

Complaint

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IN THE MATTER OF
BOND VACUUM STORES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6209—Complaint, May 27, 1954—Decision, Dec. 9, 1954

Consent order requiring a concern in Washington, D. C., to cease advertising falsely that certain vacuum cleaners and sewing machines were offered for sale when such offers were not bona fide, that it operated stores in principal cities, gave big trade-in allowances on customers' old merchandise, and furnished a five-year guarantee on its reconditioned Singer sewing machines; to cease representing fictitious prices as the customary prices of their merchandise; and to cease charging customers a "recording fee" when it did not record its sales contracts but retained the money thus collected for its own use.

Before *Mr. Loren H. Laughlin*, hearing examiner.

Mr. Michael J. Vitale for the Commission.

Kamerow & Kamerow, of Washington, D. C., 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 Bond Vacuum Stores, Inc., a Delaware corporation, and Albert Hyatt, Philip Morris, Harold Stengel and Julius Langsner, individually and as officers of said corporation, 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. Respondent Bond Vacuum Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 610 Ninth Street, Northwest, Washington, D. C. Respondents Albert Hyatt, Philip Morris, Harold Stengel and Julius Langsner are individuals and president, vice-president-treasurer, vice president and secretary, respectively, of the corporate respondent. These individual respondents formulate, control and direct the policies, acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the sale and distribution, among other things, of vacuum cleaners and sewing machines. In the course and conduct of their said business respondents have caused their vacuum cleaners and sewing machines when sold, to be transported from their place of business at the aforesaid address to purchasers thereof located in the District of Columbia and in various States of the United States. They maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce in the District of Columbia and between the District of Columbia and various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. At all times mentioned herein respondents have been, and are now, in direct and substantial competition with other corporations, firms and individuals engaged in the sale and distribution of vacuum cleaners and sewing machines in commerce.

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their vacuum cleaners and sewing machines, the respondents have engaged in extensive advertising in newspapers and on television and radio. Among and typical of the statements and representations made in such advertising relating to their said products are the following:

ACT NOW! QUANTITIES LIMITED
 BOND RECONDITIONED
 ELECTROLUX
 COMPLETE WITH 8 ATTACHMENTS
 (Picture of vacuum cleaner)
 RECONDITIONED BY
 BOND EXPERTS
 WITH BOND PARTS
 1-Year Guarantee parts and labor
 \$10.95
 FREE HOME DEMONSTRATION
 Big trade-in allowance for your
 old vacuum cleaner
 BOND
 Vacuum Stores, Inc.
 610—9th St. N. W.

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PHONE NOW!

Ex. 3-5380 for Free Home Demonstration
RECONDITIONED PORTABLE ELECTRIC
SINGER

Plus At no extra cost
Pinking Shears with
every Machine purchased

(Picture of Singer sewing machine)

\$21.50 5 Years' Guarantee

Full cash price

EASY TERMS ARRANGED

Free Home Demonstration

Big Trade-In Allowance on Your Old Sewing Machine

BOND

Vacuum Stores, Inc.

STORES IN PRINCIPAL CITIES

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import, but not specifically set out herein, respondents represented, directly or by implication:

1. That they were making bona fide offers to sell reconditioned Electrolux vacuum cleaners and reconditioned Singer sewing machines at the low prices specified in the advertising and that the said products would do a satisfactory job of cleaning and sewing, respectively;
2. That they operate stores in principal cities;
3. That in connection with the sale of vacuum cleaners and sewing machines they will give big trade-in allowances on customers' old cleaners and sewing machines;
4. That they furnish a 5-year guarantee on their reconditioned Singer sewing machines.

PAR. 6. The aforesaid statements and representations were false, deceptive and misleading. In truth and in fact:

1. The said cleaners and sewing machines would not do a satisfactory job of cleaning and sewing, respectively, and the said offers were not genuine or bona fide offers to sell the cleaners and sewing machines advertised, but were made for the purpose of obtaining leads and information as to persons interested in the purchase of vacuum cleaners and sewing machines. After obtaining such leads, through responses to said advertisements, respondents' salesmen called upon the persons so responding at their homes or waited upon them at respondents' place of business and in many instances demonstrated such cleaners and sewing machines, well knowing that their performance would be unsatisfactory; made no effort to sell the advertised cleaners and sewing machines, but in many instances belittled and disparaged such cleaners and sewing machines and attempted to, and fre-

quently did, sell different and much more expensive vacuum cleaners and sewing machines to such persons;

2. Respondents do not operate stores in principal cities. The store located at the address hereinabove set forth is the only store operated by respondents.

