

IN THE MATTER OF
MAX COHEN, TRADING AS UNITED SALES COMPANY,
UNITED ART DISPLAY AND SALES 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 4161. Complaint, June 13, 1940—Decision, June 12, 1941

Where an individual engaged in interstate sale and distribution of photographic enlargements and frames therefor by house to house canvassing in various states; soliciting orders for enlargements through his "initial salesmen" or "grabbers" who traveled in crews of varying size under crew managers, and whose general plan was to call upon the prospect, usually the woman of the house, making a \$2 charge for an enlargement, with one-half payable as a deposit and retained as the "grabber's" commission, while the balance was payable on delivery of the picture by the second agent or "proof passer" and frame salesman—

- (a) Falsely represented that his business was operated under the sanction of the United States Supreme Court through a statement on the "Authorization and Identification Certificate," supplied its salesmen, reading "The Bearer of This Document is Operating Under the Sanction of THE UNITED STATES SUPREME COURT * * * The bearer of this document is engaged in Interstate Commerce, a field over which only the Federal Government has jurisdiction";
 - (b) Falsely represented on order blanks or "Certificates" and orally through his salesmen, directly or by implication, that its colored or tinted photographic enlargements were paintings;
 - (c) Represented to prospects that said individual, doing business under different trade names, was engaged in procuring pictures for use in art displays and magazine advertisements, that a contest was being conducted at which a number of pictures were to be exhibited and that the customer whose picture was selected would receive from \$100 to \$2,000, dependent upon the revenue obtained from the agency which might use it; advising prospect, after looking over various photographs and selecting one or more, that the picture would certainly win a prize, but that in order to enter it it would be necessary to have an enlargement made at a cost of \$2; and
 - (d) Represented through the second representative or "passer" calling with customer's enlargement, that the picture had been selected in a preliminary contest to compete for first prize or to be put on exhibition at Chicago, Kansas City, or other large city, but that in order to enter it in such final contest or exhibit it would be necessary that the picture be tinted or framed in a certain way, and that said representative or "passer" was in a position to supply the necessary frame, and that individual referred to would pay half the cost thereof, varying from \$6.90 to \$14.90 to the customer, and from 70 cents to \$2 to individual aforesaid;
- Facts being said individual was not engaged in securing photographs for advertising, or in conducting contests or displaying exhibits of them,

Complaint

but primarily in the sale of enlargements and frames therefor, to accomplishment of which there were directed said elaborate sales methods; representation that a particular picture had won a prize was false and fraudulent and made solely to induce purchase of a frame, of which he did not pay one-half the cost, being on the contrary, engaged in sale of frames costing him from 70 cents to \$2 at aforesaid exorbitant prices, and his initial offer of 10 by 16 photographic enlargement for \$2 was not a special advertising offer, as set forth on salesman's order blank, but his regular method of securing orders;

With the result of placing in the hands of salesmen a means of misleading and deceiving the purchasing public and with the effect of misleading and deceiving a substantial portion thereof into the erroneous belief that the said representations were true, and of thereby inducing the purchase of substantial quantities of said enlargements and frames:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Minton & Minton, of Los Angeles, Calif., 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 Max Cohen, an individual, trading variously as United Sales Co., United Art Display and Sales Co., Art Display Co., United Art Display Co., and United Display Co., hereinafter referred to as the 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. Respondent Max Cohen is an individual trading variously as United Sales Co., United Art Display and Sales Co., Art Display Co., United Art Display Co., and United Display Co., with his principal office and place of business located at 4042 South Broadway Place, Los Angeles, Calif. Respondent is now, and for several years last past has been, engaged in the sale and distribution of photographic enlargements and of frames therefor. Respondent, through the medium of salesmen or representatives appointed by him as agents in his behalf, sells his products to customers located in States other than the State of California. In consummating such sales and in distributing such products, respondent causes the photographic enlargements and frames, when sold by him, to be transported from his place of business in Los Angeles in the State of

