

Syllabus

IN THE MATTER OF

WALTER P. PHILLIPS, TRADING AS PHILLIPS CARD COMPANY .

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

Docket 4311. Complaint, Sept. 12, 1940—Decision, Dec. 13, 1940

Where an individual engaged in interstate sale and distribution of Christmas cards, gift wrappings, and similar products; in advertising in newspapers and periodicals of general circulation, and in folders, pamphlets, and letters, employed by him in course and conduct of his said business in soliciting the sale of his products, and agents to sell same—

Made use of words "Sample Free," and sent to those replying folder containing 10 Christmas cards of various designs so marked with matter printed thereon as to be used as display samples, and, in addition "Supercraft" assortment of 21 Christmas cards not so marked, and suitable for use, together with invoice upon which was printed statement "Supercraft Assortment 21 Christmas Cards, Wholesale Price—50¢," and featured words "Free Sample Offer," and "We will cancel this invoice," followed by statement that if recipient sold certain number of boxes of such assortments within 15 days after receipt of sample assortment this would be done and that, failing this, remittance must be sent or box returned; and, if so-called free sample offer was not accepted and 50 cents paid, or assortment returned, sent recipient letter to effect 50-cent charge would be cancelled upon placing of \$3 order for additional samples to show prospects;

Facts being said, statements, representations, and prices quoted as above set forth were deceptive, false, and misleading and those replying in response to such free-sample advertisement had not ordered of said individual merchandise sent out as above set forth, said twenty-one-card assortment was not given free but recipient was required to pay for return, or order specified number of boxes within 15 days, to comply with directions of said individual, and assortment of cards thus shipped to such persons was not in fact free or sample offer since consideration in either payment of money or rendering of services was required of person receiving merchandise before assortment became, without obligation, his property;

With effect, through use of term "free sample" or word "free" and import and implication therein of delivery of said cards as gift or gratuity, of deceiving members of the purchasing public and inducing them to believe that all of said samples were to be delivered without cost or condition, and, because of such belief thus engendered, to request the sending of such samples, and with consequence of thereby placing them under obligation to said individual which they did not anticipate or intend to assume, in responding to said advertisement and ordering such "free" samples, and with result, through acts and practices of said individual in advertising said so-called free samples, and shipment to those replying, as above described, of said invoiced articles, and without prior notice of terms and conditions upon which shipped and without shipment having been authorized, of unfairly

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and deceptively imposing upon such members obligation either to pay for articles thus shipped or return same or perform services in payment, and of inducing many to pay for such merchandise in either money or services and of thereby increasing sale of said individual's merchandise in commerce: *Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. William L. Taggart for the Commission.

Mr. J. C. McManaway, of Clarksburg, W. Va., 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 Walter P. Phillips, individually and trading as Phillips Card Co., 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, Walter P. Phillips, is an individual operating and doing business under the trade name Phillips Card Co., with his principal office and place of business now located at 50 Hunt Street, Newton, Mass. Respondent formerly operated said business at 11 Beacon Street, Boston, Mass.

PAR. 2. Respondent is now, and for more than 3 years last past has been, engaged in the business of selling and distributing Christmas cards, gift wrappings, and similar products under the trade name Phillips Card Co. Said respondent now causes, and for more than 1 year last past has caused, his said products to be sold by mail order and otherwise through various advertising mediums and has caused the same, when sold, to be transported from his principal place of business in Newton, Mass., formerly Boston, Mass., to purchasers thereof located in various States of the United States other than the aforesaid State of Massachusetts, and in the District of Columbia.

There is now, and has been during all the times hereinabove stated, a course of trade in said products so sold by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business herein set out and described in paragraphs 1 and 2, respondent, in soliciting the sale of his aforesaid products, under pretense of soliciting agents for the sale of said products, and for the purpose of inducing the

purchasing public to buy said products, has circulated by mail certain statements and representations in advertisements published in newspapers and magazines having an interstate circulation, and in folders, pamphlets, and letters sent to purchasers and prospective purchasers through the mails, typical of which statements and representations, among others, are the following:

Amazing quick cash! Show fast selling Christmas Card with name. Low as 50 for \$1.00. 8 appealing assortments, 21 cards \$1.00. "Supercraft" in box, pays 100% profit. Sample free. Phillips Card, 11 Beacon, Dept. 2, Boston, Mass.

