

IN THE MATTER OF

THRIFT SALES CORPORATION, TRADING AS FINANCE SERVICE SYSTEM, AND AS CHURCH EXTENSION BUREAU, AND GUSTAVE HEISS, INDIVIDUALLY AND AS AN OFFICER OF THE THRIFT SALES CORPORATION.

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

Docket 4489. Complaint, Apr. 19, 1941—Decision, Nov. 18, 1941

Where a corporation and its officer-director who formulated, controlled and directed its policies, acts and practices; engaged in the competitive interstate sale and distribution of sales promotion plans and articles of merchandise used in their operation, including watches, clocks, luggage, cutlery, pens, lamps, and tableware—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises or lottery schemes in the sale and distribution thereof to the ultimate consumer, a typical scheme involving use of a pushcard with 100 perforated disks concealing numbers and bearing names and pictures of motion picture actors and actresses, under a plan pursuant to which the person selecting the picture concealing the number corresponding with that under the card's master seal, received choice of several articles of merchandise illustrated in the advertising folder, of which the pushcard formed a part, certain numbers and the last punch entitled customers to choice of "Junior Gifts," and the amount paid for chance or the obtaining of a free chance was dependent upon the number secured; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with such plan, under which fact as to whether a purchaser received an article or nothing, and the amount, if any, to be paid for any merchandise received, were determined solely by lot or chance; contrary to an established public policy of the United States Government and in competition with many who, unwilling to use method involving chance or contrary to public policy, refrain therefrom; With the 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 such products in preference to those of said competitors; and with tendency and capacity unfairly to divert therefrom to themselves substantial trade in commerce:

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

Before *Mr. John W. Addison*, trial examiner.

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

Mr. Raymond M. Grossman, of Chicago, Ill., 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 Thrift Sales Corporation, a corporation trading as Finance Service System and as Church Extension Bureau, and Gustave Heiss, individually and as an officer of Thrift Sales Corporation, 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Thrift Sales Corporation, is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 192 North Clark Street, Chicago, Ill. Said corporation also does business under the trade names Finance Service System and Church Extension Bureau. Respondent, Gustave Heiss, is an officer and director of the corporate respondent and has his office and principal place of business located at 192 North Clark Street, Chicago, Ill. Said individual respondent formulates, controls and directs the policies, acts, and practices of the corporate respondent. The respondents act in conjunction and cooperation each with the other in carrying out the acts and practices herein described.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of sales promotion plans and various articles of merchandise used in the operation of such plans, including; among other things, watches, clocks, luggage, cutlery, pens, lamps, and tableware. Respondents cause and have caused said merchandise, when sold, to be transported from their aforesaid place of business in the State of Illinois to purchasers at their respective points of location in the various States of the United States, other than the State of Illinois, and in the District of Columbia. There is now and has been for more than 1 year last past 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 their business respondents are and have been in competition with other individuals and corporations and with partnerships engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 3. In the course and conduct of their business as described hereinabove, respondents in soliciting the sale of and in selling and distributing their merchandise, in accordance with their promotional sales plan, furnish and have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes when said merchandise is sold and distributed to the ultimate consumers thereof. One of the methods or sales plans adopted and used by respondents is substantially as follows:

Respondents contact religious, charitable and fraternal organizations located at various points throughout the United States, and offer to conduct bazaars for such organizations, the proceeds from which are to be divided on a basis theretofore agreed upon between the respondents and the organization. Thereafter respondents place in the hands of members of such organization devices commonly known as push cards to be used and which are used in the sale of respondents' merchandise to the general public. One of the push cards furnished by respondents in connection with their merchandising plan is described as follows:

Said push card bears the names and pictures of 100 moving-picture actors and actresses, each picture covering a partially perforated disk. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The advertising booklet or brochure of which the push card is a part, contains blank spaces numbered from 1 to 100 for the purpose of filling in the names of purchasers of the disks or "pushes." Purchasers of pushes from said card pay the number of cents represented by the number pushed from the card, except that those pushing numbers in excess of 20 pay only 20 cents, and 5 of the pushes on the card are free. The push card also bears a large "Master Seal" within which is concealed 1 of the numbers appearing under the small disks. The person selecting the moving picture actor or actress whose number corresponds with the number under the master seal receives his choice of several articles of respondents' merchandise, illustrated in the advertising folder or brochure.

