

IN THE MATTER OF
CHARLES POLK, TRADING AS SALES PROMOTING
COMPANY

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

Docket 4175. Complaint, July 6, 1940—Decision, Aug. 5, 1940

Where an individual engaged in sale and distribution of watches, clocks, leather goods, electric lamps, and various other articles of merchandise, to purchasers in various States; in soliciting the sale of and in selling and distributing his said products—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprise, or lottery schemes, including plan under which he sold to fraternal and charitable organizations contacted by him articles of merchandise dealt in by him as above indicated, together with push cards for use in sale and distribution of merchandise in question to purchasing public by said organizations' members, under scheme or plan by which person selecting by chance one of feminine names displayed corresponding to name concealed under card's master seal became entitled to one of articles of merchandise being thus disposed of, and operator and seller of chances was similarly compensated for his services, and amount paid by each purchaser of chance was dependent upon number concealed and secured under disk selected; and

Supplied thereby to and placed in the hands of others, in accordance with aforesaid and similar plans involving the furnishing of other push cards and lottery devices for use in sale and distribution of such merchandise, means of conducting lotteries in sale of his said products in accordance with such plans, as above set forth, involving game of chance or sale of a chance to procure an article of merchandise 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 the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method 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 his merchandise, and element of chance involved therein, and were thereby induced to buy and sell same in preference to that offered and sold by competitors aforesaid, who do not use such or equivalent method, and with effect through use of such method and game of chance aforesaid, of unfairly diverting trade to him from his said competitors who do not use such or equivalent method; to the substantial 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 practice therein.

Mr. D. C. Daniel for the Commission.

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 Charles Polk, individually and trading as Sales Promoting Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Charles Polk, is an individual doing business under the trade name Sales Promoting Co., with his principal office and place of business located at 160 Fifth Avenue, New York, N. Y., and residence at 205 West Eighty-ninth Street, New York, N. Y. Respondent is now and for more than 5 years last past has been engaged in the offering for sale and selling watches, clocks, leather goods, electric lamps, quilts, blankets, waffle irons, radios, toilet sets, tourists sets, and other articles of merchandise to purchasers thereof located in various States of the United States. Respondent causes and has caused said merchandise when sold to be shipped or transported from his aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States. There is now and for more than 5 years last past has been a course of trade in such merchandise in commerce between and among various States of the United States. In the course and conduct of his business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof and in soliciting the sale of and in selling and distributing said merchandise respondent has furnished various devices and plans of merchandising which involves the operation of games of chance, gift enterprises, or lottery schemes. One method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent contacts fraternal and charitable organizations located in various States of the United States and sells and distributes to such organizations said articles of merchandise, together with devices commonly known as push cards. The said organizations in turn distribute said push cards to the members of such organizations and such members, in turn, distribute said merchandise to the

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purchasing public in substantially the following manner. The push card contains a number of partially perforated disks, within each of which disks there is concealed a number. Immediately beneath each of said disks there appears a feminine name. Said push cards contain also a master seal which conceals a name corresponding to one of said feminine names. Sales are from 1 cent to 35 cents and the purchaser pays in cents the amount of the number appearing within the disk selected and removed from said card by him unless the number is in excess of 35, in which event the purchaser pays only 35 cents. The purchaser pushing the disk beneath which is the feminine name corresponding with the one under the master seal which is removed after all of said disks have been sold is entitled to and receives one of said articles of merchandise, and the person who sells the chances on said push card is also entitled to and receives one of said articles of merchandise for his services. Persons who are not successful in selecting the winning number receive nothing for their money. The numbers within said disks are effectively concealed from purchasers and prospective purchasers until the said disks have been pushed or removed from said card. All the said articles of merchandise have retail values greater than the amounts to be paid therefor. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent furnishes and has furnished various other push cards and other lottery devices for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme.

PAR. 3. The persons to whom respondent furnishes the push cards use 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 said plans hereinabove set forth. The use by respondent of said sales plan or method in the sale of said 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 criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sales of 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 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 to respondent from his said competitors who do not use the same or an equivalent method and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among various States of the United States.

PAR. 5. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and the 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 July 6, 1940, issued and served its complaint in this proceeding upon respondent Charles Polk, individually, and trading as Sales Promoting 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 July 24, 1940, 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, Charles Polk, is an individual doing business under the trade name Sales Promoting Co., with his prin-

