

Complaint

IN THE MATTER OF

IRVING YANOWITZ AND BENJAMIN SOKOLOFF TRADING
AS GOTHAM PREMIUM 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 5015. Complaint, July 22, 1943—Decision, Mar. 21, 1945

Where two partners engaged in competitive interstate sale and distribution of garments, bedspreads, luggage, watches, cameras, dry goods, novelty jewelry, tooth paste and tooth powder, cosmetics, and other articles of merchandise; in promoting the sale and distribution of their said products—

Made use of a method involving the distribution of advertising or sales circulars, which depicted and described the merchandise therein offered under the plan below set forth and as compensation to the operator of said plan, and which contained a pull card or pull tab device consisting of a number of tabs, each concealing the name and price of an article, for use under a plan by which the particular article and the price paid by the purchaser was determined by his chance selection of the particular tab, and the operator after remitting to said partners the total collected from the sale of the chances, was compensated by specified merchandise or, at his option, by the right to deduct one-third of said sum; and thereby

Supplied to and placed in the hands of their said operators or sales representatives— notwithstanding notice on the card which offered the purchaser the privilege of buying an article at the price listed on the back of each slip, or of declining to buy it, and which was inconsistent with the successful operation of the plan—the means of conducting lotteries in the sale and distribution of their said merchandise in accordance therewith, under which the article to be secured and the price to be paid therefor, and whether the purchaser secured an article of greater value than the regular price designated therefor, was determined wholly by lot or chance; contrary to an established public policy of the United States government and in violation of the criminal law, and in competition with many who are unwilling to use any such sales method;

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

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

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

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

Mr. David Von G. Albrecht, 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 Irving Yanowitz and Benjamin Sokoloff, individually, and trading as Gotham Premium Novelty 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Irving Yanowitz and Benjamin Sokoloff, are individuals, trading and doing business as Gotham Premium Novelty Company, with their office and principal place of business located at 303-4th Avenue, New York City. Respondents are now and for more than one year last past, have been engaged in the sale and distribution of garments, bedspreads, luggage, watches, cameras, dry goods, novelty jewelry, tooth paste and tooth powder, cosmetics 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 six 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 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 purchaser 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 respondent 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 July 22, 1943, issued, and subsequently

served, its complaint upon the respondents, Irving Yanowitz and Benjamin Sokoloff, individually, and trading as Gotham Premium Novelty Company, 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 a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint of the Commission, answer of the respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief filed in support of the complaint (no brief having been filed by the respondents or oral argument 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, Irving Yanowitz and Benjamin Sokoloff, are copartners, trading as Gotham Premium Novelty Company, with their principal office and place of business located at 303 Fourth Avenue, New York, N. Y. Respondents are now, and for several years last past have been, engaged in the sale and distribution of garments, bedspreads, luggage, watches, cameras, dry goods, novelty jewelry, tooth paste and tooth powder, cosmetics, and other articles of merchandise in commerce among and between the various States of the United States. Respondents cause, and have caused, their said products, when sold, to be shipped or transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of their said business, the respondents are engaged in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business, the respondents distribute advertising or sales circulars by the United States mails to prospective customers or representatives located in various States of the United States for the purpose of inducing such customers to sell respondents' merchandise by means of a game of chance, gift enterprise, or lottery scheme, commonly known as a pull card or pull tab device. These circulars contain pictorial representations and descriptive matter with reference to the merchandise offered as compensation for the sale of certain of respondents' merchandise, which merchandise is likewise described by pictorial representations, and otherwise, on said circulars. Each of said circulars contains what is commonly known as a pull card or pull tab device.

Said pull card device consists of a number of tabs, under each of which is concealed the name of an article of merchandise, as well as the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers and prospective purchasers are unable to ascertain which articles of merchandise they are to receive or the prices to be paid therefor until after the tabs are separated or removed from said pull tab device. Adjacent to said device there is a list of the articles of merchandise and the prices thereof, corresponding to the various articles of merchandise and the prices thereof, as concealed under said tabs. When a purchaser has detached a tab and has discovered 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 retail values and regular prices greater than the prices so designated for them but are distributed to the consumer or purchaser for the price designated on the tab which he pulls or removes from said device. The apparent greater values and regular prices of some of said articles of merchandise as compared to the prices the prospective purchaser will be required to pay in the event he secures one of said articles of merchandise induces members of the purchasing or consuming public to select and pull the tabs in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid therefor. The specific article which the purchaser receives, the amount of money he is required to pay, and the obtaining of an article of greater value than the prices designated therefor are thus determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the articles of merchandise listed under said tabs and has collected the amounts charged therefor, such sum is then remitted to the respondents, and the respondents thereupon ship to said representative the merchandise sold by means of said device by said representative, together with a premium for the representative as compensation for operating the device and selling or distributing the said merchandise. Such premium is selected by said representative from the articles of merchandise pictured in said sales or advertising circular. If the said representative so desires he may deduct a cash premium in lieu of said merchandise premium. Said representative delivers the articles of merchandise to the purchasers thereof in accordance with the list filled out when the tabs were removed or detached from the device as above described. The advertising circulars containing such pull card device contain all of the instructions which are given to the representative for the operation of said pull card device and for obtaining the merchandise or premiums from the respondents.

