

IN THE MATTER OF

CURTIS-ELLIOTT, INC. AND LEROY H. HUTTNER

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

Docket 5231. Complaint, Oct. 6, 1944—Decision, July 11, 1946

Where a corporation and an individual—its president, treasurer and principal stockholder—who controlled and directed its policies and practices, engaged in the competitive interstate sale and distribution of watches and jewelry—Sold and distributed said products to the public by means of lottery sales plans and methods, including a so-called club plan under which each customer participant who contracted to pay \$45 in weekly installments for jewelry or a watch, received a so-called advertising or gift coupon bearing a certain number and date, which entitled him during a period of 50 weeks, to a chance to receive \$1,000, \$200, \$100, \$50, \$25, \$5 or \$1, whenever the number on the coupon corresponded with the figures making up the total weekly sales on the New York stock exchange as published in the Monday New York Times; contrary to an established public policy of the United States Government and in competition with many who did not use sales plans involving chance or lottery or contrary to public policy;

With the result that many persons were attracted by said sales plans and the element of chance connected therewith, and were thereby induced to purchase said jewelry and watches in preference to those of said competitors, and with a tendency and capacity thereby to unfairly divert trade in commerce from their said competitors, whereby substantial injury was done by them to competition in commerce:

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 acts and practices therein.

Before *Mr. Andrew B. Duwall*, trial examiner.

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

Mr. Herbert G. Kreisberg, 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 Curtis-Elliott, Inc., a corporation and Leroy H. Huttner, an individual, and officer of Curtis-Elliott, Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Curtis-Elliott, Inc., is a corporation organized and doing business under and by virtue of the laws of the

State of New York, with its office and principal place of business located at 67 West Forty-fourth Street in the city of New York, N. Y.

Respondent Leroy H. Huttner is president, treasurer, and principal stockholder of respondent corporation Curtis-Elliott, Inc., and formulates, controls and directs its policies and practices. Respondent Leroy H. Huttner has his offices at the same address as that of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the sale and distribution of watches and jewelry to purchasers located at points in the various States of the United States and in the District of Columbia. Respondents cause and have caused said watches and jewelry when sold to be transported from their aforesaid place of business in the city of New York, N. Y. to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade in said watches and jewelry 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 business respondents are and have been in competition with other corporations, and with individuals and partnerships engaged in the sale and distribution of like or similar 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 above described herein, respondents are now and have been selling and distributing said merchandise to members of the purchasing public by means of sales plans or methods which involve the operation of a game of chance, gift enterprise or lottery scheme. One of the said sales plans or methods is substantially as follows:

Members of the purchasing public are solicited by respondents' agents or representatives to purchase a watch under a so-called club plan. Respondents supply each purchaser participating in the plan with a "purchase agreement" or contract of purchase. Said agreement or contract provides for the sale by respondents of jewelry or a watch to such purchaser for the sum of \$45, which sum is to be paid weekly until the amount of \$45 is paid; respondents also furnish each customer who agrees or contracts to purchase the jewelry as aforesaid, a so-called advertising or gift coupon, bearing a serial number and date. The following legend is printed on each of said coupons:

Complaint

43 F. T. C.

Series No. 23866

Date 9/10/41

CURTIS-ELLIOTT, INC.
GIFT COUPON

It is distinctly understood that no cash consideration or compensation directly or indirectly is required to obtain this coupon and that no purchase of Jewelry or other Merchandise is required to enter into this contest or to be informed as to the prizes.

OFFERED FREE TO THE PUBLIC

Eliminate the first figure and take the following five figures of the N. Y. Stock Exchange total weekly sales as published every Monday morning (in the N. Y. Times). If they correspond at any time during 50 consecutive weeks from the date of THIS ADVERTISING COUPON with the number and date stamped thereon which is GIVEN AWAY FREE TO THE PUBLIC, we will distribute to holders of record upon presenting same within a week of appearance.

\$1,000.00 IN CASH

If the above five figures should correspond Reversed we will distribute to holders of record.

\$200.00 IN CASH

If the five figures Straight or Reversed should end with one higher or one lower than the numbers on this coupon we will distribute to holders of record.

\$100.00 IN CASH

Now eliminate the first two figures of the Stock Exchange Report. If the following four figures should correspond with the last four figures on this circular we will distribute to holder of record.