Complaint

33 F. T. C.

California to the purchasers thereof located in various other States of the United States and in the District of Columbia. In the course and conduct of his said business, respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, respondent causes agents and representatives employed by him to visit the homes of prospective customers in the cities, towns, and rural communities of the various States of the United States. The sales plan employed by respondent involves the use of two types of agents. The first type of agent, known in the trade as a "grabber" or "initial solicitor," makes the initial contact with the prospective purchaser by means of a house-to-house canvass ostensibly for the purpose of obtaining photographs, usually of children, for enlargement. The second type of agent used is the "proof passer" or frame salesman who delivers the enlargement and endeavors to sell a frame therefor.

PAR. 3. Respondent supplies to both the initial salesmen and frame salesmen an "Authorization and Identification Certificate" for use in connection with sales made on behalf of his various trade name companies, by means of which the respondent represents that the salesman is a duly authorized agent of the respondent and is acting under the sanction of the Supreme Court of the United States, which certificate reads in part as follows:

This is to certify that the bearer _____ whose signature appears below, is authorized to take orders for our portraits, miniatures and oil paintings providing that such orders are taken on our contracts and in accordance with the printed stipulations * * *.

The Bearer of This Document is Operating Under the Sanction of The United States Supreme Court. The bearer of this document is engaged in Interstate Commerce, a field over which only the Federal Government has jurisdiction.

PAR. 4. The initial salesmen travel in crews of varying size who are under the immediate supervision of crew managers employed, controlled, and directed by the respondent. The orders for enlargements, together with the original pictures, are transmitted to respondent at his home office in Los Angeles, Calif., and the enlargement work is done by a photographer employed by respondent on a contract basis of 25 cents per enlargement. Respondent charges \$2 for making a 10- by 16-inch enlargement of a photograph or snapshot, one-half of which sum is required as a deposit at the time the order is taken. The balance is payable at the time the enlargement is delivered. The initial solicitor keeps the deposit paid by the customer and receives one-fourth of the remainder, if and when paid by the customer. He also

participates in the receipts from the sales of frames to those customers whose orders for enlargements are taken by him.

PAR. 5. The initial salesmen carry order blanks, supplied to them by respondent. These order blanks, designated as "certificates" read, in part, as follows:

Special Advertising Offer

One Beautiful Duo Tone Reproduction For \$2.00. In order to select pictures for our home exhibit we will make you one of our beautiful Duo Tone Reproductions, size 10 by 16, black and white, unframed for only \$2.00.

Valuable Prizes Will Be Awarded To All Portraits Framed and Accepted For Art Exhibit.

These salesmen represent to the prospective customer that the respondent is engaged in securing photographs of children to be sold for advertising purposes to manufacturers of children's products; that there is a large demand for such pictures, and that substantial sums of money are paid therefor. Specific references are then made to a picture supposedly sold by the respondent to some large nationally recognized manufacturer of children's products, or to amounts customarily paid by such concerns for pictures of children. These salesmen then represent that, in order to obtain acceptable pictures, the respondent is conducting a contest in which valuable prizes are awarded, such as large cash prizes, wrist watches, radios, silverware, vacuum cleaners, cameras, pearls, and jewelry. In addition to the prizes given, it is further represented that the winning pictures are to be placed on display in exhibits conducted by the respondent in leading cities throughout the United States.

After thus securing the attention and interest of the prospective customer, the salesman requests permission to examine pictures of the children of the prospective customer, and after an apparent careful scrutiny of available pictures the salesman selects one which he declares to be an outstanding picture, one that is practically certain of winning a prize in the contest.

The salesman then represents to the prospective customer that all pictures entered into the contest must be of a uniform size, 10 by 16 inches, and that the respondent will make an enlargement of the picture for \$2. During the sales talk the initial solicitor carefully refrains from any reference to frames, and if any question relative thereto is raised by the customer, the salesman assures the customer that she will not be required to purchase a frame in order to enter the contest, and that the only cost to the customer will be the \$2 paid for the enlargement. After the customer is induced by the aforesaid representations to sign the order for the enlargement, she pays the \$1 deposit to the salesman, who thereupon forwards the

original picture and order to the respondent as hereinbefore set-out.

