

Syllabus

IN THE MATTER OF

IVAN D. HUSSEY, TRADING AS HUSCO MANUFACTURING COMPANY, THE HUSSEY MANUFACTURING & DISTRIBUTING COMPANY, ETC.

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

Docket 4386. Complaint, Nov. 23, 1940—Decision, Feb. 28, 1941

Where an individual engaged in interstate sale and distribution of hosiery, knives, fountain pens, and other articles in various assortments which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and included, as illustrative of kind of assortments and schemes, 24 pairs of men's hose and a push card, for use in their sale and distribution to purchasers under a plan, announced thereon, by which customer paid from 1 cent to 25 cents a pair, dependent upon particular number he secured by chance—

- (a) Sold such assortments to wholesalers, jobbers, and retailers by whom, as direct or indirect purchasers, they were exposed and sold to purchasing public in accordance with such sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of his merchandise in accordance with sales plan involving game of chance or sale of a chance to procure an article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use method involving game of chance or sale of a chance to win by chance or one contrary to public policy, and refrain therefrom;

With result that many persons were attracted by his said sales plan and element of chance involved therein, and were thereby induced to buy and sell his products in preference to those of his said competitors who do not use same or equivalent methods, thereby unfairly diverting trade in commerce from them to him, to the substantial injury of competition in commerce; and

- (b) Represented through use of word "Manufacturing" in various trade names employed by him, and otherwise, that he owned or operated a factory in which his products were made, and that he was the manufacturer of all of the products sold by him, facts being that, excepting one only, such products were purchased from others and were not made in a plant owned, operated, or controlled by him;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them mistakenly to believe that he was such a manufacturer, preferentially dealt with directly by substantial portion of purchasing public as securing them, in their belief, lower prices and other advantages not otherwise obtainable, and to purchase said articles from him as owner, operator, or controller of plant where same were made:

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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 competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. L. P. Allen, Jr., for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Ivan D. Hussey, individually and trading as Husco Manufacturing Co., The Hussey Manufacturing & Distributing Co., The Hussey Distributing Co., Hussey Co., Hussey Manufacturing Co., and Terry Products 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ivan D. Hussey, is an individual trading as Husco Manufacturing Co., The Hussey Manufacturing & Distributing Co., The Hussey Distributing Co., Hussey Co., Hussey Manufacturing Co., and Terry Products Co., with his principal office and place of business located at 85 Broad Street SW., Atlanta, Ga. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of hosiery, knives, fountain pens, ties, tobacco pouches, cigarette lighters, and other articles of merchandise. Respondent causes, and has caused, said products, when sold, to be transported from his aforesaid place of business in the State of Georgia to purchasers thereof at their respective points of location in various States of the United States other than the State of Georgia and in the District of Columbia. There is now, and for more than 1 year last past has been, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of merchandise

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so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment consists of 24 pairs of men's hose together with a device commonly called a push card. The push card bears 24 small partially perforated disks, on the face of each of which is printed the word "Push." Concealed within each disc is a number which is disclosed when the disk is pushed or separated from the card. The purchaser pays in cents the amount of the number punched from the said card, to and including the number 25. Purchasers punching numbers over 25 pay only 25 cents. The purchasers aforesaid receive one of said pairs of men's hose for the amount of money expended. The numbers are effectively concealed within the said disks until the disks are pushed or separated from the card. The push card bears a legend or instructions as follows:

EVERY PUNCH WINS

Pay What You Draw
1¢ to 25¢

YOU CAN'T LOSE

Every Punch Wins
One Pair Of
High Quality
MEN'S HOSE

ALL PUNCHES
ARE WINNERS

Sales of respondent's merchandise by means of said push card are made in accordance with the above-described legend or instructions. The amount said purchasers are to pay for said articles of merchandise is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various other push cards for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's merchandise expose and sell the same to the purchasing public