3. Respondents do not make or give big trade-in allowance, or any trade-in allowances, on customers' old cleaners and sewing machines when they purchase new or reconditioned cleaners and sewing machines, since the price of the merchandise purchased in so-called trade-in transactions is increased to cover and take care of the so-called trade-in allowance made or given.

4. Respondents' 5-year guarantee is not a bona fide guarantee because it does not set forth the terms thereof or the manner in which respondents will perform thereunder. Such a guarantee is confusing and misleading to the purchasing public.

PAR. 7. In addition to the foregoing, the respondents, in connection with the offering for sale and sale of vacuum cleaners and sewing machines, have misrepresented the regular and customary prices at which they sell their merchandise. In advertising literature such as instruction booklets which they exhibit to purchasers and prospective purchasers respondents have represented that the regular and customary price of their Kingston vacuum cleaner is \$129.95; that the regular and customary price of their Monarch sewing machine is \$189.50 and that the regular and customary price of their Kingston sewing machine is \$199.50. These prices are fictitious and far in excess of the prices at which the respondents regularly and customarily sold the said merchandise.

In connection with the sale of vacuum cleaners and sewing machines respondents have also engaged in the practice of charging purchasers an amount of \$2.50 represented as being a "recording fee." Respondents have not had any of their sales contracts recorded but have retained the money thus collected for their own use.

PAR. 8. The use by the respondents of the aforesaid false, deceptive and misleading statements, representations and practices had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and because of such statements, representations and practices to purchase substantial quantities of respondents' vacuum cleaners and sewing machines, particularly their more expensive vacuum cleaners and sewing machines. As a result thereof, substantial trade in commerce has been

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unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 9. The aforesaid acts and practices, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition 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 9, 1954, the initial decision in the instant matter of hearing examiner Loren H. Laughlin, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on May 27, 1954, issued its complaint herein under the Federal Trade Commission Act against all of the above-named respondents, charging them with having committed certain alleged unfair or deceptive acts and practices which purport to be violations of Section 5 of said Act. All respondents joined in an answer filed on June 18, 1954, after due service of the complaint upon each of them.

On September 24, 1954, the respondent corporation, by its president and its attorney, and all individual respondents except Julius Langsner, both in person and by their attorney, stipulated in writing with counsel supporting the complaint that a consent order against such respondents be entered herein which stipulation was approved by the Director and Assistant Director of the Commission's Bureau of Litigation. By said stipulation, among other things, said respondents admit all the jurisdictional allegations set forth in the complaint and stipulate that the record herein may be taken as if the Commission had more findings of jurisdictional facts in accordance with such allegations; that such stipulation is made for settlement purposes only, and does not constitute an admission by said respondents that they have violated the law as alleged in the complaint, and that respondents withdraw their said answer filed on June 18, 1954.

It was further stipulated that the complaint, insofar as it concerns the respondent Julius Langsner, be dismissed for the reasons set forth in his affidavit executed August 27, 1954, attached to said stipulation, which affidavit in substance states that theretofore having

held stock in and having been a member of the Board of Directors of respondent Bond Vacuum Stores, Inc. in July 1953, the said Julius Langsner sold all of his said stock and thereupon severed all connections with said corporations; and that neither as an employee or director of said respondent corporation did he ever formulate, control or direct its policies, acts and practices; and that he has no intention of again being connected in any way with said corporation or any similar corporation engaged in a like business, having been since August, 1949, and presently being employed by the United States Government.

Said stipulation further provides that all the parties thereto expressly waive a hearing before a Hearing Examiner or the Commission, the making of findings of facts or conclusions of law by the Hearing Examiner or the Commission, and the filing of exceptions and oral argument before the Hearing Examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission; and that the cease and desist order therein set forth and hereafter made, shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon. Respondents further specifically waive any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with said stipulation, and agree that the complaint herein may be considered in construing its terms in any further proceedings which may arise involving said order.

