

Syllabus

IN THE MATTER OF
LOUIS FARBEN TRADING AS GOLD STAR NOVELTY
HOUSE

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

Docket 3449. Complaint, May 27, 1938—Decision, Nov. 15, 1940

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

- (a) Sold various of his said articles by means of a game of chance, gift enterprise or lottery scheme under which he distributed to representatives and prospective representatives sales circulars depicting a number of his said articles, together with printed matter descriptive thereof, and also listing on page in question 22 of said products and prices thereof with spaces provided for the recording of the names of each purchaser opposite name of product purchased, and including as a part of each said circular, a pull card for use in sale and distribution of such articles under a plan in accordance with which particular article to be secured by purchaser and price to be paid therefor were determined by lot or chance, by legend disclosed by removal of tab selected, and operator had alternative of retaining specified amount of total collected as compensation for his service and remitting balance or remitting entire amount thus collected for the 22 articles and receiving a premium as selected from those described in his said circular; and

Supplied thereby to and placed in the hands of others, a means of selling and distributing his said merchandise through sale thereof in accordance with the aforesaid sales plan by persons or representatives whom he furnished said sales circulars containing such pull cards, and who used same in purchasing, selling, and distributing said 22 articles in accordance with such plan or method, constituting game of chance or sale of a chance to procure an article of merchandise at price much less than normal retail price thereof, and notwithstanding notice to purchasers advising them of privilege of securing any article described at price shown thereon, contrary to an established public policy of the United States Government and in violation of criminal laws and in competition with those selling and distributing like or similar merchandise in commerce as aforesaid, and who are unwilling to and do not use said or any other sales plan or method involving game of chance or sale of a chance to win something by chance or any sales plan or method contrary to public policy and refrain therefrom;

With the result that many, because of such element of chance involved in said sales plan employed by said individual as above described, were induced to buy and sell his merchandise in preference to that offered and sold by such competitors and trade was unfairly diverted to him therefrom to their substantial injury;

- (b) Made such false, deceptive and misleading statements and representations in its said circulars as "Gifts for all at no cost to you" and "Beautiful, useful

Complaint

31 F. T. C.

household gifts at absolutely no cost," facts being he did not give away any of his merchandise or premiums without cost to his said representatives who were first required to sell or prepare sale of said 22 articles before they received one of such premiums; and

- (c) Made such false, deceptive, misleading statements and representations, in connection with trade name used by it, as "Registered under United States Laws," facts being his said business was not registered under the laws of the United States;

With tendency and capacity to mislead and deceive substantial number of members of purchasing public in the various States and in the District of Columbia, and to induce them mistakenly and erroneously to believe that he was giving away some of his said articles without cost to his representatives and that his business was registered under the laws of the United States, and with result that a substantial number of members of such public were misled and deceived into mistaken and erroneous belief that such statements and representations were true, and were induced to purchase substantial quantities of said merchandise as a result thereof, and trade was unfairly diverted to him from competitors who sell and distribute like or similar merchandise, but who do not make such false, deceptive, and misleading statements and representations concerning the same; to their substantial injury:

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.

Before *Mr. Randolph Preston*, trial examiner.

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

Mr. Jack Goldberg, of New York City, 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 Louis Farben, individually and trading as Gold Star Novelty House, 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 Gold Star Novelty House, with his principal office and place of business located at 1140 Broadway, 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, clocks, watches, cameras, dolls, cosmetics and other articles of novelty merchandise in commerce between and among the various States of the United States and in the District of

1357

Complaint

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 engaged in the sale and distribution of 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 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 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 principle 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 pref-

1357

Complaint

erence 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:

Gifts for all no cost to you.

Beautiful useful household gifts at Absolutely no cost.

Gold Star Novelty Co. Registered under U. S. Laws.

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 that respondent gives away certain of his said articles of merchandise without cost to his said representatives, and that his said business has been registered with some department of the United States Government.

