

Syllabus

IN THE MATTER OF
STANDARD DISTRIBUTORS, INC., AND LOUIS H. GELLARCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3065. Complaint, Feb. 19, 1937—Decision, May 13, 1937*

Where a corporation and an individual, president and manager thereof and director of its policies and practices, engaged in the distribution and sale of radios, food beaters, and food mixers, and of lottery schemes in connection with sale of aforesaid products to retail merchants in the various States—

- (a) Sold and distributed to retail merchants located at various points throughout the United States, in connection with sale and distribution of aforesaid products, a lottery scheme and sales plan and paraphernalia and devices necessary to the carrying out of said scheme and distribution of aforesaid products among the customers of such merchants, under a scheme or plan by which the chance holders of the two right keys, out of a large number which it supplied to its respective merchant customers, to unlock padlock supplied with said key assortments, received, as case might be, radio, food beater or food mixer, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale or distribution of said products in accordance with such plan, contrary to the established public policy of the United States and to the laws of many States, and in competition with many unwilling, by reason of said facts, to offer or sell their merchandise so as to involve game of chance, and who refrain therefrom;

With result that many retail merchants and prospective purchasers of merchandising and sales promotion plans, attracted by element of chance involved in sales method above described, were induced to purchase their said merchandise and participate in said plan, in preference to purchase of same or similar merchandise and in preference to purchase or use of other merchandising or sales promotion plans from competitors who do not use same or equivalent methods in sale or distribution of their goods, and with tendency and capacity unfairly to divert to themselves, because of use of said lottery or game of chance, trade and commerce from competitors who do not use same or equivalent methods, to exclude from said trade all competitors who are unwilling to and do not use such practices, lessen competition therein and tend to create a monopoly thereof in them and such other competitors as do use same or equivalent practices or methods, and to deprive purchasing public of benefits of free competition therein, and with tendency and capacity, further, unfairly to eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use such or any method involving game of chance or sale of chance thus to win such articles, as contrary to public policy or laws of many States, as above set forth, or as, in their opinion, detrimental to public morals and those of persons among whom chances are distributed;

- (b) Represented, through their agents and field representatives, to retailers that said merchandising and sales promotion plan or lottery scheme, sup-

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plied and sold by them together with devices or paraphernalia as hereinabove set forth, constituted a sales promotion plan devised by them to get their said radios, food beaters and food mixers before the public, and that retailers participating in such plan might do so without cost, through return of keys by retailers and payment therefor of one cent each, and held out numerous undertakings by them and advantages to retailers in such connection, including subsequent agency on said products by retailers and commission for sale thereof, and undertaking to furnish envelopes for retailers' customers as means of securing latter's names and addresses as list of prospective purchasers of articles in question, and undertaking to supply retailer with a large number of descriptive circulars and corps of girls to distribute same; and

- (c) Represented, through use of contract forms, circulars, or other printed matter, and through their said agents and field representatives, that the radios to be distributed were "Majestic";

Facts being said lottery plan or scheme, thus distributed by it, was not a sales promotion plan to get their products before purchasing public, but scheme to dispose thereof to retailers, they did not redeem keys returned by participating retailers as above set forth, or return to such retailers all or substantial part of the money paid by them, nor furnish envelopes, nor supply circulars or girls to distribute same as above set forth, but demanded and received substantial deposit upon a retailer's agreement to participate, shipped prize merchandise, paraphernalia, and devices C. O. D. without inspection by retailer before full payment, radios were inferior to the genuine "Majestic," as well and favorably known to the purchasing public, and were "gyp" products, and return of their money to demanding retailers upon discovery of aforesaid misrepresentations was refused and not forthcoming;

With effect of causing many retailers erroneously to believe that aforesaid representations were true, and of causing a substantial portion thereof to participate in such plan and purchase merchandise from them because of such erroneous belief, and of thereby diverting substantial trade in such commerce to them from their competitors who truthfully represent their merchandise and sales plans; to their injury and that of the public:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Joseph C. Fehr for the Commission.