The said stipulation for consent order and the accompanying affidavit of respondent Julius Langsner were submitted on October 4, 1954, by the Commission's Bureau of Litigation to the undersigned Hearing Examiner duly designated by the Commission, for appropriate action by him under Rule V of the Commission's Rules of Practice. After due consideration, it appearing to the Hearing Examiner from the presentation of such matter that only such acts and practices alleged in the complaint as are unsupportable by evidence or are repetitious have been deleted from the sanctions of the proposed consent order and that the said stipulation and affidavit afford the basis for appropriate disposition of this proceeding, said stipulation and affidavit are accepted and ordered filed as a part of the record in this proceeding. The withdrawal of respondents' answer is hereby approved.

Upon the whole record as now made, in accordance with the said stipulation, the Hearing Examiner finds that the Commission has jurisdiction of the subject matter of this proceeding and of all of

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the parties respondent; that this proceeding is in the interest of the public; and that the following order as proposed in said stipulation is appropriate for the disposition of this proceeding, and the same therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondent Bond Vacuum Stores, Inc., a corporation, and its officers, respondents Albert Hyatt, Philip Morris, and Harold Stengel, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vacuum cleaners and sewing machines, or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that certain merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered;
2. Representing that they operate more stores than they do in fact operate;
3. Representing, directly or by implication, that any merchandise sold or offered for sale by respondents is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;
4. Representing, directly or by implication, that respondents usual or customary price of any merchandise is in excess of the price at which said merchandise is regularly and customarily sold by respondents in the normal course of respondent's business.
5. Requiring purchasers to pay sums of money to respondents represented by them as being for recording fees or for other expenses to be paid to others by respondents, when such sums are retained by respondents.

It is further ordered, That the complaint insofar as it relates to the respondent Julius Langsner be, and the same is, hereby dismissed.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent, Bond Vacuum Stores, Inc., a corporation, and its officers, and Albert Hyatt, Philip Morris, and Harold Stengel, individually and as officers of said corporation, 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 [as required by said declaratory decision and order of December 9, 1954].

Order

IN THE MATTER OF
BENJAMIN MALTZ AND MARSHALL MALTZ TRADING
AS BENMAR SALES COMPANY

ORDER, OPINION ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6128. Complaint, Oct. 26, 1953—Decision, Dec. 17, 1954.

Order requiring an individual in Chicago to cease supplying push cards or other lottery devices designed for use in the sale of watches and other merchandise to the public, and selling merchandise by means of a game of chance, etc.

Before *Mr. James A. Purcell*, hearing examiner.

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

Mr. Asher Feren, of Chicago, Ill., for Marshall Maltz.

ORDERS AND DECISION OF THE COMMISSION

Order modifying initial decision and adopting such decision as modified and order to file report of compliance, Docket 6128, December 17, 1954, follows:

This case having come on for hearing before the Commission upon the appeal filed by respondent Marshall Maltz from the initial decision of the hearing examiner; and

The Commission having determined that the contentions urged by that respondent in support of the appeal are without merit and that the appeal should be denied; and

The Commission, for reasons stated in its opinion which is separately issuing herein, having additionally determined that the findings as to the facts and conclusion contained in the initial decision are free from substantial error and should be adopted but that the provisions of the order to cease and desist as contained in the initial decision are inappropriate and that the record requires that they be modified:

It is ordered, That the appeal from the initial decision be, and it hereby is, denied.

It is further ordered, That the prohibitory language of the order to cease and desist as contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That respondent Marshall Maltz, individually and trading under the name of Benmar Sales Company, or under any other name or names, and his representatives, agents and employees, directly

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or through any corporate or other device, in connection with the offering for sale, sale or distribution of watches 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, punchboards, or other lottery devices, either with other merchandise or separately, which said push card, 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 initial decision, as modified herein, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent Marshall Maltz, 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 contained in the initial decision as modified herein.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 26, 1953, issued and subsequently served its complaint 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. Respondents filed their answer in due course whereupon hearings were held at which testimony and other evidence in support of, and in opposition to, the allegations of said complaint were received by the above-named Hearing Examiner theretofore designated by the Commission, said testimony and evidence being duly recorded and filed in the office of the Commission.

