

Syllabus

IN THE MATTER OF

JOHN J. SCHOCKET, TRADING AS CONSUMERS
MERCANTILE SERVICE

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

Docket 4242. Complaint, Aug. 20, 1940—Decision, Feb. 16, 1942

Where an individual, engaged in competitive interstate sale and distribution of cameras, silverware, broilers, fishing tackle, and other merchandise—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises or lottery schemes in sale and distribution of such merchandise to ultimate consumers, and distribution to agents or operators and purchasing public of push cards and circulars explaining his plan of selling such merchandise and allotting it as premiums or prizes to the operators of the cards and the public, a typical plan providing that the person selecting that one of 79 feminine names displayed on card corresponding with name concealed under master seal received choice of certain articles of merchandise illustrated on attached or accompanying folder, and amount of money paid, if any, for chance was dependent upon number concealed by the disk, upon which appeared the name selected; and thereby

Supplied to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with such sales plans, involving chance to procure article at much less than normal retail price, and under which fact as to whether purchaser received an article of merchandise or nothing for amount of money paid, or article free, was determined wholly by lot, contrary to the established public policy of the Government of the United States and in violation of criminal laws, and in competition with many who, unwilling to use any method involving game of 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 his merchandise in preference to that of his said competitors, whereby trade was unfairly diverted to him from them:

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. W. W. Sheppard* and *Mr. Andrew B. Duvall*, trial examiners.

Mr. L. P. Allen, Jr., Mr. J. V. Mishou and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. Arthur H. Schwab of Nash & Donnelly of Chicago, Ill., for respondent.

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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 John J. Schocket, individually and trading as Consumers Mercantile Service, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, John J. Schocket, is an individual trading as Consumers Mercantile Service, with his principal office and place of business located at 64 West Randolph Street, Chicago, Ill. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of cameras, silverware, broilers, fishing tackle, clocks, pens, pencils, and other articles of merchandise. Respondent causes, and has caused said merchandise, when sold, to be transported from his aforesaid 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 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 the respondent 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 his business, respondent is, and has been, in competition with other individuals and with partnerships 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 his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of, and in selling and distributing his 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 said merchandise is sold and distributed to the ultimate consumer thereof. The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to agents, operators, and the purchasing public certain literature and instructions, including among other things push cards, illustrations of his said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards

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and to the purchasing and consuming public. One of respondent's push cards bears 79 feminine names with ruled columns on the reserve side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 79 small partially perforated disks on the face of each of which is printed the word "push." Each of such disks is set over one of the aforesaid feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is 1 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 1 of the articles of merchandise illustrated on an attached or accompanying folder. The push card bears a legend or instructions as follows:

Do Not
Remove
Seal
Until
Entire
Card is
Sold

10
LUCKY
WINNERS
Person selecting name under seal receives choice
of
ONE
of the articles shown on pages
1-2-5 or 7

1 Cent to 25 Cents—Pay What You Draw. No
Higher. Those Drawing Numbers Over 25 Pay
Only 25¢—No More.

These Numbers Are
ALL FREE

1-3-5-7-9-10
11-12-13-14

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

Respondent furnishes, and has furnished, various other push cards accompanied by instructions and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance,

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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 other push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the same push cards use the same in purchasing, selling and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 involved 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 respondent, 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 respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's 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 respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, done by respondent 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 respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's 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 August 20 A. D. 1940, issued and subsequently served its complaint upon the respondent, John J. Schocket, an individual, trading as Consumers Mercantile Service, charging him 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, testimony and other evidence in support of said complaint were introduced by L. P. Allen, Jr., J. V. Mishou, and J. W. Brookfield, attorneys for the Commission, and in opposition to the allegations of the complaint by Arthur H. Schwab, attorney for the respondent, before W. W. Sheppard and A. B. Duvall, trial examiners 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, testimony and other evidence, report of the trial examiners upon the evidence and exceptions filed thereto, and briefs in support of the complaint and in opposition thereto (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, John J. Schocket, is an individual, trading as Consumers Mercantile Service, with his principal office and place of business located at 64 West Randolph Street, Chicago, Ill. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of cameras, silverware, broilers, fishing tackle, clocks, pens, pencils, and other articles of merchandise. Respondent causes, and has caused, said merchandise, when sold, to be transported from his aforesaid place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said merchandise in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his business, respondent is now, and has been, in competition with other individuals and with partnerships 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.

