

Syllabus

IN THE MATTER OF

IRVING HECHTMAN TRADING AS CENTRAL
MERCHANDISE CO.

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

Docket 5257. Complaint, Dec. 5, 1944—Decision, Mar. 31, 1948

Where an individual engaged in the competitive interstate sale and distribution of bedspreads, comforters, fountain pens, cameras, clocks, billfolds, and other merchandise—

- (a) Made use of a selling plan or method under which he distributed to individuals named on mailing lists purchased by him, certain literature and instructions, depictions of various articles, explanatory circulars, order blanks, and push cards for use in accordance with a scheme through which the cost of a chance was determined by the number revealed by a "push," the person selecting by chance the feminine name corresponding with that concealed in the master seal received a "Swiss Weather House" or "weather forecaster," the person securing a certain number received "a genuine leather billfold," and the operator of the card was compensated with one of the "forecasters," following his remission of the sum received from the sale of the chances on the cards; and
- (b) Distributed further to operator-recipients who made use of said push cards and material, and remitted to him as aforesaid described, other sales cards which were similar but usually larger, with more partially perforated discs, and prepared for use in the sale of bedspreads, fountain pens, cameras, table cloths, and other merchandise, along with literature describing and illustrating the particular article thus offered; and

Thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of merchandise, in accordance with his aforesaid plan involving a game of chance or sale of a chance to procure an article of merchandise at much less than the normal retail price thereof, contrary to the established public policy of the Government of the United States and in violation of the criminal laws, and in competition with sellers unwilling to use sales methods contrary to public policy;

With the result that many were attracted by said sales plan with its element of chance, in preference to those of his said competitors, and trade in commerce was diverted unfairly from them to him, and with capacity and tendency so to divert trade, to the substantial injury of such competitors;

- (c) Falsely and misleadingly represented, through such statements in his said literature in further pursuance of his sales plan as "extra gift," "extra free gift," "Want a 4-Star Fountain Pen As A Gift?," that the merchandise referred to was distributed free or given without consideration or cost; when in fact it was provided only as compensation to the operators of his said sales plan and was in no instance given without the rendering of services;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that the merchandise referred to was

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"free," or given without cost or the rendering of services therefor, and thereby of inducing it to purchase his merchandise, and with tendency and capacity so to do:

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

Before *Mr. John P. Bramhall*, trial examiner.

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

Mr. Gordon L. Bazelon, of Chicago, Ill., 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 Irving Hechtman, an individual trading as Central Merchandise Co., 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, Irving Hechtman, is an individual trading under the name of Central Merchandise Co., with his office and principal place of business located at 161 West Huron Street, in the city of Chicago, Ill. Respondent is now, and for more than 6 months last past has been, engaged in the sale and distribution of bedspreads, comforts, novelties, pocketbooks, and other articles of merchandise and has caused said merchandise, when sold, to be transported from his place of business in Chicago, Ill., to purchasers thereof at their respective points of location in the various States of the United States other than Illinois 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 partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof respondent, in soliciting the same of and in selling and distributing the sale of his 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 sold and distributed to the consuming 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 circulars 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 thirty feminine names with ruled columns on the back thereof, for writing in the name of the customer opposite the feminine name selected. Said push card has 30 partially perforated disks; each of said disks bears one of the feminine names corresponding to those on the list. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal or "red seal," and concealed within the master seal is one of the feminine names appearing on the disk. The person selecting the feminine name corresponding to the one under the master seal receives a bedspread or comforter. The push card bears the following legend or instructions.

4 PRIZES

LUCKY NAME UNDER LARGE RED SEAL RECEIVES CHOICE
OF A BEAUTIFUL

QUILTED IMPORTED

OR

COMFORTER BEDSPREAD

Numbers 1 to 29 Pay What You Draw

Numbers Over 29 Pay Only 29¢

NONE HIGHER

NUMBERS

1—15—20

EACH RECEIVE

A \$1.00

FOUNTAIN

PEN.

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.

