

Syllabus

IN THE MATTER OF
JOSEPH SALADOFF, TRADING AS RELIABLE SALES
SERVICE COMPANY

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

Docket 3535. Complaint, Aug. 15, 1938—Decision, Nov. 2, 1940

Where an individual engaged in sale and distribution, to retail merchants at points in the various States and in the District of Columbia, of sales promotion cards which were so designed and arranged as to involve use of a lottery scheme or gift enterprise when used by such merchants in promoting and increasing sales of their merchandise to consuming public, and included, as illustrative of various groups of such cards manufactured and distributed by him, and involving same lottery scheme or gift enterprise and varying in detail only from those described, cards (1) arranged for punching out \$5 or \$10 in trade, as case might be, and having concealed under card's "secret panel" legends entitling chance holder, upon the punching out of the total amount of trade called for and as set forth by card's explanatory notice and in accordance with particular legend as thus secured by chance, to amounts in trade ranging from 20 cents to \$5, and (2) so packed and assembled by said individual that his customers knew amount of award stated under such panels—

Sold, together with various display posters and advertisements furnished for use of such retail merchants in distributing and using same, said cards to such merchants, by whom they were distributed, as suggested by such individual or otherwise, to their customers and prospective customers upon the making of purchases thereby, and by whom awards, as shown under such "secret panels," were honored through the opening thereof when numbers had been duly punched and customer became entitled to and received from merchant goods in amount shown by legend, without additional cost, and by whom, through use of such cards, their merchandise was sold and distributed by means of game of chance, gift enterprise or lottery scheme; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale and distribution of their said products, contrary to an established public policy of the United States Government and in competition with many who make and sell various sales promotion cards, trade cards, premium cards, coupons and trading stamps for use by retail merchants in promoting or increasing the sale of their merchandise, and who are unwilling to offer or sell their said products so designed and arranged, as above set forth or otherwise, as to involve game of chance, gift enterprise or lottery scheme when used in connection with sale or distribution of merchandise by retailers, and who refrain therefrom;

With result that, because of element of chance involved in sale and distribution of merchandise by retailers thereof through his said cards, many members of consuming public were induced to deal with or purchase merchandise from such merchants using his said cards in preference to such merchants using products of aforesaid competitors, and many retailers were thereby

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induced to purchase his said cards in preference to products of such competitors who do not use such methods in designing and arranging their said products, and with further result, through his practice of so packing and assembling, as above set forth, his cards that customers knew amount of awards stated under "secret panels," that such customers were thus enabled to perpetrate a fraud on members of purchasing public in distribution thereto of cards in question, and substantial trade, as consequence of his said practices as above set forth, was unfairly diverted to him from his competitors aforesaid who do not engage therein:

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. P. C. Kolinski and *Mr. D. C. Daniel*, for the Commission.

Levi, Spooner & Quarles, of Milwaukee, Wis., 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 Joseph Saladoff, an individual, trading as Reliable Sales Service Co., hereinafter designated 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, Joseph Saladoff, is an individual doing business under the trade name of Reliable Sales Service Co., with his principal office and place of business located at 510 Arch Street, Philadelphia, Pa. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of sales promotion cards to retail merchants located at points in the various States of the United States and in the District of Columbia, and causes, and has caused, his said products, when sold, to be transported from his principal place of business in the city of Philadelphia, State of Pennsylvania, to purchasers thereof in other States of the United States and in the District of Columbia at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade by said respondent in said sales promotion cards 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, with partnerships and corporations engaged in the manufacture of sales promotion cards, trade cards, premium cards, coupons and trading stamps, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells, and has sold, cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise when used by retail merchants in promoting and increasing sales of their merchandise to the consuming public.

