Syllabus

IN THE MATTER OF

CONSUMER SALES CORP. ET AL.

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

Docket 5680. Complaint, July 13, 1949—Decision, June 27, 1951

Where a corporation and its two officers, who held all its stock, directed its activities, and formulated and controlled its policies, engaged in the promotion and interstate sale of aluminum cookware, dinnerware, silver plate, and glassware through door-to-door salesmen;

In carrying on their business (1) through said salesmen whom they furnished with a card authorizing them to solicit and accept orders and collect deposits thereon; and sales kits containing, among other materials, order blanks for said products at varying prices, entitled, in large letters, "SPECIAL OFFER," and (2) under a procedure or practice whereby, following the customer's signing of an order requiring down payment of $1.90 and payment of the balance by monthly installments, and the making of a credit check, they delivered the merchandise to the buyer through their delivery man who secured the buyer's signature on a note for the balance due, and gave the buyer a brown manila envelope addressed to said corporation in which to mail to it the collected box tops below referred to—

(*a*) Encouraged, participated in, and benefited by and were responsible for, the representations of their salesmen who, through said order blanks and orally, falsely represented that they were offering said merchandise at a special low price;

(*b*) Encouraged, participated in, and benefited by and were responsible for the representations of their salesmen who also represented falsely that they were connected in some manner with one or more of the prominent soap manufacturing companies, which, in order to prove to the Government that their allocations of fats should be increased, were obtaining soap box tops from housewives as proof of their volume of sales, and that said corporation had been authorized by the soap companies to make such surveys and, in order to secure the necessary cooperation from housewives, had authorized said special offer; and

(*c*) Encouraged, participated in, and benefited by and were responsible for, the false representations of their salesmen that said merchandise was worth from $20 to $50 more than the price at which it was being offered and that such special offering was made on the condition that the buyer collect and turn in to said corporation a certain number of box tops from said soap manufacturers' products;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and with capacity and tendency so to do, and thereby induce the purchase of substantial quantities of their 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.

As regards the above described sales approach, which, as disclosed by the evidence, was the usual and typical sales method of salesmen selling respondents' product, and respondents' contention that their sales representatives were independent contractors, since their applications sought to establish an independent contractor relationship, they acted independently of respondents in that they were not required to attend sales meetings, were not supervised in their sales, made no reports, submitting only a tally of their commissions, and were not reimbursed for expenses; and that they, the respondents, therefore, were not responsible for said false representations;

Said respondents by furnishing the salesmen with the aforesaid order forms which falsely represented they were making a special offer, by permitting them to request purchasers to collect box tops, and by furnishing self-addressed envelopes for the handling of such box tops, actively encouraged and participated in making said false representations and participated in and received the fruits resulting therefrom and were responsible therefor.

As respects one of the two officers above referred to, who, with the other, actively participated in the establishment and operation of said corporation's sales policies but who severed his connection with the corporation on March 21, 1950, or 8 months after the issuance of the complaint, there was no assurance that he might not at some future time, under some other trade name, engage in the practices found to be illegal unless prohibited from so doing by order to cease and desist.

While the complaint also alleged that respondents falsely represented that their tableware was of Czechoslovakian origin, that their aluminum cookware was authorized to use Good Housekeeping Magazine's Seal of Approval, and that the aluminum cookware sold and distributed by them was approved by leading home economists, renowned professional chefs, and such recognized authorities as the United States Public Health Service, United States Bureau of Home Economics, the American Medical Association, and the American Hospital Association, the evidence of record was not sufficient to support any of said allegations.

Before *Mr. Clyde M. Hadley*, trial examiner.
Mr. Jesse D. Kash for the Commission.
Mr. Murray M. Segal, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Consumer Sales Corp., a corporation, Julius J. Blumenfeld and Myron J. Collin, individually and as officers of Consumer Sales Corp., 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 thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Consumer Sales Corp. is a corporation organized and established under and by virtue of the laws of the State of New York with its office and principal place of business located at 673 Broadway, New York, N. Y. Respondents, Julius J. Blumenfeld and Myron J. Collin, are president, secretary and treasurer, respectively, of respondent corporation with their office and principal place of business located at 673 Broadway, New York, N. Y. Said individual respondents direct and have directed the activities of respondent corporation and have formulated and controlled its policies and affairs, including the conduct of sales and the character of advertising representations made in connection therewith.