PAR. 6. In truth and in fact, respondent's said business is not registered with any department of the United States Government, and none of respondent's premiums or so-called gifts are given away "without cost," but said premiums or so-called gifts which are represented as being "without cost" 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.

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

Findings

31 F. T. C.

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 27, 1938, issued and thereafter served its complaint in this proceeding upon respondent Louis Farben, individually and trading as Gold Star Novelty House, 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 (respondent having filed no answer thereto), testimony and other evidence in support of the allegations of said complaint were introduced by D. C. Daniel, P. C. Kolinski, 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 this proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, brief in support of the complaint (respondent having filed no brief and oral argument having been waived); and the Commission, having duly considered the matter and being now fully advised in the premises, finds 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 is an individual who was trading under the name of Gold Star Novelty House, with his principal office and place of business located at 1140 Broadway, New York City, N. Y. He was from on or about September 1937 until on or about September

1357

Findings

1938 engaged in the sale and distribution of manicure sets, electric lamps, leather wallets, pictures, silverware and chinaware, clocks, watches, cameras, dolls, 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. During said time respondent 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. There was during the time aforesaid 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 was in competition with other concerns 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 so conducting and carrying on said business as described in paragraph 1 hereof respondent has sold various of his said articles of merchandise by means of a game of chance, gift enterprise or lottery scheme. Respondent distributed and caused to be distributed sales circulars to representatives and prospective representatives. Said articles of merchandise were sold and distributed by means of said sales circulars in substantially the following manner:

On the last page of said sales circular there appear 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 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 vary 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 purchasers and prospective purchasers are unable to ascertain which article of merchandise they are to receive or the amount of money which 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 des-

Findings

31 F. T. C.

ignated for them, but all of said articles of merchandise are distributed to the customers for the prices designated under the tabs selected and pulled from said card by such customers. Which article of merchandise the purchaser is to receive, and the amount of money he is to pay, are thus determined wholly by lot or chance.

The said 22 articles of merchandise retail for \$7.65 and when the person or representative operating one of said pull cards 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 will, in turn, send 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 sends the said 22 articles of merchandise to said person or representative, together with a premium for said person or representative in payment for said services in so selling and distributing said 22 articles of merchandise. Such premiums are illustrated and described in respondent's said circulars and the person or representative desiring one of such premiums may make his selection from said premiums.

The respondent has distributed by mail a substantial number of said sales circulars to customers and prospective customers located in the various States of the United States and in the District of Columbia and as a result thereof has received and filled a substantial number of 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 to buy the article, pay the holder of this folder the price shown on slip. If you do not want the article you need not buy it.

The Commission finds that regardless of such notice, the said 22 articles of merchandise were, in fact, distributed by means of said sales circulars as hereinabove described.

PAR. 3. The Commission finds that the persons or representatives to whom respondent has furnished or supplied said sales circulars containing said pull cards have used the same in purchasing, selling, and distributing respondent's said 22 articles of merchandise in accordance with the sales plan or method as described in paragraph 2 hereof. Respondent has thus supplied to and 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 plan. The sale and distribution of said merchandise by respondent by the sales plan as aforesaid 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 Commission finds that the sale of said merchandise in the manner described in paragraph 2 hereof constitutes 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. Respondent has competitors who sell and distribute like or similar merchandise in commerce between and among the various States of the United States and the District of Columbia who are unwilling to and do not 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 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 merchandise offered for sale and sold by said competitors.

PAR. 5. The Commission finds that in so conducting its business as hereinabove described, respondent has caused false, deceptive, and misleading statements and representations to appear in its said sales circulars, some of which statements and representations are as follows:

Gifts for all at no cost to you.

Beautiful, useful household gifts at absolutely no cost.

Gold Star Novelty Co., registered under U. S. laws.

The Commission finds that such statements and representations of respondent used in connection with the sale and offering for sale of respondent's said articles of merchandise, as hereinabove described, are false, deceptive, and misleading, and have a tendency and capacity to mislead and deceive a substantial number of the members of the purchasing public in the various States of the United States and in the District of Columbia and to induce them to mistakenly and erroneously believe that respondent gives away some of his said articles of merchandise without cost to his representatives and that said business is registered under the laws of the United States.

