

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:

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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.

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 Herman Chilton, an individual, trading as Chilton Greetings 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. The respondent, Herman Chilton, is an individual trading under the firm name and style of Chilton Greetings Co., with his principal place of business at 147 Essex Street, Boston, Mass. He is now, and for several years last past has been, engaged in the business of selling and distributing greeting cards and Christmas wrapping materials. Respondent causes his said greeting cards and other merchandise, when sold, to be transported from his aforesaid place of business in the State of Massachusetts to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said greeting cards and other merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business and for the purpose of inducing the purchase of said greeting cards and other merchandise by members of the general public respondent, by means of advertisements published in various magazines and newspapers of national circulation has made various false and misleading representations. Among and typical of such false and misleading representations are the following:

Christmas Cards, 50 for \$1.00 With Name, Best Yet.

New! Sensational! Striking! Personal Christmas Cards with sender's name inscribed. Low as 50 for \$1. Just show samples—take orders. Big profits. Wide variety designs, prices. Also famous new 21 card "Blue Ribbon" Christmas Box Assortment, sells for \$1—pays you 10¢. Outstanding value. Many other fast sellers. No experience needed. Samples free. Chilton Greetings, 147-D Essex St., Boston, Mass.

Newest Money Makers! Personal Christmas Cards with customer's name imprinted. Sell Low as 50 for \$1. Earn big money fast just showing gorgeous

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new designs. Amazing values. Customers everywhere buy almost on sight. You get highest profits. Samples free. "Blue Ribbon" Box Wins Sales. 21 lovely Christmas Folders of irresistible beauty, appeal and charm. Fastest seller out at \$1 retail—you make 100% profit! Also 9 other Box Assortment leaders to boost earnings. Free Sample Offer!

Upon request for the free samples mentioned in said advertisement, respondent sends a folder containing such samples, and in addition thereto sends a box of greeting cards accompanied by an invoice upon which is imprinted the following statement:

This sample Blue Ribbon Christmas Folder Assortment is sent to you "on approval" so you may get started taking orders at once.

Special Free Sample Offer.

This memorandum bill will be cancelled if you return it to us with your first order for 12 or more Blue Ribbon Christmas Assortments within 15 days from the time this bill is received. This sample box will then be yours free. If you do not order 12 Blue Ribbon Christmas Assortments within the 15 day time limit, we will appreciate your sending a remittance of 50 cents to pay for the box. If not wanted, please return promptly and bill will be cancelled.

PAR. 3. In truth and in fact, the 21 card "Blue Ribbon" Christmas Box Assortment sent 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 constraint 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 21-card "Blue Ribbon" Christmas Box Assortment 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 "memorandum bill" or

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 volume of sales to the general public by the use of the aforesaid deceptive practices.

PAR. 4. As a result of respondent's false and misleading representations, plans, and methods, as above set-out, members of the public, believing and relying on the truth of said representations, have been induced thereby to buy, and have bought, large quantities and amounts of respondent's greeting cards and other merchandise.

PAR. 5. The aforesaid acts and practices of the 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 September 12, 1940, issued and served its complaint in this proceeding upon respondent, Herman Chilton, an individual, trading as Chilton Greetings Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 28, 1940, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint, and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Herman Chilton, is an individual trading under the firm name and style of Chilton Greetings Co., with his principal place of business at 147 Essex Street, Boston, Mass. He is now, and for several years last past has been, engaged in the business of selling and distributing greeting cards and Christmas wrapping materials. Respondent causes his said greeting cards and other merchandise, when sold, to be transported from his aforesaid place of business in the State of Massachusetts to purchasers thereof located in

various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said greeting cards and other merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business and for the purpose of inducing the purchase of said greeting cards and other merchandise by members of the general public respondent, by means of advertisements published in various magazines and newspapers of national circulation has made various false and misleading representations. Among and typical of such false and misleading representations are the following:

Christmas Cards, 50 for \$1.00 with Name, Best Yet.

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Newest Money Makers! Personal Christmas Cards with customer's name imprinted. Sell Low as 50 for \$1. Earn big money fast just showing gorgeous new designs. Amazing values. Customers everywhere buy almost on sight. You get highest profits. Samples free. "Blue Ribbon" Box Wins Sales. 21 Lovely Christmas Folders of irresistible beauty, appeal and charm. Fastest seller out at \$1 retail—you make 100% profit! Also 9 other Box Assortment leaders to boost earnings. Free Sample Offer!

Upon request for the free samples mentioned in said advertisement, respondent sends a folder containing such samples, and in addition thereto sends a box of greeting cards accompanied by an invoice upon which is imprinted the following statement:

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This memorandum bill will be cancelled if you return it to us with your first order for 12 or more Blue Ribbon Christmas Assortments within 15 days from the time this bill is received. This sample box will then be yours free. If you do not order 12 Blue Ribbon Christmas Assortments within the 15 day time limit, we will appreciate your sending a remittance of 50 cents to pay for the box. If not wanted, please return promptly and bill will be cancelled.

PAR. 3. In truth and in fact, the 21 card "Blue Ribbon" Christmas Box Assortment sent 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 constraint 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 21-card "Blue Ribbon" Christmas Box Assortment is sent by the respondent in the manner hereinabove set out have remitted to respondent the sum of fifty cents in accordance with the terms of the "memorandum bill" or 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 volume of sales to the general public by the use of the aforesaid deceptive practices.

PAR. 4. As a result of respondent's false and misleading representations, plans, and methods, as above set-out, members of the public, believing and relying on the truth of said representations, have been induced thereby to buy, and have bought, large quantities and amount of respondent's greeting cards and other merchandise.

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 the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all inter-

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vening procedure and further hearing as to said facts, 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, Herman Chilton, individually and trading under the name Chilton Greetings 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 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.

Syllabus

IN THE MATTER OF

CUP AND CONTAINER INSTITUTE, INC., ET AL

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

Docket 4036. Complaint, Feb. 17, 1940—Decision, Dec. 14, 1940

Where some 10 corporations and businesses, engaged in manufacture, as case might be, of paper drinking cups, paper food containers, ice cups, ice tubs and related products, and in interstate sale and distribution thereof to franchise distributors, wholesalers, jobbers, retailers, users, and other purchasers, and members then or thereafter and since 1935 of their Institute, or trade association, organized 2 years theretofore and during existence of the National Recovery Administration, and two other similarly engaged corporations which, while never members, cooperated with officers, directors, and members of such Institute and participated in some of the activities below set forth; constituting together dominant factors in paper drinking cup and paper food container industry and controlling more than 60 percent of the output and sale thereof, since 1938 in active and substantial competition with each other and with other members of the industry in the sale of their said products in commerce as aforesaid, and prior thereto and to adoption and use of acts, practices and methods below set-out, in active and substantial competition with each other and with other members of the industry in the sale of their said products in commerce as aforesaid, and which competition, but for such acts and practices, would have continued—

Entered into, along with certain other cooperating manufacturers and their aforesaid Institute, understandings and agreements, and carried out same through and by means of such Institute and various individuals, its officers, executive directors, and other directors; and thereby and as a result of and in pursuance of such various understandings and agreements thus entered and reached—

- (a) Fixed and maintained in many instances uniform minimum prices for some of their aforesaid products, and filed with their said Institute their respective published price lists, discounts and terms of sale, and for more than a year subsequent to invalidation of said National Recovery Act in May 1935, notified such Institute of any deviation from their price lists by giving notice in writing five days prior to effective date thereof;
- (b) Filed also with Institute sample copy of their franchise wholesaler, jobber, and user contract forms, and of their total individual dollar sales, and various other statistics pertaining to previous months' operations and various other related past periodical operating statistics;
- (c) Debated and thrashed out at Institute meetings question of general price increase by all members and as result thereof and acting through instrumentality of said Institute and certain individuals, its general officers, agreed upon and established and rigidly adhered to general price increase of 15 percent on drinking and soda cups and certain dishes and food containers;