Thereafter the proceeding came on for final consideration by the Hearing Examiner on the complaint, the answer, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel, oral argument not having been requested; and the Hearing Examiner, having duly considered the record herein, finds that this proceeding is in the public interest and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDING AS TO THE FACTS

PARAGRAPH 1. Respondent, Marshall Maltz, is an individual trading as Benmar Sales Company, having his principal place of business

at 633 South Plymouth Court, Chicago, Illinois, and is now, and for more than six months prior to issuance of the complaint has been, engaged in the sale of watches and clocks, causing said merchandise when sold to be transported from his place of business aforesaid to purchasers located in the various states of the United States other than the State of Illinois, and in the District of Columbia, in the doing of which respondent has engaged in a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondent, Benjamin Maltz, (who is the father of Marshall Maltz), is named and charged as a co-partner with his said son but the record wholly fails to substantiate this allegation of co-partnership, or his participation as a principal in the business, the testimony concerning which is hereinafter reviewed in Paragraph *Four*, and on the basis of such review and finding thereon the complaint as to Benjamin Maltz will be dismissed.

The Business Activities

PAR. 2. In the conduct of his aforesaid business respondent Marshall Maltz, to effect and facilitate sale of his merchandise, furnishes various plans of merchandising which involve operation of games of chance, gift enterprise or lottery schemes typical of which is the following:

Respondent has distributed to operators and members of the public certain literature and instructions including so-called "push cards," order blanks and circulars containing illustrations and descriptions of the merchandise, as also respondent's plan of selling and distributing same and allotting certain premiums or prizes to the operators of the push cards; the literature and plan also describes the prizes to members of the purchasing public who pay for chances or "pushes" on said cards. As example: One of said push cards bears eighty-eight proper names, singly imprinted on a partially perforated disc, with ruled columns on the reverse side of the card for recording the name of the purchaser of the "push" corresponding to the name selected. Concealed within each disc is the number which determines the price of the chance (none higher than 49¢) and which is disclosed only after the purchaser pushes and separates the disc from the card. The card also has a larger master seal concealed wherein is one of the names appearing on the disc and the purchaser selecting the name corresponding with the one under the master disc receives, as a prize, a watch. Said card bears the following printed matter or instructions:

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LUCKY NAME UNDER SEAL RECEIVES CHOICE OF
EITHER THE LADIES' OR GENTS'

BENRUS WATCH

Official watch of famous airlines

FOR AS LITTLE AS 5¢
and Not More Than 49¢

17 Jewels. Handsome 10K Natural
Gold Rolled Plate Case Raised
Unbreakable Crystal. Gold Applied
Dial. Matching Expansion Band
Beautiful Gift Box

Every Watch has the World Famous
Benrus Guarantee

Nos. 1-2 FREE. No. 3 Pays 5¢ (Master
All Other Nos. Pay 49¢-None Higher Seal)

Push Out with Pencil—Do not Open Seal Until
Entire Card Is Sold.

Sales of respondent's merchandise by means of said push cards are made in accordance with the foregoing scheme, and whether the purchaser receives an article of merchandise, or nothing, for the money he paid, as well also the amount he is required to pay, are thus determined by lot or chance. The articles of merchandise thus awarded by chance have a value substantially greater than the price paid for the chance or push.

PAR. 3. The persons to whom respondent furnishes said push cards use the same in selling and distributing respondent's merchandise in accordance with his sales plan and respondent thus supplies and places in the hands of others the means of conducting games of chance, gift enterprises or lottery schemes in the sale of merchandise, a practice contrary to the established policy of the Government of the United States. Many persons are attracted by said sales plans and the element of chance involved therein and are thus induced to buy and sell respondent's merchandise.

Aside from the direct admission of sales by the respondent, there was stipulated into the record by counsel a specific instance of an interstate sale by respondent to an individual resident in Culver, Indiana, who disposed of merchandise according to the push card sales plan of respondent; that he, the purchaser, upon collecting the sum prescribed on the card remitted same to the respondent and in

return received from respondent two watches, one of which he delivered to the purchaser who drew the "lucky number" on the push card, and the other watch he retained for himself as compensation for selling and disposing of the chances on the card.