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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 use 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 respondents from their 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: "Want a 4-Star Fountain Pen As A Free Gift?" "Extra Gift," "Extra Free Gift," "Free Additional Valuable Surprise Gift," and "A Free Gift For You," thereby representing that the merchandise distributed by respondent is free or given without consideration or cost. In truth and in fact, the merchandise represented by merchandise as being free or a gift is offered only as compensation to the operators of respondent's sales plan and is not given without cost or without the rendering of services.

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 December 5, 1944, issued and subsequently served its complaint in this proceeding upon the respondent, Irving Hechtman, an individual trading as Central Merchandise Co., charging said respondent 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 that act. After the issuance of said complaint and the filing of the respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of the 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, the proceeding regularly came on for final hearing before the Commission on the complaint, the respondent's answer thereto, testimony, and other evidence, the recommended decision of the trial examiner and briefs in support of the complaint

and in opposition thereto (no oral argument having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Irving Hechtman, is an individual trading as Central Merchandise Co. and as Huron Sales Co., with his principal place of business located at 161 West Huron Street, Chicago, Ill. The respondent is now and since May 1944 has been engaged in the sale and distribution of bedspreads, comforters, fountain pens, cameras, clocks, billfolds, and other articles of merchandise.

PAR. 2. In the course and conduct of his business the respondent causes the aforesaid merchandise, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof at their respective points of location in various States of the United States other than Illinois and in the District of Columbia; and the respondent maintains and for more than 3 years last past has maintained a regular course of trade in such merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the sale and distribution of his merchandise the respondent uses a selling plan or method consisting in part of distributing by mail to individuals whose names are included on mailing lists purchased by the respondent certain literature and instructions including, among other things, push cards, order blanks, illustrations, and picturizations of various articles of merchandise and circulars explaining the respondent's plan for the sale of such merchandise and for the allotment of premiums or prizes. One of the circulars included in a typical set of this material is headed: "Want a 'Swiss' Weather Forecaster as a Free Gift?" and this is followed by these statements:

Yes, you can have one of these "SWISS" Weather Houses practically as a gift. Predicts the weather for you 8 to 24 hours in advance.

You'll see the Old Witch come out in front when rainy or bad weather is on the way—and when the weather is going to be fair and clear you'll see the boy and girl come out on the front porch.

Merely show the illustration to your friends, relatives, neighbors and co-workers. Explain to them how they may obtain one of these "SWISS" WEATHER FORECASTERS for as little as 1¢ and not more than 29¢.

The enclosed sales card has a list of girls' names and under each seal is a number. For example—Person selecting No. 1 pays 1¢; No. 9 pays 9¢; No. 19

pays 19¢; No. 22 pays 22¢; all others pay only 29¢. *NONE HIGHER!* Numbers are not consecutive.

FOR YOUR COOPERATION in disposing of this sales card you receive one of these accurate, solidly built "SWISS" WEATHER FORECASTERS ABSOLUTELY FREE (Comm. Ex. 1-A).

The letter is accompanied by an illustrated and descriptive advertisement of the "Weather Forecaster" offered for sale and by a push card having on its face a picturization of the "Weather Forecaster" and 16 small partially perforated disks, each bearing a feminine name and each having concealed within it a number which is disclosed when the disk is pushed out or separated from the card. The card also has on its face a partially perforated larger disk with the notation thereon "Do not remove seal until entire card is sold," the statement "Lucky Name Under Seal Receives a 'SWISS' WEATHER HOUSE," the further statement, "No. 19 Receives a Genuine Leather Billfold" immediately under a picture of a pocket billfold, and a statement similar to that set out in the extracts from the circular quoted above showing the amounts to be paid by the players punching out the small perforated disks. The back of the card has the same feminine names printed on it as appear on the small disks on the face of the card, each followed by a blank space for use by the operator of the card in writing in the name of the player pushing out each of the 16 disks, together with a further explanation of the nature of the card, and the statement—

Upon receipt of your order we immediately ship to you the articles indicated on order blank. This card is given to you absolutely free. If you wish you can use this as a sales card.

The above-described material is accompanied by a printed order blank for the purchase of two "Swiss Weather Houses" and one pocket billfold for the total price of \$3.99, together with a business reply envelope addressed to the respondent under his trade name, Central Merchandise Co., at Chicago, Ill. The sum of the payments called for by the push card is \$3.99, the exact amount called for on the order blank for the two "Weather Houses" and one pocket billfold.

PAR. 4. The respondent mails the literature above described in sets varying in number from 10,000 to 25,000 at a time, and as a result of each mailing he receives orders for the merchandise described therein varying in number from 150 to 250. Upon the receipt of such orders the respondent ships the merchandise ordered from his place of business in Chicago, Ill., to the respective individuals from whom the orders are received, and at the same time he sends to each of such customers a form letter acknowledging receipt of the first order, together with additional advertising material and literature which he refers to as a "deal

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or package." The letter acknowledging the first order states, among other things, the following:

Certainly, you have friends who would like to receive these valuable **FREE GIFTS** too, and for getting them to send us orders, we would like to reward you handsomely.

Enclosed herewith are more sales cards and order blanks, which we would ask you to hand to your friends and explain our offer to them.

PLEASE READ CAREFULLY

For **EACH THREE** orders we receive from you or your friends we will send you

A-B-S-O-L-U-T-E-L-Y F-R-E-E

ANY ONE OF THE THREE SPECIAL PREMIUMS SHOWN on the enclosed 4-page **FREE PREMIUM CIRCULAR**, free of charge, postage prepaid.

Merely give the *cards, colored circulars and order blanks* to your friends, relatives, neighbors, co-workers and as soon as we receive **THREE ORDERS** to your credit we will send you your choice of the **FREE GIFT** you have selected from the enclosed 4-Page Circular.

Before handing the material to your friends, be sure and write your name and address on the bottom of the *order blank* in the space marked "This Order Blank Presented By," also state which article is wanted for getting **THREE ORDERS** to your credit. (Comm. Ex. 2-A.)

The sales cards referred to in the letter are similar to those hereinabove described except that they are usually larger, have more partially perforated disks thereon, and are prepared for use in the sale of bedspreads, fountain pens, cameras, tablecloths, and other articles of merchandise, instead of "Swiss Weather Houses," and the circulars and other literature included in the material describe and illustrate the particular merchandise offered.

PAR. 5. Many of the individuals to whom the respondent furnishes said push cards use the same in purchasing, selling, and distributing merchandise which they buy from the respondent. The sale of merchandise to the purchasing public according to the respondent's sales plan or method involves a game of chance or the sale of a chance to procure an article of merchandise at a price less than the normal retail price thereof. The respondent thus supplies to and places in the hands of others means of conducting lotteries in the sale of merchandise. The use by the respondent of the aforesaid sales plan or method in the sale and distribution of his merchandise and the sale of such merchandise by and through the use and aid of said sales plan or method is a practice contrary to the established public policy of the Government of the United States and is in violation of the criminal laws.

PAR. 6. In the sale and distribution of his various articles of merchandise, the respondent is in competition with other individuals and

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with firms and corporations who also sell and distribute like or similar merchandise. Some of these individuals, firms, and corporations are unwilling to adopt and use a sales plan or method similar to that used by the respondent, or any other method contrary to public policy, and such competitors refrain therefrom.

Many persons are attracted by the aforesaid sales plan or method employed by the respondent in the sale and distribution of his merchandise, and the element of chance involved therein, in preference to merchandise offered for sale and sold by the respondent's competitors who do not use the same or equivalent methods. The use of said plan or method by the respondent, because of the game of chance, has a tendency and capacity to and does unfairly divert to the respondent from said competitors who do not use the same or an equivalent plan or method substantial trade in commerce among and between the various States of the United States and in the District of Columbia, and as a result thereof substantial injury has been and is being done by the respondent to competitors in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. In the literature hereinabove described and in further pursuance of his sales plan or method, the respondent makes the following, among other similar statements:

Want a 4-Star Fountain Pen as A Gift?
EXTRA GIFT
EXTRA FREE GIFT
FREE—Additional Valuable Surprise Gift
A FREE GIFT FOR YOU,

thereby representing that the merchandise referred to is distributed free or given without consideration or cost. In truth and in fact, the merchandise represented as being "free" or a "gift" is in all instances provided only as compensation to the operators of the respondent's sales plan and is in no instance given without cost or without the rendering of services. The representation that such merchandise is given "free" or as a "gift" is false and misleading.