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PAR. 3. In the course and conduct of his business, respondent, in soliciting the sale of, and in selling and distributing, his 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 said merchandise is sold and distributed to ultimate consumers thereof. The method or sales plan adopted and used by respondent was, and is, substantially as follows:

Respondent distributes, and has distributed, to agents, operators, and to the purchasing public, certain literature and instructions including, among other things, push cards, illustrations of his said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears 79 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 79 small, partially perforated disks, on the face of each of which is printed the word "push." Each of such disks is set over one of the aforesaid feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card 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 one of the articles of merchandise illustrated on an attached or accompanying folder. The push card bears a legend or instructions as follows:

10
LUCKY
LUCKY WINNERS
Person selecting name under seal receives choice
of
ONE
of the articles shown on pages
1-2-5 or 7

1 Cent to 25 Cents—Pay What You Draw. No
Higher. Those Drawing Numbers Over 25 Pay
Only 25¢—No More.

Do Not
Remove
Seal
Until
Entire
Card is
Sold

These Numbers Are
ALL FREE
1-3-5-7-9-10
11-12-13-14
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Sales of respondent's 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-described legend or instructions. The fact as to whether a purchaser receives an article or merchandise or nothing for the amount of money paid, or an article of merchandise free, is thus determined wholly by lot or chance.

Respondent furnishes, and has furnished, various other push cards accompanied by instructions and other printed matter for use in the sale and distribution of his 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 other push cards, is the same as that hereinabove described, varying only in detail.

PAR. 4. The persons to whom respondent furnishes, and has furnished, said push cards, use the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others, the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 the established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 5. The sale of said merchandise to the purchasing public in the manner above-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. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above-described, 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 respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's 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 respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United

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States and in the District of Columbia, to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's 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, testimony and other evidence taken before W. W. Sheppard and A. B. Duvall, trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiners upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, John J. Schocket, an individual, trading as Consumers Mercantile Service, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cameras, silverware, broilers, fishing tackle, clocks, pens, pencils, and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying, or placing in the hands of, others, push cards or other devices which are to be used, or may be used, in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Shipping, mailing, or transporting to agents or to distributors or to members of the purchasing public, push cards or other devices which are to be used or may be used in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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 respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF

JOHN B. ARMSTRONG, M. D., TRADING AS PINK OINTMENT
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4622. Complaint, Oct. 31, 1941—Decision, Feb. 16, 1942*

Where an individual, engaged in interstate sale and distribution of his "Pink Ointment"; by advertisements disseminated through radio continuities, in which were included purported testimonial statements—

- (a) Represented, directly and by implication, that his said preparation was a cure and remedy for eczema, poison ivy, ringworm, rash, itch, weed poisoning, cuts, burns, bruises, athlete's foot, all kinds of skin irritation, chigger bites, mosquito bites, prickly heat, sunburn, hives, dust poisoning, poison oak, and sore, tender, itching, and burning feet, and a competent and effective treatment therefor;

When in fact it had no therapeutic value in said ailments and conditions in excess of affording temporary local relief due to its counterirritant, antipruritic and analgesic properties, and its antiseptic effect; repeated or continued use whereof to secure such relief might become dangerous; and

- (b) Failed to reveal facts material in the light of aforesaid representations, or with respect to consequences which might result from use of product under usual or prescribed conditions, in that it contained sufficient phenol to be dangerous to health, and use thereof might cause a necrosis of the skin and tissues, and systemic poisoning, including irritation of the kidneys, danger of which would be increased if skin to which it was applied was inflamed or broken;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such false representations were true, and with the tendency and capacity to induce such public, because of its mistaken belief, to purchase substantial quantities of his said product:

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.

Mr. Maurice C. Pearce for the Commission.

Williams & Elleman, of Topeka, Kans., 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 John B. Armstrong, M. D., an individual, trading as Pink Ointment Co., 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