

Syllabus

IN THE MATTER OF
HARRY PURE, TRADING AS TRADING SALES COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3406. Complaint, May 6, 1938—Decision, Oct. 21, 1940

Where an individual engaged in sale and distribution of manicure sets, electric lamps, leather wallets, silverware, clothing, and numerous various other articles of merchandise, to purchasers in the various other States and in the District of Columbia—

(a) Sold and distributed his said merchandise by means of a game of chance, gift enterprise, or lottery scheme under which he distributed to representatives or prospective representatives advertising or sales circulars depicting and describing, on the last page thereof, number of products being offered, and listing 22 articles and prices thereof, for use in sale and distribution of such articles under a plan by which particular article secured by customer and price paid therefor by him was dependent upon the legend concealed under the particular tab on accompanying pull card selected by particular customer, and under which scheme operator of card was compensated either by right to retain specified amount of total money received by him through sale of card's chances, or to receive from said individual premium as specified, and "Notice to Purchasers" on pull card device, advising that articles there listed might be purchased at prices set forth in connection therewith, was not called to attention of or seen by customer-purchasers; and

Supplied thereby to and placed in the hands of others means of selling and distributing his said merchandise by means of a game of chance or lottery scheme in accordance with such sales plan, involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, and under which particular article of merchandise received by purchaser and fact as to whether he was required to pay more or less than prices designated for various articles on list thereof displayed as aforesaid, and what amount, were determined wholly by lot or chance, contrary to an established public policy of the United States Government and in violation of criminal law, and in competition with many who are unwilling to adopt and use said or any other sales plan or method involving game of chance, or sale of a chance to win something by chance, or which is contrary to public policy, and refrain therefrom; With result that many persons were induced to buy and sell his said merchandise in preference to that offered and sold by his competitors aforesaid, and trade was thereby unfairly diverted to him from them, to their substantial injury; and

(b) Made such various false, deceptive and misleading statements and representations in his said sales circular as "Absolutely Free—Gifts for All—Absolutely Free," "How to Get Your Big Reward Premium Without Any Cost," "Special Offer—2 Extra Surprise Gifts—Free," and "All Shipping Charges are Paid by Us," facts being none of his said articles were thus given away without cost to such operators or representatives, but they

Complaint

31 F. T. C.

were required, before receiving same, to sell or procure sale of said 22 designated articles and remit amount procured thereby, operator or person selecting his reward premium, in addition to such sale, was required also to remit additional dollar before premium could be procured by such operator, and said individual did not pay all shipping charges, but those desiring premium as aforesaid were required to pay such additional amount as shipping charge before receiving such premium;

With effect of misleading and deceiving substantial number of members of purchasing public into mistaken belief that he gave away certain of his articles and merchandise without cost to the operators of the pull cards, and also paid all shipping charges on such articles, and with capacity and tendency to deceive and mislead substantial portion of purchasing public into mistaken and erroneous belief that his said statements and representations were true, and to cause such public to purchase substantial quantity of his merchandise as result thereof, and with result that trade was unfairly diverted to him from competitors, many of whom do not use such false, misleading and deceptive statements and representations in connection with sale and distribution of their products; to the substantial injury thereof:

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.

Before *Mr. Randolph Preston*, trial examiner.

Mr. D. C. Daniel and *Mr. L. P. Allen, Jr.*, 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 Harry Pure, individually and trading as Trading Sales 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 is an individual trading under the name of Trading Sales Co., with his principal office and place of business located at 354 West Thirty-eighth Street, New York City, N. Y. He is now, and for some time last past has been, engaged in the sale and distribution of manicure sets, electric lamps, leather wallets, pictures, silverware and chinaware, clothing, bedding, clocks, watches, cameras, dolls, tool sets, cosmetics, and other articles of novelty 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 shipped or transported from his place of business in the State of New York to purchasers thereof located in the various States of

the United States other than the State of New York, 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 said business, respondent is in competition with other individuals and with partnerships and corporations likewise engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States 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 distributes said articles of merchandise by means of a lottery scheme or game of chance. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature including, among other things, a sales circular. Respondent's merchandise is distributed to the purchasers thereof in the following manner: A portion of said sales circular consists of a list on which are designated a number of items of merchandise and the respective prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that the purchasers and prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the customer for the price designated on the tab which he pulls. The apparent greater values and higher regular prices of some of said articles of merchandise as compared to the prices the customer will be required to pay in the event he secures said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise having greater values and higher regular prices than the designated prices to be paid therefor. The facts as to whether a purchaser of one of said pull card tabs receives an article of greater value than the price designated for same on said

Complaint

31 F. T. C.

tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When a person or representative operating a pull card has succeeded in selling all of the tabs or chances, collected the amounts called for and remitted the said sums to the respondent, the said respondent thereupon ships to said representative the merchandise sold by means of said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes various assortments of said merchandise and furnishes various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above described plan or method is illustrative of the principal involved.

