

IN THE MATTER OF  
**SCHNECK-WAYNE COMPANY, INC., AND GUSTAVE B.  
WAYNE AND FRANK J. SCHNECK**

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

*Docket 3441. Complaint, May 23, 1938—Decision, Aug. 21, 1941*

Where a corporation and two officers and owners thereof, who formulated and directed its policies, acts, and practices, engaged in competitive interstate sale and distribution of various articles of merchandise, including clocks, watches, fountain pens, electrical appliances, radios, traveling bags, blankets, and silverware, and, as thus engaged, in carrying on their business under a general plan by which they entered into agreements with fraternal or charitable organizations to conduct for them money-raising enterprises, such as fairs and carnivals, upon profit-sharing basis, and under which they cooperated with the particular local organization and managed the enterprise and the sale and distribution of their merchandise—

Used and caused others to use various devices and plans of merchandising involving the operation of games of chance, gift enterprises, or lottery schemes in the sale and distribution of their said products, through forwarding to the organization sales literature and material, including pull cards and circulars illustrating their merchandise and explaining their plan of awarding it as prizes to purchasers selecting, from list of feminine names on a card, the same name as that concealed under the card's master seal, who received their choice of any gift illustrated in the "Purchasers Gift Folder" and the operators of cards—usually members of the organization—received a similar choice, and under which the cost of a chance was dependent upon the number under the tab adjoining the name selected, and each purchaser of a chance received also a ticket representing credit on the price of admission to the carnival and bearing a number participating in the special drawing for a grand award of an automobile which usually climaxed the event; and thereby

Supplied to and placed in the hands of others means of conducting lotteries in the sale of their merchandise in accordance with aforesaid plan under which articles of greater value than the cost of a single pull were sold and distributed wholly by lot or chance, contrary to an established policy of the United States Government, and in competition with many who, unwilling to use any method involving a game of chance or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by their said sales method and by the element of chance involved therein, and were thereby induced to buy and sell their said merchandise in preference to that offered and sold by their said competitors, and with tendency and capacity to divert trade unfairly to them from such competitors; to the substantial injury of competition in commerce:

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

## Complaint

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

*Mr. D. C. Daniel* for the Commission.

*Nash & Donnelly*, of Washington, D. C., for respondents.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the Schneck-Wayne Co., Inc., and Gustave B. Wayne and Frank J. Schneck, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to said 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, Schneck-Wayne Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, and has its principal office and place of business located at 261 Fifth Avenue, in the city of New York, State of New York. Respondents Gustave B. Wayne and Frank J. Schneck are, respectively, president and secretary-treasurer of the Schneck-Wayne Co., Inc., and have their office and principal place of business at 261 Fifth Avenue in the city of New York, State of New York. The individual respondents named herein direct and control the sales policies and general business activities of respondent corporation and participated in the acts and practices herein charged. Respondents are now, and for more than 1 year last past have been, engaged in offering for sale and selling general merchandise to purchasers thereof located in the various States of the United States and the District of Columbia. They cause, and have caused, said merchandise, when sold, to be shipped or transported from their place of business in the State of New York into and through other States of the United States and in the District of Columbia, to purchasers thereof at their respective points of location. There is now, and has been for some time past, a course of trade in such merchandise sold by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their business, respondents are in competition with other individuals, partnerships, and corporations engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 2. In the course and conduct of their business as herein described, and in soliciting the sale and in selling and distributing their merchandise, respondents have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes. The method and sales plan adopted and used by respondents were and are substantially as follows:

Respondents contact fraternal and charitable organizations located at various points throughout the United States and offer to put on, conduct, or promote a so-called fair or carnival for such organizations, the proceeds of which are to be divided upon a basis theretofore agreed upon between respondents and the organizations. Thereafter, respondents cause, and have caused, certain advertising literature, including, among other things, pull cards, order blanks, advertising literature containing illustrations of their merchandise, and circulars explaining respondents' plan of selling said merchandise and of awarding it as premiums or prizes to purchasers and to the operators of said pull cards to be distributed to the purchasing public through the particular fraternal or charitable organizations. Said pull cards bear a number of feminine names, with a blank space opposite each for writing in the name of the customer. Said pull cards have a corresponding number of partially perforated disks, on each of which is printed one of the feminine names appearing alphabetically elsewhere in the pamphlet or brochure. Concealed underneath each disk is a number which is disclosed when the disk is pulled or separated from the card.

The pull cards have a master seal concealed within which is one of the feminine names appearing elsewhere on the said cards.