Respondent's salesman and representatives conceal and have concealed from purchasers at the time the photographic enlargement is ordered that it will be delivered in such a peculiar form, shape, and size that it will be impossible for the customer thereafter to obtain a frame to fit it except from the respondent and at prices exacted by respondent therefor.

Respondent through and by means of salesmen variously represents that the tinted enlargements of photographs are oil paintings, paintings or hand-painted portraits.

PAR. 6. After the enlargements have been made, the original pictures and enlargements thereof are sent by respondent to other salesmen employed by respondent, who are known in the trade as "proof passers." The sale of enlargements is merely incidental to respondent's plan of operation, the entire sales plan and each of its integral and component parts having been studiously devised for the purpose of inducing and procuring the sale of frames. The "proof passer" or frame salesman delivers the enlargement to the customer, collects the unpaid balance on the photographic enlargement and seeks to sell the customer a frame for the picture.

In furtherance of this plan and for the purpose of inducing the sale of a frame, the frame salesman informs the customer that such customer's photograph has been selected in the preliminary judging as one of four pictures to receive prizes, and that a final judging will subsequently be held to determine the rating of these four pictures. He explains that in order to enter the picture in the final judging it is necessary to have it framed, and calls the customer's attention to the provision of the written order previously taken by the initial salesman providing that "valuable prizes will be awarded to all portraits framed and accepted for art exhibits." He further represents that the respondent will pay half the cost of the frame, and will, in addition, make an oil painting of the picture free of charge. He further represents that the customer cannot possibly lose, since the value of even the fourth prize is in excess of the amount required to be paid for the frame.

By means of the aforesaid representation or variations thereof, the customer in many cases is induced and persuaded to sign an order for a frame. The frame salesman collects a deposit on said order, and the transaction is consummated in the manner more particularly hereinafter set forth.

Frame salesmen receive their entire remuneration from commissions on the sale of frames, ranging from 35 to 45 percent, depending on the cost of the frame selected by the customer. If the

frame salesman is successful in receiving an order for the frame, he forwards the original picture and enlargement back to the respondent in Los Angeles, for tinting and framing of the enlargement.

The frame and tinted enlargement is then sent by respondent direct, to the customer by parcel post c. o. d. for the balance remaining due on the frame. Frames are sold by respondent at three prices, to wit, \$7.90, \$9.90 and \$14.90, depending on the frame selected. The cost of said frames to the respondent is respectively \$1.25, \$1.35 and \$2.30, plus 60 cents for the glass therefor.

If the customer refuses to purchase a frame or to pay for a frame after same has been ordered, respondent in many instances refuses to deliver the original treasured family photograph borrowed from the customer until a frame is ordered or a balance claimed on a frame is paid in full.

PAR. 7. In truth and in fact, all of the representations hereinabove set forth are false, fraudulent, and misleading. Respondent is not engaged in securing photographs of children to be sold for advertising purposes to manufacturers of children's products, or in selling such photographs, or in conducting contests or displaying exhibits of such photographs. Respondent is engaged primarily and actually in the sale of enlargements and frames therefor, and all of the elaborate and deceptive sales methods employed by him are directed to that end. The purported prize contests are not bona fide, and no radios, watches, cash awards, silverware, or other substantial prizes have been given for selected pictures. In some cases respondent purports to exhibit framed pictures in his place of business and he and his photographic assistant act as judges in "awarding" prizes therefor. In all instances, however, the "prizes" given consist either of a strand of imitation pearls, a cheap billfold, or an autograph book, which cost the respondent from 30 to 60 cents each. No prizes of value are awarded. In no instance is there any judging of pictures which have not been returned for tinting and framing. The representations of respondent's salesmen to the effect that a particular picture has won a prize are wholly false and fraudulent, and are made solely to induce the purchase of a frame. The respondent does not pay half the cost of the frame, but in fact is engaged in the sale at exorbitant prices of frames purchased by him at wholesale for resale to the public through the methods hereinbefore set out. Respondent does not produce or sell an "oil painting" or "hand-painted portrait" but merely a tinted or colored photographic enlargement. Respondent has never sold any pictures to manufacturers of children's products or to others, and has never made arrangements with any individual or concern to supply pic-

