

Complaint

IN THE MATTER OF
MYRON TROTCKY, TRADING AS FRANKLIN SALES
COMPANY

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

Docket 4782. Complaint, July 14, 1942—Decision, May 5, 1943

Where an individual, engaged in competitive interstate sale and distribution of glassware, pen and pencil sets, radios, food mixers, electrical appliances, cigarette lighters, silverware, luggage, and other articles of merchandise—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes in sale and distribution thereof, and distribution to the purchasing public of push cards, depictions of his merchandise, and circulars explaining his plan of allotting the merchandise involved as premiums or prizes to the operators of the push cards and consuming public, under which, as typical, the person selecting the feminine name on the push card found to correspond with that concealed under the card's master seal received, in accordance with explanatory legend thereon, a set of glasses, the number secured from disc adjacent to feminine name selected determined amount paid for chance, and chance selection of a certain number also entitled person securing name to a combination pen and pencil; a similar plan involving a 48-name push card entitling the winner to his choice of four articles announced thereon, including "monogrammed" combination cigarette and compact cases, while two numbers entitled holders to "Guaranteed combination pen and pencil"; and thereby

Supplied to and placed in the hands of others who sold his merchandise in accordance with such plans, involving game of chance to procure an article at much below its normal price, means of conducting lotteries in the sale thereof, contrary to an established public policy of the United States Government and in competition with many who do not use such methods;

With the result that many persons were attracted by said plan and the element of chance involved therein, and were thereby induced to buy and sell his merchandise in preference to that of his competitors aforesaid, with tendency and capacity unfairly to divert to him from them substantial trade 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.

Nash & Donnelly, 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 Myron Trotcky, an individual, trading as Franklin Sales Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing

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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, Myron Trotcky, is an individual, trading and doing business under the name of Franklin Sales Co., with his office and principal place of business located at 212-214 South Franklin Street, Chicago, Ill. Respondent is now, and has been, for more than 6 months last past, engaged in the sale and distribution of glassware, pen and pencil sets, radios, food mixers, electrical appliances, cigarette lighters, silverware, luggage, and other articles of merchandise. Respondent 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 now 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 purchasers thereof. The method of sales plans adopted and used by the respondent is substantially as follows:

Respondent distributes and has distributed to operators and 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 public. One of respondent's push cards bears 19 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. On the face of the card under each feminine name is a small perforated disc and concealed in each of said discs is a number which is disclosed only when the disc is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine

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names appearing on said discs. The person selecting the disc bearing feminine name corresponding to the one under the master seal receives a set of glasses. The push card bears the following legend or instruction:

**FOR REAL ACTION GET YOUR
SET OF 6 MAGICAL GLASSES!**
Six sensational poses! Each one
different! Each one Exciting!

Select the Names of Your Favorite Lasses!
Get a Set of 6 Mystifying Glasses!

No. 1 pays 1c, No. 11 pays 11c,
No. 22 pays 22c, No. 26 pays 26c.
All others pay only 29c NONE HIGHER.

(Feminine names and discs)

(Master Seal)
(Name under here
Receives 6 Magical
Glasses)

No. 29 receives a Combination Pen and Pencil.

Another of respondent's sales plans consists of circular letters, advertising statements and a push card. This push card is similar to the one described except that it bears 48 feminine names and partially perforated discs and bears the following legend or instructions:

Select Your Favorite Girl's Name and Receive
Your Choice of These

**EVANS MONOGRAMMED
COMBINATION CASES**
Engraved with Your Own Initials

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Smart as 5th Avenue
Glamorous as Hollywood

(Depiction of cigarette cases
and compact)

Your Choice of
20TH CENTURY CLIPPER
Combination Cigarette
Case, Lighter and Watch

THE HOLLYWOOD
Combination Cigarette
Case and Watch

MISS PETITE
Combination Compact
and Watch

TWO EXTRA PRIZES
Nos. 19 and 29
Each Receives a
Guaranteed Combination
Pen and Pencil

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Nos. 1-5-15-19
23 etc. up to 29 Pay
What you Draw Nos. over
29 pay only 29c.

None Higher

Write Your name on reverse side opposite
name you select

Sales of respondent's merchandise by means of said push cards are made in accordance with the above described plan. 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 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 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 aforesaid 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 to win something by chance, or any other method that is contrary to public policy. 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 July 14, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Myron Trotcky, an individual, trading as Franklin 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 said act. After the issuance of said complaint, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, testimony and other evidence, report of the trial examiner upon the evidence, and brief filed in support of the complaint (no brief having been filed in opposition to the complaint and oral argument not having been requested); 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, Myron Trotcky, is an individual, trading and doing business under the name of Franklin Sales Co., with his office and principal place of business located at 212-214 South Franklin Street, Chicago, Ill. Respondent is now, and has been, for more than 6 months last past, engaged in the sale and distribution of

glassware, pen and pencil sets, radios, food mixers, electrical appliances, cigarette lighters, silverware, luggage, and other articles of merchandise. Respondent 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 now, 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 the 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 purchasers thereof. The method of sales plans adopted and used by the respondent is substantially as follows:

Respondent distributes and has distributed to operators and 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 public. One of respondent's push cards bears 19 feminine names, with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. On the face of the card under each feminine name is a small perforated disc and concealed in each of said discs is a number, which is disclosed only when the disc is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on said discs. The person selecting the disc bearing feminine name corresponding to the one under the master seal receives a set of glasses. The push card bears the following legend or instruction:

**FOR REAL ACTION GET YOUR
SET OF 6 MAGICAL GLASSES!**

Six sensational poses! Each one different! Each one Exciting!