PAR. 2. The respondents are now and for more than 1 year last past have been engaged in the promotion and sale of aluminum cookware, dinnerware, and silverware through the medium of door-to-door salesmen.

The respondents cause and have caused their said products when sold to be transported from their place of business in the State of New York to purchasers thereof located at various points in other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said products in commerce between and among the various States of the United States and the District of Columbia. Respondents' volume of business in said utensils in such commerce has been and is substantial.

PAR. 3. For some time it has been the custom of various major soap companies such as those mentioned herein to circularize the consuming public, especially housewives, enclosing certain gift certificates which when used by the housewives and taken to the grocery store enable the purchaser of the soap products to obtain a 10- or 15-cent discount on products so bought. It has also been the custom of said soap companies to offer the consuming public in return for a certain number of box tops or wrappers from their products certain articles of silverware, dinnerware, or aluminumware of proven merit at a nominal price. These practices of the major soap companies are well known to the consuming public, especially housewives, who in many instances have received substantial merchandise under the sponsorship of the various soap companies.

PAR. 4. In the course and conduct of their said business and for the purpose of promoting the sale of their said products through the medium of sales agents and sales representatives the respondents have made and are making many statements and representations to

the purchasing public. Among and typical of said statements are the following:

That respondents' salesmen and representatives are in the employment of Consumer Sales Corp., which corporation is an advertising agency for Procter & Gamble, Lever Bros., Colgate-Palmolive-Peet, and other prominent soap manufacturers;

That said manufacturing companies are interested in proving to the Federal Government that their allocations of fats should be increased. In order to prove to the Government how much soap is actually being used by the housewives, said soap companies are interested in obtaining from housewives the soap-box tops or labels from the soap they use;

That these box tops or labels will be turned in by the soap companies to the Federal Government as proof of the volume of sales;

That corporate respondent has been authorized by the said companies to make surveys to ascertain the extent and usage of soap products by the consuming public in order that the soap companies mentioned may present said data to the Federal Government for the purpose of obtaining additional allocations of fats;

That in order to obtain the cooperation of the public in securing this information and the return of box tops and labels from the public, corporate respondent has been authorized to sell sets of aluminumware, dining ware, and silverware which regularly sells for $100 or more at the nominal price of $56.90—$1.90 down-payment to the agent or representative and 11 monthly payments of $5 each to be sent corporate respondent by mail together with a certain number of box tops or labels from said soap corporations' products.

A further practice on the part of the respondents is that of including with some of the aluminumware sold a guarantee certificate reading as follows:

Guarantee Certificate

The Quality Aluminum

COOKWARE SET

Every Modern Housewife Is Proud to Own!
The quality cookware in this Matched Set is manufactured from Superior Quality Pure Heavy Virgin Aluminum by the most advanced precision manufacturing processes. Every piece in this Matched Cookware Set is guaranteed against defective workmanship or materials. . Any part or parts that may prove defective will be replaced.

REPLACEMENT OR REFUND OF MONEY
Guaranteed by Good Housekeeping
IF NOT AS ADVERTISED THEREIN

Approved ALUMINUM COOKWARE is approved by leading home economists, renowned professional chefs and such recognized authorities as the U. S. Public Health Service, U. S. Bureau of Home Economics, the American Medical Association and the American Hospital Association.

LITHO. IN U. S. A.

The Good Houskeeping guarantee stamp used thereon bears a star and is similar in all respects to the guarantee emblem used by said Good Housekeeping Magazine on its stamp of approval for various products. The tableware sold by respondents is described as Czechoslovakian or of Czechoslovakian origin by their salesmen.

After a customer has made her selection of the articles wanted, she is given an envelope in which to enclose box tops or labels taken from the products of the aforesaid mentioned soap companies which are to be sent to respondents monthly or with the last payment. She is also asked to sign a contract wherein she agrees to pay the sum of $56.90 as hereinabove set-out.

The original signed contract is retained by the salesman and the purchaser is given what is called a "customer copy" which does not bear the customer's signature and is labeled "this is your receipt for $1.90." A few days after the merchandise is delivered to the purchaser and before she has had an opportunity to examine her purchase, she is asked to sign a receipt, which is in fact a promissory note wherein she agrees to pay the balance as hereinabove indicated. Before the first payment of $5 is due, the customer receives a statement of account and notice from a savings bank or finance company that it has purchased her contract note and that payments are to be made direct to it.

