

Complaint

34 F. T. C.

IN THE MATTER OF

SIMON ARON, MORRIS ARON AND LOUIS BROUDO,
TRADING AS NOVELTY SALES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4039. Complaint, Feb. 24, 1940—Decision, June 16, 1942*

Where three partners; engaged in competitive interstate sale and distribution of clocks, knives, flashlights, trays, jewelry, and other merchandise to dealers—

Sold and distributed assortments thereof which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumer, a typical assortment consisting of a number of articles of merchandise, together with a punchboard—in manufacture and sale of which two of the partners were also engaged—under a plan by which persons securing certain numbers for the 5 cents usually paid for a punch secured the articles, others receiving nothing; and thereby

Supplied to and placed in the hands of purchasers, who exposed their assortments to the purchasing public and distributed merchandise in accordance with plan described, a means of conducting games of chance, gift enterprises, or lotteries in the sale of said products in accordance with such plan;

With the result that many persons purchased said merchandise in preference to that offered by competitors who did not use similar sales methods, whereby competition was hindered and trade unfairly diverted from such competitors to them;

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, were contrary to the public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *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 S. Salus and *Mr. David S. Molod*, of Philadelphia, Pa., 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 Simon Aron, Morris Aron, and Louis Broudo, individually and as copartners, trading under the name of Novelty Sales Co., have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in

7396

Complaint

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

PARAGRAPH 1. Respondents, Simon Aron, Morris Aron, and Louis Broudo, are individuals, trading as copartners, under the name of Novelty Sales Co., with their principal office and place of business located at 806 Walnut Street, Philadelphia, Pa. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of clocks, knives, flashlights, trays, jewelry, and various other articles of merchandise to dealers located in the various States of the United States and in the District of Columbia. They cause, and have caused, their said merchandise, when sold, to be shipped or transported from their aforesaid place of business in the State of Pennsylvania to purchasers thereof in the various other States of the United States and in the District of Columbia at their respective points of location. There is now, and for more than 1 year last past has been, 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 their business, respondents are, and have been, in competition with other partnerships and individuals, and with corporations, engaged in the sale and distribution of like or similar 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 their business, as described in paragraph 1 hereof, respondents sell, and have sold, to dealers certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the consumers thereof.

Respondents' said merchandise is sold and distributed to the consuming public by means of devices commonly known as punchboards, in substantially the following manner: Assortments of said merchandise consist of a number of articles of merchandise, together with one of said punchboards. Said punchboards have printed on the tops thereof various instructions or legends showing the method or sales plan by which said merchandise is to be sold or distributed to the purchasing or consuming public. Sales are generally .5 or 10 cents each, and said punchboard has a number of sealed tubes in which have been inserted slips of paper with numbers appearing thereon. Each purchaser is entitled to punch one of said slips from said board. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the

Complaint

34 F. T. C.

slip of paper punched or removed from said board. Persons punching certain specified numbers are entitled to and receive specified articles of merchandise. Persons obtaining numbers not so specified receive nothing for their money. Said articles of merchandise are thus sold and distributed to the consuming or purchasing public wholly by lot or chance.

Others of said punchboards have no instructions or legends printed thereon but have blank spaces provided therefor. On those punchboards the purchasers thereof place instructions or legends which have the same import or meaning as the instructions or legends placed by respondents on said punchboard devices first hereinabove described.

Respondents sell and distribute various assortments of their said merchandise and furnish various devices for use in the sale and distribution of said merchandise, but the sales plan or method employed with each of said devices is substantially the same as the sales plan or method hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase or procure respondents' said merchandise and said punchboards and other devices, either directly or indirectly, from respondents, expose said devices and the said merchandise accompanying same to the purchasing public, and sell or distribute such articles of merchandise in accordance with the above described sales plans or methods. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries, gift enterprises, or games of chance in the sale of said merchandise in accordance with the sales plans or methods hereinabove set forth. Such sales plans or methods have the tendency and capacity to induce the consuming or purchasing public to purchase respondents' merchandise in preference to similar merchandise offered for sale and sold by their competitors.

PAR. 4. 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 articles of merchandise at prices less than the normal retail prices thereof. The use by respondents of said methods in the sale of their 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 and in violation of criminal laws. The use by respondents of said sales plans or methods has the tendency to unfairly hinder competition. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondents, as above described, are unwilling to adopt and use said methods 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.

PAR. 5. Many dealers in, and ultimate purchasers of, merchandise similar to that distributed by respondents are attracted by respondents' said sales plans or methods and by the element of chance involved in the sale of said merchandise in the manner above described and are thereby induced to purchase said merchandise from respondents in preference to similar merchandise offered for sale and sold by said competitors of respondents who do not use the same or similar methods. The use of said methods by respondents has the capacity and tendency, because of said game of chance, lottery scheme, or gift enterprise, unfairly to divert trade to respondents from their competitors who do not use the same or equivalent or similar methods, and has the capacity to deprive the purchasing public of free competition in said merchandise.