The respondent manufactures and distributes several groups of sales promotion cards, but they all involve the same lottery scheme or gift enterprise, and vary only in detail. The sales promotion cards in one such group are herein described for the purpose of showing arrangement, design, and principals involved. On the front, such cards are as follows:

(5)	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	(5)	
25	DISCOVER YOUR HIDDEN TREASURE THIS CARD IS VALUABLE UNDER THIS SECRET PANEL IS YOUR AWARD WARNING! VOID IF OPENED NO BLANKS EVERY CARD PAYS UP TO \$5.00																		15	
25																			15	
25																			15	
25																			15	
25																			15	
(5)	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	15	15	15	(5)

Under the "secret panel" is the following:

When Properly Punched
Good For
25 Cents
In Trade

The secret panel referred to on said card is partially perforated to indicate where it may be opened, but until said panel is opened, the legend thereunder is effectively concealed from the holder of said card. The said legends under the secret panels vary in amounts from 20 cents to \$5.00. The legend under the secret panel is effectively concealed until the panel has been opened, and the amount which the holder of said card will receive in trade is thus determined wholly by lot or chance. On the reverse, or back, of the said sales promotion cards is the following language:

NO BLANKS—AWARDS UP TO \$5.00

These awards are given in appreciation of your patronage. When this card is fully punched, present same to us intact. We will then open the SECRET PANEL. You will receive the award printed thereon ABSOLUTELY FREE. SHOULD YOU OPEN THIS SECRET PANEL, THIS CARD BECOMES VOID. BUY ALL YOUR NEEDS FROM US—YOU MAY BE A BIG WINNER.

—MERCHANT'S ADVERTISEMENT—

RELIABLE SALES SERVICE—310 ARCH STREET—PHILADELPHIA, PA.

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Other cards manufactured and distributed by the respondent provide for recording the sale of \$10 worth of merchandise by the members arranged around the border of said cards, and provide for the winning of amounts up to \$10 by the legends under the secret panel.

Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 3. The retail merchants to whom respondent sells assortment of said sales promotion cards distribute the same to their customers and prospective customers, and honor the awards as shown under the secret panel of said cards. One method advocated, or suggested by respondent and used by a substantial number of retail merchant customers, is as follows: The cards are distributed free to customers and prospective customers of said retail merchants and when purchases are made, punches corresponding to the amount of said purchases are made around the margin of said card. When all the numbers around the margin of said card are punched, the secret panel is opened and the customer is entitled to merchandise from said merchant in the amount shown by the legend under the said secret panel free of charge.

PAR. 4. There are in competition with respondent various manufacturers and distributors of sales promotion cards, premium cards, price concession cards, coupons and trading stamps which, when used by retail merchants do not involve a lottery scheme or gift enterprise. By reason of the lottery scheme or gift enterprise connected with the distribution and use of the respondent's said cards, many retail merchants are induced to purchase respondent's said cards in preference to devices manufactured and distributed by respondent's competitors, and trade is thus unfairly diverted to respondent from his said competitors.

PAR. 5. The consuming public is induced to deal with, or purchase merchandise from, retail merchants using respondent's cards in preference to retail merchants using the devices of respondent's competitors, because of the lottery scheme or gift enterprise connected with respondent's said cards. By reason thereof, retail merchants are induced to purchase respondent's said cards in preference to devices of respondent's competitors and trade is thus unfairly diverted to respondent from his said competitors.

PAR. 6. The use by respondent of the said method in designing and arranging his said cards is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

Many persons, firms, and corporations who make and sell various cards or devices for promoting or increasing the sales of retail merchants are unwilling to offer for sale, or sell, cards or devices so designed and arranged as above alleged, or otherwise designed and arranged, so as to involve a game of chance, lottery scheme, or gift enterprise, and such competitors refrain therefrom.

PAR. 7. The respondent, in shipping the said cards to his customers, assort and packs them so that such customers know the amount of the awards stated under the secret panel; thus the retail merchants to whom respondent sells his cards are enabled to perpetrate a fraud on their customers. This practice has the capacity and tendency to induce, and it does induce, retail merchants to purchase respondent's said cards in preference to cards or devices of respondent's competitors.

