

IN THE MATTER OF
MONARCH SALES COMPANY, RALPH E. STOLKIN, RUTH
M. STOLKIN AND MARY REID

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

Docket 5477. Complaint, Jan. 10, 1947—Decision, Mar. 20, 1950

Where a corporation and the two officers who owned its stock and managed and controlled it, engaged in the interstate sale and distribution of cameras, fountain pens, electric razors, billfolds and other articles; in soliciting the sale of and in selling and distributing their merchandise—

- (a) Furnished various devices and merchandising plans which involved the operation of lottery schemes in the sale and distribution of such merchandise to the ultimate consumer, and included the distribution to members of the public throughout the United States of order blanks, illustrated pamphlets describing their merchandise, and circulars explaining their plan of selling and distributing the same to the public and allotting it as premiums or prizes to the operators of said cards, along with push cards, for use in accordance with schemes through which, as typical, the cost of a chance was determined by the number revealed by a push, the person selecting by chance from a list of feminine names the name corresponding with that concealed in the master seal received a "candid color camera," and each of two specified numbers entitled the person punching it to a "genuine leather billfold";

Whereby lot or chance determined whether a purchaser received an article or merchandise or nothing for his money, and likewise the amount he paid for the merchandise or chance to receive it; and,

They thereby placed in the hands of those to whom they furnished said cards the means of conducting games of chance in the sale of merchandise, contrary to an established public policy of the United States Government;

With the result that many persons were attracted by said sales plans and the element of chance involved therein, and were thereby induced to buy and sell said merchandise;

Held, That the use of the aforesaid sales plans or methods constituted unfair acts and practices in commerce; and

Where the aforesaid corporation and individuals, in the aforesaid literature distributed to the purchasing public—

- (b) Represented that the camera distributed by them was a color camera equipped with a high-speed lens and shutter, through such statements as "the color camera you never thought you could own," "this remarkable camera actually takes pictures in full natural color as quickly and simply as some cameras take ordinary black and white snapshots"; and "high-speed round lens, faster shutter";

The facts being that there is no camera which will take a colored picture; and while, if colored film were used in their said camera, pictures might be taken

under ideal lighting conditions which could be developed as colored, said camera was not equipped with the high-speed lens and fast shutter of the average camera sold today for the purpose of taking colored pictures with colored film, and was not the type generally recognized in the photographic trade and by the general public as a color camera;

- (c) Falsely represented that the billfolds promised persons sending in order forms were made of genuine leather; when in fact they were part leather and part paper fiber; and
- (d) Represented that persons sending in orders promptly would be given certain articles of merchandise absolutely free, through such statements as "an extra gift for promptness" and "as soon as we receive the order, your 'thank you' gift will be sent to you absolutely free with our compliments";

The facts being that the articles so referred to as "gifts" were not given free or without cost, but were distributed as additional compensation for ordering and selling merchandise;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce its purchase of said 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.

While the record in the foregoing proceeding did not disclose the number of orders for merchandise which respondents received as a result of mailing out about 15,000,000 packages containing said push cards and other literature during a year, the evidence was that in the regular course of business orders are received in numbers varying from one-half percent to 4 percent of the number of packages of literature mailed.

Before *Mr. Abner E. Lipscomb*, trial examiner.

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

Beach, Fathchild & Scofield, of Chicago, Ill., for Monarch Sales Co.,
Ralph E. Stolkin and Ruth M. Stolkin.

Mr. Henry Junge, of Chicago, Ill., for Mary Reid.

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 Monarch Sales Co. and Ralph E. Stolkin, Ruth M. Stolkin, and Mary Reid, individuals and officers of said Monarch Sales Co. hereinafter referred to as respondents have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Monarch Sales Co. is a corporation organized and doing business under and by virtue of the laws of the

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State of Illinois, with its office and principal place of business located at 125 West Hubbard Street, Chicago, Ill. Respondent, Ralph E. Stolkin is president, respondent Ruth M. Stolkin is secretary-treasurer, and respondent Mary Reid is vice president of respondent corporation Monarch Sales Co. and said corporation is owned, dominated, controlled and directed by the individual respondents, Ralph E. Stolkin, Ruth M. Stolkin, and Mary Reid. All of said respondents have co-operated and acted together in the performance of the acts and practices hereinafter alleged.

