

Syllabus

IN THE MATTER OF
BENJAMIN JAFFE, INDIVIDUALLY AND TRADING AS
NATIONAL PREMIUM COMPANY AND KING 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 \$662. Complaint, Dec. 10, 1938—Decision, Sept. 5, 1940

Where an individual engaged in sale of pen and pencil sets, billfolds, silverware, candid cameras, and various other articles, to purchasers in various other States and in the District of Columbia; in soliciting and in selling and distributing various articles dealt in by him—

Made use of game of chance, gift enterprise, or lottery scheme, under or pursuant to which he distributed or caused to be distributed to representatives and prospective representatives, advertising letters, order blanks, and push cards, for use in sale and distribution of his said products by operators of such cards, in accordance with scheme by which person selecting from various feminine names beneath said card's disks name corresponding to that concealed under card's master seal received candid camera or article of merchandise being thus disposed of, and person securing certain number received combination pen and pencil, and under which amount, if any, paid for chance was dependent upon number secured by chance in accordance with disk selected, and operator was compensated also by receipt of article of merchandise in question being thus disposed of; 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, or one similar thereto and varying therefrom in detail only, involving distribution to purchasing public, wholly by lot or chance, of articles in question, and game of chance or sale of a chance to procure an article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or 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 who 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 by element of chance involved therein, and were thereby induced to buy and sell his products in preference to merchandise offered and sold by 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 unfairly diverting trade to him from his competitors aforesaid 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 practices therein.

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

Mr. D. C. Daniel for the Commission.

Mr. Henry Junge and *Nash & Donnelly*, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Benjamin Jaffe, individually and trading as National Premium Co. and King 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, Benjamin Jaffe, is an individual trading as National Premium Co. and King Sales Co. with his principal office and place of business located at 411 South Wells Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of pen and pencil sets, billfolds, silverware, blankets, candid cameras, clocks, bedspreads, luggage, bathroom scales, toaster tray sets, coffee makers, aluminum sets, shirts, princess slips, binoculars, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products when sold to be transported from his aforesaid place of business in Illinois to purchasers thereof 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 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 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 in soliciting the sale of and in selling and distributing his merchandise in commerce, as herein described, furnishes and has furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The

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method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public through the United States mails and otherwise certain literature and instructions including, among other things, push cards, order blanks, illustrations of his said products, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's push cards bears 48 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 48 small, partially perforated disks on the face of which is printed the word "push." Concealed within each disk is a number which is disclosed 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 reverse side of said card. The push card bears legends or instructions as follows:

Person Selecting Name Under Seal Receives This

Cinex

CANDID

CAMERA

Value \$10.00.

NUMBER 33 RECEIVES COMBINATION PEN AND PENCIL

Numbers 1 to 29 Pay What You Draw.

Numbers Over 29 Pay Only 29¢. No Higher.

Numbers 6-8-10-12-30 ARE FREE

Write Your Name On Reverse Side Opposite Name You Select.

Do not
remove seal
until entire
card is sold

Respondent furnishes and has furnished his representatives with additional printed instructions or suggestions for using said push card which are as follows:

SUGGESTIONS FOR USING SALES CARD

This card consists of 48 girls' names; over each girl's name is a concealed number. This number represents the amount each person pushing out the numbers, is to pay.

The concealed numbers under the small seals range from Number 1 upward, but the customer pays only 1¢ to 29¢ per drawing, according to the number drawn, NO HIGHER. Any number over 29 pays only 29¢

Be sure and write names of persons pushing out numbers on the line opposite the number they have selected on back of the card.

After all the numbers have been pushed and collections made, the large RED SEAL is pushed out, and the person holding the name corresponding to the one shown on the LARGE RED SEAL, is awarded FREE, ONE CANDID CAMERA.

Persons selecting number 33 receives a Combination Pen and Pencil.

The person selling the card receives ABSOLUTELY FREE, ONE CANDID CAMERA for their efforts put forth in selling the card. You will have lots of fun getting folks

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to push out the names on the card. Show it to your fellow employees, friends, relatives and acquaintances. Whenever there is a party or gathering at your home or your friends' homes bring out your card.

Upon receipt of the order accompanied by Cashier's Check or Postal Money Order for \$10.95, we will then ship TWO CANDID CAMERAS and ONE COMBINATION PEN AND PENCIL. If you wish we will ship C. O. D. and pay all charges, except C. O. D. Fees.

Sales of respondent's products by means of said push cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said 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 push card is the same as those hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes 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 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 com-

petitors 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 the various States of the United States and in the District of Columbia.

PAR. 5. By prices set out in his circular letters and other printed matter which are published, issued, and circulated through the United States mails to his customers and prospective customers in the various States of the United States and in the District of Columbia, respondent represents and has represented to customers and prospective customers that said products have values greatly in excess of the normal retail selling prices and in excess of the actual values thereof.

