

Complaint

IN THE MATTER OF

ALBERT ROSE, TRADING AS PARKER-THOMPSON
COMPANY

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

Docket 4699. Complaint, Feb. 4, 1942—Decision, Apr. 13, 1942

Where an individual engaged in competitive sale and distribution of suits, overcoats, and other merchandise in the District of Columbia—

Sold and distributed his said products to the purchasing public through means of sales plans or methods involving operation of a game of chance, gift enterprise, or lottery scheme, typical of which was his so-called "Club" plan, pursuant to which he supplied each participant with a contract of purchase for a suit or overcoat for \$39, their normal retail value, to be paid at the rate of \$1 per week, and subject to the provision that should the purchaser's "ledger" or contract number correspond with the last three numbers of the Treasury balance figures, such purchaser would receive the garment without payment of remaining weekly amounts due thereon; and thereby, in so selling and distributing his merchandise in accordance with such plan, involving game of chance or sale of chance to procure an article of merchandise at less than its normal retail price, conducted lotteries, contrary to an established public policy of the United States Government, and in competition with many who do not use methods involving chance, or contrary to public policy;

With the result that many persons were attracted by said methods and the element of chance involved therein, and were thereby induced to buy his merchandise in preference to that of said competitors who do not use such methods, and with tendency and capacity to divert trade to him from them; to the substantial injury of competition 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.

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

Mr. Joseph B. Danzansky, of Washington, D. C., 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 Albert Rose, an individual trading and doing business as Parker-Thompson Co., hereinafter referred to as respondent, has violated the provisions of said act and it appearing to the Commission that a proceeding by it in

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respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Albert Rose, is an individual trading and doing business as Parker-Thompson Co., with his principal office and place of business located at 1205 I Street NW., Washington, D. C. Respondent is now and has been for more than one year last past engaged in the sale and distribution of suits, overcoats, and other articles of merchandise within the District of Columbia. Said respondent sold and has caused and still causes the said garments in which he deals to be sold and distributed from his place of business to purchasers located at various points in the said District of Columbia. There is now and has been a course of trade by respondent in said garments in commerce 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 corporations and partnerships engaged in the sale and distribution of like or similar articles of merchandise in the District of Columbia.

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent is now and has been selling and distributing said merchandise to members of the purchasing public by means of sales plans or methods which involve the operation of a game of chance, gift enterprise, or lottery scheme. One of said sales plans or methods is substantially as follows:

Members of the purchasing public are solicited by respondent or respondent's representatives to purchase a suit of clothes or overcoat under a so-called "club" plan. Respondent supplies each purchaser participating in said plan with a contract of purchase. Said contract provides for the sale by respondent to such purchaser of a suit of clothes or an overcoat for the sum of \$39, which said amount is to be paid as follows: \$1 when said contract is delivered and \$1 in advance each week thereafter until the full amount of the contract has been paid. There is space provided on said contract for the recording of the weekly payments. Each of said contracts has printed thereon a "ledger" number. Purchasers are informed by respondent or respondent's representatives that should said number correspond with the last three numbers of the Treasury balance figures, provided all of said purchaser's weekly payments have been made up to date, then such purchaser would be entitled to and would receive a suit or overcoat without the payment of the remaining weekly payments. Purchasers whose contracts do not bear numbers corresponding with the daily Treasury balance, as above alleged, prior to the payment of the full amount of their contracts are required to

pay \$39 for their suits or overcoats. All of said suits and overcoats have a normal retail value of \$39. The amount which the ultimate consumer pays for one of said suits or overcoats is thus determined wholly by lot or chance.

Respondent uses and has used various sales plans which involve the operation of games of chance, gift enterprises, or lottery schemes in connection with the sale and distribution of its merchandise to the consuming public, but said sales plans are similar to the one hereinabove described, varying only in detail.

PAR. 3. Respondent has sold and distributed his merchandise to members of the consuming public in accordance with the aforesaid sales plans or methods. In so selling and distributing his merchandise, respondent has conducted lotteries in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said sales plans or methods in the sale of his merchandise and the sale of such merchandise by and through the use thereof, and by the aid of said methods, is a practice of the 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 an article of merchandise at a price 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, do not use said methods or any methods involving use of 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. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale of said merchandise in the manner above alleged and are thereby induced and persuaded to buy respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the respondent, because of said game of chance, has the tendency and capacity to divert trade in commerce in the District of Columbia to respondents from its said competitors who do not use the same or equivalent sales plans or methods. As a result thereof substantial injury is being and has been done by respondent to competition in commerce in the District of Columbia.

