

Syllabus

IN THE MATTER OF

MARVIN ALAN KOOLISH, TRADING AS CROWN DISTRIBUTING COMPANY AND CROWN 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 4041. Complaint, Feb. 28, 1940—Decision, June 18, 1940

Where an individual engaged in sale and distribution of radios, cameras, pen and pencil sets, and other articles of merchandise to purchasers in various other States and in the District of Columbia in competition with others engaged in sale and distribution of like and similar articles of merchandise in commerce as aforesaid; in soliciting sale of and in selling and distributing his merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes in sale and distribution to ultimate consumers of products in question, and distribution to purchasing public of certain literature and instructions including, among other things, push cards, order blanks, illustrations of his said merchandise, and circulars explaining his plan of selling same and of allotting it as premiums or prizes to operators of such push cards and to purchasing and consuming public, through use (1) of push cards under plan and in accordance with card's explanatory legend by which customer or purchaser selecting by chance from list of feminine names displayed on card name corresponding to that concealed under card's master seal, received specified candid camera, with roll of film, or article of merchandise being thus disposed of, and person securing by chance from numbers concealed in disks under said feminine names certain number received pen and pencil combination, and amount paid for such chances was dependent upon numbers secured by chance as announced, or through use of (2) various other push cards accompanied by order blanks, instructions and other printed matter for use in sale and distribution of merchandise by means of game of chance, gift enterprise, or lottery scheme and sales plan or method similar to that hereinabove 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 sales plan hereinabove set forth by persons to whom he furnished said push cards for use in purchasing, selling, and distributing his said products and who made use thereof in so doing in accordance with said plan, under which fact as to whether purchaser received article of merchandise or nothing for amount of money paid, and which of said articles of merchandise, if any, purchaser was to receive was thus determined wholly by lot or chance, and involving game of chance, or sale of a chance, to procure one of said articles at a price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving a game of chance or a sale of a chance to win something by chance or any other method contrary to public policy and refrain therefrom;

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

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

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

Nash & Donnelly, of Washington, D. C., 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 Marvin Alan Koolish, individually and trading as Crown Distributing Co. and Crown 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 Marvin Alan Koolish is an individual trading as Crown Distributing Co. and the Crown Sales Co. with his principal office and place of business located at 8742 Holloway Drive, Los Angeles, Calif. The respondent is now and for more than 10 months last past has been engaged in the sale and distribution of radios, cameras, pen and pencil sets, and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in the State of California to purchasers thereof, at their respective points of location, in the various States of the United States other than California and in the District of Columbia. There is now and has been for more than 10 months last past a course of trade by 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 business, respondent is and has been in competition with other individuals, 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, in soliciting the sale of and in selling and distributing his merchandise, furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes when said merchandise is sold and distributed to the ultimate consumer thereof. The method or sales plan adopted and used by respondent is substantially as follows:

Respondent distributes and has distributed to operators and the purchasing public certain literature and instructions, including among other things push cards, order blanks, illustrations of his said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears 15 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 15 partially perforated disks on the face of which is printed the word "push." Each of such disks is set over one of the aforementioned feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a camera. The person selecting a certain designated number set out in the legend at the top of said card also receives a pen and pencil set. The push card bears a legend or instructions as follows:

NAME UNDER SEAL RECEIVES A

PICKWIK

CANDID CAMERA

WITH ROLL OF FILM

No. 19 Receives a Pen & Pencil Combination

No. 1 pays 1¢; No. 19 pays 19¢;

No. 27 pays 27¢; No. 29 pays 29¢;

All others pay 29¢. NONE HIGHER.

