

Syllabus

IN THE MATTER OF
PUBLISHERS SERVICE COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 5357. Complaint, July 21, 1945—Decision, Aug. 25, 1947

Where a corporation engaged in the interstate sale and distribution of books and publications through use of a sales plan involving puzzle contests which included—

(1) The initiation of the contest by advertisements in newspapers published throughout the United States, in none of which was there any indication that the advertisements were appearing concurrently in other newspapers;

(2) Inclusion in such advertisements, along with solicitation to the public to join in the contest, of a statement of the alleged controlling rules, and the first 6 of 120 rebus-type puzzles for which solutions were to be sent in by mail;

(3) Provision usually in such advertisements for (a) award of cash prizes ranging from \$10,000 down or other prizes for the payment of 15 cents to it to cover the purchase price of books or publications with each six puzzle solutions mailed, for (b) conduct of a first and second tie-breaking contest under the same terms and conditions as for the original contest, and for (c) the submission to it of an essay on a selected subject, upon the conclusion of the second tie-breaking contest;

(4) Mailing and transmitting to participants successfully completing the original contest of congratulatory messages by special delivery letter informing the contestant that he or she was tied with others for the highest award;

(5) Solicitation from persons still engaged in said contests of letters and writings commendatory of the contest and the manner in which it was conducted;

(6) Requesting of certificates and affidavits concerning the identity and originality of essays of contestants by registered letter in which it referred to the alleged high standing of the contestant in the contest, and offered to double the amount or value of the prize to be received by the contestant, if he purchased an additional set of its books or publications; and

(7) Further solicitation, before any announcement of the winners, of the purchase of additional books or publications by telegrams and other special means of communication—

(a) Falsely represented, directly or by implication, that the opportunities of winning by a participant in a puzzle contest were enhanced, or were greater than was actually the fact, through representing that at the close of the original contest only a small number of persons were tied for the award of the first prize; when in fact many thousands were thus tied;

(b) Falsely represented that the scarcity of contestants competing in the so-called first tie-breaking contest greatly enhanced the prospect that the contestant participating therein and continuing to purchase its books or

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- publications as required in connection therewith, would win the first prize or other valuable prize; when in fact many thousands were thus competing;
- (c) Falsely represented that while the successful completion of said first tie-breaking contest did not mean that the contestant had already won the first prize, it did mean that such contestant would win one of the prizes offered if he or she continued the purchase of its books or publications and solved the final group of tie-breaking puzzles; and
- (d) Falsely represented that any contestant who successfully completed the final tie-breaking contest could double the amount of the cash prize or the value of such other prize, of which the contestant was the actual but unannounced winner, if he or she purchased an extra set of its books or publications;

Notwithstanding the fact such a contestant was only one of thousands who had the same standing in the contest, and frequently there was not more than 1 chance in 70,000 or 80,000 chances that such contestant could win a cash prize or other valuable prize in any amount;

With effect of misleading members of the public by creating the mistaken belief that such representations and implications were true, and thereby causing a substantial number thereof to engage in such contests and purchase said books or publications in substantial quantities:

Held, That such acts and practices, as herein found, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. John L. York for the Commission.

Davis, Auerbach, Cornell & Hardy, of New York City, for respondent.

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 Publishers Service Co., Inc., a corporation, hereinafter referred to as 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, Publishers Service Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 75 West Street in the city of New York, N. Y.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the conduct of puzzle contests as a means of inducing the purchase of books and publications which respondent sells and has sold to purchasers and members of the general public in the various States of the United States and in the District of Columbia. Re-

spondent causes and has caused its said books and publications, when sold by said means, to be transported from its principal place of business in New York City to the purchasers thereof 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 has been for several years last past, a course of trade and commerce in such books and publications by said respondent between and among the States of the United States and in the District of Columbia by and through means of conducting said puzzle contests.

PAR. 3. In the conduct of said puzzle contests, respondent employs and pursues a typical method which consists of the following:

(1) The contest is initiated by advertisements in newspapers published throughout the United States in none of which is there any reference to its publication in any other newspaper, or any indication that said advertisement appears concurrently in other newspapers.

