

## Complaint

## IN THE MATTER OF

EWALD A. THALACKER, DOING BUSINESS AS TOP  
MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 5831. Complaint, Dec. 4, 1950—Decision, Dec. 24, 1951*

Where an individual engaged in the interstate sale and distribution of push cards, which, bearing explanatory legends (or spaces therefor), were designed for use in the sale and distribution of articles of merchandise to the ultimate purchasers by means of varying games of chance, under a plan whereby the purchasers of a push who, by chance, selected a concealed winning name or number, secured articles without additional cost at less than the normal retail price thereof, others receiving nothing or, in some cases, a small consolation prize of less value than the price of the push (amount of which in some cases was similarly chance determined);

Sold and distributed such devices to dealers in various articles of merchandise, assortments of which, along with said devices, were made up by the direct and indirect retail dealer purchasers thereof, and exposed and sold to the purchasing public in accordance with the aforesaid sales plan, involving sale of a chance to procure articles of merchandise at much less than their normal retail price; and

Thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale and distribution of their merchandise, contrary to an established public policy of the United States Government;

With the result that many members of the public were induced to deal with retailers who sold and distributed merchandise by means of said devices; many retailers were thereby induced to trade with manufacturers, wholesalers and jobbers who sold and distributed merchandise together with such devices; gambling was taught and encouraged; and said individual thereby supplied to and placed in the hands of others means and instrumentalities for engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act:

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

Before *Mr. William L. Pack*, hearing examiner.

*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 Ewald A. Thalacker, individually and doing business as Top Manufacturing Company,

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hereinafter referred to as the respondent, has 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 by stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ewald A. Thalacker is an individual trading and doing business as Top Manufacturing Company with his office and principal place of business located at Route 4, Eau Claire, Wisconsin.

Respondent is now and for more than two years last past has been engaged in the sale and distribution of devices commonly known as push cards and in the sale and distribution of said devices to dealers in various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia and to dealers in various articles of merchandise within the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices when sold to be transported from his place of business in the State of Wisconsin to purchasers thereof at their points of location in the various States of the United States and in the District of Columbia. There is now and has been for more than two years last past a course of trade in such devices by said respondent 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 said business as described in Paragraph One hereof, respondent sells and distributes, and has sold and distributed, to said dealers in merchandise, push cards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming or purchasing public. Respondent sells and distributes, and has sold and distributed, many kinds of push cards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and these devices vary only in detail. One of said push cards has twenty-four small partially perforated discs on the face of which is printed the word "Push." Concealed within each disc is a number which is disclosed when the disc is pushed or separated from the card. The push card bears the legend as follows:

TRY YOUR LUCK!  
PAY WHAT YOU PUNCH  
1¢ to 39¢  
All Numbers Over 39  
Pay Only 39¢  
(NAME UNDER SEAL WINS)

(Under the above legend is printed twenty-four squares, each enclosing one of the perforated discs bearing a feminine name. Opposite the twenty-four discs is a list of the corresponding twenty-four names, together with a blank space for writing in the name of the purchaser of each disc.)

Many others of said push cards have printed on the faces thereof other labels or instructions that express the manner in which said devices are to be used or may be used in the sale and distribution of various specified articles of merchandise, such as candy, novelties and similar articles. The prices of the sales on said push cards vary in accordance with individual devices. Each purchaser pays either a specified price, usually from 1¢ to 5¢, or a price that is revealed only when a push has been made, and is entitled to a push or chance from the push card. When a push is made a disc is separated from the push card and a number is disclosed. In some type cards the number fixes the amount to be paid for the push or chance and in another type of cards, the number may designate whether or not an article of merchandise is awarded to the purchaser of that particular push. The numbers are effectively concealed from the purchasers and prospective purchasers until the selection has been made and the push completed. In some types of respondent's cards specified numbers entitle purchasers to designate articles of merchandise. Others of respondent's cards have a master seal which is opened when all of the pushes have been sold and discloses the winning push. Persons securing by their push lucky or winning numbers or names receive articles of merchandise without additional cost at prices which are less than the normal retail price of the said articles of merchandise. Persons who do not secure such winning numbers receive in some cases a small consolation prize of less value than the price paid for the push or, in other cases, receive nothing for their money. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Some of said push card devices have no instructions or legends thereon but have a blank space provided therefor. On these push cards the purchasers thereof place instructions or labels which have the same or similar import or meaning as instructions or labels placed by respondent on the said push cards hereinabove described, and are used for the distribution of various articles of merchandise in the same manner as the cards above described.

