

Complaint

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IN THE MATTER OF

W. J. THOMPSON, INC.

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2570. Complaint, Oct. 7, 1935—Order, Jan. 17, 1936*

Consent order requiring respondent, its officers, etc., in connection with the offer or sale of any publication in interstate commerce to cease and desist from—

- (a) Representing, directly or otherwise, that a person solving a problem presented in an advertisement and sending said solution to it will, without being required to do any other thing, be given a prize or reward, when such is not the case, or that the mere mailing of the correct solution of the problem presented in an advertisement of a puzzle prize contest will be sufficient to win the first, or any other, prize therein, when such is not the case;
- (b) Representing, etc., that it will give to the winner of any puzzle prize contest an extra award for promptness and, inferentially or otherwise, that such extra award is a separate and distinct one when in fact included within that advertised as the prize to be awarded, or issuing any writing to a person interested in any such contest which purports to be a certificate or other evidence of recipient's right to a prize or states on the face thereof "First Prize Certificate", at any time prior to the actual awarding of first prize, or representing that a contestant in any such contest has achieved a more advanced position toward success therein than is the fact;
- (c) Using in any such puzzle prize form of contest any progressive plan to secure subscriptions to its publications unless every step or stage of the plan is clearly set forth in the initial or contact advertisement or first mailing to the prospect before any money or service is accepted, showing exactly what will be required of the prospect or what compensation or reward will be given for each act or payment required in contending for a prize, award, premium, gift, or reward; or
- (d) Publishing the rules of any puzzle prize contest in other than clear and readable type.

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. T. H. Kennedy for the Commission.

Black, Varian & Simon, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, the Federal Trade Commission, having reason to believe that W. J. Thompson, Inc., a corporation, hereinafter referred to as respondent,

has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. Respondent, W. J. Thompson, Inc., is now and for several years last past has been a corporation organized and existing under and by virtue of the laws of the State of New York, and now has its principal place of business at New York City, N. Y.

Respondent has been for more than a year last past and now is engaged in the business of publishing and selling a magazine of general circulation designated "The Gentlewoman." Respondent causes said magazine when so sold and when offering it for sale, to be transported from the State of New York or other State of publication into other States of the United States to purchasers or prospective purchasers thereof situated in said other States. In the course and conduct of said business respondent has been and is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation in interstate commerce of the same and similar articles of commerce.

PAR. 2. It has been and is the practice of respondent in the course and conduct of its business as aforesaid, to conduct a so-called "At Home Travel Game", the purpose of which is the securing of subscribers for and the promoting and augmenting the sale of its magazine in interstate commerce. The particular feature of said "At Home Travel Game" has been and is a puzzle prize form of advertising, and other contests. It has caused such form of advertising to appear in various magazines, including its own, "The Gentlewoman", and newspapers of general circulation in the United States, said publication being at the time of said advertising engaged in interstate commerce. Respondent has mailed letters and advertising literature in the furtherance of its said "At Home Travel Game" to various persons throughout the United States.

In such advertisements, letters, and advertising literature, respondent has made and continues to make, false and misleading statements and representations in reference to its prize contests and the results of participating therein, in its advertisements, letters, literature and otherwise, or has omitted to state essential facts necessary to prevent the reader from obtaining a false impression of the contest, to the following effect, to wit: In its initial or contact advertisement respondent represents that the sum of \$3,500 is to be given away in 35 cash prizes, ranging from \$1,500, the amount of the first prize, down to \$15.00 for each of the last 21 prizes; that in said contact

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advertisement the impression is given that the method of determining the winner is by counting the number of points on a map included in said contact advertisement that contestant can touch in drawing a continuous line thereon. However, in truth and in fact, success of contestant in completing the line on said map in said contact advertisement does not result in contestant's receiving a prize, but merely in contestant's receiving a certificate awarding him "200 points" out of a necessary 300.

The contestant also receives a "qualification blank" entitling contestant to 65 more points, provided contestant secures \$5.00 worth of subscriptions to respondent's magazine. Contestant is permitted to retain \$1.00 of the \$5.00 as commission. The said certificate for 200 points and qualification blank are of no value to contestant until and unless he secures \$5.00 worth of subscriptions and forwards them to respondent.

As another step in the progress of respondent's game, the contestant is informed that he may participate in what is called a two-prize contest, by which he would have a chance to win an extra \$1,000, making \$2,500 in all, provided he sends in still another \$5.00 worth of subscriptions and remits \$4.00 in payment of the same.

In all the advertising matter it is stated that \$500 extra will be given for promptness, but in fact this \$500 is included in the \$1,500 first prize, although not clearly indicated in said advertising matter.

In respondent's initial or contact advertisement, respondent has failed to set forth the substance of the rules governing said contest.

A reader reasonably infers from reading said initial or contact advertisement that a mere mailing of a correct solution of the puzzle submitted in said contact advertisement will be sufficient to win a prize, when in truth and in fact said solution of said contact advertisement does not entitle a contestant to win any prize at all.

The respondent has failed to award units of credit toward winning a prize in said contest in a fair and equitable manner, in that the credits do not represent a proportionate expenditure of money or personal service required to win any other number of points or units in any other step or stage of the contest.

Respondent has used and does use a progressive plan to secure subscriptions for its magazine, as a result of contacts established through its said initial or contact advertisement, without stating in said contact advertisement the steps and stages of the plan, and thereby obtains the services of many readers and contestants which it would not have obtained if all of the stages of its said plan were clearly set forth in said initial or contact advertisement.

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The following extracts from advertisements or literature sent to or read by the readers of respondent's magazine vividly illustrate respondent's methods in regard to the complained of acts:

YOUR OPPORTUNITY TO WIN \$1,500.00 INCLUDING \$500.00 EXTRA FOR PROMPTNESS.

\$3,500.00 in CASH PRIZES will be awarded in this fascinating At Home Travel Game.

Opportunities like this one come seldom; Neglected they are always regretted. Here is offered an opportunity of a lifetime—an opportunity for you to lay the foundation for future happiness and independence—an opportunity to win \$1,500.00 CASH, including \$500.00 CASH extra for promptness. Absolutely \$1,500.00 CASH! That seems like a large sum of money to win, and it is—but even so this is the reward that positively will be given to the First Prize Winner in this \$3,500.00 Prize Travel Game.

You will find this travel Game interesting and enjoyable. It is your opportunity to Play, Learn and Win a share in more than \$3,500.00 CASH PRIZES to be awarded to Thirty-Five Winners.

CASH PRIZES

1st PRIZE----- \$1,000 CASH

2nd PRIZE----- \$1,000 CASH

3rd PRIZE----- \$250.00 CASH

4th PRIZE----- 150.00 CASH

5th PRIZE----- 100.00 CASH

6th PRIZE----- 75.00 CASH

7th PRIZE----- 50.00 CASH

8th PRIZE----- 20.00 CASH

9th PRIZE----- 20.00 CASH

10th PRIZE----- 20.00 CASH

11th PRIZE----- 20.00 CASH

12th PRIZE----- 20.00 CASH

13th PRIZE----- 20.00 CASH

14th PRIZE----- 20.00 CASH

15th PRIZE----- 15.00

16th PRIZE----- 15.00

17th PRIZE----- 15.00

18th PRIZE----- 15.00

19th PRIZE----- 15.00

20th PRIZE----- 15.00

21st PRIZE----- 15.00

22nd PRIZE----- 15.00

23rd PRIZE----- 15.00

24th PRIZE----- 15.00

25th PRIZE----- 15.00

26th PRIZE----- 15.00

27th PRIZE----- 15.00

28th PRIZE----- 15.00

29th PRIZE----- 15.00

30th PRIZE----- 15.00

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31st PRIZE	-----	\$15.00
32nd PRIZE	-----	15.00
33rd PRIZE	-----	15.00
34th PRIZE	-----	15.00
35th PRIZE	-----	15.00

TOTAL ALL PRIZES \$3,500.00

Prize Manager, V. H.
154 West 14th St.,
New York City, N. Y.

I have marked my path showing I have visited ----- "N" Places. If correct let me know at once how I may gain the remaining 100 points to win First Prize.

Name-----

Address-----

HOW MANY NAMES OF CITIES IN WHICH THE LETTER "N" APPEARS LIKE NEW YORK, NEW ORLEANS, PORTLAND, ETC., CAN YOU CONNECT WITHOUT CROSSING YOUR PATH ? ? ?

Above is a Map on which a number of Cities are shown. Without any trouble you can find New York, Nashville, Naples, all of which contain the Letter "N" in the spelling of the names. The others are just as easy to find but the idea is to see who can draw a continuous line from "dot" to "dot" and connect the MOST "N" cities, making sure that your line between "dots" is straight.

Start from New York and finish your Path at New York, including it but once in your count. Go in any direction with your Path, up or down, anyway you like, but do not cross your Path at any point. Players must submit their Maps, giving total number of "N" cities reached and Path marked with pen or pencil in a straight line from "dot" to "dot."

A First Prize of \$1,500.00 including \$500.00 Extra for Promptness will be awarded! In all more than \$3,500.00 in CASH may be won in this Travel Game. Closing date for entries November 30th, 1934.

There will be Thirty-five Winners. The First Prize, the Golden Opportunity is \$1,000.00 cash (plus \$500.00 Extra for promptness) a total of \$1,500.00. You should act quickly—remember the \$500.00 extra for promptness.

If there is a tie for any prize in the final award, the full amount of the prize tied for will be paid to each player so tied. Anyone who in any contest has won as much as \$100.00 in Cash or Merchandise is not eligible to participate in this Travel Game.

A FEW THINGS YOU CAN DO WITH \$1,500.00 CASH

FIFTEEN HUNDRED DOLLARS is the back-bone of success. With this large sum of money a person can forge ahead. It paves many avenues to a bright future.

For example:

- * TRAVEL TAKE AN OCEAN TRIP.
- * PAYMENT ON A NEW HOME NEW FURNISHINGS FOR YOUR HOME.
- * \$1,500.00 WILL START A BUSINESS OF YOUR OWN,
- * \$1,500.00 WILL PAY FOR AN EDUCATION FOR YOURSELF OR CHILDREN.
- * \$1,500.00 WILL BUY A FINE NEW AUTOMOBILE.
- * \$1,500.00 WILL BUY GORGEOUS FURS AND NEW CLOTHES. GET YOUR SHARE OF MORE THAN \$3,500.00 CASH PRIZES.

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300 POINTS will positively win first prize. I will give you 200 points for sending in the correct answer to this Travel Game Map. Promptly on receipt of your correct answer I will tell you how you may gain the remaining 100 points to win \$1,500.00 in CASH including \$500.00 extra for promptness. Mail your Map answers to:

M. McPHILLIPS, Prize Manager, Room V, 154 West 14th St., New York, N. Y.

Following response to this advertisement a certificate for 200 points is issued to the party responding:

A "Qualification Blank" for 65 more points for sending in \$5.00 worth of subscriptions to the Gentlewoman Magazine;

A sheet upon which the "Rules and Instructions" are printed, showing how 300 points may win \$1,500.00;

"This is just a straight out and out Prize offer to help advertise our business", and urging the party to earn 65 more points; and

"You are now well on your way toward getting the 300 points that will win the First Prize of \$1,500"; and

"Notice the date stamped on the Qualifying blank and be sure to mail it together with your subscriptions *not Later Than the Date Shown Therein* if you wish to get 65 more points, making your total 265 points toward First Prize."

Rule 6. "If there is a tie for the final 35 points or any lesser number of points, there will be, up to the total number of prizes offered, as many prizes reserved as there are Players tied before any Prizes are awarded for an Answer earning a lesser number of points. That is, if two or more Players should tie for the final 35 points by submitting the same total of E=Places reached in their continuous Path, the first two or more Prizes will be reserved for them and will be awarded in the order of the best answers of such Players to a third and final Map. Should ties then still exist the one who has reached the largest number of Places and whose Path measures the greatest number of inches will be declared the winner of the final 35 points and First Prize. The second best answer will then earn 34 points and Second Prize, etc. Then should ties still exist, identical prizes will be awarded."

PAR. 3. In truth and in fact the advertisements and literature are either wholly false, grossly exaggerated, or characterized by withholding and concealing facts that should be disclosed.

The contact advertisement fails to notify the reader that he will not receive \$1,500 including \$500 or any other prize for promptness if he is successful in marking the map included in said advertisement, and there is nothing to show that the reader must obtain subscriptions to respondent's magazine.

The scheme herein described and indulged in by the respondent results in obtaining a mailing list for the promotion of respondent's business, whereas the reader of the initial advertisement is led to believe that the respondent's purpose is to award the reader a prize for successfully connecting points on a map appearing in respondent's initial advertisement.

This is a selling campaign and not an advertising campaign, as prospect is first led to believe.

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There is no advantage in responding to the initial advertisement or requirements of the rules later learned by the contestant quickly to qualify for the promptness prize, inasmuch as the time limit is extended for laggards.