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 Standard Distributors, Inc., a corporation, and Louis H. Gellar, an individual, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public inter-

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est, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Standard Distributors, Inc., is a corporation organized and operating under the laws of the State of New York. The respondent, Louis H. Gellar, an individual, is president of the respondent corporation, and manages and directs its policies and practices. Both respondents have their principal place of business located at 114 E. 32 St., in the city of New York, in the State of New York.

The respondents are now and for more than one year last past have been engaged in the business of distributing and selling radios and food beaters and mixers and have also been engaged in selling lottery schemes to retail merchants located at points in the various States of the United States. They cause and have caused their said products and merchandising plan, when so sold, to be transported from their principal place of business in the city of New York, State of New York, and distributed to purchasers thereof located in other States of the United States at their respective places of business. There is now, and has been for more than one year last past, a constant current of trade and commerce by said respondents, in such products and merchandising plan, between and among the States of the United States, and in the District of Columbia. In the course and conduct of their said business, respondents are in competition with other corporations, firms, partnerships, and individuals engaged in the manufacture, sale, and distribution of radios, food beaters and mixers, cards, trade cards, discount cards, premium cards, coupons, trading stamps, and merchandising plans, in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as aforesaid, the respondents sell and distribute to retail merchants located at various points throughout the United States, radios and food beaters and mixers, and, in connection therewith, sell and distribute to such merchants a lottery scheme and sales plan, whereby said radios and food beaters and mixers are distributed among the customers of such merchants by chance. Respondents sell and distribute to such merchants the paraphernalia and devices necessary to the carrying out of said lottery scheme and the distribution of said merchandise by chance, a part of which is a large number of keys, usually 4,500, and a padlock. One of said keys is distributed by the merchants to customers with each purchase of a given amount of merchandise, usually 25¢ worth. When a fixed number of said keys, usually the entire number furnished by the respondents, have been distributed

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among the customers of the merchants, the keys so distributed are collected by the merchant and fitted into the said padlock. Two of the keys so distributed will fit the padlock, and to the holders of each of these two keys the merchant delivers a radio or food beater and mixer, as the case may be, furnished by the said respondents. Said radios and food beaters and mixers are thus distributed to the customers of said retail merchants by lottery, gift enterprise, or game of chance.

Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its said radios and food beaters and mixers in accordance with the plan hereinabove set forth. The use by the respondents of said method in the distribution of its said radios and food beaters and mixers, and the sale of said radios and food beaters and mixers by and through the use thereof, is a practice contrary to the established public policy of the United States, and contrary to the laws of many of the States of the United States, and because of said facts many competitors of said respondents are unwilling to offer for sale or sell their merchandise so as to involve a game of chance, and such competitors refrain therefrom.

Many retail merchants who are prospective purchasers of radios and food beaters and mixers are attracted by the element of chance involved in respondents' sales method as above described, and are thereby induced to purchase respondents' merchandise, and participate in said plan, in preference to the same or similar merchandise from respondents' competitors, who do not use the same or equivalent methods in selling or distributing their merchandise.

PAR. 3. The use of the method above set forth by the respondents has a tendency and capacity unfairly to divert to the respondents, because of the use of said lottery or game of chance, trade and commerce from their competitors who do not use the same or equivalent methods; to exclude from said trade all competitors who are unwilling to and who do not use the same or equivalent methods; to lessen competition in said trade, and to tend to create a monopoly of said trade in respondents and such other competitors who use the same or equivalent methods; and to deprive the purchasing public of the benefits of free competition in said trade. The use of said methods by the respondents has the tendency and capacity unfairly to eliminate from said trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said method, or any method involving a game of chance or the sale of a chance to win radios or food beaters and mixers by chance, because such method is contrary to the public policy of the United States or to the laws of many of the States of the United States, or because they are of the