Representative of such representations made by the respondent in the circular letters and printed matter aforesaid, regarding the value of the commodities thus offered by him for sale are the following:

	<i>Value</i>
Pen and pencil set.....	\$2.50
Billfolds.....	1.50
Silverware.....	5.00
Blankets.....	5.00
Bedspreads.....	7.50
Candid cameras.....	10.00
Clocks.....	7.50
Luggage.....	5.00
Bathroom scales.....	5.00
Toaster tray sets.....	5.00
Coffee makers.....	5.00
Aluminum sets.....	5.00
Shirts.....	2.50
Binoculars.....	5.00

In truth and in fact the products set out above do not have the values represented by respondent, but the pen and pencil set cost him only 25 cents each; the billfolds cost him only 25 cents each; the silverware is purchased by him for \$1.77; the blankets for \$1.65; the bedspreads for \$2.85; the cameras for \$2.30; the clocks for \$1.65; the luggage for \$1.55; bathroom scales for \$1.30; the toaster tray sets for \$1.94; coffee makers for \$1.25; the aluminum sets for \$2.29; the shirts from \$8.50 to \$10.75 per dozen; the binoculars for 88 cents.

The prices set out in said circular letters and other printed matter as aforesaid are greatly in excess of the normal retail selling price of said products and are in excess of the true and actual values thereof and in no sense represent either the true value or normal selling price

of the products so advertised, but are greatly in excess of the price at which the same are sold or intended to be sold in the usual course of trade.

As a result of respondent's representations, members of the purchasing public are, and have been, led to erroneously and mistakenly believe that the actual value and selling price of respondent's products are the prices set out in the aforesaid circular letters and the printed matter, when in fact, the prices so set out are fictitious and in no sense represent the normal selling price or actual value of the products referred to.

PAR. 6. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief. There are, among the competitors of the respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not misrepresent the price at which their products are sold. By the representations aforesaid, trade is unfairly diverted to respondent from such competitors, and, as a result thereof, substantial injury is being done, 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. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition 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 December 10, 1938, issued and thereafter served its complaint in this proceeding upon respondent Benjamin Jaffe, individually and trading as National Premium Co. and King 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. Respondent filed no answer to said complaint. Thereafter testimony and other evidence in support of said complaint were introduced by L. P. Allen, Jr., attorney for the Commission (no testimony or other evidence having been offered by the firm of Nash and Donnelly, counsel for the respondent) before Miles J. Furnas, an examiner of the Commis-

sion theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel for the Commission and counsel for the respondent, 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 Commission finds that respondent, Benjamin Jaffe, is an individual trading under the names "National Premium Company" and "King Sales Company," with his principal office and place of business located at 418 South Wells Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale of pen and pencil sets, billfolds, silverware, blankets, candid cameras, clocks, bed spreads, luggage, bathroom scales, tray sets, coffee-makers, aluminum sets, shirts, princess slips, binoculars, and other articles of merchandise, in commerce between and among various States of the United States and in the District of Columbia. In the course and conduct of his said business, respondent causes and has caused said products, when sold, to be shipped or transported from his aforesaid place of business in the State of Illinois, to purchasers thereof located in various other States of the United States and in the District of Columbia, at their respective points of location. In the course and conduct of said business, respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar articles of merchandise in commerce between and among various States of the United States.

PAR. 2. The Commission further finds that, in the course and conduct of his business as described in paragraph 1 hereof, respondent sells and distributes said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. Said respondent distributes, or causes to be distributed, to representatives and prospective representatives, a certain advertising letter, an order blank, and a device commonly known as a push card. Said respondent's merchandise is and has been distributed to the purchasing public in the following manner:

Said respondent furnishes to members of the general public an advertising letter, and order blank, together with a device commonly

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known as a "push card." Said push card contains on its face a number of detachable discs which may be pushed or otherwise separated from the card, thus disclosing a number which is concealed within or under the disk. Immediately beneath each of said disks there appears a feminine name. The push card also bears a large, removable "master seal" which covers and conceals one of the feminine names shown under the detachable disks, the name under the master seal not being revealed until all the pushes have been sold. The feminine names appearing under the disks are listed on the reverse side of the card, with a space opposite each for recording the name of the purchaser. The letter and order blank accompanying the push card bear instructions and statements which inform the recipient, or distributor, of the method by which the articles of merchandise listed and described are to be distributed to the purchasing public. The said push cards bear legends, inscriptions and instructions as follows:

Persons Selecting Name Under Seal Receives This

Cinex

Candid Camera

Value \$10.00

No. 33 Receives Combination Pen and Pencil

Nos. 1 to 29 pay what you draw

Numbers over 29 pay only 29¢, no higher

Nos. 6—8—10—12—30 are free

Write your name on reverse side opposite name selected

The Commission finds said respondent furnishes and has furnished his representatives with additional printed instructions or suggestions for using said push cards, which are as follows:

SUGGESTIONS FOR USING CARD

This card consists of 48 girls' names; over each girl's name is a concealed number. This number represents the amount each person pushing out the numbers is to pay.