PAR. 4. The practices of respondent described herein and each of them has had and they now have and each of them has the capacity and tendency to mislead and deceive the public into participation in the contest conducted by the respondent, and into rendering services to the respondent in the erroneous belief of and reliance on the aforesaid representations of the respondent.

Such practices of respondent have also had and now have the capacity and tendency to divert subscriptions to it from competitors who have been and now are selling publications in interstate commerce by fair and truthful representations and methods.

PAR. 5. The above acts and things done by respondent are all to the injury and prejudice of the public and competitors of respondent in interstate commerce, within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

The respondent herein having filed its answer to the complaint in this proceeding, and having subsequently filed with this Commission its motion that it be permitted to withdraw its said answer and that it be permitted to file in lieu thereof as a substituted answer, the draft of a proposed substituted answer annexed to the said motion; and the Commission having duly considered the said motion—

It is hereby ordered, That the said motion be and the same is hereby granted; that the said answer be and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its said substituted answer that it does not contest the said proceeding, and having consented in its said substituted answer that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint and the Commission being fully advised in the premises.

Order

It is hereby further ordered, That respondent, W. J. Thompson, Inc., a corporation, its officers, agents, representatives and employees, in connection with the offering for sale or sale of any publication in interstate commerce do cease and desist from:

(a) Representing directly or otherwise that a person solving a problem presented in an advertisement and sending said solution to respondent will without being required to do any other thing be given a prize, award or reward when such representation is not true.

(b) Representing directly; or otherwise that respondent will give to the winner of any puzzle prize contest an extra award for "promptness" and inferentially or otherwise that said extra award is a separate and distinct award, when in fact said so-called extra award is included within the award advertised as the prize to be awarded.

(c) Representing directly or otherwise that the mere mailing of a correct solution of the problem presented in an advertisement of a puzzle prize contest will be sufficient to win the first or any other prize in said contest, when in truth and in fact said representation is untrue.

(d) The issuance of any writing to a person interested in any puzzle prize form of contest which purports to be a certificate or other evidence of recipient's right to a prize, or which states on the face of said writing "First Prize Certificate", at any time prior to the actual awarding of first prize.

(e) Publishing the rules of any puzzle prize contest in other than clear and readable type.

(f) Representing that a contestant in a puzzle prize contest has achieved a more advanced position toward success in said contest than he has in fact achieved.

(g) In any puzzle prize form of contest using any progressive plan to secure subscriptions to its publications unless every step or stage of the plan is clearly set forth in the initial or contact advertisement or first mailing to the prospect before any money or service is accepted, showing exactly what will be required of the prospect or what compensation or reward will be given for each act or payment required in contending for a prize, award, premium, gift, or reward.

It is further ordered, That the said respondent within 60 days from the date of service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF
ACME COTTON PRODUCTS COMPANY, INC.

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

Docket 2605. Complaint, Oct. 31, 1935—Order, Jan. 20, 1936

Consent order requiring respondent corporation, its officers, etc., in connection with the distribution, offer and sale of surgical supplies and absorbent cotton products in commerce between and among the several States and in the District of Columbia, to forthwith cease and desist from—

- (a) Using the words "Very Highest Grade Procurable", or words of similar import, in describing or designating the grade or grades of cotton used in the manufacture or processing of the various surgical supplies and absorbent cotton products sold by it until and unless the cotton so used in such manufacture or processing of said products is in truth and in fact the very highest grade of cotton procurable on the open market; or
- (b) Using the words "Sterilized", "Aseptic" or "Purified", or words of similar import in describing or designating such supplies and absorbent cotton products sold by it, or representing through use of such words or any other words of similar import or in any manner that such supplies and cotton products made and sold by it are bacteria-free when sold and placed in the channels of trade by it, until and unless said supplies and products are in fact bacteria-free when sold by it for public use and consumption and placed in the aforesaid channels.

Mr. J. T. Welch for the Commission.

Mr. William L. Carns, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission having reason to believe that Acme Cotton Products Co., Inc., a corporation, hereinafter designated as respondent, is now, and has been, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating the charges in that respect as follows:

PARAGRAPH 1. Respondent, Acme Cotton Products Co., Inc., is now, and has been for a period of more than two years, 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 at 245 Fifth Avenue in the city of New York in said State, and is now, and has been at all times mentioned herein, engaged in the