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in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 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 which is much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's said merchandise in preference to merchandise offered for sale and sold by said competitors of respondent, who do not use the same or equivalent methods. The use of said method by respondent, because of said game of chance, has a tendency and capacity to and does unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of his business as aforesaid, respondent, in soliciting the sale of and in selling his merchandise, has represented, through the use of the word "manufacturing" in his trade names Husco Manufacturing Co., The Hussey Manufacturing & Distributing Co., and Hussey Manufacturing Co., and by other means, that he owns or operates a factory where his products are manufactured and that he is the manufacturer of all of the products sold by him. While the respondent manufactures one of the products sold under the trade name Terry Products Co., all of the remaining

products are not manufactured in a plant owned, operated, or controlled by the respondent but are purchased from other parties.

PAR. 6. The use by the respondent of the word "manufacturing" in his trade names as aforesaid constitutes within itself a false and misleading representation that the respondent owns or operates a factory in connection with his said business and that he manufactures all of his said products.

PAR. 7. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with the manufacturer of products rather than with wholesalers, jobbers, or other dealers, such preference being due in part to a belief on the part of the public that by dealing directly with the manufacturer lower prices and other advantages may be obtained.

PAR. 8. The use by the respondent of the word "manufacturing" in his trade names, and by other means, as hereinabove alleged, has had and now has the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them to mistakenly and erroneously believe that the respondent is the manufacturer of such products and owns and operates or controls the plant wherein such products are manufactured, and to purchase respondent's products on account of such mistaken and erroneous belief.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's 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 November 23, 1940, issued and on November 25, 1940, served its complaint in this proceeding upon respondent, Ivan D. Hussey, individually and trading as Husco Manufacturing Co., The Hussey Manufacturing & Distributing Co., The Hussey Distributing Co., Hussey Co., Hussey Manufacturing Co., and Terry Products Co., charging him with the use of unfair methods of competition and unfair and deceptive acts or 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 to substitute therefor an answer admitting all the material allegations of fact set forth

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in said complaint and waiving all intervening procedure and further hearing as to said facts, which answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ivan D. Hussey, is an individual trading as Husco Manufacturing Co., The Hussey Manufacturing & Distributing Co., The Hussey Distributing Co., Hussey Co., Hussey Manufacturing Co., and Terry Products Co., with his principal office and place of business located at 85 Broad Street SW., Atlanta, Ga. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of hosiery, knives, fountain pens, ties, tobacco pouches, cigarette lighters, and other articles of merchandise. Respondent causes, and has caused, said products, when sold, to be transported from his aforesaid place of business in the State of Georgia to purchasers thereof at their respective points of location in various States of the United States other than the State of Georgia and in the District of Columbia. There is now, and for more than 1 year last past has been, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of merchandise so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment consists of 24 pairs of men's hose together with a device commonly called a push card. The push card bears 24 small

partially perforated disks, on the face of each of which is printed the word "Push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The purchaser pays in cents the amount of the number punched from the said card, to and including the number 25. Purchasers punching numbers over 25 pay only 25 cents. The purchasers aforesaid receive one of said pairs of men's hose for the amount of money expended. The numbers are effectively concealed within the said disks until the disks are pushed or separated from the card. The push card bears a legend or instructions as follows:

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Sales of respondent's merchandise by means of said push card are made in accordance with the above-described legend or instructions. The amount said purchasers are to pay for said articles of merchandise is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various other push cards for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's merchandise expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by the respondent of said sales plan or method in the sale of his 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.

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PAR. 4. The sale of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an article of merchandise at a price which is much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above found, 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 that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's said merchandise in preference to merchandise offered for sale and sold by said competitors of respondent, who do not use the same or equivalent methods. The use of said method by respondent, because of said game of chance, has a tendency and capacity to and does unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of his business as aforesaid, respondent, in soliciting the sale of and in selling his merchandise, has represented, through the use of the word "manufacturing" in his trade names, Husco Manufacturing Co., The Hussey Manufacturing & Distributing Co., and Hussey Manufacturing Co., and by other means, that he owns or operates a factory where his products are manufactured and that he is the manufacturer of all of the products sold by him. While the respondent manufactures one of the products sold under the trade name Terry Products Co., all of the remaining products are not manufactured in a plant owned, operated, or controlled by the respondent but are purchased from other parties.