PAR. 3. The persons to whom respondent furnishes the said pull 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 such 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 which 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 apparent normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in commerce as herein defined in competition with respondent as above alleged are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale of said merchandise in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors

of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the capacity and tendency to and does unfairly divert trade and custom to respondent from his said competitors and to exclude from the novelty merchandise trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful. As a result thereof substantial injury is being and has been done to said competitors of respondent.

PAR. 5. In the course and conduct of his business as hereinabove related, respondent has caused various false, deceptive, and misleading statements and representations to appear in his advertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Absolutely Free—Gifts For All—Absolutely Free.

How to Get Your Big Reward Premium Without Any Cost.

Select any gift from this folder that you desire.

It Will be Yours—at absolutely No Cost.

Special Offer—2 Extra Surprise Gifts—Free.

All Shipping Charges are Paid by Us.

The effect of the foregoing false, deceptive, and misleading statements and representations of the respondent in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the various States of the United States and in the District of Columbia, by inducing them to mistakenly believe (1) that respondent gives away certain of his said articles of merchandise without cost to his said representatives, and (2) that respondent prepays all shipping charges on all of his said articles of merchandise.

PAR. 6. In truth and in fact, none of respondent's premiums or so-called gifts are given away "free" or "without cost," but said premiums or so-called gifts which are represented as being "free" to said representatives are either purchased with labor by them, or the price of said premiums or so-called gifts is included in the price of other articles of merchandise which the representatives must sell or procure the sale of before said premiums or so-called gifts can be procured by them. For a number of premiums or so-called gifts, certain sums of money must be paid by said representatives in addition to the labor performed or services rendered. Respondent does not prepay all of the shipping charges on his said products, but said representatives are required to pay certain specified sums of money as shipping charges on a number of respondent's said articles of merchandise.

Findings

31 F. T. C.

PAR. 7. The use by respondent of the false, deceptive, and misleading statements and 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 statements and representations are true, and into the purchase of substantial quantities of said respondent's products as the result of such erroneous belief. There are among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like or similar products who do not make such false, deceptive and misleading statements and representations concerning the method of sale and distribution of their products. By the statements and 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. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition 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 May 6, 1938, issued and thereafter served its complaint in this proceeding upon respondent Harry Pure, individually and trading as Trading Sales Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by D. C. Daniel and L. P. Allen, Jr., attorneys for the Commission (respondent having offered no proof in opposition to the allegations of the complaint), before Randolph Preston, an examiner of the Commission 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, the answer thereto, testimony and other evidence, brief in support of the complaint (respondent having filed no brief and oral argument having been waived); and the Commis-

sion 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 Harry Pure is an individual trading under the name of Trading Sales Co., with his principal office and place of business located in New York City, N. Y. Respondent is now, and for more than four years last past has been, engaged in the sale and distribution of manicure sets, electric lamps, leather wallets, pictures, silverware, chinaware, clothing, bedding, clocks, watches, cameras, dolls, tool chests, cigarette lighters, jewelry, cosmetics, teaspoons, and various 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 shipped or transported from his aforesaid place of business in the State of New York to purchasers thereof located in the various States of the United States other than the State of New York and in the District of Columbia, at their respective points of location. There is now, and has been for all of the time mentioned hereinabove, 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 so conducting said business, respondent was, and is, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise as those sold and distributed by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In so conducting his said business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, said merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondent's said business is, and has been, conducted in substantially the following manner: Respondent distributes and causes to be distributed to representatives or prospective representatives an advertising or sales circular. Said sales circular is used in the sale and distribution of said merchandise in the following manner: On the last or back page of said sales circular there appears picturizations of a number of said articles of merchandise and printed matter descriptive thereof. There also appears on said page a list of 22 articles of merchandise and the prices