As to Respondent Benjamin Maltz

PAR. 4. The testimony of Benjamin Maltz concerning his connection with the enterprise, fully corroborated by Marshall Maltz and unquestioned and uncontradicted by anything of record discloses:

Benjamin Maltz is engaged in the printing business at No. 940 Winona Street, Chicago, Illinois, and in his capacity as a printer produced the push cards which are the subject of this inquiry; that it was originally contemplated, (in the Fall of 1952), he and his son Marshall Maltz would form a co-partnership to engage in this business but it eventuated that he, Benjamin, was unable to make the necessary contribution toward capital requirements whereupon Marshall Maltz raised the necessary capital, had his own bank account and proceeded with operations on his own and separate account; Benjamin Maltz is, however, familiar with the operation of the business, he, as well also his wife, assisting their son Marshall in the daily operation of the business but only in the capacity of hired assistants; he testified concerning the details of operations; the extent of the mailings, (several of 100,000 each and in one instance over half a million); the method of operation of the push cards; related how some of the card purchasers disposed of merchandise by use of the cards and that although the business had been in operation but a comparatively short while it had sold \$50,000.00 of merchandise; that he printed and produced the push cards used by respondent Marshall Maltz but did not have other customers for push cards, nor did he sell or ship cards to others, his dealings therein being limited to filling the requirements of respondent Marshall Maltz, they both operating their respective businesses in the City of Chicago; he was emphatic in stating that he has no financial interest in the business, never having "put any money into it"; that he does not share in the profits but is paid for whatever assistance he renders. Upon conclusion of the foregoing testimony of Benjamin Maltz counsel supporting the complaint called as a witness respondent Marshall Maltz who testified that the answers he would make to all of the questions propounded to his father would be substantially the same if such questions were propounded to him.

The Hearing Examiner, observing the demeanor, attitude, appearance and frankness of the two witnesses was sufficiently impressed with their truthfulness which, coupled with the circumstance of complete

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absence of contradictory evidence, real or inferential, compels him to find, as a fact, that Benjamin Maltz is not, and never was, a co-partner as alleged; that co-partnership is never inferred nor arises by operation of law but must be a voluntary act of the parties and that all of the legal elements and indicia necessary to constitute such must be present, none of which exists under the facts disclosed by this record, wherefore the complaint as to Benjamin Maltz will be dismissed.

CONCLUSIONS

The aforesaid acts and practices of the respondent, Marshall Maltz, as hereinabove 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.

On the basis of the facts above found, there has been a total failure of proof to sustain the allegations of the complaint as to respondent Benjamin Maltz, wherefore, as to him, the complaint will be dismissed.

ORDERS

It is ordered, That respondent Marshall Maltz, individually and trading under the name of Benmar Sales Company, or under any other name or names, 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 watches 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, punchboards, or other lottery devices, either with other merchandise or separately, which said push 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 herein be, and it hereby is, dismissed as to respondent Benjamin Maltz.

OPINION OF THE COMMISSION

By MEAD, Commissioner:

The initial decision of the hearing examiner held that respondent Marshall Maltz, hereinafter referred to as the respondent, has engaged in unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act, and this matter

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comes before the Commission upon the appeal filed by that respondent from the initial decision.

The complaint under which this proceeding was instituted, alleges that the foregoing respondent and another individual have engaged as co-partners in soliciting the sale of and selling watches and other merchandise, and, in such connection, furnished 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 purchasing public. Distributed and furnished by the parties named, the complaint additionally charges, has been advertising literature comprising order blanks, push cards and circulars containing instructions for distributing the merchandise by means of allotting it as premiums to the operators of the cards and as prizes to members of the public purchasing chances or pushes thereon. After the filing of answer, testimony and other evidence were received into the record during the course of a hearing before the hearing examiner.

The initial decision held that the evidence received in the proceeding fully sustained the allegations of the complaint as they refer to the respondent Marshall Maltz, the appellant here, and concluded, as noted previously, that the acts and practices engaged in by him were in violation of law. We mention in passing, too, that it was found below that the charges insofar as they related to the party additionally joined in the proceeding lacked adequate support particularly in reference to the nature of his participation in the practices. Provision, accordingly, was made for dismissal of the complaint as to him and there being no appeal from that ruling, further reference to this aspect of the proceeding is not warranted.

It was held additionally in the initial decision that persons to whom the respondent has furnished push cards have used them in selling his merchandise in accordance with the sales plan, and that the respondent thus supplies and places in the hands of others the means of conducting games of chance, gift enterprises, and lottery schemes in the sale of merchandise, which is a practice contrary to the established policy of the Government of the United States. The appeal contends that the foregoing conclusions lack adequate support in the record for the reason that no evidence was presented showing how many persons have been attracted by this plan and method and that there was no evidence that the sales plan has constituted a lottery or scheme which was contrary to established public policy. Challenged and excepted to as likewise unsupported by the record and assertedly based on conjecture and guess are related conclusions appearing in the initial decision to the effect that, under the program, the articles are awarded by chance and the amounts paid for pushes or chances

likewise so determined, and that the articles awarded have been of greater value than prices paid for a chance or push.