Appearing on the back of the pamphlet or brochure are legends or instructions, of which the following is representative:

## DIRECTIONS

*The Subscription Book has 99 Girls' Names with numbers. The amount of each subscription ranges from 1¢ to 35¢. No higher—No subscription over 35¢. No. 25 & 50 each receive a Parker made Pen.*

As each person selects a Girl's Name, the amount to subscribe appears under the tab. For instance, if number one (1) is selected, the amount to subscribe is one cent. If number fourteen (14) the amount is 14 cents, etc. up to number thirty-five (35) which is 35 cents.

THOSE SELECTING NUMBERS OVER 35 SUBSCRIBE ONLY 35 CENTS

Write the name of the person making the Subscription on the proper line opposite the Girl's Name and on the ticket stub, and give them one of the Credit Tickets to the *Shriners' Frolic and Streets of Bagdad*.

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Each ticket holder participates in the choice awarding of a *Latest Model Chevrolet, Plymouth or Ford 2-door Sedan, Fully Equipped*.

When the entire Book is completed, you will have collected \$28.70. Turn the receipts in at Campaign Headquarters at once.

Remove the Seal at the top of Book. The person who selected the Girl's Name under the Seal is entitled to the choice of any Gift illustrated in the *Purchasers Gift Folder*, absolutely free. For disposing of the Subscription Book and upon receipt of the \$28.70 at the Headquarters, you will also receive your choice of any Gift illustrated in the Special Books Seller's Gift Folder. All Gifts are on display at Headquarters, Suite 222 and 223, Riviera Hotel, Newark, N. J.

*Do not remove the seal until all subscriptions have been received.*

## THE COMMITTEE.

Sales of respondents' products by means of said pull cards are made in accordance with the specified legends or instructions. The articles of merchandise sold and distributed by respondents vary in value but each of the articles of merchandise is of greater value than the cost of a single pull from said pull cards. The purchasing public is thus induced and persuaded to purchase pulls from said cards in the hope that they may pull a prize winning name or number and thus obtain an article of merchandise of a greater value than the amount paid. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is also determined wholly by lot or chance.

PAR. 3. Within the above referred to pamphlet or brochure containing the pull chances appear the following:

Every subscriber Receives Credit Admission Ticket to Shriners' Frolic and Streets of Bagdad and Participates in the choice award of a 1937 Chevrolet, Plymouth or Ford 2-door sedan.

The above language is always modified or changed to show the name of a particular organization for which the fair or carnival is being conducted.

The fair or carnival conducted or promoted for fraternal and charitable organizations by respondents is concluded by a gala night event. The credit admission ticket above referred to plus a definite sum of cash admits the holder of such credit admission ticket to the closing event of fair or carnival. On this particular night, the so-called "Grand Award" is made. The grand award consists of, among other things, a 2-door Ford, Plymouth, or Chevrolet sedan automobile.

PAR. 4. The persons to whom respondents furnish the said pull cards use the same in purchasing, selling, and distributing a greater part of respondents' merchandise, in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others

a means of conducting lotteries in the sale of their merchandise in accordance with the sales plan herein set forth. The use by respondents of said method in the sale of their merchandise, and the sale of such merchandise by and through the use thereof and by and through the aid of said method, is a practice which is contrary to an established public policy of the Government of the United States, and is contrary to the criminal statutes.

PAR. 5. 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 therefor.

Many persons, firms, and corporations, who sell or distribute merchandise in competition with the respondents as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or any other method that is contrary to public policy, and such competitors refrain therefrom.

Many persons are attracted by respondents' said method, and by the element of chance involved in the sale thereof in the manner herein set forth, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method.

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

PAR. 6. The aforesaid acts and practices of respondents are all to the prejudice of the public and of the respondents' 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 May 23, 1938, issued and thereafter served its complaint in this proceeding upon the respondents, Schneck-Wayne Co., Inc., and Gustave B. Wayne and Frank J. Schneck, individually and as officers of the Schneck-Wayne Company, Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After

the issuance of the complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission (no testimony or other evidence having been introduced by respondents), before Miles J. Furnas, 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 the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (respondents 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, Schneck-Wayne Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 261 Fifth Avenue, New York, N. Y. Respondents Gustave B. Wayne and Frank J. Schneck are the owners of all the capital stock of the corporate respondent and are president and secretary-treasurer, respectively, of the corporation. They formulate the policies and direct, dominate, and control the acts and practices of the corporation. They have their offices at the same address as that of the corporate respondent.

