

Complaint

IN THE MATTER OF

ROSE GREENBERG, TRADING AS CENTRAL STATES SUPPLY
COMPANY

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

Docket 3845. Complaint, July 11, 1939—Decision, May 31, 1944

Where an individual engaged in interstate sale and distribution of fishing tackle, silverware, rifles, radios, cups, blankets and other articles; in soliciting the sale of and in selling her said merchandise—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises or lottery schemes and distribution of push cards and circulars explaining her said plan, under which, as typical, the purchaser of a chance selecting that one of forty-four feminine names on the card corresponding to that concealed under a master seal, received a suede outing jacket, the three customers punching out certain numbers and the maker of the last punch each received a pair of "Solid Copper Nip cups," and the amount paid for a chance was determined by the particular number punched; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of her merchandise, in accordance with aforesaid sales plan involving a chance to procure an article at much less than its normal retail price, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who refrain from use of 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 her merchandise in preference to that of said competitors, whereby trade was unfairly diverted to her from them:

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

Before *Mr. Miles J. Furnas* and *Mr. J. E. Cox*, trial examiners.

Mr. L. P. Allen, Jr. and *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 Rose Greenberg, individually, and trading as Central States Supply Company, has violated the provisions of the 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:

PARAGRAPH 1. Respondent, Rose Greenberg, is an individual, trading under the name of Central States Supply Company, with her principal office and place of business located at 537 South Dearborn Street, Chicago, Ill. Respondent is now, and for some time last past has been engaged in the sale and distribution of fishing tackle, silverware, rifles, radios, cups, blankets, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused, said merchandise, when

Complaint

38 F. T. C.

sold, to be transported from her principal place of business in Illinois to purchasers thereof at their respective points of location located in various other States of the United States and in the District of Columbia. There is now, and has been for some time 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 said business, respondent is, and has been, in 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 said business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of, and in selling and distributing her said merchandise, furnishes, and has furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The sales plan or method adopted and used by respondent was, and is, substantially as follows:

Respondent distributes, and has distributed, to the purchasing public, certain literature and instructions, including, among other things, push cards, order blanks, illustrations of her said merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's push cards bears forty-four feminine names, with ruled columns for writing in the name of the customer opposite the feminine name selected. Said push card has twenty-five small, partially perforated discs, on the face of each of which is printed the word "Push." Concealed within each disc is a number, which is disclosed 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 elsewhere on the said card. The push card bears legends or instructions as follows:

Sizes 14 to 48

Maroon & Grey

Seller and party selecting girls'
name under seal each receive

(The Master
Seal)

SEAL

(Picture
of
man
wearing
suede
jacket)

FINE SUEDE
OUTING JACKET

Men's style Zipper front.

Ladies' style in CALIFORNIA
VESTEE MODEL.
Fully wind proof and
water proof.

EXTRA PRIZES

Nos. 20, 30, 40
and last number punched
each receive a PAIR of
SOLID COPPER
NIPCUPS.

Nos. 11 to 25 pay
what you draw.

Nos. over 25 pay
only 25¢

TOTAL—\$9.95

Sales of respondent's merchandise by means of said push cards are made in accordance with the above described legend or instructions. Said prizes or premiums are allotted to customers or purchasers in accordance with the above legend or instructions. The fact as to whether the purchaser receives an article of merchandise or nothing for the money paid, and which of said articles of merchandise the purchaser is to receive, if any, is determined wholly by lot or by chance.

Respondent furnishes, and has furnished, various push cards, accompanied by said order blanks, instructions, and other printed matter, for use in the sale and distribution of her merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan or method. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of her merchandise in accordance with the sales plan or method hereinabove set forth. The use by respondent of said sales plan or method in the sale of her 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 the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 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, are unwilling to adopt and use said sales plan or method, or any sales plan or 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 her merchandise and by the element of chance involved therein, and are thereby 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, and does, unfairly divert substantial trade to respondent from her said competitors who do not use the same or an equivalent, sales plan or 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 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 July 11, 1939, issued and thereafter served its complaint in this proceeding upon respondent, Rose Greenberg, individually, and trading as Central States Supply Company, charging her with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of said act. Subsequently the respondent filed her answer in which answer she admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said 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, Rose Greenberg, is an individual, trading under the name of Central States Supply Company, with her principal office and place of business located at 537 South Dearborn Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of fishing tackle, silverware, rifles, radios, cups, blankets, and other articles of merchandise in commerce between and among 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 her principal place of business in Illinois to purchasers thereof at their respective points of location located in various other States of the United States and in the District of Columbia. There is now, and has been for some time 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 said business, respondent is, and has been, in 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 said business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of, and in selling and distributing her said merchandise, furnishes, and has furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The sales plan or method adopted and used by respondent was, and is, substantially as follows:

