

It is further 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 this order.

IN THE MATTER OF

HOWARD B. GILLMORE

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

Docket C-281. Complaint, Dec. 18, 1962—Decision, Dec. 18, 1962

Consent order requiring a Blossburg, Pa., distributor to cease furnishing to sellers of his wallets a plan of merchandising which involved the operation of a game of chance when sale was made to consumers.

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 Howard B. Gillmore, an individual, hereinafter referred to as respondent, has 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 Howard B. Gillmore is an individual who operates his business from his home located at 8 Liberty Street, Blossburg, Pa.

PAR. 2. Respondent is now, and for some time last past has been engaged in the sale and distribution of various articles of merchandise, including wallets.

PAR. 3. In the course and conduct of his said business, respondent, causes, and for some time last past has caused, his said merchandise, when sold, to be shipped from his place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4 In the course and conduct of his business, as described above, in soliciting the sale of and in selling and distributing his wallets, the proposed respondent furnishes to sellers of his wallets a plan of merchandising which involves the operation of a game of chance, gift enterprise or a lottery scheme when said merchandise is sold and distributed to the purchasing and consuming public. The method or sales plan adopted and used by respondent is the following:

Respondent distributes, and has distributed, to members of the public certain literature including, among other things, merchandising cards with instructions as to their use, order blanks, circulars which feature depictions of the merchandise involved in the scheme and respondent's plan of sale and distribution of his merchandise together with the prize to be allotted to one of a certain number of purchasers. Respondent's merchandising cards have ruled lines numbered 1 through 24 on each line of which following the number is to be written in the name of the purchaser of a wallet. At the top of the merchandising card, preceding the list of 24 numbers, there is a seal under which is concealed one of the 24 numbers. The purchaser whose name appears on the merchandising card following the number which has been concealed under the seal receives a prize. For example, the merchandising card bears the following legend:

This Beautiful Secretary Case

FREE

Member whose number is under the SEAL
receives the case.

(SEAL)

One of said merchandising cards accompanies each order of 24 wallets, packed in the above described case, and is used by the recipient thereof in promoting the sale of the wallets. Sales of respondent's merchandise by means of said merchandising card are made as hereinabove set forth and said prize or premium is allotted to the customer or purchaser from said card in accordance with the above legend or instruction. Whether a purchaser of a wallet receives the prize or premium depends upon the number he selects on the card and thus the recipient of the prize is determined wholly by lot or chance.

PAR. 5. The persons to whom respondent furnishes and has furnished said merchandising card use the same in selling and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting games of chance, gift enterprises or lottery schemes in the sale of his merchandise in accordance with the sales plan hereinabove set forth.

Many persons are attracted by said sales plan or method used by respondent involving the element of chance and thereby are induced to sell respondent's merchandise. The use by respondent of said sales plan or method in the sale of his merchandise and the sale of said 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 an unfair act and practice in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and constituted, and now constitute, unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Howard B. Gillmore is an individual who operates his business from his home located at 8 Liberty Street, Blossburg, Pa.

1398

Complaint

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Howard B. Gillmore, an individual, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of wallets or other article 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, merchandising cards or any other device or devices which are designed or intended to be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

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

It is further 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 this order.