

Complaint

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IN THE MATTER

ROBERT J. THOMPSON COMPANY

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

Docket 4027. Complaint, Feb. 8, 1940—Decision, Nov. 12, 1940

Where a corporation engaged, from its principal place of business in Philadelphia, in sale and distribution of suits, overcoats and other articles of merchandise, to members of purchasing public in State of New Jersey, in competition with others engaged in sale and distribution of like or similar merchandise in commerce among the various States and in the District of Columbia—

Sold and distributed its said products to members of purchasing and consuming public by means of a sales plan or method which involved operation of game of chance, gift enterprise, or lottery scheme, and under which it solicited members of purchasing public in said State to purchase, by contract, men's clothing, thereafter to be made by it at its said place of business and shipped therefrom, and under which some of such members thus contacted, and as selected wholly by lot or chance, did not pay full contract price for such clothing thus contracted for, but paid less than contract price; and

Made use thereby, in so selling and distributing its said merchandise in accordance with aforesaid 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, of lottery scheme or plan as above set forth, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who sell and distribute merchandise and do not use said or any method involving use of a game of chance or sale of a chance to win something by chance, and refrain therefrom;

With result that trade was thereby diverted unfairly in commerce to it from its competitors aforesaid, who did not use same or equivalent methods:

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.

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

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

Mr. Maurice S. Levy and *Mr. David S. Malis*, 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 Robert J. Thompson Co., a corporation, 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, Robert J. Thompson Co., is a corporation organized and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 1216 Walnut Street, Philadelphia, Pa. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of suits, overcoats and other articles of merchandise to members of the purchasing public located in the various States of the United States and in the District of Columbia. It causes and has caused said merchandise, when sold, to be shipped or transported from its aforesaid place of business in the State of Pennsylvania to purchasers thereof in various other States of the United States and in the District of Columbia at their respective points of location. There is now and for more than 1 year last past has been 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 its business, respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar 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 its business, as described in paragraph 1 hereof, respondent is now and has been selling and distributing said merchandise to members of the purchasing public by means of sales plans or methods which involve the operation of a game of chance, gift enterprise, or lottery scheme. One of said sales plans or methods is substantially as follows:

Members of the purchasing public are solicited by respondent's representatives to purchase a suit of clothes or overcoat under a so-called Club plan. Respondent supplies each purchaser participating in said plan with a contract of purchase. Said contract provides for the sale by respondent, to such purchaser, of a suit of clothes or overcoat for the sum of \$40., which said amount is to be paid as follows: One dollar when said contract is delivered and one dollar in advance each week thereafter until the full amount of the contract has been paid. There is space provided on said contract for the recording of the weekly payments. Each of said contracts has printed thereon a "ledger" number. Purchasers are informed by respondent's representatives that should said number correspond

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with the last three figures included in the total number of shares of stock sold on the Philadelphia, Pa., Stock Exchange for the preceding week, provided all of said purchaser's weekly payments had been made up to date, then such purchaser would be entitled to and would receive a suit or overcoat without additional cost. Purchasers whose contracts do not bear numbers corresponding with the Stock Exchange number, as above alleged, prior to the payment of the full amount of their contracts, are required to pay forty dollars for their suits or overcoats. All of said suits and overcoats have normal retail values of forty dollars. The amount which the ultimate consumer pays for one of said suits or overcoats is thus determined wholly by lot or chance.

Respondent uses and has used various sales plans which involve the operation of games of chance, gift enterprises, or lottery schemes in connection with the sale and distribution of its merchandise to the consuming public, but said sales plans are similar to the one hereinabove described, varying only in detail.

PAR. 3. Respondent has sold and distributed its merchandise to members of the consuming public in accordance with the aforesaid sales plans or methods. In so selling and distributing its merchandise, respondent has conducted lotteries in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its merchandise and the sale of such merchandise by and through the use thereof, and by the aid of said methods, 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.

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 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 methods or any methods involving use of 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 respondent's said methods and by the element of chance involved in the sale of said merchandise in the manner above alleged and are thereby induced and persuaded to buy respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the respondent, because of said game of chance, has the tendency

and capacity to and does unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent sales plans or methods. As a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public, and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 8th day of February 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Robert J. Thompson Co., a corporation, charging it 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 February 26, 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by David S. Malis, counsel for the respondent, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, and the Commission, having duly considered the same 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, Robert J. Thompson Co., is a corporation organized and doing business under the laws of the State of Penn-

