

IN THE MATTER OF

EUGENE RUSSELL JAFFE (ALIAS E. J. RUSSELL), TRADING AS STERLING SALES COMPANY AND CRAFTSMAN SALES COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4656. Complaint, Dec. 9, 1941—Decision, Nov. 13, 1942

Where an individual, engaged in competitive interstate sale and distribution of numerous articles of merchandise, including cameras, radios, comforters, and electric clocks—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes through including in circular letters sent to numerous people throughout the United States soliciting their aid in sale of his said goods, push cards and circulars explaining his merchandising plan, under which the number concealed in disk under feminine name selected by a customer determined the amount he paid, the person selecting feminine name corresponding with that concealed under card's large master seal received an electric clock, the three persons pushing certain "lucky numbers" received automatic pencils, and others received nothing; and the operator, responsible for sale of such chances, remission of proceeds, and distribution of merchandise to the winners, was compensated by an electric lamp; and thereby

Supplied to and placed in the hands of agents or distributors thus secured by him the means of conducting lotteries in the sale of his merchandise in accordance with such plans, under which the amount of money paid and the particular article, if any, received were determined wholly by lot or chance; contrary to an established public policy of the United States Government and in competition with those who were not willing to use any method of chance;

With result that many members of the public were attracted by said individual's sales plan and by the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that of said competitors; and with tendency and capacity to divert substantial trade unfairly to him from them:

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

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

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

Mr. Henry Junge and *Mr. Benjamin F. Morrison*, of Chicago, Ill., 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 Eugene Russell Jaffe, alias E. J. Russell, an individual, trading as Sterling Sales Co. and Craftsman Sales 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Eugene Russell Jaffe, alias E. J. Russell, is an individual, trading and doing business under the names of Sterling Sales Co. and Craftsman Sales Co., with his office and principal place of business located at 775 West Jackson Boulevard, Chicago, Ill. Respondent, is now, and has been for several years last past, engaged in the sale and distribution of cameras, radios, comforters, and bedspreads; loungettes, sports jackets, and other men's and women's wearing apparel; floor and table lamps, pens and pencils, electric time tellers, clocks and watches; bill folds and carrying cases; tableware, kitchenware, electrical appliances, and other merchandise, and has caused said merchandise, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof at their respective points of location in the various States of the United States other than Illinois, and in the District of Columbia. There is now, and has been for several years last past, a course of trade by 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 substantial 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 consumers thereof. The method or sales plan adopted and used by respondent is substantially as follows:

Respondent distributes and has distributed to operators and to the purchasing public certain literature and instructions, including among other things, push cards, order blanks, 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

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public. One of respondent's push cards bears 30 feminine names and 30 masculine names and, on the reverse side thereof, there appears ruled columns for writing in the name of the customer opposite the feminine or masculine name selected. Said push card has 60 partly perforated disks underneath which appears the printed words "push out with pencil." Printed upon each of said disks appears one of the aforesaid feminine or masculine names and concealed within each disk is a number which is disclosed only when the disk is pushed out or separated from the card. The push card also bears a large master seal and concealed within the master seal is one of the aforesaid feminine or masculine names appearing on the face of said card. The person selecting the feminine or masculine name corresponding to the one under the master seal receives his choice of a table or floor lamp. Three Eversharp pencils are also awarded as prizes in connection with the aforesaid push card. The push card bears the following legend or instructions:

(SEAL)

Holder of Lucky Name
Under Large Red Seal
Receives Choice of Any
TABLE or FLOOR LAMP
Shown On Circular
Numbers 1 to 29 Pay
Only Amount You Draw
Any Number Over 29
Pay Only 29¢
Write Your Name Opposite Name
You Select On Back Of Card
3 EXTRA WINNERS
Numbers 22-33-44
Each Receives * * *

A Genuine
EVERSHARP \$1.00
PENCIL

Another of respondent's sales plans consists of circulars, letters, advertising statements, and a push card. This push card is similar to one above described and it bears the following legend or instructions:

SONORA

Lucky Name
Under Large Red Seal
Receives Choice of
SONORA or AIRMASTER RADIO
Numbers 1 to 35 Pay Amount You Draw
Numbers Over 35 Pay Only 35¢
3 EXTRA WINNERS
Numbers 22 33 44 Each
Receive A \$1.00 Wahl
Eversharp Pencil

(SEAL)

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above-described legends or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and the amount to be paid for any merchandise received, are thus determined wholly by lot or chance.