(2) Such advertisements include an announcement of the contest with solicitations to the public to join therein, a statement of the rules alleged to govern the contest, and the first 6 of 120 rebus-type puzzles for which solutions are to be sent to respondent by mail.

(3) Said advertisements usually provide for the award of cash prizes ranging from \$10,000 or other large amount to relatively small amounts or for the award of other prizes, for the payment of 15 cents to respondent to cover the purchase price of books or publications with each six puzzle solutions mailed to respondent, for the conduct of a first and second tie-breaking contest under the same terms and conditions as are provided for the original contest in the event the winners cannot be determined by the conduct of the original contest, and for the submission to respondent of an essay on a selected subject upon the conclusion of the second tie-breaking contest.

(4) Respondent mails and transmits to participants successfully completing the original contest congratulatory messages by special delivery letter informing the contestant that he or she is tied with others for the highest award.

(5) Respondent solicits from persons still engaged in said contests letters and writings commendatory of the contest and the manner in which it is conducted.

(6) Respondent requests certificates and affidavits concerning the identity and originality of essays of contestants by registered letters in which respondent refers to the alleged high standing of the contestant in the contest, and offers to double the amount or value of the

prize to be received by the contestant if the contestant will purchase an additional set of respondent's books or publications.

(7) Before any announcement as to the winners of prizes is made, respondent further solicits the purchase of additional books or publications by telegrams and other special means of communication.

PAR. 4. Respondent, in the course and conduct of its business, as aforesaid, promotes and induces the purchase of said books or publications by means of said typical method and by means of said puzzles, letters, telegrams, leaflets, circulars, newspaper advertisements, and other written or printed material which are disseminated throughout the various States of the United States and in the District of Columbia. By the use of said typical method and in all of said written and printed material respondent promotes and induces the purchase of said books or publications by representing and implying in substance as follows:

(1) That at the close of the original contest, only a small number of persons were tied for the award of the first prize.

(2) That the scarcity of contestants competing in the so-called first tie-breaking contest greatly enhanced the prospect that the contestants participating therein and continuing to purchase respondent's books or publications as required in connection therewith, will win the first prize or other valuable prize.

(3) That while the successful completion of said first tie-breaking contest did not mean that the contestant has already won the first prize, it did mean that such contestant would win one of the prizes offered if he or she continued the purchase of respondent's books or publications and solved the final group of tie-breaking puzzles.

(4) That any contestant who successfully completed the final tie-breaking contest could double the amount of the cash prize or the value of such other prize, of which the contestant was the actual but unannounced winner, if he or she purchased an extra set of respondent's books or publications.

PAR. 5. In truth and in fact, the foregoing representations and implications made by respondent are false, deceptive, and misleading in the following respects:

(1) At the close of the original contest, many thousands of persons were tied for the award of the first prize.

(2) Many thousands of persons competed in the first tie-breaking contest, and the prospect that the contestant participating therein and continuing to purchase respondent's books or publications would win a prize, was not enhanced by any scarcity of contestants engaged in it.

(3) The successful completion of the so-called first tie-breaking contest did not assure the contestant of being awarded any prize although he or she continued to purchase respondent's books or publications and solved the final group of tie-breaking puzzles.

(4) The contestant successfully completing the final tie-breaking contest is only one of thousands of contestants having the same standing in the contest, and frequently there is not more than 1 chance in 70,000 or 80,000 chances that such contestant can win a cash prize or other valuable prize, whether in the original amount offered, or double such original amount, or in any other amount.

