

Complaint

34 F. T. C.

IN THE MATTER OF

LITTLE ROCK TENT & AWNING COMPANY, TRADING AS
TUF-NUT GARMENT MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4481. Complaint, Apr. 4, 1941—Decision, Feb. 24, 1942*

Where a corporation, which was engaged in the manufacture and competitive interstate sale and distribution of its "Tuf-Nut" work garments to wholesalers, jobbers, and retailers, and which, during a recent 8-month period sold about 1½ million pants, shirts, and overalls and awarded about 1,000 suits or garments as below described—

Sold its said products through use of a scheme which involved a lottery in the sale and distribution thereof to consumers, it furnishing dealers with a display poster card explaining their plan, pursuant to which purchasers became entitled to "Join the Khaki Suit Club," and that one of the 60 provided for whose number corresponded to that under the poster's master seal, received a "Tuf-Nut Khaki Suit" consisting of matching shirt and pants; and thereby

Supplied to and placed in the hands of others means of conducting a lottery in the sale of its products, through use of aforesaid sales plan by retail dealers who exposed and sold its garments to the purchasing public in accordance with game of chance to procure suit or other garment without cost, contrary to the established policy of the United States Government, and in competition with many who do not use methods involving chance;

With the result that many persons were attracted by its said sales plan and the element of chance involved therein, and were thereby induced to buy its garments in preference to those of its aforesaid competitors, with tendency and capacity thereby to divert trade unfairly to it 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. William C. Reeves* and *Mr. Lewis C. Russell*, trial examiners.

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

House, Moses & Holmes, of Little Rock, Ark., 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 Little Rock Tent & Awning Co., a corporation, trading as Tuf-Nut Garment Manufacturing Co., hereinafter referred to as respondent has violated the pro-

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visions of said act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Little Rock Tent & Awning Co., is a corporation, also trading as Tuf-Nut Garment Manufacturing Co., with its office and principal place of business located at Third and Commerce Streets, Little Rock, Ark. Respondent is now and for more than 1 year last past has been engaged in the manufacture of work garments and in the sale and distribution thereof under the trade name "Tuf-Nut" to wholesale dealers, jobbers, and retail dealers, located at various points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said garments, when sold, to be transported from its principal place of business in the city of Little Rock, Ark., to purchasers thereof at their respective points of location in various States of the United States other than Arkansas, and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by respondent in such garments 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 respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of work garments 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 its business, as described in paragraph 1 hereof, respondent sells and has sold its garments to dealers by means of a method involving the use of a lottery scheme when such garments are sold and distributed to the consumers thereof. Said method of sale consists in furnishing dealers who purchase respondent's garments with a display poster bearing the following legend:

FREE TUF-NUT KHAKI SUIT

(The Mark of Quality)

JOIN THE KHAKI SUIT CLUB

Tuf-Nut	_____	T F	_____	Tuf-Nut
Khaki	Absolutely FREE	U	Absolutely Free	Khaki
Suit	_____	N T	_____	Suit

All You Have To Do

Just register your name FREE with each Tuf-Nut garment you purchase. If you buy five Tuf-Nut garments you will still get to register your name five

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times. When this card is filled out with names your Tuf-Nut dealer will break open the Tuf-Nut label in the lower corner and check the hidden number against the name that is registered opposite that number below. If you pick the lucky number you will receive absolutely FREE a Tuf-Nut Khaki Suit (shirt and pants to match).

Name	Address	Name	Address
1	-----	31	-----
2	-----	32	-----
3	-----	33	-----
4 etc.	-----	34 etc.	-----
30	-----	60	-----

THE HIDDEN LUCKY NUMBER

Register your name for each Tuf-Nut garment you purchase.

The LUCKY NUMBER wins a Tuf-Nut Khaki Suit FREE.

T F

If you are the winner you will be notified by U your Tuf-Nut dealer.

