

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";

1368

Complaint

Facts being it did not give away any of its merchandise or premiums without cost to its representatives who had first to sell or procure sale of articles in question before they were entitled to receive and received one of such premiums and, in connection with certain of said premiums, representatives were required to pay specified sums of money in addition to sales of articles in question;

With tendency and capacity to mislead and deceive substantial number of members of purchasing public in various States and to induce them mistakenly and erroneously to believe that it was giving away some of its said articles without cost to its representatives, and with result that substantial portion of such public was misled and deceived into mistaken and erroneous belief that such statements and representations were true, and to purchase substantial quantity of said merchandise as a result thereof, and trade was thereby unfairly diverted to it from competitors who sell and distribute products like or similar to those sold by it and 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.

Before *Mr. Randolph Preston*, trial examiner.

Mr. D. C. Daniel, *Mr. P. C. Kolinski*, 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 Eastern Premium House, Inc., a corporation, 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, Eastern Premium House, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 830 Broadway, New York, N. Y. Respondent is now, and for some time last past has been engaged in the sale and distribution of clocks, watches, dolls, chinaware, aluminum ware, jewelry, cosmetics, cigarette cases and lighters, flashlights, kitchenware, bedding, clothing, tableware, lamps, dresser sets, smoking stands, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from its place of business aforesaid, to purchasers thereof located in the various States of the United

Complaint

31 F. T. C.

States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by 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 and has been in competition with other corporations and with individuals and partnerships 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 its business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature including a sales circular. Respondent's merchandise is and has been distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the 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 purchasers or 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 consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated

1368

Complaint

for same on such 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 the person or representative operating the 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, said respondent thereupon ships to said representative the merchandise designated on 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 and has sold and distributed various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of said 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 and has furnished the said pull cards use and have used 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 its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its merchandise and the sales 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 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 much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance, or any 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 such 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 its said competitors who do not use the same or an equivalent method.

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

Gifts for all.

Valuable Surprise Gifts Free.

Big value rewards at no cost to you.

Gifts or cash yours absolutely without cost.

Select your gift—Costs you nothing.

We pay all shipping charges right to your door.

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

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

PAR. 7. The use by respondent of the false, deceptive and misleading statements and representations aforesaid, has had and now has the capacity and tendency to mislead and deceive and has misled 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 a result of such erroneous belief. There are, among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning 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 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 July 21, 1938, issued and thereafter served its complaint in this proceeding upon respondent, Eastern Premium House, Inc., a corporation, charging it 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, 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, 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 Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Eastern Premium House, Inc., is a corporation organized and doing business under and by virtue of

Findings

31 F. T. C.

the laws of the State of New York, with its principal office and place of business located in New York, N. Y. Respondent is now, and for more than 4 years last past has been, engaged in the sale and distribution of clocks, watches, dolls, chinaware, aluminum ware, jewelry, cosmetics, cigarette cases and lighters, flashlights, kitchenware, bedding, clothing, tableware, lamps, dresser sets, smoking stands, knives, watches, binoculars, and other articles of merchandise, in commerce between and among the various States of the United States. Respondent causes and has caused said products when sold to be shipped or transported from its place of business aforesaid to purchasers thereof at their respective points of location in the various States of the United States. There is now, and has been for more than 4 years last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States. In the course and conduct of said business, respondent is and has been in competition with other corporations and with individuals and partnerships 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.

PAR. 2. In so conducting its business as described in paragraph 1 hereof, respondent has sold and distributed articles of its said merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondent has distributed and caused to be distributed certain advertising literature, including sales circulars, to representatives and prospective representatives located in the various States of the United States. The plan used in the sale and distribution of respondent's merchandise to the purchasing public by means of said sales circulars is substantially as follows:

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 designated 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 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 ac-

Findings

31 F. T. C.

cordance 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 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 said statements and representations are as follows:

Gifts for all.

Valuable Surprise Gifts Free.

Big value rewards at no cost to you.

Gifts or cash yours absolutely without cost.

Select your gift—Costs you nothing.

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 to induce them to mistakenly and erroneously believe that respondent gives away some of its said articles of merchandise without cost to its representatives.

1368

Order

PAR. 6. The Commission finds that in truth and in fact, the respondent does not give away any of its merchandise or premiums without cost to its representatives, but that such representatives must first sell or procure the sale of said 22 articles of merchandise before they are entitled to, and receive, one of said premiums. In connection with some of said premiums the representative must pay certain sums of money in addition to the selling of said 22 articles of merchandise.

PAR. 7. The Commission finds that the use of such false, deceptive, and misleading statements and representations by respondent has misled and deceived a substantial portion of the purchasing public into the mistaken and erroneous belief that such statements and representations were true and into the purchase of substantial quantities of respondent's said merchandise as a result thereof. Respondent has competitors as mentioned in paragraph 1 hereof who sell and distribute products like or similar to these sold by respondent, but who do not make such false, deceptive, and misleading statements and representations concerning their products.

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 respondent, as aforesaid, 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.

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

Order

31 F. T. C.

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, Eastern Premium House, Inc., a corporation, 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 clocks, watches, dolls, china-ware, aluminum ware, jewelry, cosmetics, cigarette cases and lighters, flashlights, kitchenware, bedding, clothing, tableware, lamps, dresser sets, smoking stands, knives, watches, binoculars, or any other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards, or other devices which 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 terms "free" or "without 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 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 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

JOSEPH SALADOFF AND SARA SALADOFF, INDIVIDUALLY, AND TRADING AS NOVELTY PREMIUM COMPANY

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

Docket 3505. Complaint, July 21, 1938—Decision, Nov. 18, 1940

Where two individuals engaged as owner and as general manager and sales manager of business in sale of candy, watches, clocks, guns, baby buggies, quilts, aluminum ware, and other articles of merchandise to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of like and similar articles of merchandise—

- (a) Sold and distributed their said merchandise by means of a game of chance, gift enterprise, or lottery scheme, pursuant to which they distributed and caused to be distributed to representatives, advertising or sales circulars, catalogues, and other advertising literature, and including (1) pull card upon one of such circulars for use in sale and distribution of 22 boxes of candy, ranging from 9 cents to 39 cents, under a plan by which particular box of candy and price to be paid therefor were determined by lot or chance by particular tab of card selected, and (2) other circulars with pull cards involving sales plans similar to that described and varying therefrom in detail only, and under which various plans operator was compensated by choice of remitting merchandise thus sold and receiving premiums selected by him from advertising literature of said individuals, or of deducting from amount thus received, and prior to remission thereof, designated cash premium; and

Supplied thereby to and placed in hands of others means of selling and distributing their said candy through game of chance or lottery scheme, in accordance with sales plan as aforesaid, by persons or representatives to whom they furnished and supplied said pull card devices and who made use thereof by purchasing, selling, and distributing such candy in accordance with such sales plan or method, as above described, involving game of chance or sale of chance to procure box of candy at price much less than usual retail price, and notwithstanding "Notice to Purchasers" on or above said card advising reader that it was his privilege to buy box of chocolates at price therefor printed on back of each slip by paying holder such price, and which notice, when called to attention of purchasers, did not result in refusal to take candy purchased by them in manner above indicated, 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 in the sale of their merchandise involving any game of chance or sale of a chance to win something of value by chance, or any sales plan or method contrary to public policy, and refrain therefrom: