

Complaint

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IN THE MATTER OF

LOUIS ULRICH, TRADING AS J-BEE DISTRIBUTING
COMPANY, AND JULIUS WEINFELTCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4500. Complaint, May 10, 1941—Decision, Oct. 27, 1943*

Where an individual and his manager, engaged in competitive interstate sale and distribution of novelty merchandise, including watches, cameras, clocks, tableware, lamps, toilet articles, and numerous other items; in promoting the sale of their product—

Made use of a method involving distribution of descriptive advertising circulars incorporating a punch card, under a plan by which chance selection and detachment of the card's various tabs determined the article secured by a customer and the price paid therefor, and whether or not the customer received one of the articles, value of which was in excess of the stated price, and their agents were compensated by specified merchandise or cash premium following their remission of proceeds of such sale; and thereby

Supplied to and placed in the hands of their agents or sales representatives— notwithstanding notice on the card which, offering customer the privilege of declining purchase at the listed price, was inconsistent with working of the scheme and was not, apparently, taken advantage of—means of conducting lotteries in the sale and distribution of their merchandise in accordance with aforesaid sales plan involving a lottery scheme, contrary to established public policy of the United States Government and in competition with others who, unwilling to use method involving chance or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales method and the element of chance involved therein, and were induced to buy and sell their merchandise in preference to that of their aforesaid competitors, whereby substantial trade was diverted unfairly to them from such competitors:

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

Before *Mr. Andrew B. Duvall*, trial examiner.

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

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 Louis Ulrich, an individual, trading as J-Bee Distributing Co., and Julius Weinfelt, an individual, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that

a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Louis Ulrich, is an individual, trading and doing business as J-Bee Distributing Co., with his office and principal place of business located at 37 West Twentieth Street, New York, N. Y. Respondent, Julius Weinfelt, whose address is the same as that given above, is an individual, and is manager of said business, and, together with respondent, Louis Ulrich, formulates, directs, and controls the policies and practices of said business. The respondents have acted in conjunction and cooperation in carrying out the acts and practices described herein.

Respondents are now and for more than 6 months last past have been engaged in the sale and distribution of watches, cameras, clocks, tableware, lamps, toiletries, 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 and transported from their place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States other than New York, and in the District of Columbia. There is now and has been for more than 6 months last past a course of trade by 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 said business respondents are and have been in competition with other individuals and firms and with corporations engaged in the sale and distribution of 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 their business as described in paragraph 1 hereof, respondents sell and distribute said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondents cause to be distributed to representatives and salesmen and prospective representatives and salesmen certain advertising literature including a sales circular. Respondents' merchandise is distributed to the purchasers thereof 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

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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 the 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 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 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 of greater value 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 same sums to the respondents, the 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 said pull cards in accordance with the list filled out when the tabs were detached from the pull card.

Respondents sell and distribute various assortments of said merchandise and furnish 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 plans or methods vary in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish the said pull cards use 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 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 an article of merchandise at a price less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in commerce 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 other 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 said products 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 methods by respondents, because of said game of chance, has the tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from the said competitors who do not use the same or equivalent methods.

PAR. 5. The aforesaid acts and practices of 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 May 10, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, Louis Ulrich, an individual, trading as J-Bee Distributing Co., and Julius Weinfelt, an individual, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer, testimony and other evidence in support of the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by respondents), 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 hear-

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ing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents 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, Louis Ulrich, is an individual, trading as J-Bee Distributing Co., with his office and principal place of business located at 37 West Twentieth Street, New York, N. Y. Respondent, Julius Weinfelt, whose address is the same as that given above, is an individual, and is manager of the business in question, and together with respondent, Louis Ulrich, formulates, directs, and controls the policies and practices of the business. Respondent, Weinfelt, was formerly the owner of the business, but in 1938 sold it to respondent, Ulrich, and was retained by respondent, Ulrich, in the capacity of manager of the business. The respondents are now and since 1938 have been engaged in the sale and distribution of novelty merchandise, including watches, cameras, clocks, tableware, lamps, toilet articles, and numerous other items.