The exhibits received into evidence attest that the chances or pushes available on the respondent's cards have ranged from free ones up to those calling for maximum payment of 49¢. On a typical push card and elsewhere in the literature, a value of \$39.75 is ascribed to each of the watches. There accordingly can be no doubt but that the sales program comprises a lottery and game of chance. Supplying the means of conducting lotteries in the sale of merchandise is a practice contrary to the established public policy of the United States. *Jaffe v. Federal Trade Commission*, 139 F. 2d 112 (C. A. 7, 1943).

Although there is no arithmetical computation in the record as to the number of persons who have been attracted by and accepted the respondent's invitation to use his sale program, it was stipulated between counsel in the course of the hearing that a Culver, Indiana, customer, if called in this proceeding, would testify that he circulated the push card received by him from the respondent and that he awarded merchandise thereafter purchased from the respondent in the manner counseled in the advertising literature. In excess of 500,000 mailings of the advertising literature, including the push cards, have been made and the respondent has sold and shipped a substantial amount of merchandise in commerce. The respondent's push cards are clearly designed and obviously intended for use in the distribution of his merchandise and consideration of the exhibits compels conclusions that the persons to whom they were furnished by the respondent generally or in a substantial number of instances used them in accordance with his plan and program. Furthermore, it would be absurd to assume that the respondent would continue to engage in the empty and financially wasteful practice of enclosing push cards with various of his mailings of literature if such cards were not used in the manner intended. *In the Matter of Seymour Sales Company, et al.*, Docket No. 6060 (Decided November 25, 1953).

Without merit also is the respondent's contention that the decision in *United States v. Halseth*, 342 U. S. 277 (1952), precludes legal conclusions that the respondent's practices constitute a lottery or contravene public policy. That case involved an appeal from a criminal indictment for alleged violation of the Postal statutes. The question before the Court was "whether the mailing of gambling paraphernalia that may be used to set up a lottery or similar scheme in a violation of the statute" upon which the indictment was based. There was no determination that the sales plan or method involved did not constitute unfair acts and practices in violation of the Federal Trade

Commission Act. That decision is nowise dispositive of the issues here. *Seymour Sales Co., et al. v Federal Trade Commission*, 216 F. 2d 633 (C. A. D. C. No. 12064, November 4, 1954).

The respondent additionally urges that, because the standards of the Federal Trade Commission Act are assertedly vague and indefinite and provision lacking for adjudicating the fairness or unfairness of particular practices by means of jury trials, any sanctions which may be imposed under the Act should be deemed to impinge upon the due process clause of the Fifth Amendment to the Constitution. We think there is no merit in the contention that the Act is unconstitutional. *Sears Roebuck & Company v. Federal Trade Commission*, 258 Fed. 307 (C. A. 7, 1919); *Federal Trade Commission v. A. McLean & Sons*, 84 F. 2d 910 (C. A. 7, 1936).

Although we are denying the appeal, we have noted in the course of our consideration of this matter that the proscriptions of the order contained in the initial decision are not entirely responsive to the complaint. As stated previously, the complaint charges that the respondent in connection with soliciting sales of and selling his merchandise, has engaged in unfair acts and practices in commerce by furnishing various merchandising plans which involve the operation of games of chance, gift enterprises and lottery schemes when such merchandise is distributed to the consuming public. The complaint accordingly does not expressly charge that the respondent has engaged in unfair acts and practices in connection with the sale of push cards; but the order contained in the initial decision proposes, however, to forbid their sale and distribution. In the circumstances, we think that the provisions of the order should have been directed instead to forbidding the respondent from supplying or placing such devices in the hands of others in connection with the offering for sale, sale or distribution of the respondent's merchandise and from otherwise disposing of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The order is being modified accordingly.

IN THE MATTER OF
RAM MANUFACTURING CORP. ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6207. Complaint, May 27, 1954—Decision, Dec. 17, 1954

Consent order requiring a seller in New York City to cease representing falsely on labels and tags that its jackets and outer coats, resembling in color, pattern, and style those issued to members of the U. S. Armed Forces, were manufactured for the Armed Forces and in accordance with their specifications; and dismissing a charge that it represented itself falsely to be a manufacturer.