PAR. 6. The use by the respondent of the word "manufacturing" in his trade names as aforesaid constitutes within itself a false and misleading representation that the respondent owns or operates a factory in connection with his said business and that he manufactures all of his said products.

PAR. 7. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with the manufacturer of products rather than with wholesalers, jobbers, or other dealers,

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such preference being due in part to a belief on the part of the public that by dealing directly with the manufacturer lower prices and other advantages may be obtained.

PAR. 8. The use by the respondent of the word "manufacturing" in his trade names, and by other means, as hereinabove found, has had and now has the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them to mistakenly and erroneously believe that the respondent is the manufacturer of such products and owns and operates or controls the plant wherein such products are manufactured, and to purchase respondent's products on account of such mistaken and erroneous belief.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce 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 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 intervening procedure and further hearings 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 Ivan D. Hussey, individually and trading as Husco Manufacturing Co., the Hussey Manufacturing & Distributing Co., The Hussey Distributing Co., Hussey Co., Hussey Manufacturing Co., and Terry Products Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of hosiery, knives, fountain pens, ties, tobacco pouches, cigarette lighters, or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing hosiery, knives, fountain pens, ties, tobacco pouches, cigarette lighters, or any articles of merchandise so packed and assembled that sales of such merchandise to the general

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public are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices either with assortments of merchandise or separately, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling or distributing such merchandise to the public.

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 respondent shall cease from the use of the word "manufacturer" or "manufacturing" as part of any trade name used by him unless and until he shall operate a factory wherein such merchandise is wholly manufactured.

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.

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IN THE MATTER OF
GENERAL MOTORS CORPORATION AND GENERAL
MOTORS SALES CORPORATION

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

Docket 3173. Complaint, July 16, 1937—Decision, Mar. 5, 1941

Where a corporate manufacturer of automotive vehicles, and its wholly owned selling subsidiary, engaged in such manufacture and in competitive interstate sale and distribution to its retail dealers of their cars, under various names and in various models, as previously sold by five corporate subsidiaries, since dissolved;

In their extensive advertising in newspapers and various periodicals and on billboards and through sundry other advertising media as carried on by them, and as theretofore carried on by said manufacturer and its five corporate subsidiaries prior to assumption of their functions by such subsidiary;

Made use of pricing practices which were misleading and deceptive, in that prices featured in their advertisements, in which explanatory matter, if any, was either inadequate or so inconspicuous as to be of no value in removing or curing deceptive tendencies inherent therein, were not in fact prices of cars illustrated or described, as set forth in price lists supplied by them to their retail dealers; and, in thus deceptively and misleadingly advertising their prices—

- (1) Quoted price along with depiction of a higher priced car, with no explanation at all, in some instances, which would advise the most careful reader that the car illustrated could not be purchased for price quoted, and in other instances, with higher priced car depicted shown in conjunction with price of cheaper car and words "And Up," with effect of thereby conveying false impression that pictured car was obtainable at featured price, but that more expensive models were available at a higher one;
- (2) Featured price, in other cases, in large figures in conjunction with illustrative or descriptive matter qualified by another and higher, and sometimes true, price in very small figures placed in some inconspicuous location on face of the advertisement, with result that members of public reading such advertisements expected to obtain car illustrated at place of manufacture for price emphasized in large figures, plus actual transportation charges to place of purchase;
- (3) Quoted and advertised prices to which, in small type, were added further charges for accessories appearing on car illustrated or described, with result that members of public expected to purchase car with equipment exactly as shown for price designated in large figures on face of advertisement, notwithstanding such expressions, in small type, in such advertisements as "accessories extra," "white side wall tires extra," "fender wells extra," and "optional equipment extra," which seemed entirely to escape their attention;
- (4) Quoted and advertised prices to which, without disclosure in their said advertising, they added certain charges for intangible items, including,