Take advantage of our liberal, below cost sample offer to secure your samples at special money-saving prices.

Special sample offer
E-X-T-R-E-N-D-E-D

5 sample boxes only \$1.75
Postpaid Regular price \$2.75
Samples worth \$4.60 retail
Big sample outfits FREE
* * *
SAVE MONEY
Samples Worth \$4.60 Retail
For Only \$1.75 Postpaid
* * *

Upon request for the free samples mentioned in said advertisements, respondent sends a folder containing 10 Christmas cards of various designs, so marked with matter printed thereon as to be useless except as sample advertising matter. In addition thereto, however, he sends a "Supercraft" assortment of 21 Christmas cards, unmarked and suitable for use, together with an invoice upon which is imprinted the following statement:

Supercraft Assortment 21 Christmas Cards. Wholesale price 50¢.
Free Sample Offer.

We Will Cancel This Invoice if you order 12 or more boxes of our Supercraft 21 card assortment within 15 days after you receive the sample assortment. After 15 days, since the sample box is sent you on approval your remittance must be sent to us or the box returned.

If the "free sample" offer appearing on the face of the invoice is not accepted, and the 50 cents paid, and the "Supercraft" assortment is not returned, the proposed respondent follows up with a "dunning" letter and a proposition whereby the recipient can secure another "free sample box" of cards upon payment of the 50 cents due for the "Supercraft" assortment and the placing of a \$3 order for cards. He is also offered a "cash bonus certificate" for the full amount of

the order and advised that the offer expires within a time therein specified.

PAR. 4. In truth and in fact, the statements and representations and prices quoted pursuant thereto, hereinabove set out, are deceptive, false, and misleading. Respondent has no order for, and the purported purchaser has not ordered, the merchandise sent out in the manner set forth hereinabove to members of the public who write in for respondent's "free sample" Christmas cards. Said purported "free sample" Christmas cards are not given free and are only given upon condition of the purchase of other merchandise; said special price of \$1.75 purported to be offered only to agents and only for a limited time for said 5 sample boxes of Christmas cards and wrappings represented to sell wholesale at \$2.75 and to have a retail selling price value of \$4.60 is not, in fact, a reduced or special price to agents only, for a limited period of time. Said price of \$1.75, alleged to be a special price for an alleged limited period of time is, in fact, the usual, regular, and customary retail selling price of said 5-box combination Christmas cards and wrappings, and respondent has regularly and customarily sold said 5-box combination packages of Christmas cards and wrappings to all purchasers for a period of several years at said price.

PAR. 5. In truth and in fact, the "Supercraft" assortment of 21 cards sent out by respondent on approval, as hereinbefore set-out, is not in fact "free" or a "free sample," since a consideration, either the payment of money or the rendering of services, is required of the person receiving said merchandise. The advertisement by respondent of "free samples" or any other use of the word "free" or a similar expression in a manner purporting to be a gift or gratuity has a tendency and capacity to deceive members of the public and to induce them to believe that such samples are in fact free, and by reason of such belief, so engendered, to request the sending of such samples. Said members of the consuming public did not and do not thereby anticipate or intend to obligate themselves either to pay for said merchandise or to perform services in lieu thereof or to return said merchandise.

The shipment by respondent of said invoiced articles of merchandise to a customer or prospective customer without prior notice of the terms under which said articles are to be sent and without having obtained permission to make such shipment, unfairly and deceptively imposes upon such customer or prospective customer a restraint either to pay for the goods so shipped or to return the same or to perform services in lieu thereof.