Select the Names of Your Favorite Lasses!

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No. 1 pays 1c, No. 11 pays 11c,

No. 22 pays 22c, No. 26 pays 26c.

All others pay only 29c NONE HIGHER.

(Feminine names and discs)

(Master Seal)

(Name under here

Receives 6 Magical
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No. 29 receives a Combination Pen
and Pencil.

Another of respondent's sales plans consists of circular letters, advertising statements, and a push card. This push card is similar to the one described except that it bears 48 feminine names and partially perforated discs and bears the following legend or instructions:

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Your Choice of These

EVANS MONOGRAMMED

COMBINATION CASES

Engraved with Your Own Initials

(Master
Disc)

Smart as 5th Avenue
Glamorous as Hollywood

(Depiction of cigarette cases
and compact)

Your Choice of
20th CENTURY CLIPPER
Combination Cigarette
Case, Lighter and Watch

THE HOLLYWOOD
Combination Cigarette
Case and Watch

MISS PETITE
Combination Compact
and Watch

TWO EXTRA PRIZES
Nos. 19 and 29 -
Each Receives a
Guaranteed Combination
Pen and Pencil

Nos. 1-5-15-19
23 etc. up to 29 Pay
What you Draw Nos. over
29 pay only 29c.

None Higher

Write Your name on reverse side opposite
name you select

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Findings

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Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described plan. 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 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 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 aforesaid 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 set forth, 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 set forth, do not use said method or any method involving a game of chance to win something by chance, or any other method that is contrary to public policy. 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.

Order

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, 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 brief filed in support of the complaint; 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, Myron Trotcky, an individual, trading as Franklin Sales Co., his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of glassware, pen and pencil sets, radios, food mixers, electrical appliances, cigarette lighters, silverware, luggage, and other articles of 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 others, push cards or other devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.
2. Shipping, mailing, or transporting to agents or to distributors or to members of the purchasing public, push cards or other devices which are to be used or may be used in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.
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 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.

IN THE MATTER OF

WILLIAM G. NASH, SR., ET AL., TRADING AS
NASH BROTHERS DRUG COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3775. Complaint, Apr. 27, 1939—Decision, May 6, 1943*

Where three brothers, engaged in the compounding and interstate sale and distribution of their "Nash's C. & L. Malaria Chill Tonic and Laxative"; through representations in newspapers and periodicals, form letters, circulars, folders, testimonials, and radio continuities, directly and by implication—

- (a) Represented that their said medicinal preparation was an effective treatment for malaria, and a guaranteed, unsurpassed and effective preventive and cure for all types thereof; and that it was a remedy and effective treatment for biliousness, constipation, liver troubles, dyspepsia, backache, headache, nervousness, stomach trouble, chills, fever, ague, third-day chills, swamp chills, and various other conditions and disorders;
- (b) Represented that use thereof would clean out the system and restore the normal functioning of the bowels, add red corpuscles to the blood, aid digestion, and increase the appetite; that it was an effective tonic which would restore vigor and vitality; that use thereof both prevented and cured colds; and that it was a new discovery which was in no way habit-forming or harmful to users, young or old;

The facts being that, while said product was an anti-malaria preparation and laxative, it was not a competent or effective treatment for the cure of malaria in that, taken in accordance with the directions on its label, it would not provide the minimum alkaloid content necessary; though daily use thereof in the proper dosage over a long period of time would be a competent and effective treatment for such purpose, prolonged administration thereof, due to the presence of the cathartic drugs phenolphthalein and F. E. Mandrake, would be likely to be harmful and habit-forming; and, while a competent treatment for the temporary relief of biliousness and constipation, it was, as aforesaid, habit-forming, and might be harmful if taken by those suffering from abdominal pains, nausea, or other symptoms of appendicitis; and claims that it constituted a cure or effective treatment for the other conditions or diseases specified constituted false advertisements; and

- (c) Falsely represented that said preparation was endorsed by nurses, physicians, school teachers, and health officials throughout the southern part of the United States; and that 9 persons out of 10 residing in said part of the United States had malaria; and
- (d) Represented that if an individual, among other things, trembled all over, lacked energy, ached or was bilious, constipated, nervous, depressed, sleepless, broken out, etc., or had upset stomach, dizzy spells, chills, occasional fever, hot and cold flashes, liver disorders, improper functioning of the kidneys, etc., or if a child was unruly, irritable, listless, or sluggish, then such person or child was exhibiting symptoms of malaria, and its said preparation was a competent and effective treatment therefor;