PAR. 2. Respondents cause and have caused their merchandise, when sold, to be shipped from their place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents are and have been in substantial competition with other individuals and with firms 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 promoting the sale of their products respondents have distributed advertising or sales circulars through the United States mail to prospective sales representatives located at various points throughout the United States. These circulars contain pictorial representations and descriptive matter with respect to certain articles of merchandise offered by respondents as compensation for the sale of their products, and also pictorial representations and descriptive

matter as to certain of the articles of merchandise which respondents offer for sale.

Each of these circulars also contains what is commonly known as a pull card. This pull card consists of a number of tabs, under each of which is concealed the name of one of the articles of merchandise offered for sale by respondents and the price thereof. Neither the name of the article nor the price thereof is disclosed to the purchaser or prospective purchaser until after the tab has been separated or removed from the card. Adjacent to the pull tabs is a list of the articles of merchandise offered for sale and the price thereof, which corresponds with the names of the articles and the prices concealed under the various pull tabs. When a purchaser detaches a tab and there is thus disclosed which article he is to receive and the price to be paid therefor, his name is written on the list opposite the particular article of merchandise.

Some of the articles of merchandise thus offered for sale have retail values greater than the prices designated for them, but all of the articles are distributed to the purchaser at the prices shown on the tabs. The fact that some of the articles have values in excess of the designated prices induces members of the public to pull the tabs in the hope that they will obtain such articles. Moreover, some of the articles offered for sale are represented through pictures and reading matter in the circular as having values greater than their actual value, which fact serves as a further inducement to prospective purchasers to pull the tabs in an effort to obtain such articles. The specific article which the purchaser receives, the amount of money he is required to pay for such article, and whether the purchaser receives an article having an actual or apparent value greater than the price designated therefor are thus determined wholly by lot or chance.

When the individual operating the pull card has succeeded in selling all of the articles of merchandise listed under the tabs and has collected the respective amounts charged therefor, the total of such amounts is remitted to respondents. Upon receipt of such total amount, respondents ship to their representative the merchandise sold, together with a premium for the representative as compensation for operating the pull card and selling and distributing the merchandise, such premium having been selected by the representative from articles pictured in the circular. If the representative so desires, he is permitted to deduct from the amount of money remitted a specified cash premium in lieu of the merchandise premium. Upon receipt of the merchandise from respondents, the representative delivers the various articles to the purchasers in accordance with the list prepared when the tabs were pulled.

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PAR. 5. In connection with the pull tab device, the following reading matter appears:

NOTICE TO PURCHASER—On the back of each slip is printed the price of an article. If after deliberation you decide that you want to buy the article, pay the holder of this card the price shown on the slip. If you do not want the article, you need not buy it.

The Commission finds, however, that despite this notice the articles of merchandise are in fact sold and distributed by means of the pull card device in accordance with the sales plan or method described above. The record indicates that the notice is not ordinarily called to the attention of the prospective purchaser by the sales representative. Moreover, the successful operation of the sales plan is dependent upon the ability of the representative to sell all of the articles listed, so as to permit remittance of the required amount to respondents in order to obtain the merchandise purchased and in order for the operator to obtain the premium for the sale of the merchandise. It is only in very rare cases (about 1 in 500) that partial orders are forwarded to respondents by their sales representatives.

The record discloses no instance in which a person who pulled one of the tabs from the card refused to accept and pay for the merchandise designated on the tab. Moreover, in respondents' instructions to their representatives which appear in the circular there is no direction as to what should be done in the event all of the articles of merchandise are not sold. The circular likewise fails to contain any information as to the premium or compensation which can be obtained by the representative in the event some of the purchasers refuse to accept the article listed on the particular tab pulled. On the contrary, it is apparent from the instructions that the plan contemplates that all of the articles listed are to be sold. For example, the instructions contain the following:

Our plan is very simple and interesting. Just ask your friends and neighbors to pull one or more of the slips on the back page of this folder. On the back of each slip the name of a BIG BARGAIN article and its price is plainly marked. You collect from the purchasers the price stated on the slip for which they will receive the article mentioned on the slip. Prices of these articles range from 9c to 39c—none higher. When the articles are all sold, you will have collected \$7.70. Then fill out the attached Order Blank and mail to us, together with your remittance.