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 August 15, 1938, issued and thereafter served its complaint in this proceeding upon respondent Joseph Saladoff, an individual, trading as Reliable Sales Service Co., 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 was introduced by P. C. Kolinski and D. C. Daniel, 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 was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, brief in support of the complaint (respondent having filed no brief and oral argument not having been requested); 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

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Joseph Saladoff, is an individual doing business under the trade name of Reliable Sales Service Co., with his principal office and place of business located at 510 Arch Street, Philadelphia, Pa. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of sales promotion cards to retail merchants located at points in the various States of the United States and in the District of Columbia, and causes, and has caused, his said products, when sold, to be transported from his principal place of business in the city of Philadelphia, State of Pennsylvania, to purchasers thereof in other States of the United States and in the District of Columbia at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade by said respondent in said sales promotion cards 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, with partnerships and corporations engaged in the manufacture of sales promotion cards, trade cards, premium cards, coupons and trading stamps, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells, and has sold, cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise when used by retail merchants in promoting and increasing sales of their merchandise to the consuming public.

The respondent manufactures and distributes several groups of sales promotion cards, but they all involve the same lottery scheme or gift enterprise, and vary only in detail. The sales promotion cards in one such group are herein described for the purpose of showing arrangement, design, and principle involved. On the front, such cards are as follows:

(5)	5	5	5	5	5	5	5	5	5	5	5	5	5	(5)		
25	. DISCOVER YOUR HIDDEN TREASURE													15		
25	This card is Valuable													15		
25	UNDER THIS SECRET PANEL													15		
25	IS YOUR AWARD													15		
25	WARNING/ VOID IF OPENED													15		
25	NO BLANKS													15		
25	EVERY CARD PAYS UP TO \$5.00													15		
(5)	10	10	10	10	10	10	10	10	10	10	10	15	15	15	15	(5)

Under the "secret panel" is the following:

When Properly Punched
Good for
25 Cents
in Trade

The secret panel referred to on said card is partially perforated to indicate where it may be opened and the legend under said secret panel is effectively concealed from purchasers and prospective purchasers until the panel has been opened or removed from said card. The legends under the secret panels vary in amount from 20 cents to \$5.00. The amount which the individual holder of said cards will receive in trade is thus determined wholly by lot or chance. On the reverse side, or back, of the said sales promotion cards is the following language:

NO BLANKS—AWARDS UP TO \$5.00

These awards are given in appreciation of your patronage. When this card is fully punched, present same to us intact. We will then open the SECRET PANEL. You will receive the award printed thereon ABSOLUTELY FREE. SHOULD YOU OPEN THIS SECRET PANEL, THIS CARD BECOMES VOID. BUY ALL YOUR NEEDS FROM US—YOU MAY BE A BIG WINNER.

—MERCHANT'S ADVERTISEMENT—

RELIABLE SALES SERVICE—510 ARCH STREET—PHILADELPHIA, PA.

Other cards manufactured and distributed by the respondent provide for recording the sale of \$10 worth of merchandise by the numbers arranged around the border of said cards, and provide for the winning of amounts up to \$10 by the legends under the secret panel.

Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 3. The Commission finds that the retail merchants to whom respondent sells assortments of said sales promotion cards distribute the same to their customers and prospective customers, and honor the awards as shown under the secret panels of said cards as afore-said. One method advocated, or suggested by respondent and used by a substantial number of retail merchant customers, is as follows: The cards are distributed free to customers and prospective customers of said retail merchants and when purchases are made, punches corresponding to the amount of said purchases are made around the margin of said card. When all the numbers around the margin of said card are punched, the secret panel is opened and the customer is entitled to and receives merchandise from said merchant in the

amount shown by the legend under the said secret panel without additional cost.

PAR. 4. The Commission finds that the sale and distribution of merchandise by retail merchants by means of respondent's said sales promotion cards, as herein found, constitute the sale and distribution of merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondent thus supplies to, and places in the hands of, others a means of conducting lotteries in the sale and distribution of their merchandise. The sale of such cards by the respondent, as herein found, and the said use thereof by respondent's said customers are practices which are contrary to an established public policy of the Government of the United States.

PAR. 5. The Commission finds that there are in competition with respondent, as hereinabove described, many persons, firms, and corporations who make and sell various sales promotion cards, trade cards, premium cards, coupons and trading stamps for use by retail merchants in promoting or increasing the sales of the merchandise of said retail merchants and that such competitors are unwilling to offer for sale or sell their said products so designed and arranged, as above found, or otherwise designed and arranged so as to involve a game of chance, gift enterprise, or lottery scheme when used in connection with the sale or distribution of merchandise by retail dealers and such competitors refrain therefrom.