Furthermore, many of the individuals to whom the "Supercraft" assortment of 21 cards is sent by the respondent in the manner hereinabove set out have remitted to respondent the sum of 50 cents in accordance with the terms of the invoice. Respondent thereby is enabled to sell his products to many members of the general public and to receive his regular wholesale price therefor in cases where otherwise no sales would have been made. Respondent thereby receives additional revenue and increases his sales to the general public by the use of the aforesaid deceptive practices.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute 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 12th day of September 1940, issued, and on September 13, 1940, served, its complaint in this proceeding, charging the respondent, Walter P. Phillips, an individual, trading as Phillips Card Co., with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, a stipulation was entered into, whereby it was stipulated and agreed that a statement of facts, signed and executed by the respondent and by 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 said complaint 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Walter P. Phillips, is an individual operating and doing business under the trade name Phillips Card

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Co., with his principal office and place of business now located at 50 Hunt Street, Newton, Mass. Respondent formerly operated said business at 11 Beacon Street, Boston, Mass.

PAR. 2. Respondent is now, and for 20 years last past has been, engaged in the business of selling and distributing Christmas cards, gift wrappings, and similar products under the trade name Phillips Card Co. Said respondent causes said products, when sold, to be transported from his place of business in Massachusetts to the purchasers thereof located in various States of the United States other than the aforesaid State of Massachusetts and in the District of Columbia.

Respondent maintains a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, as described in paragraphs 1 and 2 hereof, respondent, in soliciting the sale of his aforesaid products and for the purpose of soliciting agents for the sale of said products, has circulated certain statements and representations in advertisements published in newspapers and magazines having a general circulation, and in folders, pamphlets, and letters sent to purchasers and prospective purchasers through the mails. Typical of such statements and representations are the following:

Amazing quick cash! Show fast selling Christmas Card with name. Low as 50 for \$1.00. 8 appealing assortments. 21 cards \$1.00. "Supercraft" in box, pays 100% profit. Samples free. Phillips Card, 11 Beacon, Dept. 2, Boston, Mass.

Take advantage of our liberal, below cost sample offer to secure your samples at special money-saving prices.

SAVE MONEY	
Samples Worth \$4.60 Retail	
For Only \$1.75 Postpaid	
Special Sample Offer	
Only one sample offer to salesman	
1 Gift Wrappings Assortment.....	.60
1 Everyday Assortment	.60
1 Etchings Assortment	.60
1 Religious Assortment	.60
1 Humorous Assortment	.35
Regular Wholesale Price	\$2.75
Retail Selling Price	\$4.60
Costs You Only \$1.75 Postpaid	

Under request for the "free samples" mentioned in said advertisements, respondent sends a folder containing 10 Christmas cards of various designs so marked with matter printed thereon as to be used

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as display samples. In addition thereto, however, he sends a "Supercraft" assortment of 21 Christmas cards, unmarked and suitable for use, together with an invoice upon which is imprinted the following statement:

Supercraft Assortment
21 Christmas Cards
Wholesale Price—50¢

FREE SAMPLE OFFER

WE WILL CANCEL THIS INVOICE

if you order 12 or more Boxes of our Supercraft—21 Card Assortment within 15 days after you receive the Sample Assortment. After 15 days, since the Sample Box is sent on approval, your remittance must be sent to us or the box returned.

If the "free sample" offer appearing on the face of the invoice is not accepted and the 50 cents paid, and the "Supercraft" assortment is not returned, the respondent sends to the recipient of said so-called "free sample offer" a letter containing a further offer whereby the 50 cents charge will be canceled upon the placing of a \$3.00 order for additional samples to show to prospects.

PAR. 4. In truth and in fact, the statements, representations, and prices quoted pursuant thereto, hereinabove set out, insofar as the "Supercraft" assortment is concerned, are deceptive, false, and misleading. Respondent has no order for, and the prospective purchaser has not ordered, the merchandise sent out, in the manner set forth above, to members of the public who write in for respondent's "free sample" Christmas cards. Said "Supercraft" assortment of 21 Christmas cards is not given free, but the recipient is required to pay for, return, or order 12 or more boxes of said assortment within 15 days to comply with respondent's directions. The "Supercraft" assortment of 21 cards shipped to persons requesting "free samples" in response to said advertisement of the respondent, as hereinabove set out, is not in fact "free" or a "free sample," since a consideration, either the payment of money or the rendering of services, is required of the person receiving said merchandise before said assortment becomes the property of the recipient without obligation to the respondent.