Before *Mr. John Lewis*, hearing examiner.

Mr. Terral A. Jordan for the Commission.

Chambers & Chambers, 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 Ram Manufacturing Corp., a corporation, and Harry I. Spiewak, Albert Spiewak and Fred Roth, individually and as officers of said corporation, 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. Respondent Ram Manufacturing Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 1150 Broadway, New York, New York. Respondents Harry I. Spiewak, Albert Spiewak and Fred Roth are respectively President and Treasurer, Secretary, and Vice President of said corporate respondent. These individuals acting in cooperation with each other formulate, direct and control all of the policies, acts and practices of said corporation. Their address is the same as that of corporate respondent.

PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the sale and distribution of jackets and outer coats to wholesalers and dealers in commerce, among and between the various States of the United States and in the District of Colum-

bia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said garments, in commerce, among and between the various States of the United States.

PAR. 3. The garments sold and distributed by respondents in the course and conduct of their business as aforesaid closely resemble the jackets and outer coats issued and furnished to members of the United States Armed Forces in color, pattern and style. Respondents also cause to be affixed to said garments certain markings, insignia, labels and tags which purport to designate the branch of service, model, contract number, specification number, stock number and directions as to the manner of use in substantially the same form, kind and manner as the markings, insignia, labels and tags prescribed and used by the United States Armed Forces on similar and like garments. Typical of the words and terms appearing on the markings, labels and tags are:

JACKET, TYPE B-15
Q. M.-O. D.-1953
SPEC. 9X-1540 N. Y. C.
STOCK NO. 1150-B-1112

THIS JACKET INCREASES GREATLY THE WARMTH
OF CLOTHING WORN UNDER IT IN COLD AND TEM-
PERATE CLIMATES BECAUSE IT IS *WINDPROOF*.

Typical of insignias on said garments is that of the Army Air Forces under which the words "Army Air Forces" appear.

PAR. 4. Through the use of said colors, patterns and styles and the markings, insignia, labels and tags, as described in Paragraph Three hereof, respondents have represented and implied and do represent and imply that said jackets and outer coats, sold and distributed by them in commerce were manufactured for the United States Armed Forces and in accordance with specifications of said Armed Forces.

PAR. 5. Said representations and implications are false, misleading and deceptive. In truth and in fact, respondents' said garments were neither manufactured for the United States Armed Forces nor in accordance with specifications of said Armed Forces.

PAR. 6. By selling and distributing to wholesalers and dealers said products manufactured as aforesaid and having affixed to them the markings, insignia, tags and labels hereinabove described, respondents furnish to such wholesalers and dealers the means and instrumentalities through and by which they may mislead and deceive the purchasing public as to the origin, kind, type, and style of their said jackets and outer coats.

PAR. 7. Through the use of the words "manufacturing," "Mfrs. of," and "factory and receiving department," in their corporate name and

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on their stationery, invoices and price lists, respondents have represented and are now representing that they own, operate or control a factory or factories where their said merchandise is manufactured, and that they are the manufacturers of such merchandise. In truth and in fact, neither the corporate respondent nor any of the individual respondents own, operate or control a factory wherein is manufactured the merchandise sold and distributed by respondents.

PAR. 8. There is a preference on the part of wholesalers and dealers for dealing directly with manufacturers of products rather than with outlets, distributors, jobbers or other intermediaries such preference being due in part to a belief that by dealing directly with the manufacturer, lower prices and other advantages may be obtained.

PAR. 9. In the course and conduct of their business respondents are in direct and substantial competition with other corporations and firms and individuals engaged in the sale in commerce of jackets and outer coats.