Findings

31 F. T. C.

thereof, with space provided for the recording of the name of each purchaser opposite the name of the article of merchandise purchased. Adjacent to said list there is a device commonly called a pull card. Said pull card consists of a number of small tabs, on the reverse side of each of which there appears the name of an article of merchandise and the price thereof, the prices of said articles of merchandise varying in amounts from 9 cents to 39 cents. Each purchaser separates or pulls one of said tabs from said device. The name of the article of merchandise and the price thereof are so concealed that the purchasers and prospective purchasers are unable to ascertain which article of merchandise they are to receive or the amount of money they are to pay, until after the tabs are separated or pulled from said card. When a purchaser has separated or pulled a tab from the card and learned what article of merchandise he is to receive, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have retail values and regular prices greater than the prices so designated for them, while others of said articles of merchandise have retail prices less than the prices designated for them, but they all are distributed to the customers for the prices designated under the tabs that such customers pull. The facts as to which articles of merchandise the purchaser is to receive; and the amount he is required to pay therefor are thus determined wholly by lot or chance.

The said 22 articles of merchandise sell for \$7.65, and when the person or representative operating the said pull card has sold all of said 22 articles of merchandise and collected said amount, he may retain \$3 for his services and remit the balance of the \$7.65 to respondent, and the respondent in turn ships said 22 articles of merchandise to said person or representative, who distributes the same to the individual purchasers thereof; or said person or representative remits the \$7.65 to respondent, and respondent ships the said 22 articles of merchandise to said person or representative, together with a premium for said person or representative in payment for services in so selling said articles of merchandise. Such premiums are illustrated and described in respondent's circular, and the person or representative desiring such a premium may make his selection from said premiums.

The respondent has distributed by mail 250,000 of said sales circulars to customers and prospective customers in the various States of the United States and in the District of Columbia. As a result thereof, the respondent has received and filled approximately 16,000 orders for said 22 articles of merchandise.

Immediately above the said pull card device there appears the following:

NOTICE TO PURCHASERS:—On the back of each slip is printed the price of an article. If after deliberation you decide that you want the article, pay the holder of this book the price shown on the slip. If you do not want the article you need not buy it.

The Commission finds that such notice was not called to the attention of, or seen by, the purchasers of said 22 articles of merchandise from said pull tab device and that said 22 articles of merchandise were, in fact, distributed as hereinabove described.

PAR. 3. The Commission finds that the persons or representatives to whom respondent has furnished or supplied said pull cards have used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the sales plan or method as described in paragraph 2 hereof. Respondent has thus supplied to, or placed in the hands of, others a means of selling and distributing said merchandise by means of a game of chance or lottery scheme in accordance with said sales plans. The use of said sales plan by respondent in the sale and distribution of his said merchandise, and the sale thereof by the use and aid of said sales plan, 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 law.

PAR. 4. The Commission finds that the sale of said merchandise in the manner described in paragraph 2 hereof involves a game of chance, or a sale of a chance, to procure an article of merchandise at a price much less than the normal retail price thereof. Respondent has many competitors, who sell and distribute merchandise in commerce between and among the various States of the United States and in the District of Columbia, who are unwilling to adopt and use said sales plan or method in the sale of their merchandise, or any other sales plan or method involving a game of chance, or the sale of a chance, to win something by a chance, or any sales plan or method which is contrary to public policy, and such competitors refrain therefrom. Because of said element of chance involved in said sales plan or method employed by respondent as hereinabove described, many persons have been induced to buy and sell respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors.

PAR. 5. The Commission finds that in conducting his business as hereinabove described, respondent causes, and has caused, various false, deceptive, and misleading statements and representations to

appear in his said sales circular, which said statements and representations are as follows:

Absolutely Free—Gifts for All—Absolutely Free.

How to Get Your Big Reward Premium Without Any Cost.

Select any gift from this folder that you desire. It Will be Yours—at absolutely No Cost.

Special Offer—2 Extra Surprise Gifts—Free.

All Shipping Charges are Paid By Us.

By such statements and representations the respondent, in offering for sale and selling said articles of merchandise, misleads and deceives, and has misled and deceived, a substantial number of the members of the purchasing public into the mistaken belief that respondent gives away certain of his said articles of merchandise without cost to the operators of said pull cards, and further that the respondent pays all shipping charges on all of his said articles of merchandise.

