

IN THE MATTER OF
**MARION ALLEN, TRADING AS TRIANGLE SALES COM-
PANY, AND ALFRED J. LANDAY**

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

Docket 4576. Complaint, Aug. 25, 1941—Decision, Dec. 4, 1941

Where an individual engaged in the competitive interstate sale and distribution of radios, bedspreads, cameras, fountain pens, and other articles, by means of lottery devices, and one "A. L.," engaged in distributing for her sales literature, etc., as below set forth, to pushcard operators and the purchasing public—

Furnished, among other things, pushcards and circulars explaining her plan of selling such merchandise and allotting it as premiums or prizes to the operators of the cards and the purchasing public, a typical pushcard being printed with 16 feminine names for use under a plan providing that the person selecting the name corresponding to that concealed under card's master seal received a camera, the three persons securing, by chance, certain numbers concealed by discs bearing feminine names, received "a genuine LEATHER BILLFOLD," and the amount paid by different customers was dependent upon numbers secured; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries or game of chance to procure an article at much below its normal price, contrary to an established public policy of the United States Government, and in competition with many who, unwilling to use any 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 said merchandise in preference to that of aforesaid competitors who do not use such methods, and with tendency and capacity to unfairly divert substantial trade in commerce to them from their said competitors:

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.

Mr. J. W. Brookfield, Jr., 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 Marion Allen, an individual trading as Triangle Sales Co., and Alfred J. Landay, an individual, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by and in respect thereof would be in the public interest,

hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Marion Allen, is an individual, trading and doing business as Triangle Sales Co., with her principal office and place of business located at 530 West Adams Street, Phoenix, Ariz. Respondent, Alfred J. Landay, is an individual, with his office and principal place of business located at 2129 Campbell Street, Chicago, Ill., and is engaged in the mailing of pushcards and literature for the respondent, Marion Allen. Both respondents have acted in concert and in cooperation with each other in performing the practices hereinafter alleged.

Respondent, Marion Allen, is now, and more than 6 months last past has been, engaged in the sale and distribution of radios, bedspreads, cameras, fountain pens, and other articles of merchandise, and has caused said merchandise when sold to be transported from her place of business in Phoenix, Ariz., to purchasers thereof at their respective points of location in the various States of the United States, other than Arizona and in the District of Columbia.

There is now, and has been, for several years last past, a course of trade by respondent, Marion Allen, 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 her business respondent, Marion Allen, is and has been in substantial competition with other individuals and with firms and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of her business as described in paragraph 1 hereof, respondent, Marion Allen, in soliciting and in selling her merchandise, furnishes, and has furnished various devices and plans of merchandising which involve the operation of game of chance, gift enterprises, or lottery schemes, when such merchandise is sold and distributed to the ultimate consumers thereof. The method or sales plan adopted and used by respondent Marion Allen, is substantially as follows:

Respondent, Marion Allen, furnishes and has furnished respondent, Alfred J. Landay, with certain literature and instructions, including, among other things, pushcards, order blanks, illustrations of said merchandise, and circulars explaining respondent Allen's sales plan or method of selling said merchandise and of allotting it as premiums or prizes to the operators of said pushcards and to the purchasing public, and respondent Landay causes and has caused the said literature and pushcards above described to be distributed

Complaint

34 F. T. C.

through the United States mails and otherwise to operators and the purchasing public located in the various States of the United States and in the District of Columbia.