opinion that such method is detrimental to public morals and to the morals of the persons among whom said chances are distributed, or because of any or all of said reasons.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents represent to retailers that the lottery plan or scheme as above set out is a sales promotion plan, devised by the respondents to get their radios and food beaters and mixers before the public, and that the retailer participating in the plan may do so without cost, in that the respondents "sell" such retailer the plan, including the merchandise given as a prize, at a price which is equivalent to one cent per key for the keys furnished, and represent that they, when the prize merchandise has been distributed, will pay to the retailer the sum of one cent for each key returned to the respondents for refund, thereby returning to the retailer all of the money paid to the respondents, if all of the keys are returned, and that the retailer thereafter will have the agency for, and receive a commission on the sales of, respondents' radios and food beaters and mixers distributed in the particular territory where the retailer is located. Respondents further represent that they will furnish envelopes within which the customers of the retailer are to place their keys, and upon which they are to place their names and addresses, to be returned to the retailer so that the keys may be fitted into the padlock, thus securing for the retailer and respondents a list of prospective purchasers of radios and food beaters and mixers. Respondents further represent that they will supply to the retailer five thousand circulars descriptive of the plan, and will furnish a corps of girls to distribute such circulars. Respondents represent and imply that the radios to be distributed are "Majestic" radios, a trade name for radios manufactured by Grigsby-Grunow Company, and well and favorably known to the purchasing public, and a radio that is preferred by a substantial portion of the purchasing public to radios not of an established brand or sold under a recognized trade name.

PAR. 5. In truth and in fact, the lottery plan or scheme so distributed by the respondents is not a sales promotion plan to get their products before the purchasing public, but is a scheme to dispose of their said products to retailers, for the respondents fail and refuse to redeem the keys returned to them by retailers participating in the plan at the rate of one cent each, and to return to such retailers all, or a substantial part, of the money paid the respondents. In truth and in fact, the respondents do not furnish envelopes in which the keys are to be placed and returned to the retailers by customers, nor do they supply to retailers five thousand circulars and a corps of girls to distribute such circulars. The radios distributed by the respond-

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ents are not the brand of radios known to the purchasing public as "Majestic" radios, but are inferior to "Majestic" radios and of the type that is commonly known and referred to as a "gyp" radio, which means a radio not manufactured and distributed by a reputable and responsible concern.

Retailers have no opportunity to learn, prior to the time of full payment of the money to the respondents for their participation in the plan, that the representations made by the respondents in regard to the envelopes, circulars, and brand of radios furnished are not true, for respondents demand and receive a substantial deposit at the time the retailer agrees to participate in the plan, and the prize merchandise, paraphernalia, and devices used in the plan are shipped to the retailer cash on delivery, and full payment is made by the retailer before inspection. Respondents fail and refuse to return to retailers the moneys paid when discovery of the misrepresentations of the respondents is made, and a demand is made upon the respondents for such refund.

PAR. 6. The aforesaid representations and implications of the respondents are false and misleading, and have the tendency and capacity to, and do, cause many retailers erroneously to believe that said representations are true, and cause a substantial portion of such retailers to participate in said plan and to purchase merchandise from the said respondents, because of such erroneous belief, thereby unfairly diverting substantial trade in said commerce to the respondents from their competitors, who truthfully represent their merchandise and sales plans, to the injury of said competitors in said commerce, and to the injury of the public.

PAR. 7. The acts, practices, and methods of the respondents, as hereinabove alleged, are all to the prejudice of the public and the respondents' said competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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, on the 19th day of February 1937, issued and served its complaint in this proceeding upon respondents, Standard Distributors, Inc., a corporation, and Louis H. Gellar, an indi-

vidual, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint (the respondents never having filed answer thereto), a stipulation as to the facts was entered into by and between the respondents and W. T. Kelley, Chief Counsel for the Commission, by which it was agreed that, subject to the approval of the Commission, the statement of facts so agreed upon should be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto; and by which stipulation it was further agreed that the Commission might proceed upon said statement of facts to issue its report stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs. Said stipulation as to the facts has been duly filed in the office of the Commission and approved by it. Thereafter the proceeding came on for final hearing before the Commission on said complaint, and the statement of facts as agreed upon in lieu of testimony, briefs and argument having been waived, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

PARAGRAPHS 1. The respondent, Standard Distributors, Inc., is a corporation organized and operating under the laws of the State of New York. The respondent, Louis H. Gellar, an individual, is president of the respondent corporation, and manages and directs its policies and practices. Both respondents have their principal place of business located at 114 E. 32nd Street, in the city of New York, in the State of New York.