PAR. 2. Respondents are now, and since 1937 have been, engaged in the sale and distribution of various articles of merchandise, including among other things, clocks, watches, fountain pens, electrical appliances, radios, traveling bags, blankets, and silverware. Respondents cause, and since 1937 have caused their merchandise, when sold, to be shipped or transported from their place of business in the State of New York or from the places of manufacture of such merchandise, to purchasers thereof located in various States of the United States other than the State of New York, and other than the States in which such merchandise is manufactured. Respondents maintain, and since 1937 have maintained, a course of trade in their merchandise in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business respondents are, and since 1937 have been, in active competition with other corpora-

tions, and individuals, and with firms and partnerships, engaged in the sale and distribution of similar articles of merchandise in commerce among and between the various States of the United States.

PAR. 4. The Commission finds that in the course and conduct of their business and in selling and distributing their merchandise, and in offering such merchandise for sale, the respondents have used, and have caused others to use, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes. The method or sales plan used by the respondents is substantially as follows:

Respondents contact various fraternal and charitable organizations located at various points throughout the United States and offer to conduct or promote for such organizations, various money-raising enterprises such as fairs and carnivals. The proceeds derived from the operation of such enterprises are divided between the respondents and the organization upon a basis theretofore agreed upon. Upon the consummation of the agreement the respondents forward to the organization certain advertising and sales literature and material, including among other things, pull cards, advertising circulars illustrating respondents' merchandise, and circulars explaining respondents' plan of selling such merchandise and of awarding it as premiums or prizes to persons purchasing chances on such pull cards, and to the persons operating such pull cards and selling the chances thereon. Respondents also forward, or cause to be forwarded, to the organization the merchandise to be awarded as prizes or premiums during the enterprise.

The respondents cooperate with the local organization and manage and direct the enterprise and the sale or distribution of the merchandise. The pull cards are usually placed in the hands of certain members of the organization, who proceed to contact other members of the organization and members of the general public and undertake to sell to such persons the chances on the pull cards.

The pull cards bear a number of feminine names, with a blank space opposite each name in which is to be written the name of the purchaser of the chance. The card also has a corresponding number of partially perforated disks on each of which is printed a feminine name corresponding to one of the names appearing elsewhere on the card. Under each disk is a number which is disclosed when the disk is pulled or separated from the card. The card also bears a master seal under which is concealed a feminine name corresponding to one of the names under the disks. The names under the disks are effectively concealed from purchasers and prospective purchasers until after a purchase has been made and the disk pulled or separated from

the card. Likewise, the name under the master seal is concealed from purchasers and prospective purchasers until all of the chances appearing on the card have been purchased and all of the disks have been pulled or separated from the card.

On the back of the pull card (referred to by respondents as a "Subscription Book") appear legends containing directions to be followed in the operation of the sales plan and in the sale of the chances. The following is typical of such legends.

## DIRECTIONS

*The Subscription Book has 99 girls' Names with numbers. The amount of each subscription ranges from 1c. to 35c. No higher—No Subscription over 35c. No. 25 & 50 each receive a Parker made Pen.*

As each person selects a Girl's Name, the amount to subscribe appears under the tab. For instance, if number one (1) is selected, the amount to subscribe is one cent. If number fourteen (14), the amount is 14 cents, etc. up to number thirty-five (35) which is 35 cents.

## THOSE SELECTING NUMBERS OVER 35 SUBSCRIBE ONLY 35 CENTS

Write the name of the person making the Subscription on the proper line opposite the Girl's Name and on the ticket stub, and give them one of the Credit Tickets to the \* \* \* *Frolic and Streets of Bagdad*. Each ticket holder participates in the choice awarding of a *Latest Model Chevrolet, Plymouth or Ford 2-Door Sedan, Fully Equipped*.

When the entire Book is completed, you will have collected \$28.70. Turn the receipts in at Campaign Headquarters at once.

Remove the Seal at the top of Book. The person who selected the Girl's Name under the Seal is entitled to the choice of any Gift illustrated in the *Purchasers Gift Folder*, absolutely free. For disposing of the Subscription Book and upon receipt of the \$28.70 at the Headquarters, you will also receive your choice of any Gift illustrated in the Special Book Seller's Gift Folder. All Gifts are on display at Headquarters \* \* \*.

Do not remove the seal until all subscriptions have been received.

Sales of respondents' merchandise by means of the pull cards are made in accordance with these instructions. The various articles of merchandise sold and distributed by means of the cards vary in value but each of the articles is of a value greater than the cost of a single pull from the pull card. Members of the purchasing public are induced to purchase pulls from the card in the hope that they may pull a prize-winning name or number and thus obtain an article of merchandise of a value greater than the amount paid. The articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the purchaser pays for a chance is also determined wholly by lot or chance.