PAR. 6. The aforesaid representations and implications made by respondent have the capacity and tendency to, and do, mislead and deceive members of the public by creating the erroneous and mistaken belief that said representations and implications are true, and cause a substantial number of the public, acting upon such erroneous and mistaken belief, to engage in such contests and to purchase substantial quantities of respondent's books or publications in said commerce.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute 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 21, 1945, issued, and on July 23, 1945, served, its complaint in this proceeding upon the respondent, Publishers Service Company, Inc., a corporation of the State of New York, charging it with the use of 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 respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor a substitute answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding came on for final hearing before the Commission on 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, Publishers Service Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its offices and principal place of business located at 75 West Street in the city of New York, N. Y.

PAR. 2. For several years past, respondent has been engaged in the use of a sales plan involving puzzle contests as a means of inducing the purchase of books and publications which respondent has sold to purchasers and members of the general public in the various States of the United States and in the District of Columbia. Respondent has caused its said books and publications, when sold by said means, to be transported from its principal place of business in New York City to the purchasers thereof in the various States of the United States other than the State of New York, and in the District of Columbia. There has been a course of trade in commerce in such books and publications by said respondent between and among the States of the United States and in the District of Columbia by and through means of conducting said puzzle contests.

PAR. 3. In the conduct of said sales plan, respondent has employed and pursued the following practices in connection with its puzzle contests:

(1) The contest is initiated by advertisements in newspapers published throughout the United States in none of which is there any reference to its publication in any other newspaper, or any indication that said advertisement appears concurrently in other newspapers.

(2) Such advertisements include an announcement of the contest with solicitations to the public to join therein, a statement of the rules alleged to govern the contest, and the first 6 of 120 rebus-type puzzles for which solutions are to be sent respondent by mail.

(3) Said advertisements usually provide for the award of cash prizes ranging from \$10,000, or other large amount, to relatively small amounts or for the award of other prizes for the payment of 15 cents to respondent to cover the purchase price of books or publications with each six puzzle solutions mailed to respondent, for the conduct of a first and second tie-breaking contest under the same terms and conditions as are provided for the original contest, and for the submission to respondent of an essay on a selected subject upon the conclusion of the second tie-breaking contest.

(4) Respondent mails and transmits to participants successfully completing the original contest congratulatory messages by special

delivery letter informing the contestant that he or she is tied with others for the highest award.

(5) Respondent solicits from persons still engaged in said contests letters and writings commendatory of the contest and the manner in which it is conducted.

(6) Respondent requests certificates and affidavits concerning the identity and originality of essays of contestants by registered letter in which respondent refers to the alleged high standing of the contestant in the contest and offers to double the amount or value of the prize to be received by the contestant if the contestant will purchase an additional set of respondent's books or publications.

(7) Before any announcement as to the winners of prizes is made, respondent further solicits the purchase of additional books or publications by telegrams and other special means of communication.

PAR. 4. By the use of said practices in connection with its puzzle contests, respondent has promoted and induced the purchase of said books or publications by representing and implying in substance as follows:

(1) That at the close of the original contest, only a small number of persons were tied for the award of the first prize.

(2) That the scarcity of contestants competing in the so-called first tie-breaking contest greatly enhanced the prospect that the contestant participating therein and continuing to purchase respondent's books or publications as required in connection therewith, will win the first prize or other valuable prize.

(3) That while the successful completion of said first tie-breaking contest did not mean that the contestant has already won the first prize, it did mean that such contestant would win one of the prizes offered if he or she continued the purchase of respondent's books or publications and solved the final group of tie-breaking puzzles.

(4) That any contestant who successfully completed the final tie-breaking contest could double the amount of the cash prize or the value of such other prize, of which the contestant was the actual but unannounced winner, if he or she purchased an extra set of respondent's books or publications.

PAR. 5. In truth and in fact, the foregoing representations and implications made by respondent are false, deceptive, and misleading in the following respects:

(1) At the close of the original contest, many thousands of persons were tied for the award of the first prize.

(2) Many thousands of persons competed in the first tie-breaking contest, and the prospect that the contestant participating therein and continuing to purchase respondent's books or publications would win

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a prize was not enhanced by any scarcity of contestants engaged in it.

(3) The successful completion of the so-called first tie-breaking contest did not assure the contestant of being awarded any prize although he or she continued to purchase respondent's books or publications and solved the final group of tie-breaking puzzles.

