

Syllabus

IN THE MATTER OF

**ALEXANDER WEILER AND LILLY GREENSPAN WEILER,
DOING BUSINESS AS NEW YORK PREMIUM NOVELTY
COMPANY**

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

Docket 3579. Complaint, Sept. 10, 1938—Decision, Jan. 24, 1941

Where two individuals engaged in sale and distribution of jewelry, cosmetics, cigarette lighters, electric lamps, razor blades, clocks, and various other articles of merchandise, to purchasers in the various States; in conducting their business as above set forth—

Made use of sales plan or method involving game of chance, gift enterprise or lottery scheme, pursuant to and as a part of which they distributed and caused to be distributed, to representatives and prospective representatives in the various States, between 800,000 and 1,000,000 advertising or sales circulars containing pull card device and depictions of various articles of their merchandise, for sale and distribution to purchasing public under a plan by which determination of which of a number of articles enumerated, together with prices assigned thereto, in said circular, purchaser received, and prices paid by purchaser for such article and whether article having retail value and regular price greater than that designated therefor was thus secured, were determined by lot or chance, in accordance with number disclosed under particular tab of card selected by purchaser, and operator of card was compensated, after sale of all chances and remission of money, through opportunity to select, as premium, from other articles depicted in their said sales or advertising circular, article, or, at his option, by premium in cash which he might deduct from amount remitted; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale and distribution of their said merchandise, in accordance with sales plan or method above set forth, by persons or representatives to whom they furnished or distributed said sales or advertising circulars, containing such pull card devices as above set forth, and who used same in purchasing, selling, and distributing their said merchandise in accordance with such plan or method as above described, and notwithstanding "Notice to Purchaser" on each pull tab device advising reader that he had option of buying from holder of the book any article listed thereon at price shown, and under which sales plan or method facts as to whether purchaser received article of greater retail value than price designated therefor on tab, and which of said articles he received, and amount of money which he was required to pay therefor, were determined wholly by lot or chance, and benefits of which method said individuals reaped, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with those who are unwilling to use said or any other sales plan or method involving game of chance, gift enterprise, or lottery scheme, or any other sales plan or method which is contrary to public policy, and refrain therefrom;

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With the result that, because of said element of chance involved in said sales plan or method employed by said individuals as above set forth, many persons were induced to buy and sell their said merchandise in preference to that offered for sale and sold by competitors, and with consequence that substantial trade was diverted to them from their said competitors in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Randolph Preston*, trial examiner.

Mr. D. C. Daniel for the Commission.

Mr. Arthur D. Herrick, of New York City, for respondents.

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 Alexander Weiler and Lily Greenspan Weiler, individually, and doing business under the name of New York Premium Novelty Co., hereinafter referred to as respondents, have 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. Respondents, Alexander Weiler and Lily Greenspan Weiler, are individuals doing business under the name of New York Premium Novelty Co., with their principal office and place of business located at 168 Avenue A, New York, N. Y. Respondents maintain mailing addresses at 1123 Broadway, New York, N. Y., and 24 West Twentieth Street, New York, N. Y. Respondents are now, and for some time last past have been, engaged in the sale and distribution of chinaware, tableware, aluminum ware, dresser sets, electric irons, electric toasters, electric lamps, cameras, clocks, watches, tool sets, salt and pepper sets with trays, thermometers, cigarette cases, jewelry, cosmetics, razor blades, clothing, fountain pen and pencil sets, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be shipped or transported from their principal place of business aforesaid to purchasers thereof in the various States of the United 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 respondents 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, respondents are and have been in competition with other partnerships and individuals and with corporations engaged in the sale and distribution of like or similar articles of merchandise between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and distribute and have sold and distributed said products by means of a game of chance, gift enterprise, or lottery scheme. The respondents distribute or cause to be distributed to representatives and prospective representatives certain advertising literature including a sales circular. Respondents' 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 facts as to whether a purchaser of one of said pull card tabs receives an article which has an apparent greater value and higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the

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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 respondents, said respondents thereupon ship 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.