One of said pushcards bears 16 feminine names with ruled columns opposite each for writing in the name of the customer opposite the feminine name selected. Said pushcard has 16 partially perforated disks, on the face of each of which is printed one of the feminine names corresponding to those printed opposite the ruled columns above referred to. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The pushcard also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a camera. The pushcard bears a legend as follows:

4 PRIZES
CLEANER!
FASTER!
BETTER!

(Picture of camera)

16 PICTURES for the price of 8.

NAME UNDER SEAL RECEIVES A PICKWICK
CANDID CAMERA AND CARRYING CASE
WITH SHOULDER STRAP
Nos. 1, 9 and 19 each receive a genuine
LEATHER BILLFOLD

Quality Features New High-Speed
Ground Lens; fast shutter. Fixed
Focus, eliminating focusing operat-
ing. Standard Film used. Kodak
127 or Agfa A8 Level View Finder.
Just look and snap shutter. Fully
Guaranteed. Finely built with gen-
uine TENITE case.

No. 1 pays 1¢	Push
No. 9 pays 9¢	out
No. 18 pays 18¢	with
No. 19 pays 19¢	pencil

All others pay only 29¢. None higher.

Write your name on reverse side opposite name you select

Sales of said merchandise by means of said pushcards 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-described legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid is thus determined wholly by lot or chance.

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

PAR. 3. The persons to whom respondents furnish, and have furnished, the said pushcards use the same in purchasing, selling, and distributing said 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 said merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of said 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.

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 one of the said articles 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 said merchandise and the element of chance involved therein, and thereby are induced to buy and sell said 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 respondent from their said competitors who do not use the same or an equivalent method.

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 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 August 25, 1941, issued and thereafter served its complaint in this proceeding upon respondents Marion Allen, an individual, trading as Triangle Sales Co., and Alfred

Findings

34 F. T. C.

J. Landay, an individual, charging them with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of said act. On November 10, 1941, respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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, Marion Allen, is an individual, trading and doing business as Triangle Sales Co., with her principal office and place of business located at 530 West Adams Street, Phoenix, Ariz. Respondent, Alfred J. Landay, is an individual, with his office and principal place of business located at 2129 Campbell Street, Chicago, Ill., and is engaged in the mailing of pushcards and literature for the respondent, Marion Allen. Both respondents have acted in concert and in cooperation with each other in performing the practices hereinafter found.

Respondent, Marian Allen, is now, and for more than 6 months last past, has been engaged in the sale and distribution of radios, bed spreads, cameras, fountain pens, and other articles of merchandise, and has caused said merchandise when sold to be transported from her place of business in Phoenix, Ariz., to purchasers thereof at their respective points of location in the various States of the United States, other than Arizona, and in the District of Columbia.

There is now, and has been for several years past, a course of trade by respondent, Marion Allen, 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 her business respondent, Marion Allen, is and has been in substantial competition with other individuals and with firms and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of her business as described in paragraph 1 hereof, respondent, Marion Allen, in soliciting and in selling her merchandise, furnishes and has furnished various devices and plans of merchandising which involve the operation of games of

chance, gift enterprises, or lottery schemes, when such merchandise is sold and distributed to the ultimate consumers thereof. The method or sales plan adopted and used by respondent, Marion Allen, is substantially as follows:

Respondent, Marion Allen, furnishes and has furnished respondent, Alfred J. Landay, with certain literature and instructions, including, among other things, pushcards, order blanks, illustrations of said merchandise, and circulars explaining respondent Allen's sales plan or method of selling said merchandise and of allotting it as premiums or prizes to the operators of said pushcards and to the purchasing public, and respondent Landay causes and has caused the said literature and pushcards above described to be distributed through the United States mails and otherwise to operators and the purchasing public located in the various States of the United States and in the District of Columbia.

One of the said pushcards bears 16 feminine names with ruled columns opposite each for writing in the name of the customer opposite the feminine name selected. Said pushcard has 16 partially perforated disks, on the face of each of which is printed one of the feminine names corresponding to those printed opposite the ruled columns above referred to. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The pushcard also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a camera. The pushcard bears a legend as follows:

4 PRIZES
CLEANER!
FASTER!
BETTER!

16 PICTURES for the price of 8.

Quality Features

New High-Speed Ground Lens; fast shutter. Fixed Focus, eliminating focusing operating. Standard Film used. Kodak 127 or Agfa A8 Level View Finder. Just look and snap shutter. Fully Guaranteed. Finely built with genuine TENITE case.