N T

The dealers to whom the said poster is furnished display the same to the purchasing public. The card contains 60 blank spaces for registration of the names of purchasers of respondent's garments and each space is accompanied by a number, the numbers running consecutively from 1 to 60. Each purchaser of a garment makes a choice of a number and writes his name in the blank opposite such number selected. On the poster is a master seal under which is concealed a number. When the card is completely filled with the names of purchasers, the master seal is broken, revealing a number from 1 to 60 and the purchaser whose name is registered opposite the number corresponding with the number found under the master seal is entitled to receive for his award a Tuf-Nut Khaki Suit (shirt and pants to match) without additional charge. The number printed under the master seal is effectively concealed from purchasers and prospective purchasers until all of the numbers on the poster have been chosen. The said Tuf-Nut Khaki Suit is thus awarded to the purchaser of other of respondent's garments wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's garments directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting a lottery in the sale of its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its garments and the sale of said garments 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 policy of the government of the United States.

PAR. 4. The sale of said garments to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a suit of other garments without cost. Many persons, firms, and corporations who sell and distribute work garments or similar merchandise in competition with 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 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 its garments and in the element of chance involved therein and are thereby induced to buy and sell respondent's garments in preference to garments of said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent because of said game of chance has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent methods.

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 April 4, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Little Rock Tent & Awning Co., a corporation, trading as Tuf-Nut Garment Manufacturing Co., charging it 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. On April 24, 1941, respondent filed its answer in this proceeding. A hearing was held in this matter on October 1, 1941, at which time a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent was read into the record in lieu of testimony in support of the charges stated in the

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complaint, or in opposition thereto, and which stipulation further provided that the Commission may proceed upon said statement of facts and written briefs, without oral argument, to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding. Respondent expressly waived the filing of a trial examiner's report upon the evidence.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer, testimony and other evidence in the form of a stipulation as to the facts upon the record, and briefs in support of the complaint and in opposition 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, Little Rock Tent & Awning Co., is a corporation, also trading as Tuf-Nut Garment Manufacturing Co., with its office and principal place of business located at Third and Commerce Streets, Little Rock, Ark. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture of work garments, and in the sale and distribution thereof under the trade name "Tuf-Nut," to wholesale dealers, jobbers, and retail dealers located in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said garments, when sold, to be transported from its principal place of business in the City of Little Rock, State of Arkansas, to the 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 such garments 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 its said business, respondent is now, and has been, in competition with other corporations, and with partnerships and individuals, engaged in the sale and distribution of work garments 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 its business, respondent sells, and has sold, its garments to dealers by means of a method involving the use of a lottery scheme when such garments are sold and distributed to the consumers thereof. Said method of sale consists in

furnishing dealers who purchase respondent's garments with a display poster bearing the following legend :

FREE TUF-NUT KHAKI SUIT

(The Mark of Quality)

JOIN THE KHAKEI SUIT CLUB

Tuf-Nut

			T	F		
Khaki	Absolutely	FREE	U		Absolutely	Free
			N	T		
Suit						

**Tuf-Nut
Khaki
Suit**

All You Have To Do

Just register your name **FREE** with each Tuf-Nut garment you purchase. If you buy five Tuf-Nut garments you will still get to register your name five times. When this card is filled out with names your Tuf-Nut dealer will break open the Tuf-Nut label in the lower corner and check the hidden number against the name that is registered opposite that number below. If you pick the lucky number you will receive absolutely **FREE** a Tuf-Nut Khaki Suit (shirt and pants to match.)

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The dealers to whom said poster is furnished display the same to the purchasing public. The card contains 60 blank spaces for registration of the names of purchasers of respondent's garments, and each space is accompanied by a number, the numbers running consecutively from 1 to 60. Each purchaser of a garment makes a choice of a number and writes his name in the blank opposite such number selected. On the poster is a master seal, under which is concealed a number. When the card is completely filled with the names of the purchasers, the master seal is broken, revealing a number from 1 to 60, and the purchaser whose name is registered opposite the number corresponding with the number found under the master seal, is entitled to receive for his reward a Tuf-Nut Khaki Suit consisting of shirt and pants to match, without additional charge. The number printed under the master seal is effectively concealed from the purchasers and prospec-

Conclusion

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tive purchasers until all of the numbers on the poster have been chosen. The said Tuf-Nut Khaki Suit is thus awarded to the purchaser of other of respondent's garments wholly by lot or chance.