PAR. 5. The foregoing statements and representations so made by the respondents and their agents and representatives in connection with the sale of their merchandise is grossly exaggerated, false, and misleading. In truth and in fact said corporate respondent is not an advertising agency for Procter & Gamble, Lever Bros., Colgate-Palmolive-Peet, or other major soap manufacturers. Respondents are not engaged in making surveys for said soap companies on the amount of soap consumed or in gathering statistics regarding the sale and distribution of soap in order to be used with the Federal Government for the allocation of additional fats for said soap companies, nor are they representing said soap companies in the obtaining of said soap-box tops or labels from their various soap products. The box tops or wrappers obtained are not to be turned over to the

Federal Government as proof of the volume of soap being used by the consuming public. The respondents are not agents or representatives of said soap companies and have not been authorized to offer high-quality merchandise at nominal cost in exchange for box tops or wrappers. The aluminum cookware sold and distributed by respondents has not been approved or guaranteed by Good Housekeeping Magazine and the manufacturers of the aluminumware so sold by respondents were never authorized by Good Housekeeping Magazine to use the guarantee bearing its seal of approval. The tableware sold by respondents is not of Czechoslovakian origin but is made of cheap non-china material. None of the tableware, silverware or aluminumware sold by the respondents is worth $100 or more per set and is not sold at a nominal price but at the customary price for which articles of a similar nature and construction are sold. The aluminum cookware sold and distributed by the respondents has not been approved by leading home economists, renowned professional chefs and such recognized authorities as the U. S. Public Health Service, U. S. Bureau of Home Economics, the American Medical Association, and the American Hospital Association.

PAR. 6. The use by the respondents of said false and misleading statements and representations in connection with the sale of their products 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 such statements and representations are true and induce a substantial number of the public because of such erroneous and mistaken belief to purchase substantial quantities of respondents' said merchandise.

PAR. 7. The aforesaid acts and practices of respondents, as hereinabove alleged, are all to the prejudice 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 13, 1949, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of 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 Com-

mission 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 aforesaid complaint, the respondents' answer thereto, the testimony, and other evidence, the recommended decision of the trial examiner and the exceptions thereto by counsel for respondents, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having disposed of the exceptions to the recommended decision 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, Consumer Sales Corp. is a New York corporation, with its office and principal place of business at 673 Broadway, New York, N. Y. Prior to March 21, 1950, respondents, Julius J. Blumenfeld and Myron J. Collin, with the same address, were the president, and the secretary and treasurer, respectively, of respondent corporation, held all of its capital stock and, with their wives, constituted its board of directors. On March 21, 1950, respondent, Julius J. Blumenfeld, transferred to the respondent corporation his 62½ shares of its common stock and resigned as its president and director. Prior to March 21, 1950, the individual respondents directed the activities of respondent corporation and formulated and controlled its policies and affairs including its sales and advertising policies.

PAR. 2. The respondents are now and for several years last past (with the exception of respondent Julius J. Blumenfeld since March 21, 1950), have been engaged in the promotion and sale of aluminum cookware, dinnerware, silver plate, and glassware, through the medium of door-to-door salesmen, causing the same, when sold, to be transported from their place of business in the State of New York to purchasers thereof in the States of New Jersey and Connecticut and maintaining a course of trade in said products in commerce between the State of New York and the States of New Jersey and Connecticut. Respondents' volume of business in said wares in such commerce has been and is substantial.

PAR. 3. In the conduct of their business, respondents select salesmen to solicit orders from door to door. Respondents furnish these salesmen with a sales kit and a card signed by the respondent corporation authorizing them to solicit and accept orders and to collect de-

