is followed and thus one member receives an article of merchandise being distributed for the payment of 1 week's dues, another for 2 weeks' dues, another for 3 weeks' dues, and so on to the end of the fixed period. At that time all remaining members receive one of the articles of merchandise, but such members have paid the face value of such merchandise. Thus, the amount which an ultimate purchaser pays for an article of merchandise is determined wholly by lot or chance.

Conclusion

31 F. T. C.

Respondent furnished various "Club Plans" for use in the sale 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 "Club Plans" was the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent sold his said articles of merchandise exposed for sale and sold the same to the purchasing public in accordance with the aforesaid sales plan or method. While respondent did not directly participate in such resale, or in the profits therefrom, he thus supplied to and placed 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 is contrary to an established public policy of the Government of the United States; and is 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 and distribute merchandise in competition with the respondent, 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 were attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise, and the element of chance involved therein, and were 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, had a tendency and capacity to and did unfairly divert trade to the respondent from his said competitors who do not use the same or an equivalent method. As a result thereof injury has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein 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 that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Meyer R. Eisenbrock, otherwise known as Meyer Eisenbrock, individually and trading as Marhar 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, bedspreads, 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 any merchandise, together with a sales plan or method involving the use of a game of chance, gift enterprise, or lottery scheme by which said merchandise is to be, or may be, sold to the purchasing public.

2. Selling, or otherwise disposing of, any merchandise by the use 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

BELMONT SALES COMPANY, ROBERT C. BUNDY, INDIVIDUALLY AND TRADING AS JACKSON SALES COMPANY AND AS AN OFFICER OF BELMONT SALES COMPANY; AND MILDRED BUNDY, INDIVIDUALLY AND AS AN OFFICER OF BELMONT 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 3/22. Complaint, May 13, 1938—Decision, June 6, 1940

Where an individual engaged in offer and sale of bedspreads, blankets, silverware, and other various articles to purchasers in various States of the United States—

Furnished various devices and plans of merchandising, which involved operation of games of chance, gift enterprises, or lottery schemes through which his merchandise was distributed to ultimate consumer by lot or chance wholly, and included distribution to purchasing public of certain advertising literature embracing push cards, order blanks, depictions of merchandise and explanation of his plan or method of selling same and allotting it as premiums or prizes to operators of said push cards under plan, among others, in accordance with which person securing by chance certain numbers as disclosed through separation of card's discs received specified articles, and person selecting from list of girls' names displayed on card name corresponding to that concealed under card's master seal received article, and under which amount paid for chance was dependent upon numbers selected as disclosed under card's tabs, and value of various articles was greater than cost of any single number and under which person selecting name or numbers other than those above indicated received nothing for his money, and made use of various other assortments, along with push cards for sale and distribution thereof by means of a game of chance, gift enterprise, or lottery scheme, similar in principle of operation to that above described and varying therefrom in detail only; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with aforesaid sales plan or method by persons to whom he furnished said devices and who used same in selling and distributing his said products in accordance with such plans or methods, involving a game of chance or sale of a chance to procure articles without cost or at prices much less than normal retail prices thereof contrary to an established public policy of the United States Government and in violation of criminal statutes, and in competition with many who were and are unwilling to adopt and use said or any method involving element of chance or sale of a chance to win something by chance or any other method contrary to public policy, and have refrained therefrom;

With result that many persons were attracted by his said method or sales plans and by element of chance involved in sale and distribution of his said merchandise as above described, and were thereby induced to buy and sell