PAR. 5. The aforesaid acts and practices of the 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 acts and practices in commerce

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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 February 4, 1942, issued and thereafter served its complaint in this proceeding upon respondent, Albert Rose, trading as Parker-Thompson Co., charging him with the use of unfair methods of competition in commerce and unfair acts and practices in commerce, in violation of the provisions of said act. On February 23, 1942, the respondent filed his answer, in which answer he 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, Albert Rose, is an individual trading and doing business as Parker-Thompson Co., with his principal office and place of business located at 1205 I Street NW., Washington, D. C. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of suits, overcoats, and other articles of merchandise within the District of Columbia. Said respondent sold and has caused and still causes the said garments in which he deals to be sold and distributed from his place of business to purchasers located at various points in the said District of Columbia. There is now and has been a course of trade by respondent in said garments in commerce 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 corporations and partnerships engaged in the sale and distribution of like or similar articles of merchandise in the District of Columbia.

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent is now and has been selling and distributing said merchandise to members of the purchasing public by means of sales plans or methods which involve the operation of a game of chance, gift enterprise, or lottery scheme. One of said sales plans or methods is substantially as follows:

Members of the purchasing public are solicited by respondent or respondent's representatives to purchase a suit of clothes or overcoat under a so-called "Club" plan. Respondent supplies each purchaser participating in said plan with a contract of purchase. Said contract provides for the sale by respondent to such purchaser of a suit of clothes or an overcoat for the sum of \$39, which said amount is to be paid as follows: One dollar when said contract is delivered and \$1 in advance each week thereafter until the full amount of the contract has been paid. There is space provided on said contract for the recording of the weekly payments. Each of said contracts has printed thereon a "ledger" number. Purchasers are informed by respondent or respondent's representatives that should said number correspond with the last three numbers of the Treasury balance figures, provided all of said purchaser's weekly payments have been made up to date, then such purchaser would be entitled to and would receive a suit or overcoat without the payment of the remaining weekly payments. Purchasers whose contracts do not bear numbers corresponding with the daily Treasury balance, as above found, prior to the payment of the full amount of their contracts are required to pay \$39 for their suits or overcoats. All of said suits and overcoats have a normal retail value of \$39. The amount which the ultimate consumer pays for one of said suits or overcoats is thus determined wholly by lot or chance.

Respondent uses and has used various sales plans which involve the operation of games of chance, gift enterprises, or lottery schemes in connection with the sale and distribution of its merchandise to the consuming public, but said sales plans are similar to the one hereinabove described, varying only in detail.

PAR. 3. Respondent has sold and distributed his merchandise to members of the consuming public in accordance with the aforesaid sales plans or methods. In so selling and distributing his merchandise, respondent has conducted lotteries in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said sales plans or methods in the sale of his merchandise and the sale of such merchandise by and through the use thereof, and by the aid of said methods, is a practice of the 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 an article of merchandise at a price less than the normal retail price thereof. Many persons, firms and corporations who sell or distribute merchandise in competition with the respondent, as above found, do not use said methods or any methods involving use of a game

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of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale of said merchandise in the manner above found and are thereby induced and persuaded to buy respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the respondent, because of said game of chance, has the tendency and capacity to divert trade in commerce in the District of Columbia to respondent from his said competitors who do not use the same or equivalent sales plans or methods. As a result thereof substantial injury is being and has been done by respondent to competition in commerce in the District of Columbia.

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 and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, 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, Albert Rose, trading as Parker-Thompson Co., or under any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of suits, overcoats, 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 by means of any sales plan or method involving the use of a game of chance, gift enterprise, or lottery scheme.

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2. Supplying or placing in the hands of others any merchandise, together with a sales plan or method involving the use of a game of chance, gift enterprise or lottery scheme by which said merchandise is to be, or may be, sold to the purchasing public.

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

J. D. FINE, TRADING AS J. D. FINE CANDY COMPANY

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

Docket 4709. Complaint, Feb. 13, 1942—Decision, Apr. 13, 1942

Where an individual, engaged in the manufacture and competitive interstate sale and distribution of assortments of candy so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers, a typical assortment being composed of 72 uniform pieces of candy together with a push card for use in their sale under a plan by which purchaser of 1 for 5 cents became entitled to a push and, if he pushed one of certain numbers, was entitled to exchange his candy piece for from 2 to 4 of said pieces—

Sold such assortments to wholesalers, jobbers and retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan involving game of chance or sale of chance to procure candy at prices much less than its normal retail price; and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his products, contrary to an established public policy of the United States Government, and in competition with many who do not use any method involving chance or contrary to public policy;

With the result that many persons were attracted by such sales plan and thereby induced to buy and sell his products in preference to those of said competitors, with tendency and capacity thereby to unfairly divert trade 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 his competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

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

Mr. D. G. Johnson, of Oklahoma City, Okla., 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 J. D. Fine, an individual trading as J. D. Fine Candy Co., 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, J. D. Fine, is an individual trading and doing business under the name of J. D. Fine Candy Co., with his