

IN THE MATTER OF
SEYMOUR SALES COMPANY AND SEYMOUR AND
FLAVIA GALTER

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 6060. Complaint, Nov. 18, 1952—Decision, Nov. 25, 1953

Where a corporation and its owner engaged in the interstate sale and distribution of cameras, pens, and other articles of merchandise—
Allotted as premiums or prizes to the operators of their push cards and to members of the consuming public who purchased chances on the cards; and
Thereby supplied to and placed in the hands of others the means of conducting games of chance, gift enterprises, or lottery schemes, contrary to the public interest and an established public policy of the United States Government:
Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair acts and practices in commerce.

Before *Mr. John Lewis*, hearing examiner.

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

Koven, Koven & Salzman, of Chicago, Ill., for respondents.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 18, 1952, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, 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' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by said hearing examiner upon the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel (oral argument not having been requested), and said hearing examiner, on July 30, 1953, filed his initial decision herein.

Within the time permitted by the Commission's Rules of Practice, respondents filed an appeal from said initial decision, and the Commis-

sion, after duly considering said appeal and the record herein, issued its order denying said appeal.

The Commission is of the opinion, however, that the initial decision of the hearing examiner is not appropriate in all respects to dispose of this proceeding, principally because the order therein is inconsistent with the form of order which the United States Court of Appeals for the District of Columbia has determined is appropriate in cases where the facts are essentially similar to those in this case. *Hamilton Manufacturing Company v. Federal Trade Commission*, 194 F. 2d 346; *U. S. Printing & Novelty Co., Inc. v. Federal Trade Commission*, 204 F. 2d 737. Therefore, the Commission, being now fully advised in the premises, 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, the same to be in lieu of the initial decision of the hearing examiner:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Seymour Sales Company (incorrectly named in the complaint as Seymour Sales, Inc.) is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 172 North Union Street, Chicago, Illinois. Respondents Seymour Galter and Flavia Galter are individuals and officers of the corporate respondent. Respondent Seymour Galter has his office and place of business located at the same address as the corporate respondent, and owns and has dominant control of the policies and sales activities of the corporate respondent, and has cooperated and acted in concert with said respondent in doing the acts and things hereinafter found.

Respondent Flavia Galter, although an officer of the corporate respondent, owns no stock therein and takes no active part in the operation of the business. The proceeding will therefore be dismissed as to said respondent in her individual capacity, and the term "respondents" as hereinafter used does not include said Flavia Galter.

PAR. 2. Respondents are now, and since approximately September 1951 have been, engaged in the sale and distribution of cameras, pens, and other articles of merchandise, and have caused said merchandise, when sold, to be transported from their place of business in Chicago, Illinois, to purchasers thereof located 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 one year last past a substantial course of trade by respondents in such merchandise in commerce, as "commerce" is defined in the Federal Trade Commission

Act, 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 Two 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 purchasing and consuming public. Among the methods and sales plans adopted and used by respondents, and which is typical of the practices of respondents, is the following:

Respondents distribute, and have distributed, by mail, to operators and to members of the public certain literature and instructions including, among other things, push cards, order blanks, circulars containing illustrations and descriptions of said merchandise, and circulars 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 as prizes to members of the purchasing and consuming public who purchase chances or pushes on said cards. The number of mailings sent out by respondents is substantial, amounting to hundreds of thousands, of which approximately 1% result in orders for merchandise. Thus in the latter part of 1951 the number of mailings for a Falcon Camera amounted to approximately 400,000 to 500,000 which resulted in orders being received from approximately 1.3% of the recipients, while in 1952, out of approximately 750,000 mailings for a Flash Master Camera approximately .8% to .9% resulted in orders.

A typical push card bears sixteen feminine names, with ruled columns on the back of said card for writing in the name of the purchaser of the push corresponding to the feminine name selected. Said push card has sixteen partially perforated discs. Each of said discs bears one of the feminine names corresponding to those on the list. Concealed within each disc is a number, which is disclosed only when the customer pushes or separates a disc 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 disc. The person selecting the name corresponding with the one under the master seal receives a camera. The push card bears the following legend or instructions:

Lucky Name Under Seal Receives A FALCON Candid
Camera and 1 roll of film

Now You Can Take Photos In Black and White
And COLOR

Enjoy these features in the FALCON—high speed ground lens, eye level viewfinder, fixed focus plastic case.

No. 1 pays 1¢ No. 9 pays 9¢

No. 19 pays 19¢ No. 22 pays 22¢

All others pay 29¢ NONE HIGHER

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(Master) (Panel bearing seals and)

(Seal) (feminine names.)

(Picture of Camera)

No. 9 Receives

A Beautiful Pen (New Ball Point Type) (Picture of Pen)

Write Your Name on Reverse Side Opposite Name You Select

A typical circular which is enclosed with one of respondents' mailings advises the recipient that he can receive a camera (or whatever product is being offered) "almost as a gift" and explains how, through the use of the push card (referred to as a "sales card"), "friends, relatives, neighbors and co-workers" can also get a camera "almost as a gift." The following instructions as to the use of the "sales card" are included:

Concealed under each of the names on the enclosed sales card is a number. These numbers are not consecutive. A person who selects a name under which number 1 appears pays 1c, number 9 pays 9c, number 28 pays 28c. All others pay 29c. There are none higher than 29c.