Respondent sells and distributes, and has sold and distributed, many kinds of push cards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution

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of candy or other merchandise and vary only in detail. The only use to be made of said push card devices and the only manner in which they are used by the ultimate purchasers thereof is in combination with other merchandise so as to enable said ultimate purchasers or retailers to sell and distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, novelties, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondent's said push card devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push card devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and in accordance with the sales plan as described in Paragraph Two hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push cards by respondent as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise. The respondent thus supplies to, and places in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging in unfair acts and prac-

tices within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondent as hereinabove 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.

#### DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated December 24, 1951, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

#### INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 4, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, Ewald A. Thalacker, individually and doing business as Top Manufacturing Company, charging him with the use of unfair acts and practices in commerce in violation of the provisions of that Act. Thereafter respondent filed his answer in which he admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to the facts. Such answer, however, was conditioned upon the deferring by the hearing examiner of his initial decision in the proceeding until the determination by the Commission of another, similar matter, that of W. H. Brady & Company, Docket No. 5298. Subsequently the present proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, (the Commission having in the meantime rendered its decision in the W. H. Brady & Company case) upon the complaint and answer, and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Ewald A. Thalacker, is an individual trading and doing business as Top Manufacturing Company, with his office and principal place of business located on Route 4, Eau

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Claire, Wisconsin. Respondent is now, and for a number of years last past has been, engaged in the sale and distribution of devices commonly known as push cards. Some of such devices are sold by respondent to dealers who are themselves engaged in the sale of various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Others of such devices are sold by respondent to dealers engaged in the sale of various articles of merchandise within the several States of the United States.

Respondent causes and has caused his devices, when sold, to be transported from his place of business in the State of Wisconsin to purchasers located in the various States of the United States and in the District of Columbia. There is now and has been a course of trade by respondent in such devices 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, respondent sells and distributes to said dealers in merchandise, push cards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchandise to the consuming or purchasing public. Respondent sells and distributes many kinds of push cards, but all of them involve the same chance or lottery features and vary only in detail. One of such push cards has twenty-four small, partially perforated discs on the face of each of which is printed the word "Push." Concealed within each disc is a number which is disclosed when the disc is pushed or separated from the card. The push card bears the following legend:

TRY YOUR LUCK!  
PAY WHAT YOU PUNCH  
1¢ to 39¢  
All Numbers over 39  
Pay Only 39¢  
(NAME UNDER SEAL WINS)

(Under the above legend appear twenty-four squares, each enclosing one of the perforated discs bearing a feminine name. Opposite the twenty-four discs is a list of the corresponding twenty-four names, together with a blank space for writing in the name of the purchaser of each disc.)

Many others of the push cards have printed on the faces thereof other labels or instructions that state the manner in which such devices are to be used or may be used in the sale and distribution of various specified articles of merchandise, such as candy, novelties, and similar articles. The prices of the sales on the push cards vary in accordance with the various cards. Each purchaser pays either a speci-

fied price, usually from 1¢ to 5¢, or a price that is revealed only when a push has been made. When a push is made a disc is separated from the push card and a number is disclosed. In some types of cards the number fixes the amount to be paid for the push or chance, and in another type of card the number may designate whether or not an article of merchandise is awarded to the purchaser of that particular push. The numbers are effectively concealed from purchasers and prospective purchasers until the selection has been made and the push completed. In some types of respondent's cards specified numbers entitle purchasers to designated articles of merchandise. Others of respondent's cards have a master seal which is opened when all of the pushes have been sold and discloses the winning push. Persons securing by their push lucky or winning numbers or names receive articles of merchandise without additional cost at prices which are less than the normal retail price of such articles of merchandise. Persons who do not secure such winning numbers receive in some cases a small consolation prize of less value than the price paid for the push or, in other cases, receive nothing for their money. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Some of respondent's push-card devices have no instructions or legends thereon but have a blank space provided therefor. On these push cards the purchasers thereof place instructions or labels which have the same or similar import as instructions or labels placed by respondent on the push cards hereinabove described, and are used for the distribution of various articles of merchandise in the same manner as the cards above described.