Findings

33 F. T. C.

tures for advertising or other purposes. Respondent's initial offer of \$2 for a photographic 10- by 16-inch enlargement is not a "special advertising offer," but is his regular, usual, and ordinary method of securing orders for enlargements. Respondent's business is not operated under the sanction of the United States Supreme Court or any other court or tribunal.

PAR. 8. The acts and practices of the respondent and his method of operation as hereinbefore described further place in the hands of salesmen a means and instrumentality for misleading and deceiving the purchasing public.

PAR. 9. The acts and practices of the respondent, as herein set forth, have had, and now have, the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true, and induce the purchase of substantial quantities of respondent's said photographic enlargements and of frames therefor because of such erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 13, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Max Cohen, an individual trading variously as United Sales Co., United Art Display and Sales Co., Art Display Co., United Art Display Co., and United Display Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Floyd O. Collins, attorney for the Commission, and in opposition to the allegations of the complaint by Albert N. Minton, attorney for the respondent, before Randolph Preston, a trial 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 said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, and brief in support of the complaint (the respondent not having filed brief and

oral argument not having been 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, Max Cohen, is an individual trading variously as United Sales Co., United Art Display and Sales Co., Art Display Co., United Art Display Co., and United Display Co., with his principal office and place of business located at 4042 South Broadway Place, Los Angeles, Calif. Respondent is now, and for several years last past has been, engaged in the sale and distribution of photographic enlargement and of frames therefor. Respondent, through the medium of salesmen or representatives appointed by him, as agents in his behalf, sells his products to customers located in States of the United States other than the State of California. In consummating such sales and in distributing such products, respondent causes the photographic enlargements and frames, when sold by him, to be transported from his place of business in Los Angeles, State of California, to purchasers thereof located in various other States of the United States. In the course and conduct of his business the respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his said business, respondent causes agents and representatives employed by him to visit the homes of prospective customers in cities, towns, and rural communities of various States of the United States. The sales plan employed by respondent involved the use of two types of agents. The first type of agent, known to the trade as a "grabber" or "initial solicitor," makes the initial contact with the prospective purchaser by means of a house-to-house canvass, ostensibly for the purpose of obtaining photographs, usually of children, for enlargement. The second type of agent used is the "Proof passer" or frame salesman, who delivers the enlargement and endeavors to sell a frame, therefor.

PAR. 3. Respondent supplies to both the initial salesmen and frame salesmen an "Authorization and Identification Certificate" for use in connection with sales made on behalf of his various trade name companies, by means of which the respondent represents that the salesman is a duly authorized agent of the respondent and is acting under

Findings

33 F. T. C.

the sanction of the Supreme Court of the United States, which certificate reads in part as follows:

This is to certify that the bearer,

Whose signature appears below, is authorized to take orders for our portraits, miniatures, and oil paintings providing that such orders are taken on our contracts and in accordance with the printed stipulations.

He is further authorized to collect deposits which are to be credited to the purchase price. THE CUSTOMER IS TO RECEIVE A PRINTED RECEIPT FOR DEPOSIT PAID.

The authority herein invested is to expire-----19-----
Date-----

The above authorization bears the signature of the trade name company under which respondent is operating at the time such certificate is issued. In addition to this certificate, the respondent also issues a purported certificate reading in part as follows:

The Bearer of This Document is Operating Under the Sanction of

THE UNITED STATES SUPREME COURT

* * *

The bearer of this document is engaged in Interstate Commerce, a field over which only the Federal Government has jurisdiction.