It's easy, isn't it? You'll want to get started at once; and then send the enclosed order form at the earliest possible moment to us. Then, as soon as we receive it, we will rush off to you two "Flash-Masters," and as an extra special two ball point pens—(the new, improved type.)

The operator of the push card, after selling all of the chances and remitting the full amount of the proceeds to respondents, with an order form, receives without additional charge a duplicate of the prizes listed on the card. Thus, in the case of the push card above described, the operator, upon remitting the amount called for, would receive a camera and ball point pen for himself, in addition to the camera awarded as a prize to the person selecting the name under the master seal and the pen awarded to the person selecting number 9 on the card.

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 customers or purchasers 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. The articles of merchandise have a value substantially greater than the price paid for the chances or pushes.

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 games of chance, gift enterprises, or lottery schemes. The sales plans or methods involved in the sale of all of said merchandise by means of said other push cards are substantially the same as that hereinabove described, varying only in detail as to the merchandise distributed, the prices of chances, and the number of chances on each card.

PAR. 4. While the attorney in support of the complaint offered the testimony of only one person who, on three separate occasions, used push cards received from respondents in selling and distributing respondents' merchandise in accordance with the above-described plan, it may reasonably be inferred that the persons to whom respondents furnish and have furnished said push cards, generally or in a substantial number of instances, use the same in selling and distributing respondents' merchandise in accordance with the aforesaid plan. Even in the absence of any evidence concerning the manner in which the push cards were actually used by the recipients thereof, it is clear, from the cards themselves and from the accompanying literature, that they were designed and intended for use in the manner above described, and it may reasonably be inferred that they were so used generally or in a substantial number of instances. While respondent Seymour Galter testified that there were "numerous" instances in which the push cards were returned unused with orders for merchandise, he was able to offer actual proof of only three such instances. Even accepting his testimony that there were "hundreds" of such instances, the fact remains that these were only a small percentage of the thousands of mailings on which orders were received. It is absurd to suppose that respondents would continue to engage in the empty and financially wasteful practice of enclosing push cards with each mailing of their literature, if such cards were not used in the manner for which they were obviously designed and intended.

It is therefore clear, and it is so found, that 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.

PAR. 5. The sale of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a

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Order

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 an unfair act and practice in commerce within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, 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.

ORDER

It is ordered, That respondent Seymour Sales Company (incorrectly named in the complaint as Seymour Sales, Inc.), a corporation, and its officers, representatives, agents, and employees, and respondent Seymour Galter, individually and as an officer of said corporation, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of cameras, pens, or other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards, sales cards, punchboards, or other lottery devices, either with other merchandise or separately, which said push cards, sales cards, punchboards, or other lottery devices are designed or intended to be used in the sale or distribution of said merchandise to the public.

2. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the complaint be, and it hereby is, dismissed as to the respondent Flavia Galter in her individual capacity but not as an officer of the corporate respondent.

It is further ordered, That respondents Seymour Sales Company and Seymour Galter shall, within sixty (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 the order to cease and desist.

Order

50 F. T. C.

IN THE MATTER OF
DOUBLEDAY & CO., INC., LITERARY GUILD OF AMERICA,
ET AL.

Docket 5569. Complaint, June 30, 1948—Decision, Dec. 5, 1953

Charge: Advertising falsely or misleadingly by using the words "free" and "Bonus Books"; in connection with the sale of books.

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

Mr. Jesse D. Kash for the Commission.

Satterlee, Warfield & Stephens, of New York City, for respondents.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached decision of the hearing examiner shall, on December 5, 1953, become the decision of the Commission.

Commissioner Mead dissenting.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint in this proceeding was issued on June 30, 1948, and respondents' answer thereto filed in due course. Thereafter, at the request of counsel, hearing for the purpose of receiving evidence was continued pending the final adjudication of a similar proceeding In the Matter of Book of the Month Club, Inc., et al., Docket No. 5572.

The theory of the instant proceeding and the gravamen of the complaint are set forth in Paragraph Four thereof, wherein allegations and conclusions are made as follows:

"The use by the respondents of the word 'free' and the term 'Bonus Books' is false, misleading and deceptive. In truth and in fact, the books designated as 'free' or as 'Bonus Books' are not gifts or gratuities or without cost to the recipient but on the contrary the prospective purchaser or purchaser, before he is entitled to receive such books, must join respondents' club thereby becoming obligated to purchase at least four books from respondents over the period of a year, the fulfillment of which obligation inures directly to the benefit of, and profit to, the respondents."

The above described acts and practices of respondents in the use of the word "free" are alleged to be to the prejudice and injury of the public and to constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.