The push card also bears on its face the following legend or instruction:

PICK A STAR
HELP OUR BAZAAR

Donations only
1¢ to 20¢

5 punches are
Free!

Nos. 22-44 and Last Punch receives Choice of Junior Gift.

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Person selecting number under seal receives Choice of Major Seal Gift.

SELECT YOUR FAVORITE MOVIE STARS

Donors Participate in Grand
Prize Drawing

Every Star you Push in-
creases reward in Grand
Prize Drawing

Sale of respondents' merchandise by means of said push cards are made in accordance with the above described legend or instruction. Said "prizes" or premiums are allotted to customers or purchasers in accordance with said legend or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and the amount to be paid for any merchandise received, are thus determined wholly by lot or chance.

Respondents, in connection with their sales promotion schemes have furnished various other push cards for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise or lottery scheme. The sales plans or methods involved in the sale of all of said merchandise by means of other push cards are essentially the same as that hereinabove described, varying only in detail.

PAR. 4. The persons to whom respondents furnish and have furnished their said push cards use the same in purchasing, selling and distributing respondents' merchandise in accordance with the afore-said sales plans. 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 plans or methods 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 plans or methods, is a practice of a sort which is contrary to an established public policy of the Government of the United States.

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 one of the said articles of merchandise without cost or at a price much less than the normal retail price thereof. Many persons, firms and corporations who sell or distribute merchandise in competition with 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 by the element of chance involved therein, and there-

by are induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondent 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 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 an equivalent method.

PAR. 6. 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 April 19, 1941, issued and thereafter served its complaint in this proceeding upon respondents Thrift Sales Corporation, a corporation, trading as Finance Service System, and as Church Extension Bureau, and Gustave Heiss, individually and as an officer of the Thrift Sales Corporation, 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 the complaint, testimony and other evidence in support thereof were introduced by attorneys for the Commission before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the counsel for the respondents on behalf of the respondents and W. T. Kelley, chief counsel for the Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which may be drawn from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding as to them without the presentation of further testimony, argument, filing of briefs or other intervening procedure. Counsel for the respondents also expressly waived the filing of a report upon the evidence by the trial examiner.

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Thereafter this proceeding regularly came on for final hearing the interest of the public and makes this its findings as to the facts the facts, said stipulation having been approved, accepted and filed 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, Thrift Sales Corporation, is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 192 North Clark Street, Chicago, Ill. Said corporation also does business under the trade names Finance Service System and Church Extension Bureau. Respondent, Gustave Heiss, is an officer and director of the corporate respondent and has his office and principal place of business located at 192 North Clark Street, Chicago, Ill. Said individual respondent formulates, controls and directs the policies, acts and practices of the corporate respondent. The respondents act in conjunction and cooperation each with the other in carrying out the acts and practices herein described.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of sales promotion plans and various articles of merchandise used in the operation of such plans, including, among other things, watches, clocks, luggage, cutlery, pens, lamps, and tableware. Respondents cause and have caused said merchandise, when sold, to be transported from their aforesaid place of business in the State of Illinois to purchasers at their respective points of location in the various States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past 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 their business respondents are and have been in competition with other corporations, individuals, and partnerships engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents in soliciting the sale of and in selling and distributing their merchandise, in accordance with their promotional sales plan, furnish and have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes when said merchandise is sold and distributed to

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the ultimate consumers thereof. One of the methods or sales plans adopted and used by respondents is substantially as follows:

Respondents contact religious, charitable, and fraternal organizations located at various points throughout the United States, and offer to conduct bazaars for such organizations, the proceeds from which are to be divided on a basis theretofore agreed upon between the respondents and the organization. Thereafter respondents place in the hands of members of such organization devices commonly known as push cards to be used and which are used in the sale of respondents' merchandise to the general public. One of the push cards furnished by respondents in connection with their merchandising plan bears the names and pictures of 100 moving-picture actors and actresses, each picture covering a partially perforated disk. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The advertising booklet or brochure of which the push card is a part, contains blank spaces numbered from 1 to 100 for the purpose of filling in the names of purchasers of the disks or "pushes." Purchasers of pushes from said card pay the number of cents represented by the number pushed from the card, except that those pushing numbers in excess of 20 pay only 20 cents, and 5 of the pushes on the card are free. The push card also bears a large "Master Seal" within which is concealed 1 of the numbers appearing under the small disks. The person selecting the moving picture actor or actress whose number corresponds with the number under the master seal receives his choice of several articles of respondents' merchandise, illustrated in the advertising folder or brochure.

