

Syllabus

IN THE MATTER OF

ISADORE PUKEL TRADING AS I. PUKEL

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

Docket 5399. Complaint, Nov. 2, 1945—Decision, May 10, 1946

Where an individual engaged in competitive interstate sale and distribution of musical vanity chests, toiletries, fountain pens, and other articles—

(a) Furnished various plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes for the sale of said merchandise, and the distribution to operators and to members of the public of push cards, order blanks, designations of said merchandise, and a circular letter explaining a plan of selling it and allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public, under which, as typical, a customer who succeeded in selecting from 79 feminine names displayed on card, the name corresponding to that concealed under card's master seal, received for the chance determined sum paid by him in accordance with number punched, a musical vanity chest; and thereby—

Supplied to and placed in the hands of operators, who made use of such push cards in selling said merchandise in accordance with the aforesaid sales plan, involving sale of a chance to produce the articles involved at much less than their normal retail price, and under which whether a purchaser received an article or nothing for his money, and amount he paid for the merchandise or chance was determined purely by chance—the means of conducting lotteries in the sale of his merchandise; contrary to an established public policy of the United States Government and in competition with many who are unwilling to use methods involving chance or contrary to public policy, and refrain therefrom;

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

(b) Falsely represented through statement in advertising literature "additional surprise gift," "free surprise gift," that the article referred to was given free or without cost to the recipient; notwithstanding the fact that he gave no merchandise free or unconditionally and the so-called "free surprise gift" was given only as compensation to the operators of his sales plan;

(c) Falsely represented through statement "This prize \$15," in circulars distributed to the purchasing public, that chests referred to had a retail value of said amount; when in fact said amount was a fictitious and exaggerated price;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true, and inducing its purchase of said merchandise:

Held, That such acts and practices, under the circumstances set forth, were

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all to the prejudice of the public and his competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. James A. Purcell*, trial examiner.
Mr. J. W. Brookfield, Jr., for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Isadore Pukel, an individual trading as I. Pukel, hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Isadore Pukel is an individual, trading and doing business under the name I. Pukel, with his office and principal place of business located at 919 Forty-seventh Street, in the city of Brooklyn, N. Y. Respondent is now, and for more than 6 months last past has been, engaged in the sale and distribution of musical vanity chests, toiletries, fountain pens, and other articles of merchandise, and has caused said merchandise, when sold, to be transported from his said place of business in the city of Brooklyn, N. Y., to purchasers thereof at their respective points of location in the various States of the United States other than New York, and in the District of Columbia. There is now, and has been for more than 6 months last past, a course of trade by 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 his business, respondent is, and has been, in substantial competition with other individuals and with corporations and partnerships 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 his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of, and in selling and distributing his said merchandise, furnishes and has furnished various plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes when said merchandise is offered for sale, sold, and distributed to the purchasing

public. The method or sales plan adopted and used by respondent is substantially as follows:

Respondent distributes, and has distributed, to operators and to members of the public, certain literature and instructions including among other things, push cards, order blanks, illustrations of his said merchandise, and a circular letter explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public.

One of respondent's said push cards bears 76 feminine names with the same names printed on the back thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 76 partially perforated disks; each of said disks bear the word "Push" and each disk also is printed in an individual frame labeled with one of the feminine names appearing on the list on the back of said cards. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from said card. The push card also has a large master seal, and concealed within said master seal is one of the feminine names appearing in the frames with the individual small disks. The person selecting the feminine name corresponding to the one under the master seal received one of the musical vanity boxes as a prize. The push card bears the following legend or instructions:

MUSICAL VANITY CHEST

Lift the Lid and Hear it Play

Name under Seal receives

MUSICAL Vanity CHEST

Attractively Packed with Toiletries

1¢ to 35¢—NO HIGHER

Nos. 1 to 35, Pay What you Draw

Nos. Over 35, Pay only 35¢

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 the customers or purchasers in accordance with the above-described legend or instructions. Whether a purchaser receives an article of merchandise

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or nothing for the amount of money paid, and the amount to be paid for the merchandise or the chance to receive the merchandise, are thus determined wholly by lot or chance.

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

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said push cards used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the afore-said sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 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 one of the said articles 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 method or any 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 his merchandise and the element of chance involved therein, and thereby are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by 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 unfairly divert substantial trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. In literature distributed to the purchasing public by means

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of the United States mails, respondent makes the following representations:

Additional surprise gift.

Free surprise gift.

thereby representing that the article referred to is given free or without cost to the recipient thereof. In truth and in fact, respondent gives no merchandise free or unconditional and the so-called "free surprise gift" is given only as compensation to the operators of respondent's sales plan and is not given without cost or without the rendering of service. Respondent also caused to be published in its circulars distributed to the purchasing public and statement: "List price \$15", referring to its musical vanity chests, thereby representing that these chests have a retail value of \$15. In truth and in fact, the chests do not have a normal retail value of \$15 and the so-called list price of \$15 is a fictitious and exaggerated price.

PAR. 6. The use by the respondent of the foregoing false, misleading, and deceptive statements has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and that said articles of merchandise are given without cost or free, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said merchandise.