WHAT YOU WILL RECEIVE:

As soon as we will receive your order and money order for \$7.70, we will send you your BIG REWARD PREMIUM, your SURPRISE GIFT for sending money order with order, your ADDITIONAL SURPRISE GIFT for selling the order promptly, and the 22 articles you have sold. * * *

The order blank referred to in these instructions reads in part as follows:

As soon as you have sold the 2 articles of merchandise and collected \$7.70 fill out this order blank stating correct number of your REWARD PREMIUM. Write your name and address plainly, and mail this order to us.

* * * Please ship at once charges prepaid, the 22 articles of merchandise I sold together with my valuable reward premium No. -----

The Commission therefore finds that, as a practical matter, the so-called notice to purchasers has no substantial effect upon the operation of the sales plan and that it does not serve to remove the lottery element from respondents' sales method.

PAR. 6. The persons to whom respondents furnish their pull card device use such device in selling and distributing respondents' merchandise in accordance with the sales plan or method herein described. Respondents thus supply to and place in the hands of others a means of conducting lotteries in the sale and distribution of their merchandise in accordance with such sales plan or method. Respondents' merchandise is thus sold and distributed by means of a game of chance, gift enterprise, or lottery scheme, and respondents reap the benefits therefrom. The use by respondents of this sales plan or method in the sale of their merchandise and the sale of such merchandise to the public by and through the use of such sales plan is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 7. Among the individuals, partnerships, and corporations who sell and distribute merchandise in competition with respondents, as set forth in paragraph 3 hereof, are those who are unwilling to adopt and use the 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 persons are attracted by respondents' sales method and by the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by those competitors of respondents who do not use the same or any equivalent method. The use of such method by respondents has the tendency and capacity to and does divert substantial trade unfairly to respondents from such competitors.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair acts and

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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 taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); and the Commission having 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 the respondents, Louis Ulrich, individually, and trading as J-Bee Distributing Co., or trading under any other name, and Julius Weinfelt, individually, and as manager of said company, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondents' 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 agents, distributors, or members of the public, pull cards or other lottery devices which are to be used or may be used in the sale or distribution of respondents' 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 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
THOMAS E. COLLINS, TRADING AS THOMAS E.
COLLINS CO.

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

Docket 4816. Complaint, Aug. 17, 1942—Decision, Oct. 27, 1943

Where an individual engaged in interstate sale and distribution of his "Alimentone" medicinal preparation; through advertisements in periodicals and by circulars and other advertising media, directly or by implication—

- (a) Represented that his said preparation expelled or helped to expel mucus from the body, and provided symptomatic relief for catarrhal conditions generally, nasal catarrh, colds, bronchitis, nonallergic types of asthma, and mucus colitis; and
- (b) Represented that it toned or aided in toning the mucus membranes, fortified them against infection and was of therapeutic value in the treatment of inflammation thereof; was a cure or remedy for colds; and eliminated or aided in the elimination of toxic substances and deposits from the body tissues;

The facts being that while the product in question—composed of powdered wheat embryo, powdered dried skimmed milk, and vegetable concentrates—might have some food value, it was wholly without value as a therapeutic agent and would not accomplish the results so claimed for it;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and to cause it to purchase substantial quantities of such product as a result of the erroneous belief so engendered:

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. James A. Purcell*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Charles Reagh and *Mr. Howard Magee*, of San Francisco, Calif., 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 Thomas E. Collins, an individual, trading as Thomas E. Collins Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows: