

Syllabus

IN THE MATTER OF
CHARLES DEER AND JACK DEER, TRADING AS SAVOY
MANUFACTURING COMPANY

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

Docket 4763. Complaint, May 21, 1942—Decision, Nov. 1, 1944

Where two individuals who were engaged in the interstate sale and distribution of various household furnishings and articles, including electrical appliances, carpet sweepers, cutlery, blankets, comforters, bedspreads, lamps, tableware, chinaware, luggage and furniture, and who represented themselves as "Manufacturers and Distributors of Quality Merchandise for Concessionaires, Indoor and Outdoor Carnivals, Fairs, Bazaars, Parks, Celebrations, Amusement Resorts, Bridge Prizes, Premium Users, etc.," and had printed on their letterheads "Let US help solve your bingo-bridge and carnival problems, We have the experience"—

- (a) On request supplied to customers, including churches, lodges, clubs and other groups, their "Club Plan," for use in selling and distributing merchandise bought from them to members of the purchasing public, consisting of (1) their catalog which, entitled "Savoy's Super-De-Luxe Merchandise Club of Quality," illustrated the various articles offered by them and stated the terms on which any of them could be obtained through the operation of said "Club Plan," and (2) membership cards for use under the plan by which each member agreed to pay a specified amount, consisting usually of 25¢ a week for 26 weeks, the member whose number was drawn each week received one of the articles described in the catalog—retail value of each of which was about \$6.50—for the amount thus far paid by him, and all other members who had made their payments received also one of aforesaid articles for the entire amount thus paid in; and
- (b) On request sold or furnished along with merchandise sold to customers, as aforesaid, paraphernalia for its distribution to the purchasing public through the use of the game of "bingo," and in some instances furnished the merchandise on consignment, accompanied by said paraphernalia for purchasers' use and return after its employment, by means of which that one of the player participants—each of whom received a number of markers and a card on which appeared numbers in rows, and each of whom, when the game was conducted for profit, paid for the privilege of participation—who first had in a straight line on his card five numbers, as disclosed by the counters drawn from the box, and called by the person conducting the game, won the prize; and

Thereby supplied to and placed the means of conducting lotteries in the sales of their merchandise, in the hands of the organizations which purchased and distributed it to the purchasing public in accordance with the aforesaid sales plans, involving game of chance or sale of chance to procure article at much less than its normal retail price, contrary to an established public policy of the United States and in competition with others who do not use methods involving chance or otherwise contrary to public policy;

With tendency and capacity to divert trade in commerce to said individuals from their aforesaid competitors who do not use equivalent sales plans; and

- (c) Represented through inclusion of the word "Manufacturing" in their trade name and through statements on their letterheads "Manufacturers and Distributors" of

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merchandise (many kinds of which were there listed), that they were the manufacturers of their products;

The facts being that while at one time they had made some of their merchandise, for about 15 years last past they had not made any of the articles which they sold and distributed and they were not manufacturers, with whom a substantial portion of the purchasing public and trade has long preferred to deal directly, as thereby securing them, in their belief, lower prices, elimination of middlemen's profits, superior products and other advantages;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and into the purchase thereby of a substantial volume of their products:

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 and deceptive acts and practices therein.

Before *Mr. Randolph Preston*, trial examiner.

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

Mr. Leon Himmelfarbe, 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 Charles Deer and Jack Deer, individuals, trading as Savoy Manufacturing Co., hereinafter referred to as respondents, have 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. Respondents, Charles Deer and Jack Deer, are individuals, trading under the name of Savoy Manufacturing Co., with their principal place of business located at 12 West 23rd Street, in the city of New York, State of New York. Respondents are now, and for more than one year last past have been engaged in the sale and distribution of merchandise including electrical appliances, carpet sweepers, cutlery, blankets, comforters and bedspreads, lamps, tableware, chinaware, luggage, furniture, and other house furnishings and household articles. Respondents cause and have caused said merchandise when sold to be transported from their aforesaid place of business in New York, N. Y. to purchasers thereof at their respective points of location in the various States of the United States other than the State of New York and in the District of Columbia. There is now and for more than one year last past has been, a course of trade by respondents 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 respondents are and have 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. Respondents in selling and distributing their said merchandise have supplied their customers with a certain plan known as the "club plan" for the distribution of said merchandise by means of which said merchandise is sold and distributed to the public in a manner which involves the operation of a game of chance, gift enterprise, or lottery scheme.

Said plan is substantially as follows: Respondents furnish to churches, lodges, groups, clubs, and other organizations, catalogs of their merchandise, together with a number of cards designated as membership cards. The organizations thereupon distribute said cards to a specified number of members joining the club, each member agreeing to pay a specified amount, usually 25¢ per week for 26 weeks. Each card contains 26 numbers which represent 26 weeks in the year. Each card also has a number which represents the number of the member participating in the club. Once each week the organization conducting the club has a drawing at which time one of the numbers represented by a card is drawn and the member whose number is drawn thereupon receives one of respondents' articles of merchandise as illustrated and described in the catalog which is furnished the organization conducting the club. The member whose number is drawn the first week receives his article of merchandise for 25¢ and the member whose number is drawn the second week receives his article of merchandise for 50¢, and so on until at the end of 26 weeks the members whose numbers have been drawn have paid prices ranging from 25¢ to \$6.50 for their various articles of merchandise. All members whose names are not drawn before the 26th week and who have paid in the specified weekly amount of 25¢ each week receive one of the articles of merchandise described in respondents' catalog. These articles are valued at approximately \$6.50 each. All of said articles of merchandise are thus of substantially the same retail value. The amount which the ultimate consumer pays for one of the said articles of merchandise is thus determined wholly by lot or chance.

Respondents have also in connection with the sale of their merchandise in commerce furnished to organizations, churches, and other purchasers of their said merchandise, Bingo paraphernalia to be used in connection with the distribution of said merchandise. The organizations furnished said Bingo paraphernalia have used the same in conducting Bingo games for the distribution of respondents' merchandise by lottery means or games of chance.

PAR. 3. Lodges and other organizations who purchase respondents' merchandise directly, or indirectly, expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondents thus supply to and place in the hands of others, the means of conducting lotteries in the sale of its merchandise in accordance with the sales plans, hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their merchandise and the sales of said merchandise by and through the use thereof and by the aid of said plans or methods, 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 by the methods or plans, hereinbefore set forth, involves a game of chance or the sale of a chance to procuring an article of merchandise at a price less than the normal retail price thereof. Many persons, firms and corporations who

sell or distribute merchandise in competition with respondents as above alleged, do not use said methods or any methods 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. Many persons are attracted by said sales plans or methods employed by the respondents in the sale and distribution of its merchandise and by the element of chance involved therein and are thereby induced and persuaded to buy and sell respondents' merchandise in preference to merchandise of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by the respondents because of said game of chance, has a tendency and capacity to divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent sales plans or methods.

PAR. 5. In the course and conduct of their business, respondents by the use of the words "manufacturing company" and "mfg. company" on circulars distributed through the United States mails and otherwise, by the use of advertising literature and letter heads used in correspondence with purchasers and prospective purchasers, of their products, have misrepresented themselves to be manufacturers of the products sold by them.

In truth and in fact respondents do not manufacture any of the merchandise sold and distributed by them.

PAR. 6. There has long been a preference on the part of a substantial portion of the purchasing public and the trade, for dealing directly with the manufacturer in the belief that lower prices, elimination of middlemen's profits, superior products, and other advantages, can thereby be obtained.

PAR. 7. The use by the respondents of the false and misleading representations above, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the members of the purchasing public into the erroneous belief that such representations are true and to a purchasing of a substantial volume of respondents' products on account of such beliefs so induced.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of the 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 21, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, 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 said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before an 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 on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiner, and briefs in support of and in opposition to the complaint (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. Respondents, Charles Deer and Jack Deer, are individuals, trading under the name "Savoy Manufacturing Co.," with their principal place of business located at 12 West Twenty-third Street, New York, N. Y. Respondents are now, and for more than a year last past have been, engaged in the sale and distribution of merchandise, including electrical appliances, carpet sweepers, cutlery, blankets, comforters, bedspreads, lamps, tableware, chinaware, luggage, furniture, and various other house furnishings and household articles. They represent themselves as "Manufacturers and Distributors of Quality Merchandise for Concessionaires, Indoor and Outdoor Carnivals, Fairs, Bazaars, Parks, Celebrations, Amusement Resorts, Bridge Prizes, Premium Users, etc."

PAR. 2. Respondents cause, and have caused, the aforesaid merchandise, when sold, to be transported from their place of business in New York, N. Y., to purchasers thereof at their respective points of location in the various States of the United States other than the State of New York and in the District of Columbia. There is now, and for more than one year last past has been, a course of trade by respondents in said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have, when requested by any customer, supplied to such customer a sales plan designated as the "Club Plan," for the use of such customer in selling and distributing the merchandise bought from respondent to members of the purchasing public. This club plan consisted of respondents' catalog entitled "Savoy's Super-De-Luxe Merchandise Club of Quality" and "membership" cards. The catalogs contained illustrations of various articles offered for sale by respondents and statements of the terms on which any of such articles could be obtained through the operation of said club plan. The membership cards carried on their faces:

Date Started..... No.....

MEMBERSHIP CARD

Name.....

Address.....

State Article Desired

.....

For Period of Weeks

Around the edge of the cards the numbers 1 to 26 appeared. On the back of the cards appeared "Super De Luxe Merchandise Club, Savoy Mfg. Co., 12 W. 23rd Street, New York City." Respondents have furnished to customers, including churches, lodges, clubs, groups, and other organizations, catalogs of their merchandise and membership cards such as those described above. The customer thereupon distributed membership cards to a specified number of members joining the club, each member agreeing to pay a specified amount, usually 25¢ per week for 26 weeks. Once each week the organization conducting the club held a drawing, at which time one of the numbers represented by a card was drawn, and the member whose number was drawn thereupon received one of respondents' articles of merchandise illustrated and described in the catalog furnished. The member whose number was drawn the first week received his article of merchandise for 25¢ and the member whose number was drawn the second week received his article of merchandise for 50¢, and so on until at the end of 26 weeks the members whose numbers were drawn paid prices ranging from 25¢ to \$6.50 for the various articles of merchandise. All members whose names were not drawn before the 26th week and who paid in the specified amount of 25¢ each week received one of the articles of merchandise described in respondents' catalog. The retail value of these articles was approximately \$6.50 each, and all of said articles were of substantially the same retail value. Various organizations who purchased respondents' merchandise and used the said club plan sold such merchandise to the purchasing public in accordance with the plan described.

PAR. 4. Respondents also sell merchandise and on request of the customer sell or furnish therewith paraphernalia for the distribution of such merchandise to the purchasing public through the use of the game of bingo. In some instances the merchandise is furnished on consignment and the paraphernalia of the bingo game is furnished for the use by the purchaser in distributing such merchandise, and thereafter the bingo paraphernalia is returned to respondents. The game of bingo is played with many variations but is substantially as follows: The person who conducts the game has a box or cage containing 75 balls or counters numbered consecutively from 1 to 75. The number of players who may participate is practically unlimited. Each player receives a number of markers and a card on which some of the numbers from 1 to 75 appear in rows. The person conducting the game draws the counters one at a time by chance and calls the number of each as it is drawn, and if the number called appears on the player's board he designates it with a marker. The first player who has on his card five numbers which have been called and which are in a straight row on his card wins. As conducted by clubs and other organizations for the purpose of profit, the players pay a consideration for the privilege of participating in the bingo game, thus securing a chance to win a prize. Respondents do not themselves conduct or operate the bingo games for their customers, but they represent on their letterheads "Let US help solve your bingo-bridge and carnival problems. We have the experience." Approximately one-third of respondents' total sales of merchandise are to bingo customers.

PAR. 5. Lodges, clubs, and other organizations purchasing respondents' merchandise distribute it to the purchasing public in accordance with the sales plans heretofore described. Respondents thus supply to and place in

the hands of others the means of conducting lotteries in the sale of their merchandise. The use by respondents of said sales plans or methods in the sale of their merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said plans or methods, is a practice of a sort which is contrary to an established public policy of the United States. The sale of merchandise to the purchasing public by such methods or plans involves a game of chance or the sale of a chance to procure an article of merchandise at a price less than the normal retail price thereof. There are others who sell or distribute merchandise in competition with respondents and who do not use said methods, or any methods involving a game of chance or the sale of a chance to win something by chance, or any other method contrary to public policy. The use of said methods by the respondents has a tendency and capacity to divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent sales plans or methods.

PAR. 6. Respondents now trade, and for many years have traded, under the name "Savoy Manufacturing Company," and in addition to this trade name represent themselves on their letterheads as "Manufacturers and Distributors" of merchandise, many kinds of which are listed on such letterheads. At one time respondents manufactured some of the merchandise sold by them, but for approximately the last 15 years respondents have not manufactured any of the articles of merchandise which they sell and distribute under the aforesaid trade name or as to which they represent themselves to be the manufacturers and distributors. By the use of the word "Manufacturing" in their said trade name, and by representations that they are "manufacturers" appearing on the letterheads used in their business, respondents falsely represent that they are the manufacturers of products sold by them. There has long been a preference on the part of a substantial portion of the purchasing public and the trade for dealing directly with manufacturers in the belief that lower prices, elimination of middlemen's profits, superior products, and other advantages can thereby be obtained. The use by respondents of the aforesaid false and misleading representations concerning their business status, has had, and has, the capacity and tendency to mislead and deceive a substantial portion of the members of the purchasing public into the erroneous belief that such representations are true and into the purchasing of a substantial volume of respondents' products because of such belief.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondents, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and briefs in support of and in opposition to the complaint (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Charles Deer and Jack Deer, jointly or severally, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of electrical appliances, carpet sweepers, cutlery, blankets, comforters, bedspreads, lamps, tableware, chinaware, luggage, furniture, or other 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 any "club-plan" catalogs, cards, or other articles, or any other sales promotion plan, either with assortments of merchandise or separately, which plan is so designed that its use in the distribution of merchandise constitutes the operation of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others bingo paraphernalia or similar devices, either with assortments of merchandise or separately, which bingo paraphernalia or similar devices are to be used, or may be used, in selling or distributing said merchandise to the public.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

4. Using the word "manufacturing," or any word or words of similar import or meaning, in or as a part of any trade or corporate name used to designate their business or representing in any other manner that merchandise not manufactured by respondents is manufactured by them.

It is further ordered, That respondents shall, within 60 days after the 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.

Syllabus

IN THE MATTER OF
DAVID JACOBS AND ALLIED NEWS-PHOTO SERVICE
CORP., ETC.

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

Docket 4884. Complaint, Dec. 31, 1942—Decision, Nov. 4, 1944

Where an individual and a corporation controlled by him, engaged in interstate sale and distribution of photographs and "Goldtone Miniatures" made therefrom, through the mails and salesmen whom they supplied with purported "Press Cards" which contained such matter as "To Police Department: Please extend every reasonable courtesy essential to the bearer," "Issued to" (followed by provision for "Signature of Bearer"), set forth their trade name "Allied News Photographic Service, 439 Madison Avenue, New York City," followed by the words "London, Paris, Berlin," contained a blank for the insertion of the name of a person as "General Manager," and set forth such other matter as might be expected to be contained on such a card, followed by provisions for bearer's description and the words "Not Transferable"—

(a) Represented, directly or by implication, through use of corporate name "Allied News Photo Service Corporation," and trade names "Globe Press-Photo Service" and "Allied News Photographic Service," which were brought to the attention of prospects orally by their salesmen, by mailing envelopes sent to prospects, and by the display of aforesaid cards with which they supplied their salesmen, that they were in the business of obtaining photographs of persons of public interest for the press, throughout the United States; that such photographs were desired by them because of their news value; that newspapers desiring photographs of prospective subjects, would obtain said photographs from them; and that they were news or press photographers or photographic agencies as distinguished from portrait photographers;

The facts being that they did not conduct a news or press photographic agency and had no regular connection with any such, nor did they, except in rare instances, furnish them with photographs; but were engaged in the business of making photographs and "Goldtone Miniatures" and selling them to individual private customers;

(b) Represented falsely, directly and by implication, through the use of the aforesaid cards and statements by their agents, that the persons who carried said cards were accredited representatives of a recognized news photographic service or agency to whom, in the course of their work, police authorities frequently accorded opportunities to photograph current events not accorded to others; and that they had offices or agencies or representatives in London, England; Paris, France; and Berlin, Germany;

(c) Represented to prospects directly and by implication, through their representatives and salesmen, that photographs were desired in order that prints might be available in the event that the press desired them for publication, and that many newspapers obtained such photographs from them;

When in fact they desired to take photographs in order that they might receive orders therefor and for "Goldtone Miniatures" made therefrom, from the subjects thereof; and they were not, except in very rare instances, a source of supply for photographs to newspapers;