

Complaint

IN THE MATTER OF
RODIN NOVELTY COMPANY

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

Docket 5082. Complaint, Nov. 17, 1943—Decision, Jan. 28, 1944

Where a corporation engaged in the competitive interstate sale and distribution of cigarette lighters, ash trays, knives, luggage, clocks, blankets, toys, leather goods, novelties and other merchandise, including various assortments of merchandise so packed and assembled with punch boards and push cards as to involve use of games of chance when sold to purchasers, a typical assortment being composed of 12 "House-Broke Pete" ash trays and a punch board containing 800 2¢ punches, for use in their sale and distribution under a plan by which chance punching of certain numbers entitled purchaser to an ash tray or package of cigarettes, value of which exceeded said amount, others receiving nothing for their money; while second similar assortment included 10 cigarette lighters and a punch board containing 600 punches at 5¢ each, with lucky purchasers receiving a lighter or a package of cigarettes—

Sold such assortments to retail dealers, clubs and other organizations in various states by whom they were directly or indirectly exposed and sold to the purchasing public in accordance with aforesaid sales plan, involving sale of chance to procure articles at much less than normal retail price thereof; and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products, contrary to an established public policy of the United States government and in competition with many who do not use chance sales methods or any other methods contrary to public policy;

With result that many persons were attracted by said sales methods and the element of chance involved therein and were thereby induced to buy and sell its merchandise in preference to that of aforesaid competitors, and with tendency and capacity unfairly to divert trade in commerce to it from them to the substantial injury of competition;

Held, That such acts and practices 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.

Mr. David Singer, of Sioux City, Ia., 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 Rodin Novelty Company, a corporation, 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Rodin Novelty Company, is a corporation, organized and doing business under and by virtue of the laws of the State

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of Iowa, with its office and principal place of business located at 814 Pierce Street, Sioux City, Iowa. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of cigarette lighters, ash trays, knives, luggage, clocks, blankets, toys, leather goods, novelties and other merchandise to retail dealers, clubs and other organizations located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from its place of business in the city of Sioux City, Iowa, to purchasers thereof at their respective points of location in the various States of the United States other than Iowa and in the District of Columbia. There is now and has been for more than one year last past a course of trade by respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of similar articles of merchandise between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to retail dealers, clubs and other organizations certain assortments of merchandise so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes when sold and distributed to the purchasers thereof. Typical of said assortments are the ones hereinafter described for the purpose of showing the methods used by respondent, and are as follows:

One assortment includes 12 novelty ash trays designated "House-Broke Pete" and a punch board. The novelty ash trays are distributed to the purchasing public by means of a punch board in the following manner: The punchboard contains 800 punches, each concealing a number, said numbers running from 1 to 800, but these numbers are not arranged in numerical sequence. Sales of the punches are 2¢ each. The board bears a legend informing purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the ash trays, and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes. The purchaser who does not qualify by obtaining one of the specified numbers receives nothing for his money. The ash trays and the packages of cigarettes are worth more than 2¢ each, and the purchaser who obtains a number calling for one of the ash trays or a pack of cigarettes receives the same for 2¢. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch containing the number separated from the board. The ash trays and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

Another of the assortments sold and distributed by respondent consists of 10 cigarette lighters and a punch board. The lighters are distributed to the purchasing public in the following manner: The punch board contains 600 punches, each concealing a number. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. Sales are 5¢ per punch, and the board bears a statement informing the purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof

to receive one of the lighters, and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes. A customer who does not qualify by punching one of the specified numbers receives nothing for his money. The lighter and the packages of cigarettes are worth more than 5¢ each, and the purchaser whose punch reveals a number calling for the lighters or the pack of cigarettes receive the same for 5¢. The numbers are effectively concealed from the purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The lighters and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondent furnishes and has furnished various punch boards and push cards and merchandise assortments for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise or lottery scheme. Such punch board and merchandise assortments are similar to the ones herein described and vary only in detail, and said push card assortments differ from the above-described assortments only in that the merchandise is different and is distributed by means of push cards instead of punch boards.

PAR. 3. Retail dealers and others who purchase respondent's ash trays, cigarette lighters and other merchandise directly or indirectly expose and sell same to the purchasing public in accordance with the sales plans aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth. The use by the respondent of said sales plan or methods in the sale of its merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice 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 by the methods or sales plans hereinabove set forth involves a game of chance or the sale of a chance to procure the articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms and corporations who sell and distribute merchandise in competition with respondent as above alleged do not use said methods or any method involving a game of chance, or the sale of a chance to win something by chance or by any other method which is contrary to public policy. Persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of its merchandise and by the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise of said competitors of respondent who do not use the same or equivalent methods.