(Picture of camera)

NAME UNDER SEAL RECEIVES A PICKWICK CANDID CAMERA CARRYING CASE WITH SHOULDER STRAP.

Nos. 1, 9 and 19 each receive a genuine LEATHER BILLFOLD

No. 1 pays 1¢	Push
No. 9 pays 9¢	out
No. 18 pays 18¢	with
No. 19 pays 19¢	pencil
All others pay only 20c. None higher.	
Write your name on reverse side opposite name you select	

Sales of said merchandise by means of said pushcards 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-described legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid is thus determined wholly by lot or chance.

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

PAR. 3. The persons to whom respondents furnish, and have furnished, the said pushcards use the same in purchasing, selling, and distributing said 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 said merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of said 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.

PAR. 4. 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 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 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 said merchandise and the element of chance involved therein, and thereby are induced to buy and sell said 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.

Order

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 the answer of respondents, in which answer respondents admitted all the material allegations of fact set forth in said complaint and stated that they waived all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, Marion Allen, individually and trading as Triangle Sales Co. or trading under any other name, and Alfred J. Landay, an individual, either jointly or severally, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of radios, bed spreads, cameras, fountain pens, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Supplying to, or placing in the hands of, others punch boards, push or pull cards, pull tabs, or other lottery devices, either with assortments of merchandise or separately, which said punchboards, push or pull cards, pull tabs, 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.

IN THE MATTER OF

**RALPH KALNER, REA DRATH, FREDA ROSTEN, AND
ALVIN B. WOLF, TRADING AS DELUXE PRODUCTS
COMPANY AND DELCO NOVELTY COMPANY**

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

Docket 3634. Complaint, Oct. 22, 1938—Decision, Dec. 9, 1941

Where four individuals engaged at different times as partners in the interstate sale and distribution of bed spreads, pillows, wrist watches, china ware, and a general line of novelty goods in competition with others who were unwilling to and did not use any sales plan involving chance or a lottery in periodicals—

- (a) Sold and distributed their said merchandise by means of a game of chance, gift enterprise, or lottery scheme, through sending to those replying to their advertisements offering "free" handkerchiefs and beautifying kits, catalogs and circulars describing their various articles and explaining plan under which the particular item of twenty listed, and the price paid therefor, were determined by the legend under the tab of the pull card selected by customer, and the card operator or distributor was compensated for the sale of chances by the premium selected by him, or, at his option, by the right to retain part of the amount he collected from said sales;

Whereby purchasers were induced to pull the tabs in the hope of receiving articles of merchandise, some of which ordinarily sold at higher prices and were of greater value than the price designated to be paid therefor, determined wholly by lot or chance, as was fact as to which of the twenty articles purchaser might receive;

With effect of placing in the hands of others devices by use of which their merchandise was distributed to the ultimate consumer wholly by lot or chance, contrary to the established public policy of the United States; and notwithstanding "Notice to Purchasers" in small print above the pull tab, purporting to advise the reader of his privilege of buying any article at the price shown therefor on the back of each slip, which was inconsistent with the working of the scheme as planned;

- (b) Represented that the price charged for their merchandise was less than the usual retail price through statements in their catalog purporting to offer "BONUS COUPON—worth 40¢, 50¢ value—Kurl-Kwik Curler for only 10¢" and "BONUS COUPON—worth 65¢, \$1.00 value—Knife, fork and pie server set for only 35¢";

The facts being said curlers ordinarily sold at retail for 10 cents and the sets for 45 cents, their fair values; and

- (c) Described in their catalog one of their premiums or awards given to their salesmen as "Rogers 26 Piece Silver Set," whereby distributors and prospective purchasers were caused to believe that such merchandise was of solid silver when in fact it was only plated ware;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, as a