The use by respondent of the term "free sample" or the word "free" in said advertisements, in the manner aforesaid, imports and implies the delivery of said cards as a gift or gratuity, and has the tendency and capacity to, and does, deceive members of the purchasing public and to induce them to believe that all of said samples are to be delivered without cost or condition, and, because of such erroneous belief so engendered, members of the purchasing public are induced to request

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the sending of such samples and thereby are placed under an obligation to respondent which they did not anticipate or intend to assume when they responded to said advertisement and ordered the "free samples" advertised.

PAR. 5. The acts and practices of respondent in advertising said so-called "free samples" and the shipment by respondent to members of the public responding to such advertisement of said invoiced articles of merchandise without prior notice to such members of the public of the terms and conditions under which said articles are shipped and without having been authorized by such members of the public to make such shipments, unfairly and deceptively impose upon such members of the public an obligation either to pay for the articles of merchandise so shipped or to return the same or to perform services in payment therefor, and induce many members of the public to pay for said merchandise in money or services, thereby increasing the sales of respondent's said merchandise in commerce between and among the several 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 constitute 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 and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, Chief Counsel for the 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, Walter P. Phillips, individually and trading under the name Phillips Card Co. or any other name, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of Christmas cards, gift wrappings, and

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similar products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the words "free," or "free sample," or any other word or words indicating a gift or gratuity, to designate, describe, or refer to merchandise delivered to members of the public which is not delivered without cost and unconditionally.

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
HERMAN CHILTON, TRADING AS CHILTON GREETINGS
COMPANY

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

Docket 4313. Complaint, Sept. 12, 1940—Decision, Dec. 13, 1940

Where an individual engaged in interstate sale and distribution of greeting cards and Christmas wrapping materials; in advertising in various magazines and newspapers of national circulation, in course and conduct of his business and to induce purchase of his said cards and other merchandise by members of the general public—

Made use of words "Samples Free," and sent to those requesting free samples mentioned a folder containing such samples and, in addition, a box of greeting cards, accompanied by an invoice upon which appeared among other things advice that such assortment "is sent to you on approval so you may get started taking orders at once," and, under caption "Special free sample offer," statement "This memorandum bill will be cancelled if you return it to us with your order for 12 or more Blue Ribbon Christmas card assortments within 15 days from the time this bill is received," and advice that if said additional assortments were not ordered within such time limit "We will appreciate your sending a remittance of 50 cents to pay for the box," and "if not wanted please return promptly and bill will be cancelled"; facts being said 21-card assortment sent by him on approval as above set-out was not in fact free or a free sample, since either payment of money or rendering of services was required of person receiving such merchandise;

With tendency and capacity to deceive members of public and induce them to believe that such samples were in fact free, and, by reason thereof, to request sending of samples in question, neither anticipating nor intending to obligate themselves either to pay for such merchandise or perform services in lieu thereof or return same, and with result, through shipment by said individual of such invoiced articles to customer or prospective customer without prior notice of terms under which they were to be sent, and without having obtained permission to make such shipment, of unfairly and deceptively imposing constraint either to pay for goods thus shipped or return same, or perform services in lieu thereof, and with result further that many individuals remitted said 50 cents in accordance with terms of so-called memorandum bill of invoice, and such individual was thereby enabled to sell his products to many members of general public and receive his regular wholesale price therefor in cases where otherwise no sales would have been made, and thereby received additional revenue and increased his sales to general public through use of such deceptive practices, and members of public, relying upon truth of his false and misleading representations, were induced thereby to and did buy large quantities and amounts of his said cards and other merchandise: