

IN THE MATTER OF
WALLACE BROWN, INC.

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

Docket 4312. Complaint, Sept. 12, 1940—Decision, Jan. 23, 1941

Where a corporation engaged in sale and distribution of greeting cards to purchasers in various other States and in the District of Columbia, and, as thus engaged, in contacting prospective agents to market such cards through advertisements in various newspapers and magazines of national circulation which were placed, as far as possible, under such classifications as "Sales Help Wanted" and bore such captions, among others, as "CHRISTMAS CARDS FASTEST SELLING LINE IN 18 YEARS," "Saleswomen CHRISTMAS CARDS MIRACLE LINE," etc., and in sending to those answering and requesting samples, sample illustrative portfolio and also salable merchandise consisting of, usually, its so-called "Golden Value" 21-card box assortment retailing at \$1.00, together with so-called "Statement" from it, which, following its address, read "For 1 'Golden Value' Christmas Card Box Assortment (Retail Value \$1.00) * * * 50¢," followed by words "THIS IS NOT A BILL—Please Read: * * * is sent to you on approval * * *," and advice to reader that by order of 12 boxes of any kind of it at its regular wholesale prices, assortment in question became reader's property, and request, in event he should be unable to sell such box, to return same to it or, if he wished to keep it, to send 50 cents "in payment of this statement"—

Made use of such words as "SAMPLES FREE" in such contact advertisements as above referred to, facts being said 21-card "Golden Value" assortment sent on approval by it as above set out, was not in fact "free" or a "free sample," since consideration either in payment of money or rendering of services was required of person receiving such merchandise which, thus, was not delivered without cost or unconditionally;

With tendency and capacity to deceive some members of public and induce them, not anticipating or intending to obligate themselves either to pay for merchandise or to perform services in lieu thereof or return such merchandise, to request sending of such "free samples," and with result that many members of public, and especially those who had not previously acted as agents for it, replied to its said advertisements by requesting the shipment of the "free samples" mentioned therein, and there was imposed thereon, through shipment of unwanted merchandise in delivery thereto of said 21-card box assortments as above described, constraint either to pay for the goods thus shipped or return same or perform services in lieu thereof, and many members of public to whom said assortments were shipped in response to inquiries as above set forth, and without their permission and knowledge on their part as to terms and conditions imposed by it as above described, paid to it sum of money indicated as purchase price, and some

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returned same to it or performed services required by it in lieu of payment therefor:

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.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Shaffer & Pierson, 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 Wallace Brown, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Wallace Brown, Inc., is a New York corporation with its principal office and place of business at 225 Fifth Avenue, New York, N. Y. It is now, and for several years last past has been, engaged in the business of selling and distributing greeting cards. Said respondent, being engaged in business as aforesaid, causes said greeting cards, when sold, to be transported from its place of business in the State of New York 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 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 its said business and for the purpose of inducing the purchase of said greeting cards, respondent has contacted dealers for the marketing thereof, by means of advertisements published in various magazines and newspapers of national circulation. The following advertisements are typical of those so used:

CHRISTMAS CARDS
FASTEST SELLING LINE
IN 18 YEARS

Don't experiment. Earn more with vast selection, nationally known, magnificent personal cards, personal stationery. Also 7 thrilling box assortments! "Golden Value" 21-card \$1 assortment, 65¢ religious box. Funniest humorous

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asst; gift wrappings, etchings, others. Profits up to 100%. Experience unnecessary. Easy to start. Samples free. Wallace Brown, 225 Fifth Ave. Dept. 1007, New York.

Saleswomen

CHRISTMAS CARDS

MIRACLE LINE

Easiest Sellers Thrill America
and Offer Unheard of Earnings

DON'T EXPERIMENT—GET THE BEST

Wallace Brown 1939 Collection of Personal Christmas Cards and Stationery with name imprinted make earning money real fun, because customers are amazed, delighted, with sensational values. Never before so many sparkling new, different cards for so little money. Why work hard? Show this line—**MAKE MORE MONEY, faster.**

MANY BOX ASSORTMENTS

New "Golden-Value" 21-Card \$1 Box Assortment pronounced super-value of season. Your profit 100%. Cash bonus. See for yourself. Also 65¢ Religious Assortment, sensational value. Gift wrappings, Etchings, Humorous, others. Easy. Costs nothing to start. Use spare time. Experience unnecessary. **SAMPLES FREE.** Call or write today. **WALLACE BROWN, INC. 36 S. STATE ST. DEPT. CT.**

In response to those persons answering such advertisements and requesting samples, the respondent sends a sample portfolio illustrating various Christmas cards and assortments. In addition thereto, it sends salable merchandise, usually its so-called "Golden-Value" 21-Card Box Assortment retailing at \$1, accompanied by a so-called "Statement" reading as

STATEMENT FROM

WALLACE BROWN, INC.

36 S. State Street, Chicago, Ill.

For 1 "Golden-Value" Christmas

Card Box Assortment (Retail Value \$1.00) * * * 50¢.

THIS IS NOT A BILL—Please Read: The "Golden-Value" Christmas Greeting Card Assortment is sent to you on approval. As soon as you have ordered only 12 Boxes of any kind at our regular wholesale prices, this box becomes your property, free of a penny cost. Should you be unable to sell for us, kindly return the Box to us. If you want to keep it for personal use, send us only 50¢ in payment of this statement. You save 50¢.

PAR. 3. In truth and in fact, respondent's practice of advertising "free samples" and then sending in addition unsolicited shipments of invoiced goods to persons merely requesting the samples offered as "free" is inherently misleading, deceptive and unfair. All the

goods actually received are not free, and a wholly unexpected demand is thereby imposed upon the inquirer, to pay for said unsought merchandise, by cash or services, or else return the same.

The 21-Card "Golden-Value" Christmas Greeting Card 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 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 request the sending of such free samples. They do not thereby anticipate or intend to obligate themselves either to pay for merchandise or to perform services in lieu thereof or to return said merchandise.

The shipment by respondent of 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 permission obtained 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 "Golden-Value" 21-Card \$1 Box Assortment is sent by respondent in the manner hereinabove set out have remitted to respondent the sum of fifty cents in accordance with the terms of the "Statements." Respondent thereby is enabled to sell its products to many members of the general public and to receive its regular wholesale price therefor in cases where otherwise no sales would have been made. Respondent thereby receives additional revenue and increases its volume of sales to the general public by the use of the aforesaid deceptive sales 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 to buy, and have bought, large quantities and amounts of respondent's greeting cards.

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 the 12th day of September 1940, issued and served its complaint in this proceeding upon said respondent, Wallace Brown, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and substitute therefor an amended answer, which amended answer was duly filed in the office of the Commission. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, Shaffer & Pierson, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceedings without the presentation of arguments or the filing of briefs. Respondent expressly waived the filing of a report upon the evidence by a trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, amended answer, and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Wallace Brown, Inc., is a New York corporation with its principal office and place of business at 225 Fifth Avenue, New York, N. Y.

Respondent is now, and for several years past has been, engaged in the business of selling and distributing greeting cards. Said respondent now causes and for more than one year last past has caused said greeting cards, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States other than the aforesaid State of New York, 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. 2. In the course and conduct of its said business and for the purpose of procuring agents for the sale of said greeting cards, respondent has contacted prospective agents for the marketing thereof by means of advertisements published in various newspapers and magazines of National circulation. Said advertisements, as far as possible, are placed under the classification of "Sales Help Wanted", or some such similar designation or classification. The following advertisements are typical of those so used:

CHRISTMAS CARDS
FASTEST SELLING LINE
IN 18 YEARS

Don't experiment. Earn more with vast selection, nationally known, magnificent personal cards, personal stationery. Also 7 thrilling box assortments! "Golden Value" 21-card \$1 assortment, 65¢ religious box. Funniest humorous asst.; gift wrappings, etchings, others. Profits up to 100%. Experience unnecessary. Easy to start. Samples free. Wallace Brown, 225 Fifth Ave. Dept. 1007, New York.