posits on such orders. Said sales kit contains, among other materials, order blanks for dinnerware, silver plate, glassware, and alumnium cookware at prices varying from $49.90 to $56.90. Each order blank is entitled in large letters "Special Offer." By the use of such order blanks and of oral statements certain of the respondents' salesmen have represented that they were offering the respondents' merchandise at a special low price. The salesmen have also represented that they were connected in some manner with one or more of the prominent soap-manufacturing companies, that the said companies, in order to prove to the Federal Government that their allocations of fats should be increased, were obtaining soap-box tops from housewives to turn into the Government as proof of their volume of sales, that the corporate respondent had been authorized by the said soap companies to conduct this survey and that, in order to secure the necessary cooperation from housewives in the collection of box tops, it was authorized to make this special offer. The salesmen have also represented the said merchandise as being worth from $20 to $50 more than the price at which it was being offered and that this special offer was made on the condition that the buyer collect and turn in to respondent corporation a certain number of box tops from said soap manufacturers' products. The order signed by the buyer required her to pay the salesman a down payment of $1.90 and to pay the remainder by monthly payments. After a credit check by respondent corporation, the merchandise was delivered to the buyer by respondents' truck. In accordance with respondents' instructions, the delivery man, an employee of respondent corporation, before delivering the merchandise, secured the buyer's signature on a note for the balance due and gave the buyer a brown manila envelope addressed to respondent corporation and requested the buyer to mail the collected box tops to respondent corporation in the envelope so furnished.

PAR. 4. The prices, which respondents have represented as constituting a special offer, were in fact the same as the prices at which they customarily and regularly sold their merchandise. Respondents were not advertising agents for, nor were they connected with or representing in any manner, any soap company. They have not conducted any survey for any soap company, nor have they gathered statistics on soap consumption for use by any soap company in attempting to secure an increased allocation of fats. They have not been authorized by any soap company to collect box tops of their products for any purpose nor have they been authorized by any soap company to offer to sell or sell merchandise at a special low price as a premium for the collection of box tops.

PAR. 5. Respondents contend that their sales representatives are independent contractors and that, therefore, respondents are not responsible for their false representations. Respondents base their contention on the fact that their agents' applications seek to establish an independent contractor relationship, and on the fact that the agents acted independently of respondents in that they were not required to attend sales meetings, were not supervised in their sales, made no sales reports, submitting only a tally of their commissions, and were not reimbursed for expenses. However, by furnishing the salesmen with order forms falsely representing that they were making a special offer, by permitting the salesmen to request purchasers to collect box tops, and by furnishing self-addressed envelopes for the handling of the box tops, respondents actively encouraged and participated in making the said false representations. The evidence shows that the above-described sales approach was the usual and typical sales method of salesmen selling respondents' products. Respondents participated in and received the fruits resulting from such false representations and are responsible for them.

The individual respondents actively participated in the establishment and operation of respondent corporation's sales policies. Respondent, Julius J. Blumenfeld, severed his connection with the respondent corporation on March 21, 1950. This was over 8 months after the issuance of the complaint in this matter. There is no assurance that this respondent may not at some future time under some other trade name, engage in the same practices herein found to be illegal unless he is prohibited from so doing by an order to cease and desist.

PAR. 6. The complaint in this proceeding also alleged that respondents falsely represented that their tableware was of Czechoslovakian origin, that their aluminum cookware was authorized to use Good Housekeeping Magazine's seal of approval, and that the aluminum cookware sold and distributed by respondents was approved by leading home economists, renowned professional chefs, and such recognized authorities as the United States Public Health Service, United States Bureau of Home Economics, the American Medical Association, and the American Hospital Association. The evidence of record is not sufficient to support any of the allegations of the complaint referred to in this paragraph.

PAR. 7. The use by the respondents of the false and misleading statements and representations referred to in paragraphs 3 to 5, inclusive, in connection with the sale of their products, had a tendency and capacity to and did mislead and deceive a substantial portion of

the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial number of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said merchandise.

CONCLUSION

The acts and practices of the respondents as herein found (excluding those referred to in par. 6) were all to the prejudice and injury of the public and constituted 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, respondents' answer thereto, 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 trial examiner's recommended decision and exceptions thereto by counsel for respondents and briefs and oral argument of counsel; 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, Consumer Sales Corp., a corporation, and its officers, agents, representatives, and employees, and the individual respondents, Julius J. Blumenfeld and Myron J. Collin, and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of aluminum, cookware, dinnerware, silverware, or other merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(1) That the respondents or any of them are connected with or represent in any manner any soap manufacturer or any other company or organization unless such is the fact.

(2) That the respondents or any of them are making or conducting a survey.

(3) That the purchasers of the said merchandise are being given a reduced price for such merchandise or any other valuable consideration as a premium or reward for their collection of box tops, cooperation in furnishing information or participation in any other similar project or activity.

(4) That said merchandise is being sold at a special price when the price at which it is sold is the usual and customary price at which respondents sell such merchandise in the ordinary course of their business.

It is further ordered, That said respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth the manner and form in which they have complied with said order.

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