The use of said methods by respondent because of said game of chance has a 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 respondent from its said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being done and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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 com-

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merce 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 November 17, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Rodin Novelty Company, a corporation, charging it 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. On December 21, 1943, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint and the answer thereto, 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, Rodin Novelty Company, is a corporation, organized and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 814 Pierce Street, Sioux City, Iowa. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of cigarette lighters, ash trays, knives, luggage, clocks, blankets, toys, leather goods, novelties and other merchandise to retail dealers, clubs and other organizations located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from its place of business in the city of Sioux City, Iowa, to purchasers thereof at their respective points of location in the various States of the United States other than Iowa and in the District of Columbia. There is now and has been for more than one year last past a course of trade by respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of similar articles of merchandise between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to retail dealers, clubs and other organizations certain assortments of merchandise so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes when sold and distributed to the purchasers thereof. Typical of said assortments are the ones hereinafter described for the purpose of showing the methods used by respondent, and are as follows:

One assortment includes 12 novelty ash trays designated "House-Broke Pete" and a punch board. The novelty ash trays are distributed to the purchasing public by means of a punch board in the following manner:

The punch board contains 800 punches, each concealing a number, said numbers running from 1 to 800, but these numbers are not arranged in numerical sequence. Sales of the punches are 2¢ each. The board bears a legend informing purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the ash trays, and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes. The purchaser who does not qualify by obtaining one of the specified numbers receives nothing for his money. The ash trays and the packages of cigarettes are worth more than 2¢ each, and the purchaser who obtains a number calling for one of the ash trays or a pack of cigarettes receives the same for 2¢. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch containing the number separated from the board. The ash trays and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

Another of the assortments sold and distributed by respondent consists of 10 cigarette lighters and a punchboard. The lighters are distributed to the purchasing public in the following manner: The punch board contains 600 punches, each concealing a number. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. Sales are 5¢ per punch, and the board bears a statement informing the purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the lighters, and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes. A customer who does not qualify by punching one of the specified numbers receives nothing for his money. The lighter and the packages of cigarettes are worth more than 5¢ each, and the purchaser whose punch reveals a number calling for the lighter or the pack of cigarettes receives the same for 5¢. The numbers are effectively concealed from the purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The lighters and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondent furnishes and has furnished various punch boards and push cards and merchandise assortments for use in the sale and distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such punch board and merchandise assortments are similar to the ones herein described and vary only in detail, and said push card assortments differ from the above-described assortments only in that the merchandise is different and is distributed by means of push cards instead of punch boards.

PAR. 3. Retail dealers and others who purchase respondent's ash trays, cigarette lighters, and other merchandise directly or indirectly expose and sell same to the purchasing public in accordance with the sales plans aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth. The use by the respondent of said sales plans or methods in the sale of its merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

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PAR. 4. The sale of merchandise to the purchasing public by the methods or sales plans hereinabove set forth involves a game of chance or the sale of a chance to procure the articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondent as above found do not use said methods or any method involving a game of chance or the sale of a chance to win something by chance, or by any other method which is contrary to public policy. Persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of its merchandise and by the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise of said competitors of respondent who do not use the same or equivalent methods.

The use of said methods by respondent because of said game of chance has a 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 respondent from its said competitors who do not use the same or equivalent methods, and as a result thereof, substantial injury is being done and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The 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 and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in the complaint and states that it waives all intervening procedure and further hearing as to said facts, 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, Rodin Novelty Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's 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 punchboards, push or pull cards, or other lottery devices, either with assortments of merchandise or separately, which are to be used or may be used in the sale or distribution of respondent's merchandise to the public.

2. Selling or distributing any merchandise so packed and assembled that sales of such merchandise to the public are to be made or, due to the manner in which such merchandise is packed and assembled at the

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time it is sold by respondent, may be made 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 it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

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IN THE MATTER OF

HARRY FISCHER AND JOSEPH FISCHER, TRADING AS
HARRY FISCHER & COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND THE WOOL PRODUCTS
LABELING ACT OF 1939, APPROVED OCT. 14, 1940

Docket 5073. Complaint, Nov. 1, 1943—Decision, Jan. 31, 1944

Where two partners engaged in the manufacture and interstate sale and distribution of men's topcoats, overcoats and other articles of clothing from woolen fabrics which were purchased by them from manufacturers in other states and had affixed thereto a stamp, tag, label or other means of identification purporting to show the information required by the Wool Products Labeling Act of 1939;

In connection with certain coats which were made for introduction into commerce, and were wool products within the intent and meaning of said Act in that they were composed in whole or in part of wool, reprocessed wool, or reused wool as defined therein—

Made use of conflicting labels in violation of said Act and the rules and regulations thereunder in that a cardboard tag attached to the left sleeve of the coats bore the words "Made of All Wool," while the cloth label sewed to the inner lining near the collar and bearing a picture of a camel and alpaca read "of Camel Hair and Wool," and thereby misbranded said coats in violation of said Act in that the cloth label did not show the percentage of the total fiber weight of wool, reprocessed wool, reused wool, non-wool fiber and aggregate thereof, including filler or adulterating matter as there required; and proper identification of the manufacturer or seller;

With capacity and tendency to confuse and deceive the purchasing public as to the fiber content of said coats and with effect of so doing, in violation of said Act:

Held, That such acts, practices and methods were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

Mr. DeWitt T. Puckett for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Harry Fischer and Joseph Fischer, individually and as copartners, trading and doing business as Harry Fischer & Company, hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, Harry Fischer and Joseph Fischer, are copartners, trading and doing business as Harry Fischer and Company, and have their principal office and place of business at 315 North 12th Street, Philadelphia, Pa. Respondents are now and for more than one year last past have been engaged in manufacturing and selling men's topcoats and overcoats and other articles of clothing.