

IN THE MATTER OF
**HYMAN LANGSAM AND ABRAHAM LANGSAM, TRADING
AS MODEL HOME SUPPLY COMPANY**

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

Docket 3507. Complaint, July 22, 1938—Decision, May 25, 1942

Where two individuals, engaged in competitive interstate sale and distribution of jewelry, cosmetics, clothing, bedding, and other merchandise—

- (a) Sold and distributed, under their sales plan, various assortments thereof together with pull cards, for use in their sale and distribution, which concealed the name and price of one of said articles beneath each of their tabs, so that which article purchaser received and price paid, and whether or not the value of the particular article was greater than the price designated therefor, were determined wholly by lot or chance; and compensated by a premium, after remission to said individuals of amounts collected, card's operator; and

Thereby supplied to and placed in the hands of others the means of conducting a game of chance, gift enterprise, or lottery scheme in the sale of their merchandise; with the result that many persons were attracted by said sales method and the element of chance involved therein, and were thereby induced to buy and sell their merchandise in preference to that offered and sold by competitors who are unwilling to and do not use such methods; whereby trade was unfairly diverted to them from their competitors aforesaid; and

- (b) Represented through circulars and advertising matter accompanying said pull cards that their so-called premiums or gifts were given away free through such statements as "Beautiful, useful household gifts at absolutely no cost," "How to get your gifts without cost to you"; and that they paid all shipping charges;

When in fact premiums were not given away, but were either purchased by the labor or services of their representatives, or price thereof was included in prices of the other articles which representative was required to sell or procure sale of before he could obtain premiums; and they did not pay all shipping charges, but required specific sums of money to be paid as such by representatives on a number of their articles;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true; as a result whereof it purchased substantial quantities of their products and trade was unfairly diverted to them from their competitors, including those who do not make such misrepresentations, to the substantial injury of competition in commerce:

Held, That such sales methods were contrary to the public policy of the Government, and 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.

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Before *Mr. Randolph Preston, Mr. Miles J. Furnas, Mr. John W. Addison, Mr. Arthur F. Thomas, and Mr. Andrew B. Duvall*, trial examiners.

Mr. D. C. Daniel and Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Arthur D. Herrick, of New York City, 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 Hyman Langsam and Abraham Langsam, individually, and as copartners, trading under the firm name and style Model Home Supply Co., 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. Respondents, Hyman Langsam and Abraham Langsam, are individuals, doing business as a copartnership under the firm name and style Model Home Supply Co., with their principal office and place of business located at 34 East Twelfth Street, New York, N. Y. The present address of respondent, Hyman Langsam, is 993 Mission Street, San Francisco, Calif. The present address of Abraham Langsam is 1370 East Eighteenth Street, Brooklyn, N. Y. Respondents are now, and for some time last past have been, engaged in the sale and distribution of jewelry, cosmetics, clothing, bedding, kitchenware, clocks, watches, electrical appliances, razors, chinaware, silverware, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products when sold to be shipped or transported from their said place of business to purchasers thereof in the various States of the United States and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said 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 said business respondents are and have been in competition with other partnerships and individuals and with corporations engaged in the sale and distribution of similar or like 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. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute and have sold and distributed said articles of merchandise by means of a game of chance, gift enterprise or lottery scheme. The respondents distribute or cause to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular. Respondents' merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for and remitted the sums to the respondents, said respondents thereupon ship to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from

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said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondents sell and distribute and have sold and distributed various assortments of said merchandise and furnish and have furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish and have furnished the said pull cards use and have used the same in purchasing, selling and distributing respondents' 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 their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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 much less than the apparent 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 method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale of such merchandise in the manner above described, and are thereby 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 the capacity and tendency to, and does, unfairly divert trade and custom to respondents from their said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of their business, as hereinabove related, respondents cause and have caused various false, deceptive, and misleading statements to appear in their advertising matter as

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aforesaid, of which the following are examples but are not all-inclusive:

Beautiful useful Household Gifts at absolutely No Cost.

How To Get Your Gifts without cost to You.

Special Offer: 2 Extra Gifts Free.

All Shipping Charges Paid by Us.

PAR. 6. In truth and in fact, none of respondents' so-called premiums or gifts are given away "free" or "without cost," but said premiums or gifts, which are represented as being "free" or "without cost," to said representatives, are either purchased with labor by them, or the price of said so-called premiums or gifts is included in the price of other articles of merchandise which the representatives must sell or procure the sale of before said so-called premiums or gifts can be procured by them. For a number of said so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered. Respondents do not pay all shipping charges on their said products, but said representatives are required to pay certain specified sums of money as shipping charges on a number of respondents' said articles of merchandise.

PAR. 7. The use by respondents of the false, deceptive, and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are, among the competitors of respondents as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning the distribution of their products. By the statements and representations aforesaid, trade is unfairly diverted to respondents from such competitors, and, as a result thereof, substantial injury is being done, and has been done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition 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 the 22d day of July A. D. 1938, issued and thereafter served its complaint in this proceeding upon the respondents, Hyman Langsam and Abraham Langsam, individually, and as copartners, trading under the firm name and style, Model Home Supply Co., charging them with unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of the complaint and the filing of Abraham Langsam's answer admitting all the material allegations of the complaint, testimony, and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission, and testimony in opposition to the allegations of the complaint was introduced by the attorney for respondents, before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission, on the complaint, answer of respondent, Abraham Langsam, the testimony and other evidence, report of the trial examiners and exceptions thereto, and brief in support of the complaint. 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. Respondents, Hyman Langsam and Abraham Langsam, are individuals and copartners, trading under the firm name and style "Model Home Supply Co." with their principal place of business located at 34 East Twelfth Street, in the city and State of New York.

PAR. 2. Respondents are now, and since some time prior to the issuance of the complaint herein have been engaged in the business of selling and distributing jewelry, cosmetics, clothing, bedding, kitchenware, clocks, watches, electrical appliances, razors, china ware, silverware, and other articles of merchandise, in commerce between and among various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various States of the

United States and in the District of Columbia. Respondents, during all of the time mentioned herein have maintained a course of trade in such merchandise in commerce between and among various States of the United States and in the District of Columbia, and during all of said time have been in competition with other individuals and partnerships, and with corporations, engaged in the sale and distribution of similar articles of merchandise between and among various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in the conduct of their business, distribute or cause to be distributed to representatives and prospective representatives certain advertising literature, including sales circulars describing their method of conducting business. The sales circulars contain a list of a number of items of merchandise and the prices thereof; adjacent to the list is printed and set out a device commonly called a "pull card," which consists of a number of tabs under each of which is the name of an article of merchandise and the price thereof, so concealed that the purchaser or prospective purchaser of a tab, or the right to pull a tab, is unable to ascertain either the article he is to receive or the price to be paid therefor until the tab is separated from the card. After the tab has been separated from the card the purchaser's name is written on the list opposite the article of merchandise revealed when the tab has been pulled. Some of the articles of merchandise have a retail value greater than the price designated for them on the tabs, but are distributed to the pullers of the tabs for the prices disclosed when the respective tabs are pulled. Whether the purchaser of a pull tab receives an article of greater value than the price designated for same on such tab, and which of said articles of merchandise he is to receive and the amount of money he is required to pay, are determined wholly by lot or chance.

The person or representative operating a pull card, after selling all of the pull tabs or the right to pull the tabs, collects the amounts called for and remits same to the respondents, who thereupon ship to said representative the merchandise designated on the pull cards together with a premium to be retained by the representative as compensation for his services in disposing of respondents' merchandise. Respondents' representative delivers the merchandise to the pullers of the tabs, in accordance with the hereinbefore-described plan.

Respondents, by the use of the hereinbefore described sales method, sell and distribute and have sold and distributed various assortments of merchandise, and furnished and have furnished various pull cards which vary only in detail from the one herein described, for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme.

PAR. 4. The persons to whom respondents have furnished their pull cards have used the same in purchasing, selling, and distributing respondents' merchandise in accordance with the hereinbefore-mentioned sales plan. Respondents thus supply to and place in the hands of others the means of conducting a game of chance, gift enterprise, or lottery scheme in the sale of their merchandise in accordance with the said sales plan.

PAR. 5. Many persons are attracted by respondents' sales method and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to that offered for sale and sold by competitors of respondents who are unwilling to use and do not use the same or an equivalent method, and as a result, trade is unfairly diverted to respondents from their said competitors.

PAR. 6. Respondents, in their circulars and advertising matter described in paragraph 3 hereof, make the following representations:

Beautiful, Useful Household Gifts at absolutely no cost;
How to get your gifts without cost to you;
Special Offer two extra gifts free;
All shipping charges paid by us.

The said representations, and each of them, are false, deceptive, and misleading. In truth and in fact, none of respondents' so-called premiums or gifts are given away free, or without cost; they are either purchased by the labor or services of respondents' representatives, or the price of the so-called "premiums" or "gifts" is included in the prices of the other articles of merchandise which the representative must sell or procure the sale of before the so-called premiums or gifts can be procured by him. A certain sum of money must be paid by respondents' representatives for a number of the so-called premiums or gifts, in addition to the labor performed or the service rendered.

Respondents do not pay all shipping charges on their products, their representatives being required to pay certain specific sums of money as shipping charges on a number of respondents' articles of merchandise.

PAR. 7. The use by respondents of the false, deceptive, and misleading representations set forth in paragraph 6 hereof has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such representations are true, and as a result, they have purchased substantial quantities of respondents' products. Among the competitors of respondents mentioned in paragraph 2 hereof are those who do not make such false, deceptive, and misleading representations.

By reason of the said false, deceptive, and misleading representations trade has been unfairly diverted to respondent from such com-

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petitors, and as a result substantial injury has been and is being done by respondents to competition in commerce between and among various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents are to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act, and respondents' sales methods are contrary to the public policy of the Government of the United States.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent Abraham Langsam, testimony and other evidence taken before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, the reports of the trial examiners and exceptions thereto, and brief in support of the complaint. And the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Hyman Langsam and Abraham Langsam, individually and as copartners, trading under the firm name and style of Modern Home Supply Co., or under any other name or designation, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of jewelry, cosmetics, clothing, bedding, kitchenware, clocks, watches, electrical appliances, razors, china ware, silverware, or any other article of 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 and 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, push or pull cards, punchboards or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, punchboards or other lottery devices are to be used, or may be used, in selling or distributing any merchandise to the public.

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

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4. Representing, by means of circulars, advertising matter, or by any other means, that merchandise is given by the respondents to their representatives free, or without cost.

5. Representing by means of circulars and advertising matter, or by any other means, that all shipping charges are paid by respondents.

It is further ordered, That 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.

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IN THE MATTER OF

STERLING PRODUCTS AND VITA-RAY CORPORATION

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

Docket 4197. Complaint, July 26, 1940—Decision, May 25, 1942

Where a corporation and its subsidiary, engaged in interstate sale and distribution of a line of cosmetic products made by latter; by means of advertisements in newspapers and periodicals, radio continuities, and circulars, leaflets, pamphlets, and other advertising literature—

Represented that vitamins A and D constituted a basic need for the health of the skin which was satisfied through application of such vitamins locally by means of cold cream; and that a vitamin deficiency, of which dryness and coarse pores might be symptoms, would be relieved through the use of their cosmetic "Vita-Ray Vitamin Cream" containing said vitamins;

The facts being that the skin does not require vitamins A and D by means of local application, and while said vitamins may be absorbed to some extent through the skin under certain conditions of application, there is no scientific basis for the claim that there is any local or systemic effect whatever; dryness of skin due to vitamin deficiency constitutes a secondary symptom which becomes manifest only after serious deficiency has depleted the vitamin stores and presents a pathological condition requiring treatment by a physician; and their said cream has no beneficial or therapeutic effect because of the addition of such vitamins;

With effect of misleading and deceiving the purchasing public into the erroneous belief that such representations were true:

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. William L. Pencke for the Commission.

Rogers, Hoge & Hills, of New York City, 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 Sterling Products, a corporation, and Vita-Ray Corporation, a 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, Sterling Products, is a corporation, organized, existing, and doing business under the laws of the State