PAR. 6. The Commission finds that respondent did not give away any of his merchandise or premiums without cost to his said representatives but that such representatives were required to first sell or procure the sale of said 22 articles of merchandise before they received one of said premiums; and that respondent's said business was not registered under the laws of the United States.

PAR. 7. The Commission finds that as a result of the use of said statements and representations, a substantial number of the members of the purchasing public were misled and deceived into the mistaken and erroneous belief that said statements and representations were true, and were induced to purchase substantial quantities of respondent's said merchandise as a result thereof. Respondent has competitors as hereinabove found who sell and distribute merchandise like or similar to that sold by respondent but who do not make such false, deceptive, and misleading statements and representations concerning their said merchandise.

PAR. 8. As a result of the use of said sales plan or method described in paragraph 2 hereof and the use of said false, deceptive and misleading statements and representations by said respondent, as aforesaid, trade has been unfairly diverted to respondent from such competitors who do not engage in such practices and substantial injury 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 (respondent having filed no answer thereto), 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, Louis Farben, individually and trading as Gold Star Novelty House, his representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of manicure sets, electric lamps, leather wallets, pictures, silverware and chinaware, cosmetics, jewelry, comb and brush sets, razor blades or any other arti-

1357

Order

cles 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 devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme,

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

4. Using the term "no cost" or any other term or 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 said offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the term "no cost" or any other term or 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,

5. Representing that respondent's business is registered under the laws of the United States.

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
EASTERN PREMIUM HOUSE, INC.

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

Docket 3504. Complaint, July 21, 1938—Decision, Nov. 15, 1940

Where a corporation engaged in sale and distribution of clocks, watches, dolls, chinaware, and various other articles of merchandise to purchasers in the various States—

- (a) Sold and distributed such articles by means of a game of chance, gift enterprise, or lottery scheme under which it distributed and caused to be distributed to representatives and prospective representatives certain advertising literature and sales circulars depicting a number of such products, together with printed matter descriptive thereof, and listing 22 articles and prices thereof, with space provided for the recording of the name of each purchaser opposite name of product purchased, and including, as part of said circular, pull card for use in sale and distribution of such product under a plan in accordance with which particular article to be secured by purchaser and price to be paid therefor were determined by lot or chance, by legend disclosed by removal of tab selected and pulled from card by customer and operator had alternative, as compensation for his services, of deducting from entire amount thus collected for the products in question certain amount and remitting balance, or of remitting entire amount thus secured and receiving one of premiums described in circular in question; and Supplied thereby to and placed in the hands of others means of selling and distributing such merchandise by means of game of chance or lottery scheme in accordance with said sales plan by persons or representatives to whom he had furnished such sales circulars containing pull cards as aforesaid, and who made use of same in purchasing, selling, and distributing his said 22 articles in accordance with such plan or method as above set forth, constituting game of chance or sale of a chance to procure an article of merchandise at a price much less than normal retail price thereof, and notwithstanding notice to purchasers advising of their privilege of buying any article listed at price shown therefor, contrary to an established public policy of the United States Government and in violation of criminal laws and in competition with those who sell and distribute like or similar merchandise in commerce as aforesaid, and who are unwilling to and do not use said or any other sales plans or method in sale of their merchandise involving games of chance or sale of a chance to win something by chance or any sales plan contrary to public policy and who refrain therefrom;
- With result that many persons were induced to buy and sell its said products in preference to merchandise offered and sold by such competitors and that trade was unfairly diverted to it from said competitors; to their substantial injury; and
- (b) Made such false, deceptive, and misleading statement and representations in its said circular as "Gifts for all," "Valuable Surprise Gifts Free," "Big Value Rewards at no Cost to You," "Gifts or Cash Yours, Absolutely Yours, Without Cost," and "Select your Gift—Costs you Nothing";