Immediately above said pull tab device there appears the following:

NOTICE TO PURCHASERS—

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 book the price shown on the slip. If you do not want the article you need not buy it.

The Commission finds that regardless of said notice the said articles of merchandise have been, and are, in fact sold and distributed by means of said pull card device in accordance with the sales plan or method hereinabove described. The successful operation of respondents' sales plan is dependent upon the ability of the operator to sell all the articles listed, so

as to permit remittance of the required amount to the respondents in order to obtain the merchandise purchased and the premium allowed to the representative as compensation. The purchaser knows the articles listed and the price to be paid therefor before he selects and removes the tab from the pull tab device. The element of chance is the amount of money to be expended and the specific article to be purchased. The operation of the plan strictly in accordance with the above-mentioned NOTICE TO PURCHASERS would not tend to net the operator a return sufficient to warrant the completion of the plan and would thereby make the plan inoperative, and to this extent such notice is merely a subterfuge. The provision in the circular that the operator may deduct one-third of the amount collected and remit the balance in the event all the articles are not sold, does not constitute a sufficient return to the operator to warrant completion of the plan since the inducement to such operator was the premiums or gifts which were to be obtained upon sale of all the articles listed on said pull card device.

PAR. 4. The Commission finds that the persons or representatives to whom respondents have furnished or distributed said sales or advertising circulars containing said pull card device use, and have used, the same in purchasing, selling, and distributing respondents' merchandise in accordance with the sales plan or method hereinafter described. Respondents have thus supplied to, and placed in the hands of, others a means of conducting lotteries in the sale and distribution of their said merchandise in accordance with the sales plan or method hereinabove described. Said merchandise has thus been sold or distributed by means of a game of chance, gift enterprise, or lottery scheme, and respondents have reaped the benefits therefrom. The use of the respondents of said sales plan or method in the sale of their said merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method are a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 5. The sale of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations that sell or distribute merchandise in competition with respondents in commerce among and between the various States of the United States are unwilling to adopt and use said method or any method involving a game of chance or a sale of a chance to win something by chance or any 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 such merchandise 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 method by respondents, because of said game of chance, has the capacity and tendency to, and does, unfairly divert trade to respondents from their said competitors who do not use the same or an equivalent method.

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' competi-

tors 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 on the complaint of the Commission, answer of the respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief filed in support of the complaint (no brief having been filed by the respondent or oral argument 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, Irving Yanowitz and Benjamin Sokoloff, individuals, trading as Gotham Premium Novelty Company or under any other trade name, and their respective agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of garments, bedspreads, luggage, watches, cameras, dry goods, novelty jewelry, tooth paste and tooth powder, cosmetics, and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying or placing in the hands of others, pull cards or other devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Shipping, mailing, or transporting to agents or distributors or to members of the public, pull cards or other devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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 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.

IN THE MATTER OF
INTERSTATE HOME EQUIPMENT COMPANY, INC. ET AL.

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

Docket 5173. Complaint, June 3, 1944—Decision, Mar. 23, 1945

Where a corporation and several individuals who controlled it, engaged in the interstate sale and distribution of silverware, mattresses, blankets, radios, towels and other household articles, through some 32 branch offices or distribution centers in 20 States, operated in accordance with their policies by the respective managers and under a program by which said managers' house-to-house canvassers, as a rule, displayed samples and obtained contracts and down payments, and the merchandise—contingent upon approval by the manager or home office of the prospect's credit standing—was delivered, and installments collected until the price was paid—

- (a) Represented that they were selling Rogers 1847 silverware at a price substantially less than the usual retail price; that they were putting on a special advertising campaign in an effort to acquaint the public with their merchandise, during which said merchandise was being sold at reduced prices or at substantially less than usual prices; and that they were selling merchandise at lower prices than others;
- The facts being that the silverware in question was not Rogers 1847, but an inferior grade which they regularly sold at a price substantially less than the customary retail price of Rogers 1847 silverware; they were not putting on any special advertising campaign, and the articles of merchandise which they claimed they were selling at reduced prices were regularly sold by them at the prices asked; and their prices were not less than those of others but were generally higher than were the prices charged by local stores for merchandise of equivalent value;
- (b) Represented falsely that they were representatives of local and well-known business house, that the silverware sold by them was carried in stock by all large department stores, that the patterns sold by them—mostly obsolete—could be supplemented from local department stores, and that their silverware was superior in quality to that offered by local stores at comparable prices;
 - (c) Represented that mattresses offered for sale and sold by them were equal in grade and quality to the well-known and established "Beauty Rest" mattress; and that certain health features thereof were endorsed by physicians;
- The facts being their said mattresses did not compare favorably with Beauty Rest mattresses, but were made of inferior materials and poorly constructed; and they were not endorsed by physicians;
- (d) Represented that blankets which they offered and sold were composed wholly or partly of wool when in fact some were entirely cotton, and none contained over 5% wool;
 - (e) After having agreed to do so, refused to return payments or deposits made by purchasers on merchandise which was unsatisfactory or not as represented by their salesmen;
 - (f) Refused to return payments or deposits on merchandise in cases where purchasers did not desire to complete the sale;
 - (g) Delivered to purchasers goods other than, and in some instances inferior in quality to, those ordered;
 - (h) Delivered goods in addition to those ordered by purchasers and then threatened to sue said purchasers if the unordered merchandise were not paid for;