PAR. 6. The Commission finds that, in truth and in fact, none of respondent's said articles of merchandise are given away without cost to said operators or representatives, but that the said operators or representatives, before they receive such articles of merchandise or premiums, must sell, or procure the sale of, 22 designated articles of merchandise and remit the amount procured by the sale of said 22 designated articles of merchandise. Said operator or person who selects respondent's reward premium No. 201, in addition to the sale of said merchandise as hereinabove described, must also remit an additional \$1 before said premium can be procured by said operator or person. The Commission finds that the respondent does not pay all of the shipping charges on all of his merchandise, but, in truth and in fact, the operators or persons who desire respondent's reward premium No. 201 are required to pay an additional \$1 as a shipping charge on said premium before said operator or person will receive the same.

PAR. 7. The Commission finds that said statements and representations are false, deceptive, and misleading and have had, and now have, the tendency and capacity to deceive and mislead a substantial portion of the purchasing public into the mistaken and erroneous belief that said statements and representations are true; and to cause the purchasing public to purchase a substantial quantity of respondent's merchandise as a result thereof. There are many of respondent's competitors who are and have been engaged in the sale and distribution of merchandise like or similar to that sold by respondent, as described in paragraph 1 hereof, who do not use such false, misleading and deceptive statements and representations in connection with the sale and distribution of their merchandise.

1149

Order

PAR. 8. As a result of the use of said sales plan described in paragraph 2 hereof, and said statements and representations by respondent, trade is being, and has been, unfairly diverted to respondent from such competitors, and substantial injury is being, and has been, done to said competitors by respondent 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 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, the answer of respondent, testimony and other evidence taken before Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondent having offered no proof in opposition thereto), brief filed herein by counsel for the Commission (respondent not having filed brief and oral argument having been waived), 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, Harry Pure, individually, and trading as Trading Sales Company, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of manicure sets, electric lamps, leather wallets, pictures, silverware, chinaware, clothing, bedding, clocks, watches, cameras, dolls, tool chests, cigarette lighters, jewelry, cosmetics, teaspoons, or any other articles of 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 lottery devices which are to be used or may be used in the sale or distribution of said merchandise to the public by the use thereof.

2. Shipping, mailing, or transporting to agents or to distributors, or to members of the public push or pull cards, punchboards, or other lottery devices which are to be used or may be used in the sale or distribution of said merchandise to the public by the use thereof.

Order

31 F. T. C.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

4. Using the terms "free" or "without any cost" or any other terms of similar import or meaning to describe or refer to merchandise offered as compensation for distributing respondent's merchandise, unless all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the terms "free" or "without any cost" or any other terms of similar import or meaning and there is no deception as to the price, quality, character, or any other feature of such merchandise or as to the services to be performed in connection with obtaining such merchandise.

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.

Complaint

IN THE MATTER OF

TOMMY LOUGHRAN

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

Docket 3976. Complaint, Dec. 16, 1939—Decision, Oct. 21, 1940

Where an individual engaged in sale and distribution of correspondence courses in which he outlined methods of physical culture, exercise, and instructions as to diet intended to improve health and physical condition of purchasers thereof—

Represented, through statements and claims disseminated in commerce through the mail and advertisements in newspapers and magazines of general circulation and otherwise, directly or by implication, that his courses of instruction would keep everyone in a healthy condition, insuring everyone of big muscles and a huge, robust, powerful body, and would produce health and a perfect functioning of the organisms for all users thereof, and that his book "Puissant Body Building" would show how all users could obtain big muscles and a robust body, and that such courses would enable everyone to become a paragon of strength;

Facts being that, while proper exercise and diet are important factors in building up and preserving health and body strength, they do not constitute all that is necessary to be done to correct ill health or preserve health and strength, and following his instructions as to exercise and diet would not produce health for everyone or keep everyone in a healthy condition, nor insure everyone of big muscles or a huge, robust and powerful body, nor result in the perfect functioning of the human body, his said book would not teach everyone how to obtain such big muscles and powerful body, and his said courses would not enable everyone to become a "paragon of strength";

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and of causing portion of such public, because of such erroneous and mistaken belief, to purchase his said correspondence courses; to the injury of the public in various States and in the District of Columbia:

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.

Mr. Clark Nichols, for the Commission.

Cross & Quinlan, 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 Tommy Loughran,