Respondent furnishes and has furnished various other push cards accompanied by order blanks, 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 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 said push cards use the same in purchasing, selling, and distributing respondent's merchandise in accordance with the afore-said 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.

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 one of the said articles 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, do not 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 thereby are 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 unfairly divert substantial 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.

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 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 December 9, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Eugene Russell Jaffe, alias E. J. Russell, an individual, trading as Sterling Sales Co. and as Craftsman Sales 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 that act. After the filing of respondent's answer, testimony, and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such 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, the answer thereto, testimony, and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral arguments; 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. The respondent, Eugene Russell Jaffe, who has also used the name E. J. Russell, is an individual, trading and doing business under the names Sterling Sales Co. and Craftsman Sales Co., with his office and principal place of business located at 775 West Jackson Boulevard, Chicago, Ill. Respondent is now and since February 1941, has been engaged in the sale and distribution of numerous articles of merchandise, including, among others, cameras, radios, comforters, bedspreads, lamps, pens, pencils, electric clocks and other electrical appliances, billfolds, tableware, kitchenware, and various articles of men's and women's wearing apparel.

PAR. 2. In the course and conduct of his business respondent causes and has caused his merchandise, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is and at all times mentioned herein has been in substantial competition with other individuals, and with partnerships and corporations, engaged in the sale and distribution of similar articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the sale and distribution of his merchandise respondent furnishes to his agents and distributors various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes when such merchandise is sold and distributed to the ultimate consumers thereof. The method or sales plan used by respondent is substantially as follows:

Respondent addresses to numerous members of the public located throughout the United States circular letters explaining respondent's plan of merchandising and soliciting the aid of such persons in selling merchandise, the names of the addressees being taken from general mailing lists. The volume of letters distributed by respondent is large, some six million letters having been distributed by him during the year 1941. Enclosed in each letter is an order blank, a circular illustrating certain articles of merchandise, and a device commonly known as a push card.

The push card contains 60 partially perforated disks, on the face of each of which is a feminine or masculine name. Concealed under each disk is a number. The card also bears a large master seal, and concealed under this master seal is a name which corresponds with one of the names appearing on the perforated disks. Persons pushing the disks pay varying amounts, the exact amount paid being determined by the number concealed under the particular disk pushed. For example, a person pushing a disk revealing the number "10" pays 10 cents. The maximum amount paid by anyone, however, is 29 cents. After all of the disks on the card have been pushed, the master seal is removed and the person who pushed the disk bearing the name corresponding with the name under the master seal receives an electric floor or table lamp. Persons pushing certain "lucky numbers," three in number, receive automatic pencils. The other persons pushing disks on the card receive nothing for their money. Whether persons pushing the disks receive an article of merchandise or nothing for the

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amount of money paid, and the particular article received, is thus determined wholly by lot or chance.

The push card bears the following legend explaining how the card is operated:

(SEAL)

Holder of Lucky Name

Under Large Red Seal

Receives Choice of Any

TABLE or FLOOR LAMP

• Shown On Circular

Numbers 1 to 29 Pay

Only Amount You Draw

Any Number Over 29

Pay Only 29¢

Write Your Name Opposite Name

You Select On Back Of Card

3 EXTRA WINNERS

Numbers 22-33-44

Each Receives * * *

A Genuine

EVERSHARP \$1.00

PENCIL

The total amount of money collected by the agent or distributor operating the card is \$14.95, which is remitted to respondent. The articles of merchandise to be awarded as prizes are then shipped by respondent to the agent, along with an additional electric lamp which is retained by the agent as his compensation for operating the card.