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sylvania, with its principal office and place of business located at 1216 Walnut Street, Philadelphia, Pa. Respondent, for some time prior to the filing of the complaint in this matter, engaged in the sale and distribution of suits, overcoats and other articles of merchandise to members of the purchasing public located in the State of New Jersey. It caused said merchandise, when sold, to be shipped or transported from its aforesaid place of business in the State of Pennsylvania to purchasers thereof in the State of New Jersey, at their respective points of location. There was, for some time prior to the filing of the complaint in this matter, a course of trade by respondent in such merchandise in commerce between the States of Pennsylvania and New Jersey. In the course and conduct of its business, respondent has been in competition with other corporations, and with individuals and partnerships engaged in the sale and distribution of like or similar 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 its business, as described in paragraph 1 hereof, respondent has been selling and distributing said merchandise to members of the purchasing public by means of a sales plan or method which involved the operation of a game of chance, gift enterprise or lottery scheme. The sales plan or method was substantially as follows:

Members of the purchasing public in the State of New Jersey were solicited by respondent's representatives to purchase by contract men's clothing thereafter to be manufactured by respondent at its place of business in Philadelphia, Pa. Some of the aforesaid members of the purchasing public so contacted did not pay the full contract price for the article of men's clothing contracted to be purchased but paid less than the contract price for the said articles of clothing. The persons who were entitled to receive and who did receive the articles of men's clothing for less than the full contract price were selected wholly by lot or chance. The said articles of men's clothing so sold and distributed were shipped by common carriers from respondent's aforesaid place of business in Philadelphia, Pa., to the said customers of respondent wherever located in the State of New Jersey.

PAR. 3. Respondent has sold and distributed its merchandise to members of the consuming public in accordance with the aforesaid sales plan or method. In so selling and distributing its merchandise, respondent has conducted lotteries in accordance with the sales plan or method hereinabove set forth. The use by respondent of the said sales plan or method in the sale of its merchandise and the sale of such merchandise by and through the use thereof and by the aid

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of said 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 found involves a game of chance or in the sale of a chance to procure an article or 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 respondent, as above found, do not use said method or any method involving the use of a game of chance or the sale of a chance to win something by chance, and such competitors refrain therefrom. The use of said method by respondent because of said game of chance had a tendency and capacity to and did unfairly divert trade, in commerce between and among the various States of the United States, to respondent from its said competitors who did not use the same or equivalent methods.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and a stipulation as to the facts entered into between counsel for the respondent and W. T. Kelley, chief counsel for the Federal Trade Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, 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, Robert J. Thompson Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of suits, overcoats or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Supplying to or placing in the hands of others any merchandise, together with a sales plan or method involving the use of a game of chance, gift enterprise, or lottery scheme by which said merchandise is to be, or may be, sold to the purchasing public.

2. 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 it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF
JUNIOR LEAGUE LINGERIE, INC.

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

Docket 4124. Complaint, May 1, 1940—Decision, Nov. 12, 1940

Where there had existed for well over 30 years, in various cities and towns throughout the United States, organizations of young women which, known as Junior Leagues, were benevolent, nonprofit organizations devoted to charitable purposes and improvement of social conditions in their respective communities, and which sponsored various benevolent activities, including financial assistance of hospitals and other charitable enterprises and, in order to obtain funds with which to carry on their activities, frequently engaged in various money-raising functions such as operation of gift shops, rummage sales, and tearooms and the conducting of fashion shows, often in cooperation with local merchants, and where there had long been incorporated an association known as the Association of The Junior Leagues of America, Inc., purpose of which was to unite in a central organization all the Junior Leagues throughout the United States, Canada, and Mexico, and which had come to have approximately 130 local or members leagues with total membership of some 35,000, and published and sold to public, as well as to members of various local organizations, its "Junior League Magazine" with numerous articles and suggestions with respect to women's apparel and current fashions and styles therein, and name "Junior League" had come, for many years last past, to be associated in minds of substantial portion of purchasing public with aforesaid organizations to such an extent that use of such name to designate or describe articles of merchandise, particularly women's apparel, served as representation to public, and caused public to believe, that articles so designated were sponsored or approved by said Junior League; and thereafter, a corporation engaged in sale and distribution of women's apparel, including slips and other lingerie, to purchasers thereof in various other States and in the District of Columbia—

- (a) Represented, through inclusion and use of words "Junior League" as part of its corporate name, that it had some connection with said organization, and that its said products were sponsored or approved thereby; and
- (b) Represented that its said products were thus sponsored or approved, through tags and labels attached thereto and through invoices, letters, circulars, and other advertising material distributed among prospective purchasers and otherwise, and including, as typical of such false and misleading representations, use of legends "Junior League Distinctive Lingerie" and "Junior League Buds," which it caused to appear on labels attached to certain of its slips and other such products, and statement "This garment is unconditionally guaranteed by the makers of Junior League Lingerie," which it placed on tags attached to aforesaid slips; and
- (c) Supplied to dealers purchasing its products, newspaper mats, and other advertising material with which to promote sale thereof, and in all of which words "Junior League" were prominently and conspicuously displayed;