The concealed numbers under the small seals range from No. 1 upward, but the customer pays only 1¢ to 29¢ per drawing according to the number drawn, no HIGHER. Any number over 29 pays only 29¢.

Be sure and write names of persons pushing out numbers on the line opposite the number they have selected on back of the card.

After all the numbers have been pushed and collections made, the large RED SEAL is pushed out, and the person holding the name corresponding to the one shown on the LARGE RED SEAL is awarded FREE, ONE CANDID CAMERA.

Persons selecting number 33 receive a Combination Pen and Pencil.

The person selling the card receives ABSOLUTELY FREE, ONE CANDID CAMERA for their efforts put forth in selling the card. You will have lots of fun getting folks to push out the names on the card. Show it to your fellow employees, friends, relatives and acquaintances. Whenever there is a party or gathering at your home or your friends' homes bring out your card.

Upon receipt of the order accompanied by Cashier's Check or Postal Money

Order for \$10.95, we will then ship TWO CANDID CAMERAS and ONE COMBINATION PEN AND PENCIL. If you wish, we will ship C. O. D. and pay all charges except C. O. D. Fees.

Sales of respondent's products by means of said push cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to customers or purchasers in accordance with the above legends and instructions. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance. Respondent furnishes and has furnished various push cards, accompanied by order blanks and instructions for their 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 respondent's merchandise by means of said push card, or similar method, is the same as that hereinabove described, varying only in detail.

PAR. 3. The Commission finds that persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's merchandise in accordance with the afore-said 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 policy of the Government of the United States and in violation of the criminal law.

PAR. 4. The Commission finds that 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 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 competitors of respondent who do not use the same or equivalent methods. 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 com-

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petitors who do not use the same or any equivalent method, and as a result thereof, substantial injury has been and is being done by respondent to competition in commerce between and among various States of the United States.

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 (respondent having filed no answer), testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondent having offered no testimony in opposition thereto), briefs filed herein and oral argument by counsel for the Commission and counsel for respondent, 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 Benjamin Jaffe, individually and trading as National Premium Co. and King 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 pen and pencil sets, billfolds, silverware, blankets, candid cameras, clocks, bedspreads, luggage, bathroom scales, tray sets, coffee makers, aluminum sets, shirts, princess slips, binoculars, or any other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards, or other devices, which said push or pull cards, punchboards, or other devices, are to be used or may be used in selling or distributing said articles of merchandise or any other merchandise, to the general public by means of a game of chance, gift enterprise, or lottery scheme.

2. Mailing, shipping, or transporting to agents or distributors, or to members of the public, push or pull cards, punchboards, or other devices, so prepared and printed that sales of said merchandise, or

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any other merchandise, are to be made, or may be made, to the general public by means of a game of chance, gift enterprise, or lottery scheme.

3. 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
**BENJAMIN GOULD, TRADING AS PICCADILLY HOSIERY
MILLS AND PICCADILLY HOSIERY COMPANY**

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

Docket 3774. Complaint, Apr. 26, 1939—Decision, Sept. 5, 1940

Where an individual engaged in sale and distribution of hosiery, in commerce among the various States and in the District of Columbia—

Set forth and made use of trade name including words "Hosiery Mills," in certain letterheads, invoices, and other printed matter distributed to customers and prospective customers, and represented, through use of word "Mills" as aforesaid, that he was manufacturer of hosiery sold by him, and owned or operated mill where said product was made, notwithstanding fact he was not such a manufacturer, for dealing with whom directly there is preference on part of substantial portion of purchasing and consuming public and dealers as securing, among other things, lower prices, elimination of middleman's profits, superior products, and other advantages, and at no time owned, operated, or controlled a mill wherein his said product, which he obtained from others, was made;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into mistaken and erroneous belief that he was manufacturer of such hosiery and, by reason thereof, into purchase of substantial quantity of his said product:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. L. E. Creel, Jr. for the Commission.

Mr. Charles P. Bloome, of Philadelphia, Pa., 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 Benjamin Gould, trading as Piccadilly Hosiery Mills and Piccadilly Hosiery Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Benjamin Gould, is an individual doing business under the trade names of Piccadilly Hosiery Mills and Piccadilly Hosiery Co., with his principal office and place of business located at 1019-1021 Arch Street, in the city of Philadelphia, State of