PAR. 4. The initial salesmen or "grabbers" travel in crews of varying size, who are under the immediate supervision of crew managers employed by the respondent. The orders for enlargements, together with the original pictures, are transmitted to the respondent at his home office in Los Angeles, Calif., and the enlargement work is done by a photographer employed by the respondent on a contract basis. A charge of \$2 for enlarging a photograph 10 by 16 inches in black and white is quoted to the customer, one-half of which sum is required as a deposit at the time the order is taken, which the "grabber" retains as his commission. The balance is payable at the time the enlargement is delivered, of which the crew manager retains 50 cents, the "proof passer" 15 cents, leaving a balance of 35 cents for the respondent to cover cost of enlargement. This amount is not sufficient to cover cost of enlargement and the profit in respondent's plan is dependent upon the ability of the "proof passer" to sell the customer a frame.

PAR. 5. The initial salesmen carry order blanks supplied to them by the respondent. These order blanks, designated as "Certificates," read in part as follows:

Special Advertising Offer

One Beautiful Duo Tone Reproduction for \$2.00. In order to select pictures for our home exhibit we will make you one of our beautiful Duo Tone Re-

productions, size 10 by 16, black and white, unframed for only \$2.00. Valuable Prizes will be awarded to all portraits framed and accepted for art exhibit.

Our awards are final.

The general plan followed by such initial salesman was to call upon a prospect, usually the woman of the house, and state that he had heard from some neighbor or other person that the prospective customer had a very beautiful young child and that the respondent, under one of his several trade names, was looking for a picture to be used in art display and magazine advertisements. He further represented that a contest was being conducted at which a number of pictures were to be displayed and that certain pictures would be selected for advertising purposes; and that the prospective customer, if her picture should be selected, would receive from \$100 to \$2,000, dependent upon the revenue obtained from the magazine or advertising agency which might use such picture.

After looking over various photographs, the representative would select one or more, with the assurance that the picture would certainly win a prize but that the owner would hear from the company later. It was then explained that in order to enter a picture in such contest or exhibit it would be necessary to have an enlargement made at a cost of \$2, of which the representative usually collected \$1 at the time. A week or more later another representative of the respondent technically known as a "passer" would appear with the enlarged photograph and usually assure the customer that the picture had been selected in a preliminary contest as one of a limited number to compete for first prize or to be put upon exhibition at Chicago, Kansas City, or some of the larger cities of the country. The customer was then advised by the "passer" that, in order to enter such picture in the final contest or exhibit, it would be necessary that the picture be tinted or painted and framed in a certain way and that he was in a position to supply the necessary frame, and that the respondent would pay half the cost of the frame. The prices of the frames to the customer varied from \$6.90 to \$14.90, which frames cost the respondent 70 cents, 85 cents, \$1.50, and \$2, respectively. If the customer paid for the frame in full, the picture and frame were usually delivered to such customer, but if the customer refused to buy a frame the enlargement was usually delivered upon payment of \$2 as stated.

PAR. 6. The aforesaid statements and representations comprising respondent's sales plan are false, deceptive, and misleading. Respondent is not engaged in securing photographs to be sold for advertising purposes or in selling such photographs or in conducting contests or displaying exhibits of such photographs. Respondent is engaged primarily and actually in the sale of enlargements and frames

Order

33 F. T. C.

therefor, and all of the elaborate and deceptive sales methods employed by him are directed to that end. The respondent has never sold or attempted to sell any pictures to advertisers and has never made arrangements with any individual or concern to supply pictures for advertising or other purposes. The respondent displays pictures in his place of business from time to time, not as a competitive contest but solely for the purpose of inducing persons who may come into his place of business to purchase photographic enlargements. The representations of respondent's salesmen to the effect that a particular picture has won a prize are wholly false and fraudulent and are made solely to induce the purchase of a frame. The respondent does not pay half the cost of the frame but, in fact, is engaged in the sale at exorbitant prices of frames purchased by him at wholesale for resale to the public through the methods hereinbefore set out.