(4) The contestant successfully completing the final tie-breaking contest is only one of thousands of contestants having the same standing in the contest, and frequently there is not more than 1 chance in 70,000 or 80,000 chances that such contestant can win a cash prize or other valuable prize, whether in the original amount offered or double such original amount or in any other amount.

PAR. 6. The aforesaid representations and implications made by respondent have the capacity and tendency to, and have, mislead and deceived members of the public by creating the erroneous and mistaken belief that such representations and implications are true, and have caused a substantial number of the public, acting upon such erroneous and mistaken belief, to engage in such contests and to purchase substantial quantities of respondent's books or publications in said commerce.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Commissioner Mason not participating.

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 the respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint and 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, Publishers Service Co., Inc., a corporation of the State of New York, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of its said books or publications in commerce as "commerce" is defined

in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or attempting to sell respondent's books or publications by means of any sales plan or method of merchandising in connection with which it is falsely represented, either directly or by implication, that the opportunities of winning by a participant in a puzzle contest are enhanced or are greater than is actually the fact by the use of any of the following or similar representations:

(a) That only a small number of persons are tied for the award of the first prize at the close of the original contest.

(b) That the scarcity of contestants competing in the so-called first tie-breaking contest greatly enhances the prospect that the contestant participating therein and continuing to purchase respondent's books or publications as required in connection therewith will win the first prize or other valuable prize.

(c) That the successful completion of the first tie-breaking contest means that the contestant will win one of the prizes offered if he or she continues to purchase respondent's books or publications and solves the final group of tie-breaking puzzles.

(d) That any contestant who successfully completes the final tie-breaking contest can double the amount of the cash prize or the value of such other prize, of which the contestant is the actual but unannounced winner, if he or she purchases an extra set of respondent's books or publications.

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

Commissioner Mason not participating.

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IN THE MATTER OF
SCOTCH WOOLEN MILLS

MODIFIED CEASE AND DESIST ORDER

Docket 940. Aug. 29, 1947

Order modifying prior order in proceeding in question, May 1, 1945, 40 F. T. C. 484, which required respondent, in connection with the offer, etc., of clothing and like merchandise in commerce, to cease and desist from using the word "Mills" in its corporate or trade name, etc.; from representing, etc., that it makes the cloth used in its articles of clothing, etc.; from representing in any manner that it owns, etc., any mills, etc., in which the cloth used in its clothing is produced; from using the word "Scotch," etc., in its corporate or trade name when used to designate a business which deals principally in products not of Scotch origin; and from representing, etc., as "Scotch," articles of clothing or materials therein which are not of such origin;

So as to permit the use, as a corporate name, of the words "Scotch Tailors, Inc.," provided that in immediate conjunction therewith, in prominent type, and upon each article and in all advertising matter, as therein specified, there is connected therewith a clear and conspicuous disclosure through use of the words "Made in the U. S. A.," or otherwise that said articles and woolen materials are made in the United States; *and so as to permit*, in connection with said last-named corporate name, the slogan "Formerly Scotch Woolen Mills," for a period of 2 years from the date of entry of the modified order; *and also so as to permit* use in the transaction of its business, of such stationery, envelopes, etc., which bear said name, "Scotch Woolen Mills," as it may have on hand or on order, until exhausted, but no longer than 18 months from the date of entry of modified order herein; and that said corporation may use such items and such slogans accordingly and for such respective periods of time.

Before *Mr. John W. Addison*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Isaac S. Rothschild, of Chicago, Ill., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This matter having heretofore been heard by the Federal Trade Commission, and the Commission having duly made and issued its findings as to the facts, conclusion and order to cease and desist dated May 1, 1945; and

It appearing that a petition to review and set aside said order was filed by the respondent on June 22, 1945, in the United States Circuit Court of Appeals for the Seventh Circuit, and that thereafter the Commission certified and filed in said court a transcript of the entire record in this proceeding; and