\$50.00 IN CASH

If the last four figures correspond Reversed we will distribute to holders of record.

\$25.00 IN CASH

If the last three figures correspond Straight or Reversed we will distribute to holders of record.

\$5.00 IN CASH

If the last two figures correspond we will distribute to holders of record.

\$1.00 IN CASH

No employee connected with Curtis-Elliott, Inc. or any of their immediate families may participate in this contest.

Purchasers of respondents' merchandise are thus entitled to a chance to receive the sum set out on the coupon each week while their payments for said merchandise are being made or while their purchase agreement is in effect.

PAR. 4. Respondents have sold and distributed their merchandise to members of the purchasing public in accordance with the aforesaid

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sales plans or methods. In so selling and distributing their merchandise, respondents have conducted lotteries in accordance with the sales plans or methods hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their merchandise and the sale of such merchandise by and through the use thereof, and by the aid of said methods in a practice contrary to an established public policy of the Government of the United States.

PAR. 5. The sale of merchandise to the purchasing public, in the manner, and by the plan or method hereinabove set forth, involves a game of chance or lottery in the sale of said merchandise wherein purchasers of respondents' merchandise may secure a cash prize in addition to receiving said merchandise. Many persons, firms, and corporations who sell and distribute watches and jewelry in competition with respondents, as above alleged, do not use said methods or sales plans or any methods or plans involving a game of chance or lottery or any other method contrary to public policy. Many persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their jewelry and watches and in the element of chance connected therewith and are thereby induced to purchase said jewelry and watches in preference to jewelry and watches of said competitors, or respondents who do not use the same or similar methods. The use of said methods by respondents, because of said game of chance has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or similar methods, and as a result thereof substantial injury is being and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. 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 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 the 6th day of October, 1944, issued and served its complaint in this proceeding upon respondents, Curtis-Elliott, Inc., a corporation, and Leroy H. Huttner, an individual and officer of Curtis-Elliott, Inc., charging them with the use of unfair methods of competition and unfair acts and practices in com-

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merce in violation of the provisions of said act. On December 16, 1944, the respondents filed their answer in this proceeding. At a hearing held in New York on July 20, 1945, a stipulation as to the facts in the case was entered into between counsel for the Commission and counsel for the respondents, and read into the record, whereby it was stipulated and agreed that, subject to the approval of the Commission, said stipulated facts may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed upon said stipulated facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondents specifically waived the filing of a trial examiner's report. Thereafter this proceeding regularly came on for final hearing before the Commission in said complaint, answer, and stipulated facts. Said stipulation having been approved by the Commission, the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Curtis-Elliott, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 67 West Forty-fourth Street in the city of New York, N. Y.

Respondent Leroy H. Huttner is president, treasurer, and principal stockholder of respondent corporation, Curtis-Elliott, Inc., and formulates, controls, and directs its policies and practices. Respondent Leroy H. Huttner has his offices at the same address as that of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter described.

PAR. 2. Respondents, during the years 1941 and 1942, were engaged in the sale and distribution of watches and jewelry to purchasers located at points in the various States of the United States and in the District of Columbia. Respondents caused said watches and jewelry, when sold, to be transported from their aforesaid place of business in the city of New York, N. Y., to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. During the times mentioned herein the respondents have maintained a course of trade in said watches and

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jewelry 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 business respondents have been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar 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 above described herein, respondents sold and distributed said merchandise to members of the purchasing public by means of sales plans or methods which involve the operation of a game of chance, gift enterprise, or lottery scheme. One of the said sales plans or methods was substantially as follows:

Members of the purchasing public are solicited by respondents' agents or representatives to purchase a watch under a so-called "club" plan. Respondents supply each purchaser participating in the plan with a "purchase agreement" or contract of purchase. Said agreement or contract provides for the sale by respondents of jewelry or a watch to such purchaser for the sum of \$45, which is to be paid in weekly payments until the amount of \$45 is paid; respondents also furnish each customer who agrees or contracts to purchase the jewelry as aforesaid, a so-called advertising or gift coupon bearing a serial number and date. The following legend is printed on each of said coupons:

Series No. 23866

Date 9/10/41

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GIFT COUPON

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\$25.00 IN CASH

If the last three figures correspond Straight or Reversed we will distribute to holders of record

\$5.00 IN CASH

If the last two figures correspond we will distribute to holders of record

\$1.00 IN CASH

No employee connected with Curtis-Elliott, Inc. or any of their immediate families may participate in this contest.