Respondents are now, and for more than 1 year last past, have been engaged in the sale and distribution of cameras, fountain pens, electric razors, billfolds, and other articles of merchandise and have caused said merchandise when sold to be transported from their 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 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 selling and distributing their merchandise furnish and have 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. One method or sales plan adopted and used by respondent is substantially as follows:

Respondents distribute and have distributed to operators and to members of the public certain literature and instructions including among other things push cards, order blanks, circulars including thereon illustrations and descriptions of said merchandise and a circular explaining respondents' plan of selling and distributing their merchandise and of allotting it as premiums or prizes to the operators of said push cards and to members of the purchasing and consuming public. One of respondents' said push cards bears 26 feminine names with ruled columns on the back of said card for writing in the name of the customer opposite the name selected. Said push card has 26 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 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

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names appearing on the disk. The person selecting the feminine name corresponding to the one under the master seal receives a camera. The push card bears the following legend or instruction:

MAJESTIC
Candid Color Camera
Also Takes Regular
Black and White Photos

Nos. 9 and 19
Each Receive a Genuine Leather Billfold
No. 1 pays 1¢
No. 9 pays 9¢
No. 19 pays 19¢
No. 28 pays 28¢
All others pay only 29¢

NONE HIGHER

WRITE YOUR NAME ON REVERSE SIDE OPPOSITE THE NAME YOU
SELECT

Sales of respondents' merchandise by means of said push cards are made in accordance with the above described legend or instructions and said prizes or premiums are allotted to the customer or purchaser from said card in accordance with the above 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.

Respondents furnish and have furnished various other push cards accompanied by order blanks, instructions and other printed matter for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise or lottery scheme. The sales plans or methods 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 respondents furnish and have furnished said push cards use the same in selling and distributing respondents' merchandise in accordance with the aforesaid sales plans. Respondents thus supply to and place in the hands of others the means of conducting games of chance, gift enterprises or lottery schemes in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plans or 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.

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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 advertising literature distributed to the purchasing public by means of the United States mail respondents have published the following representations:

The color camera you never thought you could own. Camera fans everywhere are saying that this new Majestic color camera is opening a great new era in photography because this remarkable camera actually takes pictures in full natural color as quickly and simply as some cameras take ordinary black and white snapshots.

An extra gift for promptness.

High speed round lens, fast shutter.

As soon as you have sent us the inclosed order form we will rush to you two Majestic candid color cameras and two genuine leather billfolds.

Through the use of the above quoted statements and representations respondents represent that the camera distributed by them is a color camera equipped with high speed lens and fast shutter. In truth and in fact respondents' cameras have a shutter speed of 1/25 second and a lens speed of approximately F-11 and are not what is known in the trade and by the public as color cameras and will make colored pictures only when color film is used. The billfolds represented as being of genuine leather are in fact not genuine leather in their entirety and the carrying case represented as being an "extra gift for promptness" is not a gift nor given free or without cost but is distributed as additional compensation for selling respondents' merchandise.

PAR. 6. The use by respondents 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 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 respondents as herein alleged are all to the prejudice and injury of the public and constitute 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 January 10, 1947, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondents' answer, 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 designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' answer thereto, the testimony and other evidence, the recommended decision of the trial examiner, and briefs of counsel (oral argument not 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, Monarch Sales Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 333 West Lake Street, in the city of Chicago, State of Illinois. The respondent, Ralph E. Stolkin, is the president, and the respondent, Ruth M. Stolkin, is the secretary-treasurer of the respondent corporation, and together they own all of the stock of said corporation and manage and control its business affairs.

Mary Reid, the other person named in the complaint as a respondent, was a secretary in the office of the attorney who procured the incorporation of the respondent, Monarch Sales Co., and as a matter of form and convenience she was named the vice president of said corporation. This party has never been otherwise connected with or employed by Monarch Sales Co., however, and she has never par-

ticipated in any of its business activities. The term "respondents" hereinafter used to designate or refer to the other respondents herein shall not be deemed to include the said Mary Reid.

PAR. 2. The respondents are now, and for a number of years last past they have been, engaged in the sale and distribution of cameras, fountain pens, electric razors, billfolds, and other articles of merchandise; and they cause, and have caused, said merchandise, when sold, to be transported from their place of business in the State of Illinois 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. The respondents maintain, and at all times mentioned herein they have maintained, a regular course of trade in such 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 described in paragraph 2 hereof, the respondents, in soliciting the sale of and in selling and distributing their merchandise, furnish, and have furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes, when such merchandise is sold and distributed to the ultimate consumers thereof. One method or sales plan so furnished by the respondents is substantially as follows.

The respondents distribute, and have distributed, to members of the public located throughout the United States various pieces of literature and instructions including, among other things, push cards, order blanks, pamphlets containing illustrations and descriptions of certain merchandise which the respondents have for sale and circulars explaining the respondents' plan of selling and distributing said merchandise and of allotting it as premiums or prizes to the operators of said push cards and to members of the purchasing and consuming public. One of the respondents' said push cards bears 26 feminine names with ruled columns on the back of said card for writing in the name of the ultimate customer opposite the name selected. Said push card has 26 partially perforated disks. Each of said disk 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 ultimate 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 disk. The person selecting the feminine name corresponding to the one under the master

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seal receives a camera. The push card bears the following legend or instruction :

MAJESTIC
Candid Color Camera
Also Takes Regular
Black and White Photos

Nos. 9 and 19
Each Receive a Genuine Leather Billfold
No. 1 pays 1¢
No. 9 pays 9¢
No. 19 pays 19¢
No. 28 pays 28¢
All others pay only 29¢

NONE HIGHER

WRITE YOUR NAME ON REVERSE SIDE OPPOSITE THE
NAME YOU SELECT

Sales of the merchandise by means of said push cards are made by the respondents' customers in accordance with the above-described legend or instructions, and the prizes or premiums described on the push cards or in the other literature are allotted to the purchaser in accordance with the above 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 respondents furnish, and have furnished, to members of the public various other push cards accompanied by order blanks, instructions, and other printed matter for use in the sale and distribution of the merchandise sold by them by means of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods 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. During the year 1947 the respondents mailed to members of the public throughout the United States a total of about 15,000,000 packages containing the push cards and other literature. The record does not disclose the number of orders for merchandise which the respondents received as a result of such mailings, but the evidence is that in the regular course of business orders are received from persons to whom literature is sent in numbers varying from one-half percent to 4 percent of the number of packages of literature mailed.

PAR. 4. The persons to whom the respondents furnish, and have furnished, said push cards and other literature use the same in pur-

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chasing from the respondents and in selling and distributing the respondents' merchandise in accordance with the aforesaid sales plans. The respondents thus supply to and place in the hands of others the means of conducting games of chance, gift enterprises, or lottery schemes in the sale of merchandise sold by them in accordance with the sales plans hereinabove set forth. The use by the respondents of said sales plans or methods in the sale of their merchandise and the sale of said merchandise to the ultimate consumers 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. 5. The sale of merchandise to the purchasing public in the manner herein described involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by the sales plans or methods employed by the respondents and by the element of chance involved therein, and such persons are thereby induced to buy and sell the respondents' merchandise. The use by the respondents of the aforesaid sales plans or methods thus constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. In the literature hereinabove referred to which has been distributed to the purchasing public by means of the United States mails for the purpose of inducing the purchase of certain of their merchandise, the respondents have published the following statements:

The color camera you never thought you could own.

Camera fans everywhere are saying that this new Majestic color camera is opening a great new era in photography because this remarkable camera actually takes pictures in full natural color as quickly and simply as some cameras take ordinary black and white snapshots.

High speed round lens, faster shutter.

As soon as you have sent us the inclosed order form we will rush to you two Majestic candid color cameras and two genuine leather billfolds.

An extra gift for promptness.

As soon as we receive the order, your "Thank you" gift will be sent to you absolutely free with our compliments * * *.

Through the use of these statements, and others similar thereto, the respondents have represented (a) that the camera distributed by them is a color camera equipped with a high-speed lens and fast shutters; (b) that the billfolds promised persons sending in order forms are made of genuine leather; and (c) that persons sending in orders

promptly would be given certain articles of merchandise absolutely free.

PAR. 7. In truth and in fact, there is no camera which will take a colored picture. Pictures may, however, be taken successfully by two types of camera and thereafter developed into colored pictures. The first type is called a "one-shot" camera. This camera takes three negatives on black and white, and by a process of developing and dyeing the three negatives, a colored picture may be produced. This type of camera is very expensive.

The second type is an ordinary fast-speed camera requiring the use of colored film. The average camera being sold to the public today for the purpose of taking colored pictures with colored film has a lens speed of approximately F-4.5, which is approximately eight times faster than the lens of the respondents' camera. In addition, a shutter is regarded as a high-speed shutter when it has a speed of one four-hundredths or one five-hundredths of a second. The respondents' camera, however, is equipped with a shutter speed of approximately one twenty-fifth of a second.