Respondents sell and distribute and have sold and distributed various assortments of said merchandise and furnish and have 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 respondents furnish and have furnished the said pull cards use and have used the same in purchasing, selling and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others a means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and 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 and distribute merchandise in competition with the respondents, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' 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 respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use

the same or an equivalent method. The use by respondents of said method, because of said games of chance, has the capacity and tendency to and does unfairly divert trade and custom to respondents from their said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and 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 10, 1938, issued and thereafter served its complaint in this proceeding upon Alexander Weiler and Lilly Greenspan Weiler (named in the complaint as Lily Greenspan Weiler), individually and doing business under the name of New York Premium Novelty Co., charging them with the use of unfair methods of competition in commerce and 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 respondents' 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., counsel for the Commission (respondents having offered no evidence in opposition to the allegations of the Commission's 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, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel for the Commission and counsel for the respondents, 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. Respondents, Alexander Weiler and Lilly Greenspan Weiler (named in the complaint as Lily Greenspan Weiler), are individuals doing business under the name of New York Premium Novelty Co., with their principal office and place of business located at 168 Avenue A, New York, N. Y. Respondents maintain mailing addresses at 1123 Broadway and 24 West Twentieth Street, New York, N. Y. Respondents are now, and for more than five years last past have been, engaged in the sale and distribution of jewelry, cosmetics, cigarette lighters, electric lamps, razor blades, clocks, cameras, dresser sets, watches, kitchenware, tableware and various other articles of merchandise in commerce between and among the various States of the United States. Respondents cause and have caused said products when sold to be shipped or transported from their aforesaid place of business in New York, N. Y., 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 five years last past, a course of trade in such products by respondents in commerce between and among the various States of the United States.

PAR. 2. In so conducting their said business as hereinabove described, respondents have distributed and caused to be distributed between 800,000 and 1,000,000 advertising or sales circulars, each of which contained what is commonly known as a pull card device, to representatives and prospective representatives located in the various States of the United States. Such circulars also contained picturizations of various articles of respondents' merchandise. Respondents' said merchandise is, and has been, sold and distributed to the purchasing public in substantially the following manner:

Said pull card device 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 and prospective purchasers are unable to ascertain which articles of merchandise they are to receive or the prices to be to be paid therefor until after the tabs are separated or removed from the said pull tab device. Adjacent to said device there is a list of the articles of merchandise and the prices thereof, corresponding to the various articles of merchandise and the prices thereof, as concealed under said tabs. 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 retail values and regular prices greater than the prices so designated for them but

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are distributed to the consumer or purchaser for the price designated on the tab which he pulls or removes from said device. The apparent greater values and regular prices of some of said articles of merchandise as compared to the prices the prospective customer will be required to pay in the event he secures one of said articles of merchandise, induce members of the purchasing or consuming public to select and pull the tabs in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid therefor. The facts as to whether a purchaser receives an article of greater retail value than the price designated therefor on such tab, which of said articles of merchandise the purchaser is to receive, and the amount of money which the purchaser is required to pay are thus determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the articles of merchandise listed under said tabs, collected the amounts charged therefor and remitted the money to the respondents, said respondents thereupon ship to or transport to said representative the merchandise sold by means of said device by said representatives, together with a premium for the representative as compensation for operating the device and selling and distributing the said merchandise. Such premium is selected by said representative from other articles of merchandise picturized in said sales or advertising circular. If the said representative so desires he may deduct a cash premium in lieu of said merchandise premium. Said representative delivers the articles of merchandise to the purchasers thereof in accordance with the list filled out when the tabs were removed or detached from the device as above described.

Immediately above said pull tab device there appears the following:

NOTICE TO PURCHASER: 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 book the price shown on the slip. If you do not want the article you need not buy it.

The Commission finds that, regardless of said notice, the said articles of merchandise have been and are, in fact, sold and distributed by means of said pull card devices in accordance with the sales plan or method described in paragraph 2 hereof.

Respondents, by means of the sales plan or method hereinabove described, have done an annual volume of business of between \$25,000 and \$30,000, 60 percent of which has been outside of the State of New York.