PAR. 10. The sale and distribution in commerce of said garments in the color, style, design and with markings, as hereinabove alleged, has had and now has the tendency and capacity to and does mislead a substantial portion of the purchasing public into the belief that said garments were manufactured for the United States Armed Forces and in accordance with specifications of said Armed Forces, and the use of the words "manufacturing," "Mfrs. of," and "factory and receiving department" in their corporate name and on their stationery, invoices and price list, as herein alleged, further misleads the wholesalers and dealers who purchase the merchandise of the respondents into the erroneous mistaken belief that respondents are the manufacturers of their merchandise and own, operate or control the plant or plants where such merchandise is manufactured and into the purchase of substantial quantities of respondents' merchandise in commerce because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 11. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, 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 17, 1954, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 27, 1954, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act. After being duly served with said complaint, the respondents appeared by counsel and filed their joint answer on June 23, 1954. Thereafter a stipulation, dated August 11, 1954, was signed by the parties, providing for the entry of a consent order disposing of one of the two principal charges in the complaint. Respondents, pursuant to said stipulation, have admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Said stipulation provides that the answer heretofore filed by respondents is to be withdrawn as to the issues disposed of by such stipulation and that the parties expressly waive a hearing before the Hearing Examiner or the Commission, and all further and other procedure to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents have agreed that the order to cease and desist issued in accordance with said stipulation shall have the same force and effect as if made after a full hearing and specifically waive any and all right, power, or privilege to challenge or contest the validity of said order. It has also been stipulated and agreed that the complaint herein may be used in construing the terms of the order provided for in said stipulation and, further, that the signing of said stipulation is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as to those issues disposed of by the stipulation.

The aforesaid stipulation for consent order, after being approved by the Director and Assistant Director of the Commission's Bureau of Litigation, was submitted to the above-named Hearing Examiner for his consideration, in accordance with Rule V of the Commission's

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Rules of Practice. Following the submission of said stipulation, counsel in support of the complaint filed a motion on October 12, 1954, requesting that the remaining charge in the complaint be dismissed, without prejudice, for the reason that counsel does not have any information presently available to controvert the facts with respect thereto, submitted by respondents in the form of an affidavit.

This proceeding having now come on for final consideration by the above-named Hearing Examiner, heretofore duly designated by the Commission, on the complaint; the answer of respondents, which is hereby deemed withdrawn as to the charge covered by the stipulation for consent order; the said stipulation for consent order, which is hereby accepted and ordered filed as part of the record herein; and the motion of counsel supporting the complaint to dismiss the remaining portion of the complaint, as to which no opposition has been filed; and said Hearing Examiner having duly considered the record herein, makes the following findings, for jurisdictional purposes, and order:

1. Respondent Ram Manufacturing Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 1150 Broadway, New York, New York. Respondents Harry I. Spiewak, Albert Spiewak and Fred Roth, are, respectively, President and Treasurer, Secretary, and Vice President of said corporate respondent. The address of said individual respondents is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents Ram Manufacturing Corp., a corporation, and Harry I. Spiewak, Albert Spiewak and Fred Roth, individually and as officers of said corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, in the offering for sale, sale or distribution of wearing apparel, or of any 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, by marking, branding, labeling, tagging, or in any other manner, that such merchandise was manufactured for the Armed

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Forces of the United States or in accordance with specifications of said Armed Forces.

It is further ordered, That the allegations of the complaint charging that said respondents have violated the Federal Trade Commission Act by representing that they own, operate or control manufacturing facilities be, and the same hereby are, dismissed without prejudice.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein 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 [as required by said declaratory decision and order of December 17, 1954].

IN THE MATTER OF

RICHARD H. DAVIMOS AND CASPER PINSKER, JR.,
TRADING AS ORCHIDS, ETC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6129. Complaint, Oct. 27, 1953—Decision, Dec. 18, 1954

Consent order requiring two partners doing business in Harrison, N. J., and New York City, to cease representing falsely in advertising the kind and qualities of the orchids they sold, the properties and effectiveness of their chemical soil conditioner "Loanium", and that their private business was a "guild".

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

Mr. Terral A. Jordan for the Commission.

Mr. Harry T. Davimos, of Newark, N. J., 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 Richard H. Davimos and Casper Pinsker, Jr., individually and as copartners, trading under the names of Orchids, Orchid Guild, and White House Company, 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. Respondents Richard H. Davimos and Casper Pinsker, Jr., are individuals trading and doing business, or have traded and done business, as a copartnership under the names of Orchids, Orchid Guild, and White House Company with their principal office and place of business located at 2 Kingsland Avenue, Harrison, New Jersey, and also doing business at 8 East 54th Street, New York, New York.

PAR. 2. The respondents have engaged in the sale and distribution of orchid plants and have sold and distributed and are presently selling and distributing a combination chemical soil conditioner and plant fertilizer designated as "Loanium." Respondents have caused and presently cause said products when sold to be transported from their aforesaid place of business in the State of New Jersey to purchasers thereof located in various other States of the United States