PAR. 6. The aforesaid acts and practices of the 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 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 the 24th day of February A. D. 1940, issued and thereafter served its complaint in this proceeding upon the respondents, Simon Aron, Morris Aron, and Louis Broudo, individually, and as copartners, trading under the name, "Novelty Sales Company," charging them with 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 the complaint and filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission 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, said proceeding came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner, briefs in support of the complaint and in opposition thereto, and oral argument and the

Findings

34 F. T. C.

Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Simon Aron, Morris Aron, and Louis Broudo, from 1927, A. D., to December 31, 1939, were co-partners trading under the name Novelty Sales Co. On the latter date the partnership was discontinued and respondent Simon Aron became sole owner and operator of the business until June 29, 1940, when he died. Since that time his widow, Jennie Aron has conducted the business. Respondents' principal place of business was located at 806 Walnut Street, Philadelphia, Pa., and Jennie Aron now conducts the business at this place.

PAR. 2. Respondents, during the existence of the partnership, and respondent, Simon Aron, from the time of the dissolution of the partnership until the time of his death, were engaged in the sale and distribution of clocks, knives, flashlights, trays, jewelry, and other articles of merchandise to dealers located in various States of the United States. Respondents caused their merchandise, when sold, to be shipped from their place of business in Pennsylvania to purchasers thereof located in various States of the United States.

Respondents, during the periods herein stated, were in competition with other individuals and partnerships, and with corporations, engaged in the sale and distribution of like or similar merchandise in commerce between and among various States of the United States.

Respondents, Morris Aron and Louis Broudo, are also engaged in the business of manufacturing punchboards which were sold to the respondents.

PAR. 3. Respondents sold and distributed assortments of their merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme, when sold and distributed to the consumers thereof. Such assortments consisted of a number of articles of merchandise together with a punchboard. Such punchboards had printed on the top thereof various instructions explaining the method or sales plan by which the merchandise was to be sold or distributed to the consuming public. The punchboards had a number of tubes containing slips of paper bearing numbers. These numbers were effectively concealed within the tube until it had been punched and the paper withdrawn. Five cents was the usual price charged for the privilege of punching one of these tubes.

1396

Order

Persons who punched tubes bearing certain numbers received the article of merchandise stated in the legend; nothing was received by the persons punching other numbers. The merchandise was thus sold and distributed to the consuming public wholly by lot or chance.

Respondents sold and distributed various assortments of merchandise and furnished various devices for use in the sale and distribution thereof, but the sales plan or method was the same as that herein described, varying only in detail.

PAR. 4. The purchasers of respondents' assortments exposed the same and said device to the purchasing public, and sold and distributed the merchandise in accordance with the herein described plan or sales method. Respondents thus supplied to and placed in the hands of others the means of conducting games of chance, gift enterprises, or lotteries in the sale of their said merchandise, in accordance with their said sales plan.

PAR. 5. Respondents' sales plan involved a game of chance or the sale of a chance to procure articles of merchandise at a price less than the normal retail price thereof, and because of this, many persons purchased respondents' merchandise in preference to similar merchandise offered for sale by competitors of respondents who were unwilling to use and did not use the same or similar methods in disposing of their merchandise. As a result, competition has been hindered and trade unfairly diverted to respondents from their competitors.

CONCLUSION

The aforesaid acts and practices of the respondents were all to the prejudice and injury of the public and of respondents' competitors, are contrary to the public policy of the Government of the United States of America, 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, the answer of respondents, testimony and other evidence in support of the allegations of the complaint taken before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, report of the trial examiner, briefs in support of the complaint and in opposition thereto, and oral argument: And the Commission having

Order

34 F. T. C.

made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Morris Aron and Louis Broudo, individually, and as copartners, trading under the name of Novelty Sales Co., or trading under any other name, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of clocks, knives, flashlights, trays, jewelry, 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 same 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 punchboards, push or pull cards, or other lottery device, either with assortments of merchandise or separately, which said punchboards, push or pull cards, or other lottery device, 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 complaint, insofar as it relates to respondent, Simon Aron, be and the same hereby is dismissed.

It is further ordered, That respondents, Morris Aron and Louis Broudo 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.

Syllabus

IN THE MATTER OF

BLANK & STOLLER CORPORATION, HARRY H. LONG,
GEORGE STOLLER, MAURICE SCHULTZ, AND RANDOLPH FAJENCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4523. Complaint, June 24, 1941—Decision, June 16, 1942*

Where a corporation previously engaged in making and selling photographs, in the course of which it acquired a large number of negatives, together with the three officers in control of its business activities and a fourth individual, engaged in making and selling photographic miniatures from said negatives; by means of circular letters to prospective purchasers, whose names and addresses they obtained from the corporate files along with corresponding negatives—

Represented that the miniatures they offered from negatives of photographs of the prospect had been displayed at public exhibition, were regularly or frequently sold for as much as \$75 or \$50, and that the quoted price of \$12.50 was greatly reduced and a special offer; and that such miniatures were prepared by a new and unusual method;

The facts being that while their place of business had a show case containing a number of miniatures—many of which had been rejected—which could be seen by persons entering, none of the miniatures had in fact been displayed in any public exhibition within the real meaning of the term; none of them had ever sold for any such amounts; quoted price was neither special nor reduced but the regular and customary one which they sought and which they even made no serious effort to maintain, selling at the best price obtainable and sometimes for as low as \$5; and methods used were not new or unusual, but commonly known and employed in the trade generally;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to said products, causing thereby its purchase thereof:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John W. Addison*, trial examiner.

Mr. Donovan Divet for the Commission.

Mr. Joseph K. Guerin, Receiver, and *Mr. Emil Weitzner*, of New York City, for Blank and Stoller Corp.

Mr. Isidor Glasgal, of New York City, for George Stoller and Maurice Schultz.

Baer & Marks, of New York City, for Randolph Fajen.