PAR. 4. Retail dealers who purchase respondent's garments, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting a lottery in the sale of its products in accordance with the sales plan hereinabove described. The use by the respondent of said sales plan or method in the sale of its garments, and the sale of said garments 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 policy of the Government of the United States.

PAR. 5. The sale of said garments to the purchasing public in the manner above described, involves a game of chance or the sale of a chance to procure a suit or other garment without cost. Many persons, firms, and corporations who sell and distribute work garments or similar merchandise in competition with the respondent in commerce among and between the various States of the United States do not use said method or any similar method involving a game of chance or the sale of a chance to win something by chance. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its garments and in the element of chance involved therein, and are thereby induced to buy respondent's garments in preference to the garments of said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent, because of said game of chance, has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia, to respondent from its competitors who do not use the same or equivalent methods.

PAR. 6. During the period from January 1, 1941, to October 1, 1941, respondent has sold approximately 1½ million pants, shirts, and overalls and has awarded, under the plan of merchandising described herein, approximately 1,000 free suits or garments.

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.

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Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent upon the record, 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, Little Rock Tent & Awning Co., a corporation, trading under the name of Tuf-Nut Garment Manufacturing Co., or under any other name, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of work garments, or any other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of, retail dealers or others, display posters or any other sales plans or devices which are to be used, or may be used, in the sale or distribution of work garments or any other merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. 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 it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

PACIFIC FRUIT & PRODUCE COMPANY, WALLA WALLA
GARDENERS' ASSOCIATION, ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4487. Complaint, Apr. 16, 1941—Decision, Feb 24, 1942*

Where three corporations, two partners and a cooperative association, engaged, among other things, in shipping broad- or flat-leaf spinach from their respective packing houses at Walla Walla, Wash., particularly to jobbers for resale in Chicago and surrounding area in which such spinach, during the shipping season, from early September to late November, normally met no substantial competition—and prior to 1939, and but for acts and practices below set forth, in competition with one another and others in such shipment and sale, as were brokers and jobbers, below referred to, in purchase thereof;

Following a meeting in Chicago of the Chicago manager of a Minneapolis broker, the manager of aforesaid Walla Walla cooperative association, and the sales manager of one of four Chicago jobbers—

- (a) Entered into and carried out agreement to sell such broadleaf spinach only through aforesaid broker, with shipments to be allotted to said shippers on basis of sales of previous years; and

Where such shippers and four Chicago jobbers handling such product, following discussions and correspondence with aforesaid broker's Chicago manager—

- (b) Entered into and carried out agreement to the effect that the purchase and sale of product in question in the Chicago market would be prorated among the four jobbers concerned; and

Where said four jobbers—

- (c) Entered into and abided by agreement that they would purchase such Walla Walla spinach only from aforesaid shippers through said Minneapolis broker, and would rotate cars or portions thereof on the basis of previous years' purchases; and

Where aforesaid shippers, jobbers and brokers—

- (d) Entered into and abided by agreement that any request for purchase of spinach received by said shippers from any dealer other than jobbers herein concerned would be referred to said broker, who would advise such other jobbers or dealers that there were no cars of such spinach available; and

Where aforesaid jobbers, pursuant to such agreement, combination and conspiracy, and in furtherance thereof—

- (e) Established and maintained a fixed resale price at which such broadleaf spinach should be sold in the Chicago market;

With the result that said acts and practices, all to the prejudice and injury of the public, had a tendency to, and did actually, hinder and prevent price competition between and among said shippers, jobbers and brokers in the purchase and sale of fresh broadleaf spinach in commerce, and placed in them the power to control and enhance the prices of said commodity;