Purchasers of respondents' merchandise are thus entitled to a chance to receive the sum set out on the coupon each week while their payments for said merchandise are being made or while their purchase agreement is in effect.

PAR. 4. Respondents have sold and distributed their merchandise to members of the purchasing public in accordance with the aforesaid sales plans or methods. In so selling and distributing their merchandise, respondents have conducted lotteries in accordance with the sales plans or methods hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their merchandise and the sale of such merchandise by and through the use thereof, and by the aid of said methods is a practice contrary to an established public policy of the Government of the United States.

PAR. 5. The sale of merchandise to the purchasing public, in the manner and by the plan or method hereinabove set forth, involves a game of chance or lottery in the sale of said merchandise wherein purchasers of respondents' merchandise may secure a cash prize in addition to receiving said merchandise. Many persons, firms, and corporations who sell and distribute watches and jewelry in competi-

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tion with respondents, as above found, do not use said methods or sales plans or any methods or plans involving a game of chance or lottery or any other method contrary to public policy. Many persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their jewelry and watches and in the element of chance connected therewith and are thereby induced to purchase said jewelry and watches in preference to jewelry and watches of said competitors of respondents who do not use the same or similar methods. The use of said methods by respondents, because of said game of chance, has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or similar methods, and as a result thereof substantial injury has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of 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 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, the answer of the respondents and a stipulation as to the facts entered upon the record between counsel for the Federal Trade Commission and counsel for respondents, which provides, among other things, that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the filing of briefs or the presentation of argument, and which waives the filing of a report upon the evidence by the trial examiner; 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 the respondents, Curtis-Elliott, Inc., a corporation, its officers, representatives, agents and employees, and Leroy H.

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Huttner, an individual, 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 watches, jewelry or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Selling and distributing any merchandise by means of any sales plan or method involving the use of a game of chance, gift enterprise or lottery scheme;

(2) Supplying to or placing in the hands of others any merchandise together with a sales plan or method involving the use of a game of chance, gift enterprise or lottery scheme by which said merchandise is to be, or may be, sold or distributed to the purchasing public.

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.

Syllabus

IN THE MATTER OF

WILLIAM J. ELLISON, INC., AND ALBERT A. CHAPMAN

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

Docket 5327. Complaint, May 29, 1945—Decision, July 23, 1946

Where a corporation and an individual, its president, treasurer, and principal stockholder who controlled and directed its policies and practices, engaged in the competitive interstate sale and distribution of men's suits and overcoats—

Sold and distributed said products to members of the purchasing public through sales plans which involved the operation of a game of chance, gift enterprise or lottery scheme, including, as typical, a so-called club plan under which they supplied each participant who had undertaken to pay a specified sum in weekly installments of \$1 or \$2 for the garment selected, an advertising or gift coupon, bearing a serial number and date, and stating that they would give the garment free to the holder in the event that during the period of his contract the last three figures of the treasury balance as published in the New York Times should correspond with the number stamped on the coupon; and in partial compliance with such plan gave the garment without further charge to contracting participants who held winning numbers as above described; and made use thereby of a game of chance whereby purchasers might secure garments at a price substantially less than their retail value, contrary to an established policy of the United States Government and in competition with many who do not use methods contrary to public policy;

With the result that many persons were attracted by said sales plans and the element of chance connected therewith, and were thereby induced to purchase said garments in preference to those of aforesaid competitors, and with tendency and capacity to unfairly divert trade in commerce to them from their said competitors, to the substantial injury of competition in commerce:

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

In a proceeding in which complaint charged respondents, among other things, with violating the Wool Products Labeling Act, and in which it appeared that, prior to the issuance of said complaint, it was the practice of the respondents to place upon the bolts of wools from which their customers selected the materials for their garments, substitute tags or labels which did not contain all the information required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, but that the respondents had since changed such labels and tags so that they thereafter did contain the information thus required, it was the conclusion of