

Complaint

IN THE MATTER OF
SANDERS 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 3526. Complaint, Aug. 4, 1938—Decision, June 12, 1941

Where a corporation engaged in the manufacture and the competitive interstate sale and distribution of advertising novelties, rulers, calendars, fans, flyswatters, punchboards, and various other articles—

Furnished purchasers various plans and devices which involved the operation of games of chance, gift enterprises, or lottery schemes by means of which said merchandise was distributed to the ultimate consumers wholly by lot or chance, and included, as typical, combination of one of the aforesaid articles of merchandise together with a punchboard for use under a sales plan providing that the purchaser of a "punch" who punched certain concealed number, received the article without additional payment, and purchasers of all other punches received nothing for their 5 cents except the "punch"; placing thereby in the hands of others various devices involving games or schemes of chance for distribution of its said merchandise to the ultimate consumer wholly by lot or chance, contrary to established public policy of the United States Government;

With result that many persons were attracted by aforesaid sales method and the element of chance involved therein and were thereby induced to purchase its merchandise in preference to that of its competitors who were unwilling to and did not use any such methods, and trade was unfairly diverted from them to it:

Held, That such acts and practices were all to the prejudice and injury of the public, and its competitors, and constituted unfair methods of competition in commerce.

Before *Mr. Arthur F. Thomas, Mr. John W. Addison, Mr. Miles J. Furnas* and *Mr. W. W. Sheppard*, trial examiners.

Mr. D. C. Daniel 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 Sanders Manufacturing Co., 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:

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PARAGRAPH 1. The respondent is a corporation organized and doing business under the laws of the State of Tennessee with its principal office and place of business located at 122-126 Fourth Avenue, South, in the city of Nashville, State of Tennessee. Respondent is now, and for some time last past has been, engaged in the business of selling and distributing various articles of novelty merchandise, including pencils, knife sharpeners, billhooks, pocket mirrors, key tags, and sand glasses. Respondent also sells and distributes knives and watches together with various punchboards and push cards. All of the above-described merchandise is sold and distributed by respondent for resale or distribution to the purchasing public. Respondent's customers are located in various States of the United States and in the District of Columbia, and the respondent causes its merchandise, when sold, to be transported from one of its places of business in the State of Tennessee or from the place of manufacture to the purchasers thereof in other States of the United States and in the District of Columbia, at their respective addresses. There is now, and has been for some time last past, a course of trade by said 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 its business, respondent is 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 certain of its products in commerce, has furnished or sold various punchboards or push cards which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is or may be or is designed to be distributed to the ultimate purchasers or consumers thereof wholly by lot or chance.

The punchboards or push cards, as sold or distributed by the respondent, have attached thereto watches or pocket knives and have printed on the top of said punchboards or push cards various statements or legends showing the manner or sales plan by which said articles of merchandise are to be sold or distributed to the purchasing or consuming public. Sales are generally 5 cents each and said punchboards or push cards have a number of holes or partially perforated disks and each purchaser is entitled to a punch or push from said punchboard or push card, and when a punch or push is made a printed slip or disk is separated and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until

a selection has been made and the punch or push completed. Certain specified numbers entitle purchasers to an article of merchandise. Persons obtaining numbers not so specified receive nothing for their money other than the privilege of making a punch or push from said board or card. The articles of merchandise attached to said board are offered for distribution and distributed to the public in accordance with the above described sales plan and the merchandise attached to said punchboards or push cards is thus distributed to the consuming or purchasing public wholly by lot or chance.

PAR. 3. Retail dealers who purchase or procure respondent's said merchandise and punchboards or push cards either directly or indirectly from respondent expose said devices and the merchandise attached thereto to the purchasing public and sell or distribute such articles of merchandise in accordance with the above described sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale of said merchandise in accordance with the sales plan hereinabove set forth. Such sales plan has the tendency and capacity to induce the consuming or purchasing public to purchase respondent's merchandise in preference to similar merchandise offered for sale and sold by its competitors.

PAR. 4. The sale of said merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure said articles of merchandise. The use by respondent of said method in the sale of its merchandise and the sale of its merchandise by and through the use thereof 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. The use by respondent of said sales plan or method has the tendency to unfairly hinder competition. Many persons, firms and corporations who sell and distribute merchandise in competition with the respondent as above described 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.

