

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 1, 1949, TO JUNE 30, 1950

IN THE MATTER OF

JOE KATZ AND MARSHALL MALTZ¹ DOING BUSINESS
AS J. & M. SALES CO.

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

Docket 5559. Complaint, May 24, 1948—Decision, July 1, 1949

Where an individual engaged in the interstate sale and distribution of watches and other merchandise to dealers, operators, and other purchasers; in advertising in periodicals of general circulation for operators of push cards, to whom, in answer to their inquiries, he sent a letter describing his card sales plan—

- (a) Furnished and supplied his customers with plans of merchandising which involved the operation of a lottery scheme in sales to the consuming public, including such typical push card deal as one providing that the customer who by chance selected from 72 feminine names displayed on the card, the name corresponding to that concealed under the card's master seal, received for the thirty-five cents, or for nothing, as determined by the accompanying number, one of the two more costly wrist watches sold therewith;

Thereby supplying to and placing the means of conducting lotteries in the hands of dealers, operators, and other purchasers, who sold his watches and other merchandise by means of said push card deal, whereby, whether the customer received a watch, other article, or nothing for the money he paid, was dependent wholly upon lot or chance, contrary to an established public policy of the United States Government and the public interest;

¹ The Commission on July 1, 1949, issued an order closing case without prejudice as to respondent Marshall Maltz, as follows:

"This matter came on to be heard in regular course upon motion, filed December 13, 1948, by counsel supporting the complaint, to close this case without prejudice as to the individual respondent Marshall Maltz, to which no answer has been filed by said respondent.

"The complaint herein, issued May 24, 1948, charges respondents, Joe Katz and Marshall Maltz, as individuals and partners, doing business as J. & M. Sales Co., with violation of Section 5 of the Federal Trade Commission Act through the use of lottery methods in the sale and distribution of watches and other merchandise. From the answers to said complaint filed by both respondents and from said motion to dismiss, it appears that said partnership was dissolved on March 1, 1948, that respondent Marshall Maltz has not since been connected therewith, and that Joe Katz is now carrying on the business formerly conducted by the partnership.

"Having duly considered the matter and being now fully advised in the premises:

"It is ordered, That the motion to close this case as to the respondent Marshall Maltz be, and it hereby is, granted without prejudice to the right of the Commission to reopen this proceeding or to take such further action at any time in the future as may be warranted by the then existing circumstances."

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With the result that many persons were attracted by said sales plans or methods involving a game of chance, and were thereby induced to buy and sell his said merchandise; and

Where said individual, in soliciting the sale and distribution of his said sales plans—

- (b) Represented through such statements in periodicals of general circulation as "Make \$250 to \$500 a week—Be your own operator of push cards—A once-in-a-lifetime opportunity to make \$250 to \$500 a week with little investment," that his customers earned or would earn \$250 to \$500 a week through the use of his said sales plans; notwithstanding the fact that none of them had thereby earned such sums or any other substantial amount;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and thereby induce their purchase of a substantial number of his said sales plans, watches, push cards, and other merchandise:

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

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 Joe Katz and Marshall Maltz, individuals and partners trading as J. & M. Sales Co., hereinafter referred to as respondents, have violated the provisions of the 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. Respondents, Joe Katz and Marshall Maltz, are individuals and partners trading and doing business as J. & M. Sales Co., with their office and principal place of business located at 708 South State Street in the city of Chicago, Ill. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of watches and other articles of merchandise and have caused said watches and merchandise when sold to be transported from their place of business in the city of 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 1 year last past a course of trade by respondents in such merchandise, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents in soliciting the sale of and in sell-

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ing and distributing their watches and other merchandise, furnish, and have furnished, various plans of merchandising which involve the operation of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the purchasing and consuming public. One method or sales plan adopted and used by the respondents is substantially as follows:

Respondents advertise in periodicals having a general circulation throughout the United States for operators of push cards, and in answer to inquiries send them a letter describing the operation of their plan for selling their push-card deals. The push-card deals sold by respondents consist of a push card and 2 wrist watches. Each of respondents' push cards bears 72 feminine names with ruled columns on the back of said push card for writing in the name of the customer opposite the name selected. Said push card has 72 partially perforated disks. Each of said disks bears 1 of the feminine names corresponding to those on the list. Concealed within each disk is a number which is disclosed only when the customer pushes or separates a disk from the card. The push card also has a larger master seal, and concealed within the master seal is one of the feminine names appearing on the disks and list. The person selecting the feminine name corresponding to the one under the master seal receives a wrist watch. The push card bears the following legend or instructions:

WIN THIS
BEAUTIFUL
NEW WATCH

Precision Made
Swiss Movement

Person holding name to
correspond with Seal wins
a watch.

Numbers 1 to 10 are Free
All Other Numbers Pay 35¢ each

Respondents sell their push-card deal as above described to persons located in the various States of the United States and these customers of respondents make sales of respondents' merchandise by means of said push card in accordance with the above-described legend or instructions, and said watches are allotted to the customer or purchasers from said card 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 said merchandise are thus determined wholly by lot or chance. The watches have a retail value greater than the price paid for any of the chances.

Respondents sell and distribute various other push cards and merchandise plans, all of which involve the sale of said merchandise by means of said other push cards, and vary only in detail, all of said merchandise plans embodying the distribution of merchandise by game of chance, gift, enterprise, or lottery scheme.

PAR. 3. Retail dealers, operators, and others who purchase respondents' push card and watch assortments or deals directly or indirectly, use the said push cards for distribution of the watches to the purchasing public in accordance with the sales plan above described. Respondents thus supply to and place in the hands of others the means of conducting lotteries or games of chance in the sale of their products in accordance with the sales plans hereinabove set forth. The use by respondents of said sales plans and methods in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice 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 are attracted by said sales plans or methods used by respondents and the element of chance involved therein and thereby are induced to buy and sell respondents' merchandise.

The use by respondents of a sales plan or method involving distribution of merchandise by means of chance, lottery, or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business and in soliciting the sale of their sales plan as above described, respondents have caused to be published in periodicals having a general circulation throughout the United States the following advertising:

Make \$250 to \$500 a week

Be Your Own Operator of Push Cards

A once-in-a-lifetime opportunity to
make \$250 to \$500 a week with little
investment.

Through the use of the above-quoted statements, respondents represent and have represented that their customers will earn \$250 to \$500 a week through the use of respondents' sales plan. In truth and in fact, none of respondents' customers have earned \$250 nor \$500 a week or any substantial amount weekly through the use of respondents' sales plans.

PAR. 6. The use of the aforesaid misleading and deceptive statements and representations by respondents in connection with the offering for sale and the sale of its said merchandising plan has had and now has the tendency and capacity to mislead the purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true and to induce them to purchase respondents' watches and push cards.

PAR. 7. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 May 24, 1948, issued, and subsequently served, its complaint in this proceeding upon respondents, Joe Katz and Marshall Maltz, as individuals and partners, doing business as J. & M. Sales Co., charging them with the use of unfair acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers, the Commission, by order entered herein, granted motion of respondent Joe Katz for permission to withdraw his said answer and to substitute therefor an answer, as to him, 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 regularly came on for final hearing before the Commission on said complaint and substitute answer (the Commission, by order entered herein, having duly granted motion to close the case without prejudice as to respondent Marshall Maltz); 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, Joe Katz, is an individual trading and doing business as J. & M. Sales Co., with his principal office and place of business located at 708 South State Street, Chicago, Ill. He is now, and for more than 1 year last past has been, engaged in the offering for sale, sale, and distribution of watches and other articles of merchandise to dealers, operators, and other purchasers.

PAR. 2. In the course and conduct of his aforesaid business, respondent causes, and has caused, his said watches and other merchandise, when sold, to be shipped or transported from his place of business in the State of Illinois to purchasers thereof at their respective points of location in other States of the United States and in the District of Columbia, and at all times mentioned herein has maintained a course of trade in said watches and other merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. (a) In carrying on his business, as aforesaid, respondent advertises in periodicals having a general circulation throughout the United States for operators of push cards and, in answer to inquiries, sends such operators a letter describing his plan for selling said push-card deals. In the offering for sale, sale, and distribution of his aforesaid watches and other merchandise, respondent furnishes and supplies, and has furnished and supplied, his customers with plans of merchandising which involve the operation of a game of chance, gift enterprise, or lottery scheme, whereby said products are by said customers sold and distributed to the purchasing and consuming public.

(b) Typical of the plans and sales methods adopted and used by respondent is one substantially as follows: A push-card deal consists of a push card and 2 wrist watches. The push card bears 72 feminine names, with an equal number of ruled columns on the back for writing in the name of the customer or purchaser opposite the feminine name selected by him. Said push card also contains 72 partially perforated disks, each of which bears one of the feminine names corresponding to those on the list. Concealed within each disk is a number, which is disclosed only when a customer or purchaser pushes or separates a disk from the card. On said push card is a master seal, within which is concealed one of the feminine names appearing on the partially perforated disks. The purchaser selecting the feminine name

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on the perforated disk which corresponds to the name within the master seal receives a wrist watch. The push card bears the following legend or instructions:

WIN THIS
BEAUTIFUL
NEW WATCH

Precision Made
Swiss Movement

Person holding name to
correspond with Seal wins
a watch.

Numbers 1 to 10 are Free
All Other Numbers Pay 35¢ Each

(c) Respondent sells the above described push-card deal to dealers, operators, and other purchasers located in the various States of the United States, who, in turn, make sales of respondent's watches and other merchandise by means of said push card, and said watches and other merchandise are allotted to customers or purchasers from said card according to the aforesaid legend or instruction. Whether said customer or purchaser receives a watch, other article of merchandise, or nothing for the amount of money paid or to be paid for the possibility of receiving it, depends wholly upon lot or chance. The watches have a retail value greater than the price paid for the privilege of punching out one of the perforated disks.

(d) Respondent sells and distributes various other push-card and merchandising plans, through the use of which watches and other merchandise are sold and distributed by means of a game of chance, gift enterprise, or lottery scheme, and all of which vary only in detail from the one hereinabove described.

PAR. 4. Retail dealers, operators, and others who, directly or indirectly, purchase respondent's push card and watch assortments or deals expose and sell the same to the purchasing public in accordance with the sales plan heretofore described. 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 such sales plans. The use by respondent of such plans or methods in the sale and distribution of his watches and other merchandise, and the sale and distribution of same by and through, or with the aid of, such sales plans or methods, is a practice contrary to an established public policy of the Government of the United States.

PAR. 5. The sale of watches and other merchandise to the purchasing public by the methods or sales plans hereinbefore found involves a

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game of chance or the sale of a chance to procure said watches or merchandise at a price much less than the normal retail price, and many persons are attracted by said sales plans or methods and the element of chance involved therein and are thereby induced to buy and sell respondent's watches and other merchandise. The use by respondent of sales plans or methods involving distribution of watches and other merchandise by means of chance, lottery, or gift enterprise is contrary to the public interest.

PAR. 6. (a) In soliciting the sale and distribution of his sales plans and methods heretofore described, respondent has caused to be published in periodicals having a general circulation throughout the United States the following advertisement:

Make \$250 to \$500 a week
Be Your Own Operator of Push Cards
A once-in-a-lifetime opportunity to make
\$250 to \$500 a week with little investment.

Through the use of the aforesaid statement, respondent represents, and has represented, that his customers earn, or will earn \$250 to \$500 a week through the use and handling of his said sales plans or methods.

(b) The aforesaid representations and statements are misleading and deceptive. In truth and in fact, none of respondent's customers have earned \$250 to \$500 per week or any other substantial amount through the use or handling of said sales plans or methods.

PAR. 7. The use by respondent of the foregoing misleading and deceptive statements and representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce them to purchase a substantial number of respondent's sales plans, watches, push cards, and other merchandise.

CONCLUSION

The 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.

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, Joe Katz, in which answer said respondent admits all the material allegations of fact set forth in the complaint

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and waives all intervening procedure and further hearing as to said facts; 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 respondent, Joe Katz, an individual, trading as J. & M. Sales Co., or under any other name or names, 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, push cards, and other 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, watches or other merchandise, together with push cards or any other lottery devices, which said push cards or other devices are to be used, or may be used, in selling or distributing such watches or other merchandise to the public.

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

3. Selling, or otherwise disposing of, watches or any other merchandise by the use of push cards or any other lottery device.

4. Representing as possible earnings or profits of retailers, operators, or salesmen of said watches, push cards, and other merchandise, for any stated period of time, any specified sum of money which is not a true representation of the net earnings or profits which have been made by a substantial number of respondent's active retailers, operators, or salesmen in the ordinary course of business under normal conditions and circumstances.

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 it.

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IN THE MATTER OF

ALFRED J. HARRIS DOING BUSINESS AS A. J. HARRIS & CO. AND AS SMITH STORAGE CO., INC., AND AS PRESIDENT OF A. J. HARRIS & CO., INC.; AND A. J. HARRIS & CO., INC., DOING BUSINESS IN ITS OWN NAME AND AS SMITH STORAGE CO., INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTION C OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5628. Complaint, Dec. 20, 1948—Decision, July 1, 1949

Where a corporation and an individual who owned substantially all of its stock and had been its president since incorporation and continuance by it of the business theretofore individually carried on by him; engaged in the distribution of food products (1) as brokers, with no financial interest in the products other than the commission or brokerage fees which they received from their seller-principals for making the sale; and (2) as buyers of food products for their own account;

in carrying on purchase of products for their own account, in which connection they transmitted orders directly to sellers by whom products concerned were invoiced and shipped directly to them or in the corporate name of their otherwise inactive hauling and drayage concern (used to make such purchases for resale and to conceal from the sellers that such purchases were made for their own accounts); and with which products they dealt as traders for profit, taking title, and warehousing and selling the same at their own prices and terms, etc., and assuming all the risks incident to ownership—

Received and accepted, directly or indirectly, from the respective sellers from whom they purchased products for their own account, brokerage fees, commissions or other compensation or allowances or discounts in lieu thereof:

Held, That such receipt and acceptance of brokerage fees, or commissions or allowances and discounts in lieu thereof, from manufacturers and sellers upon purchasers of food products, as above set forth, constituted a violation of the provisions of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Mr. Cecil G. Miles and Mr. Edward S. Ragsdale for the Commission.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13), as amended by the