If color films are used in the respondents' camera, pictures may be taken which can be developed as colored pictures if the lighting conditions under which the exposure was made were ideal. It is clear, however, that the respondents' camera is not equipped with a high-speed lens and fast shutter and is not of the type of camera generally regarded in the photographic trade and by the general public as a color camera, and the respondents' representations to the contrary were false and misleading.

The billfolds which the respondents promised persons sending in orders were not made of leather in their entirety, but were composed in part of leather and in part of paper fiber; and the articles referred to in respondents' literature as "gifts" were not given free or without cost, but were distributed as additional compensation for ordering and selling the respondents' merchandise. The respondents' representations to the effect that such billfolds were made of leather and that such other articles of merchandise were "gifts" or given "free" were also false and deceptive.

PAR. 8. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations had 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 were true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said merchandise.

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CONCLUSION

The acts and practices of the respondents 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, the respondents' answer, testimony, and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the recommended decision of the trial examiner, and briefs of counsel (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Monarch Sales Company, a corporation, and its officers, and the respondents, Ralph E. Stolkin and Ruth M. Stolkin, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cameras, fountain pens, electric razors, billfolds, or any other article of merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punch boards, or other devices, either with merchandise or separately, which said push or pull cards, punch boards, or other devices, are to be used, or may be used, in the sale or distribution of the respondents' merchandise, or any other merchandise, to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Selling or otherwise disposing of any merchandise by any method or sales plan involving the use of a game of chance, gift enterprise, or lottery scheme.

3. Using the words "gift" or "free," or any other word or term expressly or impliedly importing a like meaning, in advertising, to designate, describe, or refer to any article of merchandise which is not in fact a gift or gratuity, or which is not given without requiring the purchase of other merchandise or the performance of some service inuring, directly or indirectly, to the benefit of the respondents.

4. Representing, directly or by implication, that any camera which is not adapted to the successful taking, under normal conditions, of color pictures, is a color camera.

5. Representing, directly or by implication, that billfolds, or other articles, made in whole or in part of substance other than leather, are made of leather.

6. Misrepresenting in any manner the value, quality, condition, or characteristics of any article offered as a premium, prize, commission, or compensation, for selling the respondents' products.

It is further ordered, For reasons appearing in the Commission's findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to the respondent Mary Reid.

It is further ordered, That the respondents, Monarch Sales Company, Ralph E. Stolkin and Ruth M. Stolkin, 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.

IN THE MATTER OF
**BENJAMIN D. RITHOLZ ET AL., TRADING AS NATIONAL
OPTICAL STORES COMPANY, ETC.**

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

Docket 5176. Complaint, June 8, 1944—Decision, Mar. 22, 1950

Where six partners, engaged in the interstate sale of eyeglasses and optical supplies, with principal office and place of business in Chicago, and branch offices in various cities and States in advertising their said products in newspapers and by other means, directly and by implication—

- (a) Represented falsely that the lenses for all glasses sold by them were ground in accordance with proper prescriptions made for customers' eyes by their physician-oculists or doctors;
- (b) Represented that their offers of complete glasses at \$2.88, or at substantially similar prices, were special offers at reduced prices and for a limited time only;

The facts being said glasses were wholly unsuited for most people with defective vision and few if any were actually sold at such prices; persons attracted by such subterfuge were examined by doctors whose incomes said partners often guaranteed, and told that their eyes were in such serious condition that other glasses were needed and salesmen were thereby enabled, often by falsely representing that the advertised glasses were unsuited for the customer, to sell such persons glasses at prices many times higher and which very frequently differed otherwise little if at all; and

- (c) Falsely represented through such statements as "15-day free trial," "15-DAY FREE TRIAL * * * MONEY BACK GUARANTY," etc., that customers would be permitted to wear glasses purchased from them for 15 days and that at the expiration of that time, if not satisfied, they might return the glasses and have their money promptly refunded;

The facts being that many such customers, after wearing their glasses, found refunds refused for various excuses; and while in some instances, after the matter was taken up with local better business bureaus, sufficient pressure was brought to bear to obtain the return of customers' money, it was only after said partners were threatened with exposure of their practices or were otherwise forced to do so that they ever made a refund;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true, and thereby into the purchase of substantial quantities of their said products:

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

As regards the allegations of the complaint that said partners in the course of their said business traded under the name Midwest Scientific Company, as