Saleswomen

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MIRACLE LINE

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MANY BOX ASSORTMENTS

New "Golden-Value" 21-Card \$1 Box Assortment pronounced super-value of season. Your profit 100%. Cash bonus. See for yourself. Also 65¢ Religious Assortment, sensational value. Gift wrappings, Etchings, Humorous, others. Easy. Costs nothing to start. Use spare time. Experience unnecessary. SAMPLES FREE. Call or write today. WALLACE BROWN, INC. 36 S. STATE ST. DEPT. CT.

In response to those persons answering such advertisements and requesting samples, the respondent sends a sample portfolio illustrating various Christmas cards and assortments. In addition there-

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to, it sends salable merchandise, usually its so-called "Golden-Value" 21-Card Box Assortment retailing at \$1, accompanied by a so-called "Statement" reading as follows:

STATEMENT FROM
WALLACE BROWN, INC
36 S. State Street, Chicago, Ill.
For 1 "Golden-Value" Christmas
Card Box Assortment (Retail Value
\$1.00) * * * 50¢

THIS IS NOT A BILL—Please Read: The "Golden Value" Christmas Greeting Card Assortment is sent to you on approval. As soon as you have ordered only 12 Boxes of any kind at our regular wholesale prices, this box becomes your property, free of a penny cost. Should you be unable to sell for us, kindly return the Box to us. If you want to keep it for personal use, send us only 50¢ in payment of this statement. You save 50¢.

PAR. 3. In truth and in fact, the so-called "Golden-Value" 21-Card Box Assortment is not free in that a request is thereupon made upon the inquirer to pay for said merchandise by cash or services, or else return the same. The 21-Card "Golden-Value" Christmas Greeting Card 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 a gift or gratuity, has a tendency and capacity to deceive some members of the public and to induce them to request the sending of such free samples, in that they may not anticipate or intend to obligate themselves either to pay for merchandise or to perform services in lieu thereof or to return said merchandise.

Many members of the public, especially those who have not previously acted as agents for respondent, have replied to respondent's advertisements hereinbefore set out, by requesting the shipment of the "free samples" mentioned in the advertisements. When respondent complies with such requests by shipping its so-called "Golden-Value" 21-Card Box Assortment on the condition that it be paid for in cash or services or returned to the respondent, such assortment is not in fact "free" or a "free sample," since it is not delivered without cost or unconditionally. Such shipment of unordered merchandise imposes upon the recipient thereof a constraint either to pay for the goods so shipped or to return the same or to perform services in lieu thereof.

Many members of the public to whom said "Golden-Value" Assortment has been shipped in response to inquiries resulting from the aforementioned advertisements, without their permission and without knowledge on their part as to the terms and conditions imposed by respondent, as above set out, have paid to the respondent the sum of money indicated as the purchase price, while some have returned said assortment to the respondent or performed the services required by the respondent in lieu of payment for said assortment.

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, the amended answer of the respondent 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, Wallace Brown, 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 greeting cards 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 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.

IN THE MATTER OF
VONNEGUT HARDWARE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4344. Complaint, Oct. 10, 1940—Decision, Jan. 23, 1941

Where a corporation engaged in manufacture of its self-releasing fire exit, or panic devices, as known to trade, and in sale and distribution thereof to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of fire exit latches and devices between and among the various States and in said District—

Discriminated in price between different purchasers buying its said panic devices of like grade and quality, through granting to some purchasers 40 percent discount from list, while contemporaneously granting to other purchasers, competitively engaged with group receiving said discount of 40 percent, 50 percent discount from uniform list price aforesaid;

With result that effect of said discriminations in price, through such differential in prices charged to competing purchasers, for which no justification was affirmatively shown or claimed, had been and might be substantially to injure, destroy, or prevent competition with it, and also with those purchasers who received benefits of said discriminatory prices:

Held, That said corporation, under facts and circumstances set forth, discriminated in price between purchasers of its said fire exit devices, in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. John G. Rauch, of Indianapolis, Ind., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Vonnegut Hardware Co., a corporation, is violating, and since June 19, 1936, has violated the provisions of section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows.

PARAGRAPH 1. Vonnegut Hardware Co., respondent herein, is a corporation organized and existing under the laws of the State of Indiana, with its principal office located at 120 East Washington Street, Indianapolis, Ind. Respondent operates a number of retail hardware stores in Indianapolis, Ind., and also is engaged in the manufacture of