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principal office and place of business located at 160 Fifth Avenue, New York, N. Y., and residence at 205 West Eighty-ninth Street, New York, N. Y. Respondent is now and for more than 5 years last past has been engaged in the offering for sale and selling watches, clocks, leather goods, electric lamps, quilts, blankets, waffle irons, radios, toilet sets, tourists sets, and other articles of merchandise to purchasers thereof located in various States of the United States. Respondent causes and has caused said merchandise when sold to be shipped or transported from his aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States. There is now and for more than 5 years last past has been a course of trade in such merchandise in commerce between and among various States of the United States. In the course and conduct of his business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof and in soliciting the sale of and in selling and distributing said merchandise respondent has furnished various devices and plans of merchandising which involves the operation of games of chance, gift enterprises, or lottery schemes. One method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent contacts fraternal and charitable organizations located in various States of the United States and sells and distributes to such organizations said articles of merchandise, together with devices commonly known as push cards. The said organizations, in turn, distribute said push cards to the members of such organizations and such members, in turn, distribute said merchandise to the purchasing public in substantially the following manner: The push card contains a number of partially perforated disks, within each of which disks there is concealed a number. Immediately beneath each of said disks there appears a feminine name. Said push cards contain also a master seal which conceals a name corresponding to one of said feminine names. Sales are from 1 cent to 35 cents and the purchaser pays in cents the amount of the number appearing within the disk selected and removed from said card by him unless the number is in excess of 35, in which event the purchaser pays only 35 cents. The purchaser pushing the disk beneath which is the feminine name corresponding with the one under the master seal which is removed after all of said disks have been sold is entitled to and receives one

of said articles of merchandise, and the person who sells the chances on said push card is also entitled to and receives one of said articles of merchandise for his services. Persons who are not successful in selecting the winning number receive nothing for their money. The numbers within said disks are effectively concealed from purchasers and prospective purchasers until the said disks have been pushed or removed from said card. All the said articles of merchandise have retail values greater than the amounts to be paid therefor. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent furnishes and has furnished various other push cards and other lottery devices for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme.

PAR. 3. The persons to whom respondent furnishes the push cards use 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 said plans hereinabove set forth. The use by respondent of said sales plan or method in the sale of said 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 criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above described involves a game of chance or the sales of 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 described 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 to respondent from his said competitors who do not use the same or an equivalent method

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and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondent as herein found are all to the prejudice and the 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 Charles Polk, individually and trading as Sales Promoting 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 watches, clocks, leather goods, electric lamps, quilts, blankets, waffle irons, radios, toilet sets, tourist sets, 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 said 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 other devices, which said push or pull cards, punchboards or other devices are to be used or may be used in selling or distributing said merchandise to the general public by means of a game of chance, gift enterprise, or lottery scheme.

3. Supplying to or placing in the hands of others push or pull cards, punchboards, or other devices either with merchandise or sep-

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arately, which said push or pull cards, punchboards, or other devices are to be used or may be used in selling or distributing such merchandise to the general public, by means of a game of chance, gift enterprise, or lottery scheme.

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

UNION FOUNTAIN PEN COMPANY, AND PAULINE JOAB,
ISADORA SANDROW AND LOUIS MORRISON

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

Docket 3522. Complaint, Aug. 2, 1938—Decision, Aug. 6, 1940

Where a corporation and three individuals, who were officers thereof, managed, directed, and controlled its policies, practices, and business affairs, and participated in below acts and practices, engaged in sale and distribution of fountain pens to purchasers in other States and in District of Columbia, and in thus offering and selling to wholesalers certain pens at 33½ cents each, in substantial competition with others also engaged in such sale and distribution of fountain pens and including many who are unwilling to employ methods used by them, as below set forth, or any similar methods involving use of misleading and deceptive representations in sale of their respective products, and who do not place in the hands of others means of deceiving public in regard thereto—

- (a) Offered and sold their said "Tourist" pens with price mark or band affixed to each disclosing figure \$3.75, and designation "The Tourist," wrapped in so-called "Guaranteed Lifetime Service" "certificate"; and
- (b) Represented their said "Tourist" pens as "custom-built" in advertising thereof;

Facts being pens' regular retail price was from 89 cents to \$1, purported resale price placed thereon was greatly exaggerated and fictitious and much in excess of that contemplated and in no wise represented pens' regular retail price or value, neither pens nor parts were, as understood by purchasing public from term "custom-built," "hand-made," but were assembled by them from parts purchased from different manufacturers, and they were not, as thus understood, "custom-built" nor with points such as last, ordinarily, two years or thereabouts, of grade and quality that would last for lifetime of purchaser, and they did not make repairs and replacements without cost to purchaser, but only upon payment of postage and insurance;

With result of placing in hands of retailers, through practice of affixing said price mark or band, means by which purchasing public was misled or deceived as to pens' true retail price and value, and of leading said public, through such so-called "Guarantee," to believe that product was of grade and quality that would last for purchaser's lifetime, with any repairs necessary made without cost to purchaser, and of misleading and deceiving it further as to real grade and quality of said pens, thus banded, and into belief that they were in fact of grade and quality which ordinarily sell for and have retail value of \$3.75, and were "custom-built" or "hand-made," and with effect of misleading and deceiving substantial portion thereof into erroneous and mistaken belief that said pens did in fact have such value and ordinarily sell for said sum, and were "custom-built" or "hand-made," with repairs and replacements without cost to purchaser, and of causing such portion of public, because of said erroneous and mis-