PAR. 5. Each purchaser of a chance on the pull card receives also a ticket purporting to represent a credit on the price of admission

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to the fair or carnival. Each of these tickets bears a different number. The fair or carnival is usually climaxed by a special night event at which there is a drawing for a "Grand Award," usually an automobile. The holder of the ticket bearing the lucky number receives the Grand Award.

PAR. 6. The persons to whom respondents furnish the pull cards through the local organization, use the cards in selling and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others a means of conducting lotteries in the sale of respondents' merchandise in accordance with such sales plan.

PAR. 7. The Commission finds that the sale of merchandise to the purchasing public in the manner herein described 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. The use by respondents of such method in the sale of their merchandise and the sale of respondents' merchandise by and through the use and aid of such method is a practice of a sort which is contrary to an established public policy of the Government of the United States.

Among the persons, firms, and corporations who sell and distribute merchandise in competition with respondents, as above set forth, are those who are unwilling to adopt and use the method used by respondents or any method involving a game of chance or any other method which is contrary to public policy, and such competitors refrain therefrom.

Many persons are attracted by respondents' sales method and by the element of chance involved in the sale of respondents' merchandise, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by respondents' competitors who do not use such method or any equivalent method.

PAR. 8. The Commission therefore finds that the use of such method by respondents has the tendency and capacity, because of such game of chance, to divert trade unfairly to respondents from their said competitors. In consequence thereof, substantial injury has been done and is being done by the respondents to competition in commerce among and between the various States of the United States.

## CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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Order

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (no testimony or other evidence having been offered by respondents), report of the trial examiner upon the evidence, and brief of counsel for the Commission (no brief having been filed by respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondents, Schneck-Wayne Co., Inc., a corporation, its officers, and Gustave B. Wayne and Frank J. Schneck, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their clocks, watches, fountain pens, electrical appliances, radios, traveling bags, blankets, silverware, or any other merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others any merchandise, together with push or pull cards, punchboards, or any other lottery devices, 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.

2. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices, either with 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 respondents' merchandise or any other 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 respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF  
**PHILIP HARRY KOOLISH AND SARA ALLEN KOOLISH,  
INDIVIDUALLY AND TRADING AS STANDARD DISTRIBUTING COMPANY**

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

*Docket 4135. Complaint, May 18, 1940—Decision, Aug. 21, 1941*

Where two individuals, husband and wife, engaged in interstate sale and distribution of flashlights, electric mixers, sport jackets, cosmetics, cameras, billfolds, pen and pencil sets, bedspreads, radios, raincoats, watches, clocks, silverware, vacuum cleaners, and other articles of merchandise;

In carrying on their business pursuant to a scheme, as below set forth, under which they distributed more than a million merchandise offers, received orders for such merchandise from thousands of individuals, dealers, and others to whom such offers were made, making sales during a recent 12-month period amounting to about \$1,800,000, and receiving orders from approximately 1 percent of those to whom said offers were sent, and reorders or additional orders from about 25 percent of those to whom sales had been made—

Made use of selling plan or method which involved distribution by mail to individuals, without prior receipt of any request therefor, of certain literature and instructions, including, among other things, push cards, order blanks, illustrations, and descriptions of articles of merchandise and circulars explaining their plan for the sale thereof and allotting premiums or prizes and which included, as typical, offer of certain portable radio receiving sets by mail through an explanatory letter accompanied by an illustrative and descriptive advertisement, a push card and a printed order form for the purchase of the two radios involved and four combinations of pen and pencil at a total price of \$16.95 (as called for by said card), together with a business reply envelope addressed to said individuals under their trade name, and plan under which, as explained to recipient, person selecting from list of feminine names displayed on card that name, after sale of all chances, found to correspond with name concealed under card's seal, received one of said radios, amount paid by each customer or purchaser was dependent upon number disclosed through disk selected in accordance with feminine name chosen, and operator of card, i. e., recipient of particular offer, was compensated, upon remitting to said individuals the total sum thus called for, by the right to retain one of said radios, upon the shipment to him of said various merchandise, for distribution to customers secured by him in response to the invitation and suggestion contained in the circular letter and as above set forth; and thereby

Supplied to and placed in the hands of others, means of conducting lotteries in the sale of merchandise through sales plan aforesaid, under which many of the individuals, dealers, and others to whom said individuals furnished said push cards made use thereof to purchase, sell, and dis-