Respondent supplies to his agents and distributors various other push cards for use in the sale and distribution of his merchandise, but the sales plans or methods involved in the use of all of the cards are substantially the same as that described above, varying only in detail.

PAR. 5. The persons to whom respondent furnishes his push cards use such cards in selling and distributing respondent's merchandise in accordance with the sales plan described. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise. The use by respondent of such sales plan or method in the sale of his merchandise and the sale of such merchandise by and through the use of such method is a practice of a sort which is contrary to an established public policy of the Government of the United States:

PAR. 6. The sale of merchandise to the purchasing public in the manner herein described involves a game of chance or the sale of a

chance to procure an order of merchandise at a price much less than the normal retail price thereof. Among the competitors of respondent referred to in paragraph 3 hereof are those who are unwilling to use the sales method herein described, or any method involving a game of chance or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and such competitors refrain therefrom. Many members of the public are attracted by the sales plan or method employed by respondent and by the element of chance involved therein, and such persons are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by those competitors of respondent who do not use such methods. Because of the element of chance involved in such method, the use thereof by respondent has the tendency and capacity to divert and has diverted substantial trade unfairly to respondent from his said competitors.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice 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, the answer of respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Eugene Russell Jaffe, alias E. J. Russell, individually, and trading as Sterling Sales Co. and as Craftsman Sales Co., or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cameras, radios, comforters, bedspreads, lamps, pens, pencils, electric clocks or other electrical appliances, billfolds,

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tableware, kitchenware, men's or women's wearing apparel, or any other merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of agents, distributors, dealers, members of the public, or others, push cards, pull cards, punchboards, or any other devices which are to be used or may be used in the sale or distribution of respondent's merchandise or any 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 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.

Syllabus

IN THE MATTER OF

NATHANIEL FRIEDMAN, TRADING AS CONSUMER'S
RESEARCH SERVICE AND CONSUMER'S REPORT
SERVICE

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

Docket 4734. Complaint, Mar. 17, 1942—Decision, Nov. 17, 1942

Where an individual, engaged in compiling and publishing, and in interstate sale and distribution to automobile dealers and the public, of certain publications—

- (a) Made use of trade names "Consumer's Research Service" and "Consumer's Report Service" in conduct of his business and displayed the same in and on the publications in question; and made use of the names "Consumer's Research Reporter" and "Consumer's Automobile Reporter" to designate such publications in and on the publications themselves and in referring to them in circular letters addressed to automobile dealers;

Notwithstanding the fact he was at no time connected with "Consumers' Research, Inc.," well-known non-profit corporation of Washington, N. J., or its monthly "Consumers' Research Bulletin" which, well-known to a large portion of the purchasing public, is regarded as a source of accurate and unbiased expert opinion with respect to the commodities covered by it;

- (b) Represented that he was an automotive expert or engineer and qualified to render authoritative opinions on the merits of automobiles, and that he maintained a staff of experts or engineers, through references thereto in introductions to said publications, and through statements in aforesaid circular letters;

The facts being that he had no training or experience which would qualify him as such an expert or engineer or enable him to render authoritative opinions; and had no staff of, and did not consult with, persons who could qualify in such capacity, the garage mechanics of whom he made occasional inquiries with respect to the mechanical features or performance of various makes of automobiles being in no wise expert on the subject;

- (c) Represented that the information given in his publications was impartial and that it was based upon results obtained from nation-wide polls of automobile owners or users, through statements in said pamphlets and circular letters;

The facts being that purported information contained therein was not impartial in that publications in question were prepared with the view of portraying certain makes of automobiles in a more favorable light than others, apparently to serve as sales aids to dealers handling those cars, toward whom almost exclusively his sales efforts were directed; and he did not in any manner conduct polls among car owners or users; and

- (d) Represented that his publications were copyrighted and "Dedicated to the Service of the People" through statements to that effect in or on them;

The facts being the publications were not copyrighted, were compiled, published, and sold by him as a commercial enterprise and solely for profit, and were in no way "dedicated to the service of the public";