Respondent does not produce or sell oil paintings, as represented by salesmen and in his certificate described in paragraph 3 hereof, but merely sells tinted or colored photographic enlargements. Respondent's initial offer of \$2 for a photographic 10- by 16-inch enlargement is not a special advertising offer but is the regular, usual, and ordinary method of securing orders for enlargements.

Respondent's business is not operated under sanction of the United States Supreme Court or any other court or tribunal.

PAR. 7. The acts and practices of the respondent and his method of operation as hereinabove described further place in the hands of salesmen a means and instrumentality for misleading and deceiving the purchasing public.

PAR. 8. The acts and practices of the respondent as herein set forth have had, and now have, capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true and induce the purchase of substantial quantities of respondent's said photographic enlargements and frames therefor because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the re-

spondent, testimony and other evidence before Randolph Preston, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the report of the trial examiner upon the evidence and exceptions thereto and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Max Cohen, an individual, trading as United Sales Co., United Art Display and Sales Co., Art Display Co., United Art Display Co., and United Display Co., or under any other trade name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with offering for sale, sale, and distribution of photographic enlargements and of frames therefor in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by inference, that colored or tinted pictures, photographs, or photographic enlargements are paintings.

2. Representing that the respondent is engaged in the business of procuring pictures for use in advertising of various products or that any picture so procured by him will be sold or offered for sale to any advertiser, or otherwise misrepresenting the nature of respondent's business or the purposes for which pictures are procured.

3. Representing that pictures submitted to respondent or photographic enlargements made therefrom will be entered in any picture contest unless such contest is then, in fact, being conducted and such pictures or photographic enlargements are eligible for entry therein, or otherwise misrepresenting the existence of any picture contest or the eligibility of customers' pictures or photographic enlargements therein.

4. Representing that any photograph or colored enlargement of a photograph has been entered in any competitive competition or that any award has been made to such photograph or enlargement in such competitive competition.

5. Representing that respondent is conducting any special campaign or advertising campaign in any particular place or locality unless such campaign is, in fact, then being conducted in such locality for such purpose.

6. Representing as customary or regular prices or values for pictures or frames, prices and values which are, in fact, fictitious and greatly in excess of the prices at which said pictures or frames are regularly and customarily offered for sale and sold in the normal and usual course of business.

Order

33 F. T. C.

7. Representing that the respondent will pay half the cost of the frame of any picture when, in fact, the frame is sold to the purchaser at prices in excess of the price at which such frames are regularly and customarily offered for sale and sold in the normal and usual course of business.

8. Representing that respondent's business is operated under the sanction of the United States Supreme Court or any other court or tribunal.

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.

Complaint

IN THE MATTER OF

C. T. CLAYTON TRADING AS CLAYTON CANDY COMPANY

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

Docket 4395. Complaint, Dec. 3, 1940—Decision, June 12, 1941

Where an individual engaged in the manufacture and the competitive interstate sale and distribution of candy, including certain assortments of candy which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers; and included, as typical, 60 bars of candy of uniform size and shape, together with a push card for use in sale thereof under a plan by which a purchaser paid for a bar of candy nothing or 1, 2, or 3 cents, depending on the number disclosed when a disk was pushed from the card;

Sold such assortments to wholesalers, jobbers, salesmen, and retailers, by whom, as direct or indirect purchasers, they were exposed and sold to purchasing public in accordance with aforesaid sales plan, involving game of chance to procure candy bars without cost and at prices much less than usual, and thus supplied to and placed in the hands of others means of conducting lotteries in the sale of his products, contrary to established public policy of the United States Government and in violation of criminal laws, and in competition with many, who, unwilling to use such or any method contrary to public policy, refrain therefrom;

With result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell his candy in preference to that of his said competitors, whereby trade was unfairly diverted to him from them and substantial injury was done to competition:

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

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Roy L. Smith, of Phenix City, Ala., 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 C. T. Clayton, an individual trading under the name of Clayton Candy 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, C. T. Clayton, is trading as the Clayton Candy Co. with his office and principal place of business located in