PAR. 7. 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 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 2, 1945, issued and thereafter served its complaint in this proceeding upon the respondent, Isadore Pukel, an individual trading as I. Pukel, charging him with the use of unfair methods of competition and unfair acts and practices in commerce in violating of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as

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to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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 Isadore Pukel is an individual, trading and doing business under the name of I. Pukel, with his office and principal place of business located at 919 Forty-seventh Street, in the city of Brooklyn, N. Y. Respondent is now, and for more than 6 months last past has been, engaged in the sale and distribution of musical vanity chests, toiletries, fountain pens and other articles of merchandise, and has caused said merchandise, when sold, to be transported from his said place of business in the city of Brooklyn, N. Y., to purchasers thereof at their respective points of location in the various States of the United States other than New York, and in the District of Columbia. There is now, and has been for more than 6 months last past a course of trade by 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 his business, respondent is, and has been, in substantial competition with other individuals and with corporations and partnerships 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 his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of, and in selling and distributing his said merchandise, furnishes and has furnished various plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes when said merchandise is offered for sale, sold, and distributed to the purchasing public. The method or sales plan adopted and used by respondent is substantially as follows:

Respondent distributes, and has distributed, to operators and to members of the public, certain literature and instructions, including, among other things, push cards, order blanks, illustrations of his said merchandise, and a circular letter explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to

the operators of said push cards and to the purchasing and consuming public.

One of the respondent's said push cards bears 76 feminine names with the same names printed on the back thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 76 partially perforated disks; each of said disks bears the word "Push" and each disk also is printed in an individual frame labeled with one of the feminine names appearing on the list on the back of said cards. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from said card. The push card also has a large master seal, and concealed within said master seal is one of the feminine names appearing in the frames with the individual small disks. The person selecting the feminine name corresponding to the one under the master seal received one of the musical vanity boxes as a prize. The push card bears the following legend or instructions:

MUSICAL Vanity CHEST
Lift the Lid and Hear it Play

Name under Seal receives
MUSICAL VANITY CHEST
Attractively Packed with Toiletries

1c to 35c—NO HIGHER
Nos. 1 to 35, Pay What You Draw
Nos. Over 35, Pay Only 35c.

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 the customers or purchasers in accordance with the above-described legend or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and the amount to be paid for the merchandise or the chance to receive the merchandise, are thus determined wholly by lot or chance.

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

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said push cards used the same in purchasing, selling, and

distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 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 found involves a game of chance or the sales of a chance to procure one of the said articles 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 method or any 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 his merchandise and the element of chance involved therein, and thereby are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by 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 unfairly divert substantial trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. In literature distributed to the purchasing public by means of the United States mails, respondent makes the following representations:

Additional surprise gift.

Free surprise gift.

thereby representing that the article referred to is given free or without cost to the recipient thereof. In truth and in fact, respondent gives no merchandise free or unconditionally and the so-called free surprise gift is given only as compensation to the operators of respondent's sales plan and is not given without cost or without the rendering of service. Respondent also caused to be published in its circulars distributed to the purchasing public the statement: "List price \$15," referring to its musical vanity chests, thereby representing that these

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chests have a retail value of \$15. In truth and in fact, the chests do not have a normal retail value of \$15 and the so-called list price of \$15 is a fictitious and exaggerated price.

PAR. 6. The use by the respondent of the foregoing false, misleading, and deceptive statements has a tendency and capacity to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and that said articles of merchandise are given without cost or free, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said merchandise.

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 substitute answer of respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint and states that he 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, Isadore Pukel, an individual, trading as I. Pukel or under any other trade name, and his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of vanity chests, toiletries, novelties, or any other articles of 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, push 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.

2. Shipping, mailing, or transporting to agents or to distributors or to members of the purchasing public, push cards or other devices

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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.

4. Using the term "free" or "gift" or any other term of similar import and meaning to describe, designate, or refer to any merchandise which is furnished as compensation for services rendered or the price of which is included in the price of other merchandise.

5. Representing as the customary or regular price or value of respondent's merchandise, any price or value which is in excess of the price at which said merchandise is customarily offered for sale and sold in the normal and usual course of business.

It is further ordered, That the respondent shall within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF

EDWARD LEVENTHAL, AND JACOB HURWITZ, COPARTNERS, TRADING AND DOING BUSINESS AS LEVENTHAL & HURWITZ, AND HARRY HABER, TRADING AND DOING BUSINESS AS HABER & COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5125. Complaint, Feb. 3, 1944—Decision, May 14, 1946

Where an individual engaged in the sale and distribution to the public from three retail stores in the District of Columbia of women's coats and suits, many of which were composed in whole or in part of wool and were wool products within the intent and meaning of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder—

Sold and distributed products which were misbranded in that they did not have affixed thereto a stamp, tag, label, or other means of identification containing the information required by said act and said Rules in that the coat of a two-piece suit labeled "100% all wool," and otherwise represented composed entirely of wool, was in fact composed of about 50% wool and 50% rayon; in that tags failed to give any information at all as to the fiber content of the product involved, were affixed only to the coat or skirt of two-piece suits and not to both; and gave either no information at all or insufficient information as to the identity of the seller of the product or the person introducing the same into commerce or engaged in the sale, transportation, or distribution thereof in commerce:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and were to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Before *Mr. Miles J. Furnas* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. De Witt T. Puckett and *Mr. G. M. Martin*, for the Commisison.

Mr. Milton J. Levy, of New York City, for Edward Leventhal and Jacob Hurwitz.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., for Harry Haber.

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 Edward Leventhal and Jacob Hurwitz, individually and as copartners, trading and doing business as Leventhal