PAR. 8. The use by the respondent of the false and misleading representations referred to in paragraph 7 has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true and that the articles of merchandise referred to are "free" or given without cost or the rendering of services therefor, and to induce a substantial portion of the public, because

of such erroneous and mistaken belief, to purchase the respondent's merchandise.

CONCLUSION

The aforesaid acts and practices of the 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 and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, 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, the recommended decision of the trial examiner and briefs in support of the complaint and in opposition thereto (no oral argument having been requested); and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Irving Hechtman, individually, and trading as Central Merchandise Co. and as Huron Sales Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of any merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

1. Supplying to or placing in the hands of others any merchandise, together with push or pull cards, punchboards, or any other lottery devices, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling or distributing such merchandise to the public.

2. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices, either with any merchandise or separately, which push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling or distributing merchandise to the public.

3. Selling or otherwise disposing of any merchandise by the use of push cards, pull cards, punchboards or other lottery devices.

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4. Using the terms "free" or "gift," or any other word or term of similar import or meaning, to describe or refer to any merchandise which is not in fact a gift or gratuity or is not given to the recipient thereof without requiring the performance of some service inuring directly or indirectly to the respondent.

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.

IN THE MATTER OF

BLACKSTONE COLLEGE OF LAW, INC., ALSO TRADING
AS BLACKSTONE-SPRAGUE SCHOOL, INC., HAROLD R.
LISTER AND E. STANLEY GERIGCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4929. Complaint, Mar. 15, 1943—Decision, Apr. 7, 1948*

An academic degree connotes scholarship and intellectual achievement. At the very least the conferring of such a degree implies that the recipient has seriously pursued and has completed certain prescribed courses of instruction under competent supervision.

An honorary degree implies outstanding achievement either in the academic field or in some other field of worthy endeavor.

No reputable institution of learning would consider the indiscriminate awarding of academic degrees upon the basis of a mere statement or certificate by the individual that he had completed the course of study; and the granting of such degrees, with no serious effort to establish or maintain genuine scholastic standards or requirements, and of purportedly honorary degrees, in effect upon the basis of a money payment, constitutes an imposition and fraud upon the public and upon the nation's educational system, and a sham, and is unfair not only to legitimate holders of genuine academic degrees and students seriously undertaking to obtain them, but also to recipients of such so-called degrees, in that, contrary to the representation implicit in the conferring thereof, they are wholly without academic value and are not recognized by any reputable educational institution.

Where a corporation engaged, under its corporate name, in the sale and distribution of correspondence courses of study and instruction in law, and engaged also, under a separate trade name, in the sale and distribution of courses of study and instruction in short story writing, acting under the direction of its president-treasurer, who formulated its policies; in and through advertising material, consisting of various circulars, form letters and other matter distributed among prospective students—

- (a) Represented, directly or by implication, that it was a large law school with a faculty of many well known and scholarly instructors;

When in fact it was operated from an office composed of four rooms and a stock room, with four employees who handled the clerical work; its faculty consisted of two practicing attorneys who devoted only a portion of their time to the school, their duties consisting of grading the papers or lessons sent in by the students; and neither its said president-treasurer, nor its vice president-secretary (whose duties were largely of a clerical nature) was a lawyer;

- (b) Falsely represented that its methods of teaching and courses of instruction were comparable with those used by the leading resident law schools;
- (c) Falsely represented that it was a recognized and standard law school which had been given an A rating by the Association of American Law Schools; and,