PAR. 6. The Commission finds that, because of the element of chance involved in the sale and distribution of merchandise by retail dealers by means of respondent's said cards, many members of the consuming public have been, and are being induced to deal with, or purchase merchandise from, retail merchants using respondent's said cards in preference to retail merchants using said products of respondent's said competitors. As a result thereof, many retail merchants are, and have been, induced to purchase respondent's said cards in preference to said products of respondent's said competitors who do not use such methods in designing and arranging their said products.

PAR. 7. Respondent so packs and assembles his said cards that his customers know the amount of the awards stated under the said secret panels and such customers are thus enabled to perpetrate a fraud on the members of the purchasing public in the distribution thereto of said cards.

PAR. 8. As a result of the practices of respondent as hereinabove found, substantial trade is being and has been unfairly diverted to respondent from his said competitors who do not engage in such practices.

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Order

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 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 having filed no 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, Joseph Saladoff, an individual trading as Reliable Sales Service 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 sales promotion cards, 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 sales promotion cards, or any other articles of merchandise, so designed and arranged that their use by retail merchants constitutes, or may constitute, the operation of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to, or placing in the hands of others sales promotion cards or sales promotion plans or schemes, or any other articles of merchandise, which are used, or which may be used, without alteration or rearrangement thereof, to conduct a lottery, game of chance, or gift enterprise when distributed to the consuming public.

3. Furnishing or supplying to dealers display posters or circulars or other advertising literature bearing legends or statements informing the public as to the manner in which sales promotion cards or other lottery devices are to be or may be distributed and used.

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
AMERICAN HAIR & FELT COMPANY, AND CLINTON
CARPET COMPANY

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

Docket 3822. Complaint, June 16, 1939—Decision, Nov. 2, 1940

Where a corporation engaged in the manufacture, sale, and distribution of rug cushions, primary purpose of which is to prolong life of rugs under which placed and to deaden noise in rooms where used, and types of which cushions, as made by it, included those made entirely of hair except as below set forth, and others made of hair and jute with burlap base, or of approximately 95 percent hair with strands of jute with burlap center, or jute with interwoven strands of burlap; and its corporate subsidiary engaged in sale and distribution of its said products—

- (a) Represented, in the course and conduct of their said business of selling, to purchasers in various States and in the District of Columbia, various types of rug products made by said manufacturer, by means of advertisements published and disseminated through magazines, trade journals, pamphlets, and in other printed matter distributed among prospective purchasers in the various States and in the District of Columbia, that rug cushions composed of materials other than hair would not serve the customary and ordinary purposes for which they were intended and used, and would cause rugs under which used to wear out sooner than would be the case if no cushions were used, through such statements as "Before you buy a rug cushion—ask what it's made of! And be wary of rug pads not made of ALL HAIR, because only too often these 'bargain pads' pack down in hard lumps that actually make rugs wear out sooner," and "Jute is a vegetable fibre and is no more to be compared with hair than a straw mattress with a hair mattress. Jute (often dyed to look like hair) is extensively used on so-called 'cheap' rug pads. Don't be misled—insist on getting an ALL-HAIR cushion," and others of similar tenor:

Facts being that any cushioning material, even paper, will serve some useful purpose as a rug cushion, jute and jute and hair mixed pads will prolong life of rugs under which placed and otherwise serve purposes for which intended and used, and such pads or cushions, under normal use in ordinary circumstances, will not become lumpy or cause rugs to wear out sooner than would be the case if no cushion were used; and

- (b) Represented, for a time, that their "Ozite" cushions were composed entirely of hair, through label, later changed to disclose inclusion in cushion in question of reinforcing burlap center, reading "OZITE Rug Cushion is made of ALL HAIR," and through depiction of said label in its advertising matter:

Facts being while primary purpose of burlap or jute strip, as included by it, is to serve as necessary reinforcement to hold intact cushion composed of hair, such strip does have some cushioning effect, and to designate such a pad as "All Hair," without disclosing presence therein of said strip of burlap or jute, is not accurate description of product in question and is confusing to purchasers who do not understand technical problems involved in the manufacturing and handling of pads composed of hair;