PAR. 3. The Commission finds that the persons or representatives to whom respondents have furnished or distributed said sales or advertis-

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ing circulars containing said pull card devices use and have used the same in purchasing, selling and distributing respondents' merchandise in accordance with the sales plan or method hereinabove described. Respondents have thus supplied to and placed in the hands of others a means of conducting lotteries in the sale and distribution of their said merchandise in accordance with the sales plan or method hereinabove described. Respondents' said merchandise has thus been sold and distributed by means of a game of chance, gift enterprise, or lottery scheme, and respondents have reaped the benefits therefrom. The use by respondents of said sales plan or method in the sale of their merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method 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 respondents have competitors who sell and distribute like or similar merchandise in commerce between and among the various States of the United States, which said competitors are unwilling to use said sales plan or method in the sale or distribution of their merchandise or any other sales plan or method involving a game of chance, gift enterprise, or lottery scheme, or any other 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 respondents as hereinabove found, many persons have been induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by respondents' said competitors.

PAR. 5. As a result of the use of said sales plan or method by respondents as hereinabove found, substantial trade is being, and has been, diverted to respondents from their said competitors in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and 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 answer of respondents, testimony and other evidence taken before Randolph Preston,

an examiner of the Commission heretofore duly designated by it in support of the allegations of said complaint (no evidence having been offered by respondents in opposition thereto), briefs filed herein and oral arguments by D. C. Daniel, counsel for the Commission, and Arthur D. Herrick, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Alexander Weiler and Lilly Greenspan Weiler (named in the complaint herein as Lily Greenspan Weiler) individually and doing business under the name of New York Premium Novelty Co., or under any other name, their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of jewelry, cosmetics, cigarette lighters, electric lamps, razor blades, clocks, cameras, dresser sets, watches, kitchenware and tableware, 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 means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the respondents shall within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
L. B. PATTERSON, TRADING AS NU-WAY MANUFACTURING COMPANY

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

Docket 3852. Complaint, July 15, 1939—Decision, Jan. 27, 1941

Where an individual engaged in competitive, interstate sale and distribution of electric "Speed King Water Heater" for heating water through immersion in vessel containing same when attached by cord to ordinary electric fixture outlet, through representatives or distributors under plan by which such person took and transmitted orders and retained as commission certain amount of deposit made by purchasers, or under which he purchased heaters from aforesaid individual and resold same to public for whatever price could be obtained therefor; in advertising in newspapers and other periodicals of general circulation to secure services of such representatives or distributors in various States—

- (a) Represented that said heater or device comprised or embodied fastest way known of heating water and boiled it instantly or in 60 seconds, and saved 50 percent of fuel bills and did the work of a \$50 heater or one costing 40 to 50 times as much, facts being it would not save owners aforesaid proportion, or any substantial percentage, of their total household gas and fuel bills, could not be used for cooking except insofar as boiling small quantities of water might be considered cooking, did not boil water almost instantly or boil in 60 seconds any quantity of water sufficient to be of practical use in connection with purposes for which heater was designed, and other statements and representations above with respect thereto were likewise false, misleading, and deceptive;
- (b) Represented and implied, through depiction of one of his said heaters with cord attached, disseminated as part of his advertising, and in connection with which there was arrow pointed to heater and printed legend "Underwriters Laboratory Seal of Approval," that both heater and cord attached thereto had received such approval, facts being representation and impression thus conveyed were untrue and misleading;
- (c) Represented that representatives or distributors had earned as much as \$36 a day and amounts ranging from \$10 to \$25 a day, and made profits of from 141 percent to 218 percent, through such statements as "Make up to 218% profit on your sales," "Make up to \$20 a day," "With this plan you ought to be able to place 36 a day and sell at least 30 of them at a profit of \$1.20 each to yourself * * *," and others of similar tenor, facts being no representative or distributor of said individual had ever earned \$36 a day, nor did his representatives, except in very unusual cases, if ever, earn from \$10 to \$25 a day or make profits ranging as above set forth;
- (d) Made use of such words as "Daring free-sample offer" and "I give you the demonstrator if you are honest with me and will send in orders * * *," and "Cut out this coupon * * * and mail it quick for my