Respondent sells and distributes many kinds of push cards, but all of such devices involve the same chance or lottery features when used in connection with the sale or distribution of candy or other merchandise and vary only in detail. The only use to be made of such push-card devices and the only manner in which they are used by the ultimate purchasers thereof is in combination with other merchandise so as to enable such ultimate purchasers or retailers to sell and distribute other merchandise by means of lot or chance as hereinabove described.

PAR. 3. Many persons, firms, and corporations, who sell and distribute candy, cigarettes, novelties, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase respondent's push card devices, and pack and assemble assortments comprised of various articles of merchandise, together with such push card devices. Retail dealers who have purchased such assortments either directly or

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indirectly have exposed the same to the purchasing public and have sold or distributed such articles of merchandise by means of such push cards and in accordance with the sales plan as described above. Because of the element of chance involved in the sale and distribution of merchandise by means of such push cards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing merchandise by means thereof. As a result, many retail dealers have been induced to deal or trade with manufacturers, wholesale dealers and jobbers who sell and distribute merchandise, together with such devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above set forth involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof, and teaches and encourages gambling among members of the public, all to the injury of the public. The use of such sales plan or method in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of such sales plan or method, is a practice which is contrary to an established public policy of the Government of the United States and constitutes unfair acts and practices in commerce.

The sale or distribution of push cards by respondent as hereinabove found supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise. Respondent thus supplies to, and places in the hands of such persons, firms, and corporations means and instrumentalities for engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

#### CONCLUSION

The acts and practices of respondent as hereinabove set out are all to the prejudice of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

#### ORDER

*It is ordered,* That the respondent, Ewald A. Thalacker, individually and doing business as Top Manufacturing Company, or under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, push cards, punchboards, or other

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lottery devices which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered*, That the respondent herein shall, within sixty (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 the order to cease and desist [as required by said declaratory decision and order of December 24, 1951].

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## IN THE MATTER OF

## RICHMOND GARMENT COMPANY, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

*Docket 5858. Complaint, Mar. 12, 1951—Decision, Dec. 24, 1951*

Where a corporation and its president, engaged in the introduction into commerce and in the offer, sale, and distribution therein of wool products—

- (a) Misbranded certain of said products within the intent and meaning of the Wool Products Labeling Act and the rules and regulations promulgated thereunder in that, labeled "100% wool," they contained no "wool" as there defined, but were composed, exclusive of ornamentation not exceeding 5 percent of their total fiber weight, of "reprocessed wool";
- (b) Misbranded said products, thus labeled, in that their constituent fibers and the percentages thereof were not shown on the tags or labels as required by said Act and rules, etc.;
- (c) Misbranded certain of said products in that there was not shown on the labels attached thereto the legal name of the manufacturer, or of a person authorized by said Act to affix stamps, tags, labels, etc.;
- (d) Misbranded certain of said products in that the constituent fibers of their interlinings and the percentages thereof were not separately set forth and segregated upon tags or labels attached thereto, as required by said Act;
- (e) Misbranded certain of said products under said Act in that there were not set forth and segregated upon the labels or tags attached to the linings, which purported to contain wool, reused wool, or reprocessed wool, the constituent fibers and their percentages, exclusive of ornamentation not exceeding 5 percent of their total fiber weight; and,
- (f) With intent to violate the provisions of said Act, caused and participated in the removal or mutilation of stamps, tags, labels, and other means of identification which had been affixed to said wool products and purported to contain the information required by said Act;

With the result that said products, when offered and sold by them at their place of business, did not have affixed thereto the stamps, etc., containing the information required by said Act and rules and regulations:

*Held*, That such acts and practices, under the circumstances set out, were all to the prejudice of the public and in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. William L. Pack*, hearing examiner.

*Mr. Jesse D. Kash* for the Commission.

*Shure & Bruder*, of New York City, for respondents.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the