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above-described legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which

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

Respondent furnishes and has furnished various other push cards accompanied by order blanks, instructions and other printed matter 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 other push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said push cards use the same in purchasing, selling, and distributing respondent's 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 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 alleged, involves a game of chance or the sale of a chance to procure one of the said articles 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 method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method. As a result thereof, substantial 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 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 February 28, 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Marvin Alan Koolish, individually and trading as Crown Distributing Co. and Crown 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 May 20, 1940, the respondent filed his answer, in which answer he admitted all the material allegation 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 Marvin Alan Koolish is an individual trading as Crown Distributing Co. and Crown Sales Co., with his principal office and place of business located at 8742 Holloway Drive, Los Angeles, Calif. The respondent is now and for more than 10 months last past has been engaged in the sale and distribution of radios, cameras, pen and pencil sets, and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in the State of California to purchasers thereof, at their respective points of location, in the various States of the United States other than California and in the District of Columbia. There is now and has been for more than 10 months last past a course of trade by 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 business, respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and

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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, in soliciting the sale of and in selling and distributing his merchandise, furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes when said merchandise is sold and distributed to the ultimate consumer thereof. The method or sales plan adopted and used by respondent is substantially as follows:

Respondent distributes and has distributed to operators and the purchasing public certain literature and instructions, including among other things push cards, order blanks, illustrations of his said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears 15 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 15 partially perforated disks on the face of which is printed the word "push." Each of such disks is set over one of the aforesaid feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a camera. The person selecting a certain designated number set out in the legend at the top of said card also receives a pen and pencil set. The push card bears a legend or instructions as follows:

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All others pay 29¢. NONE HIGHER.

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above-described legend or instructions. The

fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various other push cards accompanied by order blanks, instructions and other printed matter 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 other push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said push cards use the same in purchasing, selling, and distributing respondent's 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 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 found, involves a game of chance or the sale of a chance to procure one of the said articles 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 method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method.

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CONCLUSION

The aforesaid acts and practices of 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, Marvin Alan Koolish, individually and trading as Crown Distributing Co. and Crown 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, cameras, and pen and pencil 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 any merchandise together with punchboards, push or pull cards, or other lottery devices, which said punchboards, push or pull cards, or other lottery devices are to be used or may be used in selling or distributing such merchandise to the public.

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

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.

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IN THE MATTER OF
FRANK SPORS, TRADING AS SPORS COMPANY

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

Docket 3165. Complaint, June 29, 1937—Decision, June 19, 1940

Where an individual engaged in sale and distribution of drugs, cosmetics, foods, and other merchandise, including household notions and other novelties, to dealers, specialty salesmen, house-to-house peddlers and others in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar merchandise in commerce, as aforesaid, and, as thus engaged, in soliciting through advertisements in various periodicals and specialty magazines prospective agents and salesmen to apply for copies of his catalog, and in forwarding to those requesting it such copies, containing descriptions and prices of some four thousand items sold by him, and also in sending therewith leaflets and circulars describing other items—

- (a) Represented that he manufactured or imported all or a major portion of the products sold by him through use of legend "Wholesale Importers and Manufacturers," set forth without further qualification on his catalogs and in some of the other advertising material above referred to, and that his business was larger than was the fact, through depiction on said catalogs of what purported to be building housing his said business;

Facts being that major portion of articles sold by him was purchased in domestic open market, and volume of business in certain items which he did make constituted not more than 15 percent of his total volume of business, nearly all of his items were of domestic rather than foreign origin, and structure which housed his business was building with only basement and first floor rather than two stories depicted in advertising material referred to, and his concern or business was not a manufacturing or importing one, and one doing large volume of business, and one for dealing with which, as such, there is preference on part of substantial portion of purchasing public as offering, in their belief, lower prices, superior quality, and other advantages; and

- (b) Sold and distributed various devices, assortments, and plans of merchandising which involved operation of gift enterprises, gaming devices, or lottery schemes in sale and distribution of merchandise to ultimate consumers and included various pull cards, punchboards, push cards, and sale boards for use in sale and delivery to purchasing public, in accordance with method suggested, of specified articles of merchandise wholly by lot or chance and, among others, assortments of number of articles, together with push cards, for use in sale and distribution of said articles and in accordance with card's explanatory legend, by which those securing by chance, for 2 cents paid, or nothing, depending on number punched, received a table lighter and certain other numbers became entitled to Scotty Dog Novelty, and last punch on card also received such a lighter, and which included also various other assortments, together with which it supplied such boards and devices for use in sale thereof and involving