Respondent distributes, and has distributed, to the purchasing public, certain literature and instructions, including, among other things, push cards, order blanks, illustrations of her said merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's push cards bears forty-four feminine names, with ruled columns for writing in the name of the customer opposite the feminine name

485

Findings

selected. Said push card has twenty-five small, partially perforated discs, on the face of each of which is printed the word "Push." Concealed within each disc is a number, which is disclosed 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 elsewhere on the said card. The push card bears legends or instructions as follows:

Sizes 14 to 48

Maroon & Grey

Seller and party selecting girls'
name under seal each receive

(The Master
Seal)

(Picture
of
man
wearing
suede
jacket)

SEAL

FINE SUEDE
OUTING JACKET

Men's style Zipper front.
Ladies' style in CALIFORNIA
VESTEE MODEL.
Fully wind proof and
water proof.

EXTRA PRIZES

Nos. 20, 30, 40
and last number punched
each receive a PAIR of
SOLID COPPER
NIPCUPS.

Nos. 11 to 25 pay
what you draw.
Nos. over 25 pay
only 25¢

TOTAL—\$9.95

Sale of respondent's merchandise by means of said push cards are made in accordance with the above described legend or instructions. Said prizes or premiums are allotted to customers or purchasers in accordance with the above legend or instructions. The fact as to whether the purchaser receives an article of merchandise or nothing for the money paid, and which of said articles of merchandise the purchaser is to receive, if any, is determined wholly by lot or by chance.

Respondent furnishes, and has furnished, various push cards, accompanied by said order blanks, instructions, and other printed matter, for use in the sale and distribution of her merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

Order

38 F. T. C.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan or method. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of her merchandise in accordance with the sales plan or method hereinabove set forth. The use by respondent of said sales plan or method in the sale of her 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 the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an article 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 found, are unwilling to adopt and use said sales plan or method, or any sales plan or 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 her merchandise and by the element of chance involved therein, and are thereby induced to buy 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, and does, unfairly divert substantial trade to respondent from her said competitors who do not use the same or an equivalent, sales plan or method.

CONCLUSION

The aforesaid acts and practices of 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 said complaint and states she waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Rose Greenberg, an individual, trading under the name of Central States Supply Company, or any other trade name, her representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of fishing tackle, silverware, rifles, radios, cups, blankets, or any other articles of merchandise in commerce as "com-

485

Order

merce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying or placing in the hands of others push cards, punch-boards, or other devices, either with assortments of merchandise or separately, 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 dealers, agents, or members of the public, pull 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 her of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which she has complied with this order.

Complaint

38 F. T. C.

IN THE MATTER OF

MAX HABERNICKEL, JR., AND JOHN A. ANDERSON,
TRADING AS HABAND COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4790. Complaint, July 30, 1942—Decision, May 31, 1944*

Where two partners engaged in interstate sale and distribution of men's neckties by mail, chiefly, and in promoting sale thereof through circular letters in which were enclosed depictions of certain of their said products, and in some instances samples of material,—

- (a) Represented certain types as "all silk" in their advertising material and on the labels thereof, notwithstanding the fact product involved was not composed entirely of pure silk—preferred by the public over fabric containing weighting material—but contained about fifty per cent of metallic weighting;
- (b) Represented through their advertising material and labels that certain of their ties were "hand-made," facts being that while one of the operations employed in their manufacture was performed by hand, all the others were performed by machine, and products concerned, therefore, could not properly be designated as "hand-made"; and
- (c) Failed to disclose, or disclosed inadequately through a small part of a closely printed letter or through a partially concealed and inconspicuous statement on the innerlining of some of its ties, that the major portion of its said products—which had the appearance and feel of the preferred silk, and samples and pictorial representation of which created said impression—were composed entirely or in part of rayon;

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 products as a result of the erroneous belief so engendered:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Alexander M. MacLeod, of Paterson, N. J., and *Rabbino & Rabbino*, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Max Habernickel, Jr., and John A. Anderson, co-partners, trading as Haband Company, 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Max Habernickel, Jr., and John A. Anderson, are co-partners, trading under the name "Haband Company," with their principal place of business located at 680 Madison Avenue in the city of