

Complaint

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IN THE MATTER OF

S. & K. SALES, INC.

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

Docket 3769. Complaint, Apr. 19, 1939—Decision, Apr. 14, 1941

Where a corporation engaged in interstate sale and distribution of tapestries, neckties, pipes, knives, fountain pens, and other articles of merchandise, to jobbers, wholesalers, and retailers, and in distributing circulars illustrating and explaining its plans and devices for the sale thereof—

Furnished to purchasers along with such merchandise various plans and devices which involved the operation of games of chance, gift enterprises, or lottery schemes in sale or distribution thereof to ultimate consumers, typical "deals" including, respectively, 12 neckties with bands of heavy paper or cardboard to be arranged by the retailer to enfold the narrow part of the tie, attached to pull tabs, separation of which disclosed particular amount, ranging from 1 cent to 25 cents, purchaser was to pay for tie, and 12 tapestry table covers, together with a punch card for use in sale thereof, under a plan by which the number secured by chance determined amount to be paid therefor, so placing, thereby, in the hands of others various devices involving chance or lottery schemes or games for distribution of its products, whereby they were distributed to ultimate consumers wholly by lot or chance;

With the result that trade was thereby diverted to it from competitors who are unwilling to and do not use any such method:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors, contrary to the established public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. L. P. Allen, Jr. and *Mr. William L. Pencke*, for the Commission.

McCarthy, Morris, Smith & Sparrow, of St. Louis, Mo., 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 S. & K. Sales, 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 interest

of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, S: & K. Sales, Inc., is a corporation organized and existing under the laws of the State of Missouri, with its principal office and place of business located at 104 North Broadway, St. Louis, Mo. Respondent is now and for some time last past has been engaged in the sale and distribution of tapestries, neckties, pipes, knives, fountain pens, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be transported from its aforesaid place of business in Missouri to purchasers thereof in the various other 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 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 corporations and with partnerships and individuals 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 its business as described in paragraph 1 hereof, respondent in soliciting the sale of and in selling and distributing its merchandise furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumer thereof wholly by lot or chance. Certain of said devices and plans are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various devices and plans nor does it include all of the details of the several devices and plans which respondent has been or is using in the sale and distribution of its said merchandise by lot or chance:

(a) Respondent distributes and has distributed to the purchasing and consuming public certain literature and instructions, including among other things push cards, illustrations of its merchandise and circulars explaining respondent's plan of selling and distributing merchandise to the purchasing and consuming public. One of respondent's push cards bears 12 small partially perforated disks, on the face of which is printed the word "push." Concealed within each disk is a number, which is disclosed when the disk is pushed

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or separated from the card. The purchaser pays in cents the amount of the number punched from the said card and receives an article of merchandise for the money expended. The numbers range from 1 to 39 and are effectively concealed within the said disk until it is pushed or separated from the card. The push cards bear legends as follows:

EVERY PUNCH WINS
No Blanks
1¢ to 39¢
Pay What You Punch—
From 1¢ to 39¢ No Higher
EVERY PLAY WINS

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends. 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 push cards accompanied by said instructions and other printed matter for use in the sale and distribution of its 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 said merchandise by means of said push card is the same as that hereinabove described, varying only in detail.

(b) Another device used by respondent in the sale and distribution of its said neckties consists of 12 neckties, along with 12 bands of cardboard, which are designed to be and are folded around the narrow portion of each necktie. Attached to said bands of cardboard are pull tabs, which when pulled or separated from the bands of cardboard reveal the amount the purchaser is to pay for the necktie. These amounts range from 1 cent to 25 cents and such numbers are effectively concealed from the purchaser or prospective purchaser until the pull tab is pulled or separated from the said band of cardboard.

Sales of respondent's neckties are made in accordance with the plan just described and the amount to be paid by purchaser for said neckties is thus determined wholly by lot or chance. The respondent furnishes and has furnished various pull tab devices for use in the sale and distribution of its neckties by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of said neckties by means of said pull tab device is the same as that hereinabove described, varying only in detail.

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PAR. 3. The persons to whom respondent furnishes and has furnished the said push cards and pull tab devices use the same in purchasing, selling, and distributing respondent's merchandise, in accordance with the aforesaid sales plans. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods 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 the 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 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 methods or any method or methods involving a game of chance or the sale of a chance to win something by chance, or any other method or methods that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of its merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's 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 methods by respondent, because of said games of chance, has a tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors who do not use the same or equivalent methods, and 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. The aforesaid acts and practices of 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 the 19th day of April, A. D., 1939, issued and thereafter served its complaint in this proceeding upon the respondent, S. & K. Sales, Inc., a corporation, charging it with 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 respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by L. P. Allen, Jr., and William L. Pencke, attorneys for the Commission, and in opposition to the allegations of the complaint by M. X. Morris, attorney for the respondent, before Miles J. Furnas, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding. 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, the testimony and other evidence, and brief in support of the complaint (no brief being filed by respondent and no oral argument requested). 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, S. & K. Sales, Inc., is a corporation organized and doing business under the laws of the State of Missouri, and having its principal office and place of business in the city of St. Louis, in said State.

PAR. 2. Respondent, for some time last past has been, and now is, engaged in the sale and distribution to jobbers, wholesalers, and retailers, of tapestries, neckties, pipes, knives, fountain pens and other articles of merchandise, and causes its said products, when sold, to be shipped from its principal place of business to purchasers thereof located in various States of the United States.

PAR. 3. Respondent, in the conduct of its business as set forth in paragraph 2 hereof, has been and now is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among various States of the United States.

PAR. 4. Respondent, in the sale and distribution of its merchandise described in paragraph 2 hereof, has furnished and furnishes to purchasers thereof various plans and devices which involve the operation of games of chance, gift enterprises, or lottery schemes, by means of which said merchandise is sold or distributed to the ultimate consumers. Typical of the methods used by respondent are the following:

(a) One of respondent's "deals" consists of twelve neckties with bands of heavy paper or cardboard to be arranged by the retailer to enfold the narrow part of the necktie; attached to said bands are "pull-tabs" which, when the ends are pulled and the tab separated from the band, discloses the amount the purchaser is to pay for the necktie; these amounts range from 1 cent to 25 cents and are effectively concealed until the tab has been pulled and separated from the band.

(b) Another of respondent's "deals" consists of twelve tapestry table covers and a "punch card" bearing the following caption:

Every Punch Wins	No Blanks
1¢ to 39¢	Pay What You Punch—
From 1¢ to 39¢	No Higher
Every Play Wins	

Ranged beneath this caption are 12 disks, each covering a perforation in the card; these perforations are also covered on the reverse side by twelve disks; on each of the face disks is printed the word "Push", and on the under side of these face disks, effectively concealed until the disk is pushed and removed from the card, is a number which indicates the amount to be paid in cents for the tapestry.

Other items of respondent's merchandise are sold by means of like or similar plans and devices.

PAR. 5. Respondent, in soliciting the sale of its merchandise "deals," has distributed and distributes to prospective or potential customers circulars illustrating and explaining its plans, methods and devices for the sale of its merchandise as set forth in paragraph 4 hereof.

PAR. 6. Respondent, by its sales methods hereinbefore described, places in the hands of others various devices which involve games of chance, gift enterprises, or lottery schemes to be used in the distribution of its merchandise, and by the use of said devices, said merchandise is distributed to the ultimate consumers wholly by lot or chance.

PAR. 7. During all the time herein mentioned respondent has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution, in commerce between

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and among various States of the United States, of merchandise similar to that sold by the respondent, and who are unwilling to use, and do not use, in the sale and distribution of their merchandise, any method involving a game of chance, gift enterprise or lottery scheme; and as a result of respondent's said methods, trade has been diverted from such competitors to the respondent.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondent's competitors and are contrary to the established public policy of the Government of the United States of America, and constitute unfair methods of competition in commerce and unfair 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 the respondent, the testimony and other evidence taken before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, brief filed herein by the attorney for the Commission (no brief being filed by respondent and oral argument not requested); and the Commission having made its findings as to the facts and its conclusion that the respondent, S. & K. Sales, Inc., a corporation, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, S. & K. Sales, Inc., its officers, directors, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of tapestries, neckties, pipes, knives, fountain pens or any other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Selling or distributing any merchandise so packed or assembled that sales of such merchandise to the 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, pull tabs, punchboards or other lottery devices either with assortments of merchandise or separately, which said push or pull cards, pull tabs, punchboards or lottery devices are to be used, or may be used, in selling or distributing said merchandise to the public.

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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 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
SAKS & COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 3456. Order, Apr. 15, 1941

Modified order in proceeding in question, in which original order issued on Apr. 3, 1940, 30 F. T. C. 898, and in which, following the filing of petition for review in the Circuit Court of Appeals for the Second Circuit to set aside such order, and the filing in the court by the Commission of a transcript of the entire record, parties executed a stipulation by the terms of which respondent agreed to dismiss its petition and the Commission agreed, thereupon, to set aside its said order, in lieu thereof, to make, enter, and serve a modified order as therein provided, and court accordingly, on motion of respondent, dismissed said petition, and Commission set aside its aforesaid order¹—

Requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of its furs or fur products or textile fabrics, including women's dresses and wearing apparel, to forthwith cease and desist from misrepresenting (1) customary worth, value, and prices of its furs or fur products, and (2) as new or "brand new" any fur coat not in fact new, and from using (1) unqualified descriptive term "satin," etc., to describe, etc., any fabric or product not composed wholly of silk, product of cocoon of the silkworm, and (2) term "silk," etc., to describe, etc., any fabric or product not composed wholly of silk, as aforesaid; as in said order in detail set forth, and subject to provisos therein stated in connection with use of aforesaid terms.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Robert Mathis, Jr. for the Commission.

Mr. Horace G. Hitchcock of Chadbourne, Wallace, Parke & Whiteside, of New York City, for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before Edward E. Reardon, Esq., an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Robert Mathis, Jr., Esq., counsel for the Commission, and by Horace G. Hitchcock, Esq., of the firm of Chadbourne, Wallace, Parke & Whiteside, counsel for the respondent, and the Commission

¹ See *post*, p. 1648.