PAR. 5. Many dealers in and ultimate purchasers of merchandise similar to that distributed by respondent are attracted by respondent's said sales plan or method and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase said merchandise from respondent in preference to similar merchandise offered for sale and sold by said competitors of respondent who do not use the same or a similar method. The use of said method by respondent has the capacity and tendency, because of said

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game of chance, lottery scheme, or gift enterprise, unfairly to divert to respondent trade and custom from its competitors who do not use the same or an equivalent or similar method, and has the capacity and tendency to deprive the purchasing public of free competition in said merchandise.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition 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 4th day of August, A. D. 1938, issued and thereafter served its complaint in this proceeding upon the respondent, Sanders Manufacturing Co., a corporation, charging it with unfair methods of competition 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 attorneys for the Commission before duly appointed trial examiners of the Commission designated by it to serve in this proceeding. No testimony or evidence was offered on behalf of the respondent. The testimony and other evidence introduced 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 the report of the trial examiners thereon, 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 Sanders Manufacturing Co. is a corporation organized under the laws of the State of Tennessee with its principal office and place of business located at Nashville, Tenn., and it also operates two branches at Shelbyville, Tenn.

PAR. 2. Respondent is engaged in the business of manufacturing, selling, and distributing advertising novelties, rulers, calendars, fans, flyswatters, punchboards and various other articles.

PAR. 3. Respondent causes its said merchandise described in paragraph 2, when sold, to be shipped or transported from its said places

of business to purchasers thereof located in various States of the United States at their respective points of location.

PAR. 4. Respondent in the course and conduct of its business as set forth in paragraphs 2 and 3 hereof now is, and has been, in competition with other corporations, individuals, and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States.

PAR. 5. Respondent in the sale and distribution of its merchandise furnished, and now 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 and distributed to the ultimate consumers wholly by lot or chance. Typical of the methods used by respondent is the following:

One of respondent's combinations consists of one of the articles of merchandise mentioned in paragraph 2 hereof, and a punchboard. This punchboard has 100 covered tubes, for the right to punch which a charge of 5 cents is usually made. Each of these tubes contains a ticket which is effectively concealed until the cover of the tube has been punched. On each of the tickets is printed a number, and one of the numbers entitles the purchaser to receive the article of merchandise as a prize, without any additional payment. The purchasers of all the other punches received nothing for their investment except the right to punch one of the tubes.

Other like or similar devices, differing only in detail, are used by respondent in disposing of its merchandise.

PAR. 6. The respondent, by its sales methods hereinbefore described, places in the hands of others various devices to be used in the distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme, and by the use of such devices said merchandise is distributed to the ultimate consumer wholly by lot or chance. Respondent's said sales methods are contrary to the established public policy of the Government of the United States.

PAR. 7. Many persons have been and are attracted by the sales methods employed by respondent in the sale and distribution of its merchandise, and by the element of chance involved therein, and have been thereby induced to purchase respondent's merchandise in preference to merchandise offered for sale by respondent's competitors who do not use the same or a similar method.

PAR. 8. Respondent, for some time last past, has been in competition with other manufacturers and distributors of merchandise similar to that mentioned in paragraph 2 hereof, who are engaged in commerce between and among various States of the United States, and who are unwilling to use, and do not use, in the 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 unfairly diverted from such competitors of 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 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, testimony and other evidence taken before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, and the report of the trial examiners thereon, and the Commission having made its findings as to the facts and its conclusion that the respondent Sanders Manufacturing Co. has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Sanders Manufacturing Co., a corporation, 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 and distribution of advertising novelties, rulers, calendars, fans, flyswatters, punchboards 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, 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 said 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 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.

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IN THE MATTER OF
FRED P. WEISSMAN, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3532. Complaint, Aug. 9, 1938—Decision, June 12, 1941*

Where a corporation engaged in competitive interstate sale and distribution of women's coats and other garments—

Caused to be attached to its products certain labels carrying legend "100 percent CAMEL'S HAIR," and thereby represented that such products were composed entirely of said hair, when said coats in fact contained only about 30 percent of camel's hair, preferred by substantial portion of purchasing public over those made of other fibers or materials, with remaining fibers consisting of wool and mohair in about equal proportions;

With effect of misleading and deceiving a substantial portion of the purchasing public with respect to the composition of said coats, and of inducing it, as a result of the erroneous belief so engendered, to purchase its products in preference to those of its competitors, and of thereby diverting trade unfairly to it from said competitors, many of whom do not misrepresent the constituent materials of their products:

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. John J. Keenan*, *Mr. Miles J. Furnas*, and *Mr. Lewis C. Russell*, trial examiners.

Mr. John R. Phillips, Jr., for the Commission.

Mr. David Leavenworth, 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 the said act, the Federal Trade Commission having reason to believe that Fred P. Weissman, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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. Fred P. Weissman, Inc., is a corporation created by and existing under the laws of the State of New York, with its principal offices and place of business located at 270 West Thirty-Eighth Street, in the city of New York, State of New York.