

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-

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tribute merchandise bought by them from said individuals, and involving the sale of merchandise to the public by game of chance to procure an article at much less than its normal retail price, contrary to the established public policy of the United States Government and in violation of the criminal laws and in competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

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

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. L. P. Allen, Jr., and *Mr. D. C. Daniel* for the Commission.

Mr. Albert A. Jones, of Washington, D. C., and *Mr. Jacob Rabkin*, of New York City, 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 Philip Harry Koolish and Sara Allen Koolish, individually and trading as Standard Distributing Co., hereinafter referred to as respondents, have 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Philip Harry Koolish and Sara Allen Koolish, are individuals trading as Standard Distributing Co. The principal place of business of the respondents was formerly 6227 Broadway, Chicago, Ill. The principal place of business of respondents is now located at 2222 Diversey, Chicago, Ill. Respondents are now, and for more than 1 year last past, have been engaged in the 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 commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their aforesaid places of business in the State of Illinois to purchasers thereof, at their respective points of location,

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in various States of the United States other than the State of Illinois, and in the District of Columbia. There is now, and for more than 1 year last past has been a course of trade by respondents 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, respondents are and have been in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States or the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents, in soliciting the sale of and in selling and distributing their merchandise, furnish and have 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 consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondents was and is substantially as follows:

Respondents distribute, and have distributed, to the purchasing public certain literature and instructions, including among other things push cards, order blanks, illustrations of their said merchandise, and circulars explaining respondents' plan of selling merchandise and allotting it as premiums or prizes to the operators of said push cards. One of respondents' push cards bears 15 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 15 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 or separated from the card. The push card bears a legend or instructions as follows:

NAME UNDER SEAL RECEIVES A

PICKWIK

CANDID CAMERA

With Roll of Film

No. 19 Receives a Combination Pen & Pencil

Do Not

Remove Seal

Until Entire

Card is Sold

No. 1 pays 1¢; No. 19 pays 19¢;

No. 27 pays 27¢; No. 29 pays 29¢;

All others pay 29¢. NONE HIGHER

Push Out
With Pencil

Sales of respondents' merchandise by means of said push card are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondents furnish and have furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondents furnish the said push cards use the same in purchasing, selling, and distributing respondents' merchandise, in accordance with the aforesaid sales plan. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of 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 respondents, as above alleged are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, 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 equivalent methods. The use of said method by respondents, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial trade in commerce between and among the various

States of the United States and in the District of Columbia to respondents from their 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 respondents 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 respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' 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 May 18, 1940, issued and subsequently served its complaint in this proceeding upon Philip Harry Koolish and Sara Allen Koolish, individually, and trading as Standard Distributing Co., charging them with the use of 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by attorneys for the Commission and in opposition to the allegations of the complaint by attorneys for the respondents before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and the 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, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel; 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. Respondents, Philip Harry Koolish and Sara Allen Koolish, are individuals trading as Standard Distributing Co. and having their principal place of business at 2222 Diversey, Chicago, Ill. Respondent Sara Allen Koolish is the wife of respondent Philip Harry Koolish. Respondents are now, and since January 1939 have

been, engaged in the 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.

PAR. 2. In the course and conduct of their business respondents cause, and have caused, articles of merchandise, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois and in the District of Columbia. There is now, and for more than 1 year last past has been, a course of trade by respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The selling plan or method used by respondents in the sale and distribution of merchandise is to distribute by mail to individuals, without the prior receipt of any request therefor, 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 of such merchandise and of allotting premiums or prizes. A typical instance of respondents' merchandising plan is illustrated by the offering for sale of certain portable radio receiving sets by mailing to various individuals a circular letter which stated in part:

HERE'S ALL YOU NEED TO DO TO GET YOUR RADIO:

Merely show the enclosed illustration to your friends * * * neighbors * * * relatives * * * folks you work with * * * persons you trade with and so on; and explain to them how they may obtain one of these KENT RADIOS.

The sales card contains a list of girls' names and under each seal is a concealed number. Numbers are not consecutive. Person selecting No. 1 pays 1¢, No. 5 pays 5¢, No. 9 pays 9¢, No. 15 pays 15¢, No. 19 pays 19¢, No. 22 pays 22¢, all others pay only 29¢. NONE HIGHER.

HOW TO SEND FOR YOUR RADIO: Simply fill out enclosed order form. Immediately upon receipt of your order we will RUSH to you 2 KENT RADIOS and 4 COMBINATION PEN & PENCILS. You may keep one RADIO and may give the other RADIO to the party who selected the name which is found under the large seal.

This letter was accompanied by an illustrated and descriptive advertisement of the radio receiving sets offered for sale and by a push card having on its face 62 partially perforated small disks each printed with the word "Push" and a feminine name and having concealed within it a number which is disclosed when the disk is pushed or separated from the card. The card also has on its face a partially perforated large disk with the notation, "Do not remove seal until entire card is sold," the statement, "NAME UNDER SEAL

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RECEIVES A KENT RADIO," an illustration of the radio receiving set, and a statement similar to that set out in the extracts from the letter quoted above showing the amounts to be paid by players and bearing the notation that Nos. 1, 9, 19, and 29 each receive a combination pen and pencil. The back of the card has the same feminine names printed on it as appear on the partially perforated disks on the face of the card, each followed by a blank space intended for the use of the operator of the card in writing in the name of the player pushing each of the 62 partially perforated disks, together with a further explanation of the nature of the card and the statement:

Upon receipt of your order we immediately ship you the articles indicated on order blank. This card is given to you absolutely free. If you wish you can use this as a sales card.

The above-described material is accompanied by a printed order form for the purchase of two Kent radios and four combination pen and pencils at a total price of \$16.95, together with a business reply envelope addressed to respondents under their trade name, Standard Distributing Co. The sum of the payments called for by the push card is \$16.95.

The offerings made by respondents of other articles of merchandise are in substantially the same form, varying only in detail. In each instance the total amount of the payments called for by the push card is exactly equal to the amount stated on the printed order form addressed to respondents as the price for the principal article of merchandise and such subsidiary prizes or premiums as are provided for on the push card, plus one additional article of merchandise identical to the principal prize or premium named on the push card. It is intended and provided by respondents' sales plan that one of the two identical principal articles of merchandise shall be retained by the operator of the push card and the other, and such subsidiary prizes or premiums as may be provided in the particular offer, shall be allotted to the player or players selecting the concealed numbers which correspond to the predetermined number or numbers entitling the player or players to such prizes or premiums as may be specified.

PAR. 4. Respondents have distributed more than a million of the aforesaid merchandise offers accompanied by push cards in substantially the form described above and have received orders for such merchandise from thousands of individuals, dealers, and others to whom such offers were mailed. Respondents' sales of merchandise pursuant to the aforesaid plan for the 12 months ending November 30, 1940, amounted to approximately \$1,800,000. In most

instances the orders for merchandise received by respondents are for precisely the articles of merchandise listed on the printed order form mailed out with a push card and cover two identical principal articles of merchandise and such subsidiary premiums or prizes as are named on the push card. Respondents receive such orders for merchandise from approximately 1 percent of the individuals, dealers, or others to whom push cards are sent, and when the shipments are made to such purchasers respondents send with such shipments other literature and push cards offering different types of merchandise under the same plan. Reorders or additional orders are received from about 25 percent of those to whom a sale has been made.

PAR. 5. The Commission concludes that many of the individuals, dealers, and others to whom respondents furnished said push cards have used, and do use, the same in purchasing, selling, and distributing merchandise which they buy from respondents. The sale of merchandise to the purchasing public according to respondents' sales plan 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. Respondents thus supply to and place in the hands of others means of conducting lotteries in the sale of merchandise. The use by respondents of the aforesaid sales plan or method in the sale and distribution of their merchandise, and the sale of such merchandise by the aid of and through the use thereof, is a practice contrary to the established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 6. In the sale and distribution of their various articles of merchandise respondents are in competition with many other persons, firms, and corporations who sell and distribute like merchandise, some of whom are unwilling to adopt and use a sales plan or method similar to that used by respondents, or any method involving a game of chance or any other method contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, 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 equivalent methods. The use of said method by respondents, because of said game of chance, has a tendency and capacity to, and does, unfairly divert to respondents from their said competitors who do not use the same or equivalent methods substantial trade in commerce between and among the various States of the

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United States and in the District of Columbia, and as a result thereof substantial injury has been done, 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.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice and injury 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.

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 in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel, 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 respondents Philip Harry Koolish and Sara Allen Koolish, individually, and trading as Standard Distributing Co., or under any other name, jointly or severally, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of any merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

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 any merchandise or separately, which 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.

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3. Selling or otherwise disposing of any merchandise by the use of push cards, pull cards, punchboards, or other lottery devices.

It is further ordered, That respondents shall, within 60 days after the 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
INLAID OPTICAL CORPORATION

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

Docket 4178. Complaint, July 11, 1940—Decision, Aug. 21, 1941

Where a corporation engaged in the interstate sale and distribution of lenses and eyeglasses, including reading glasses and sunglasses, importing uncut lenses from Japan, and processing and mounting them in frames, in course of which the label attached to each bearing legend "Made in Japan," was removed, and also manufacturing and purchasing lenses of domestic origin with which it customarily intermingled the processed Japanese lenses in its ready-to-wear glasses—

- (a) Sold and distributed said glasses to chain stores and dealers, without any label, mark or words thereon indicating the Japanese or foreign origin of lenses above referred to, frames of which were made in the United States; and
- (b) Represented, through salesmen and representatives, that its eyeglasses, assembled from lenses intermingled as above set forth and of which about 25 percent contained such imported lenses, were of domestic origin;

With effect of misleading and deceiving a substantial portion of the purchasing public, which has a decided preference for products made in the United States over those made in Japan and many other foreign countries, and members of which have become accustomed to examining articles prior to purchase for indication of foreign origin, in absence of which they assume such products to be domestic, into the erroneous belief that its said eyeglasses were wholly of domestic origin, thereby inducing such public to purchase its said products, and placing in the hands of unscrupulous and uninformed dealers means to mislead and deceive members of said public:

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. Lewis C. Russell*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Adler & Flint, of Providence, R. I., 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 Inlaid Optical 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:

PARAGRAPH 1. Respondent, Inlaid Optical Corporation, is a corporation organized, existing, and doing business under and by virtue