The push card also bears on its face the following legend or instruction:

PICK A STAR

HELP OUR BAZAAR

Donations only
1¢ to 20¢

5 punches are
Free!

Nos. 22-44 and Last Punch receives Choice of Junior Gift.

Person selecting number under seal receives Choice of Major Seal Gift.

SELECT YOUR FAVORITE MOVIE STARS

Donors Participate in
Grand Prize Drawing

Every Star you Push
increases reward in
Grand Prize Drawing

Sales of respondents' merchandise by means of said push cards are made in accordance with the above described legend or instruction.

Said "prizes" or premiums are allotted to customers or purchasers in accordance with said legend or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and the amount to be paid for any merchandise received, are thus determined wholly by lot or chance.

Respondents, in connection with their sales promotion schemes have furnished various other push cards for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods involved in the sale of all of said merchandise by means of other push cards are essentially the same as that hereinabove described, varying only in detail.

PAR. 4. The persons to whom respondents furnish and have furnished their said push cards use the same in selling and distributing respondents' merchandise in accordance with the aforesaid sales plans. 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 plans or methods 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 plans or methods, is a practice of a sort which is contrary to an established public policy of the Government of the United States of America.

PAR. 5. The sale of merchandise to the purchasing public in the manner above found, involves a game of chance or the sale of a chance to procure one of the said articles of merchandise without cost or at a price much less than the normal retail price thereof. Many persons, firms and corporations who sell or distribute merchandise in competition with respondents, as above found, 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 by the element of chance involved therein, and thereby are 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 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 an equivalent method.

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CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and a stipulation as to the facts entered into by counsel for the respondents in behalf of the respondents and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Thrift Sales Corporation, a corporation, its officers, directors, representatives, agents, and employees, and Gustave Heiss, an individual and as an officer of the Thrift Sales Corporation, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

1. Selling or distributing merchandise so packed and assembled that sales of such merchandise to the general public are to be made and may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others push or pull cards or other lottery devices either with assortments of merchandise or separately, which said push or pull cards or other lottery devices are to be used or may be used in selling or distributing said merchandise to the public.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the 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.

Complaint

IN THE MATTER OF

CONCORD DISTRIBUTING COMPANY, INC.

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

Docket 4508. Complaint, May 27, 1941—Decision, Nov. 18, 1941

Where a corporation engaged in the competitive interstate sale and distribution of cameras, souvenir thermometers, clocks, tableware sets, dressing table sets, electric lamps, and other articles of merchandise—

Furnished various devices and plans by which such merchandise was sold and distributed to the ultimate consumer wholly by lot or chance, distributing to the purchasing public pushcards, circulars explaining its plan of selling said merchandise, and allotting it as premiums or prizes to operators of pushcards and to the purchasing public; a typical scheme involving a plan, pursuant to which a person selecting the one of 32 feminine names corresponding with that under the card's master seal received a camera, the person selecting the name concealing a designated number received a souvenir thermometer, and the amount paid by a customer for chance was dependent upon the particular number secured; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with such sales plan, under which the fact as to whether a purchaser received an article or nothing for the amount of money paid, and which article, if any, was determined wholly by lot or chance, and involving sale of a chance to procure an article at much less than its normal retail price; contrary to an established public policy of the United States Government and in competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

With the effect of unfairly diverting trade in commerce to it from its said competitors, to the substantial injury of competition in commerce:

Held, That such acts and practices as above set forth constituted unfair methods of competition in commerce and unfair acts and practices therein.

Mr. J. V. Mishou for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Concord Distributing Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Concord Distributing Co., Inc., is a corporation organized and existing under the laws of the State of New