The respondents are now, and for more than one year last past have been, engaged in the business of distributing and selling radios, food beaters and food mixers and have also been engaged in selling lottery schemes in connection with the sale of said products to retail merchants located at points in various States of the United States. They cause and have caused their said products and merchandising plan, when so sold, to be transported from their principal place of business in the city of New York, State of New York, and distributed to purchasers thereof located in other States of the United States at their respective places of business. There is now, and has been for more than one year last past, a constant current of trade and commerce by said respondents, in such products and merchandising plan, between and among the States of the United States, and

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in the District of Columbia. In the course and conduct of their said business, respondents are in competition with other corporations, firms, partnerships, and individuals engaged in the manufacture, sale, and distribution of radios, food beaters and food mixers, and also engaged in the manufacture of cards, trade cards, discount cards, premium cards, coupons, trading stamps, and merchandising plans, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as aforesaid, the respondents sell and distribute to retail merchants located at various points throughout the United States, radios, food beaters and food mixers, and, in connection therewith, sell and distribute to such merchants a lottery scheme and sales plan, whereby said radios, food beaters and food mixers are distributed among the customers of such merchants by chance. Respondents sell and distribute to such merchants the paraphernalia and devices necessary to the carrying out of said lottery scheme and the distribution of said merchandise by chance, a part of which is a large number of keys, usually 4,500, and a padlock. One of said keys is distributed by the merchants to customers with each purchase of a given amount of merchandise, usually 25¢ worth. Since on or about May 1, 1936, the said sales promotion plan and the form of contract incident thereto was changed so as to provide that the retail merchant purchasing said sales promotion plan would distribute said keys to customers without additional charge. When a fixed number of said keys, usually the entire number furnished by the respondents, have been distributed among the customers of the merchants, the keys so distributed are collected by the merchant and fitted into the said padlock. Two of the keys so distributed will fit the padlock, and to the holders of each of these two keys the merchant delivers a radio, food beater, or food mixer, as the case may be, furnished by the said respondents. Said radios, food beaters, and food mixers are thus distributed to the customers of said retail merchants by lottery, gift enterprise, or game of chance.

Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale or distribution of its said radios, food beaters and food mixers in accordance with the plan hereinabove set forth. The use by the respondents of said method in the sale and distribution of its said radios, food beaters and food mixers is a practice of the sort that is contrary to the established public policy of the United States, and contrary to the laws of many of the States of the United States, and because of said facts many competitors of said respondents are unwilling to offer for sale or

sell their merchandise so as to involve a game of chance, and such competitors refrain therefrom.

Many retail merchants who are prospective purchasers of merchandising plans and sales promotion plans are attracted by the element of chance involved in respondents' sales method as above described, and are thereby induced to purchase respondents' merchandise, and participate in said plan, in preference to purchasing the same or similar merchandise and in preference to purchasing or using other merchandising or sales promotion plans from respondents' competitors, who do not use the same or equivalent methods in selling or distributing their merchandise.

PAR. 3. The use of the method above set forth by the respondents has a tendency and capacity unfairly to divert to the respondents, because of the use of said lottery or game of chance, trade and commerce from their competitors who do not use the same or equivalent methods, to exclude from said trade all competitors who are unwilling to and who do not use the same or equivalent methods, to lessen competition in said trade, and to tend to create a monopoly of said trade in respondents and such other competitors who use the same or equivalent methods, and to deprive the purchasing public of the benefits of free competition in said trade. The use of said methods by the respondents has the tendency and capacity unfairly to eliminate from said trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said method, or any method involving a game of chance or the sale of a chance to win radios, food beaters or food mixers by chance, because such method is contrary to the public policy of the United States or to the laws of many of the States of the United States or because they are of the opinion that such method is detrimental to public morals and to the morals of the persons among whom said chances are distributed, or because of any or all of said reasons.

PAR. 4. In the course and conduct of respondents' business, as aforesaid, the agents and field representatives of the said respondents, in the course of their employment have from time to time represented to retailers that the lottery plan or scheme as above set out is a sales promotion plan, devised by the respondents to get their radios, food beaters and food mixers before the public, and that the retailer participating in the plan may do so without cost, in that the respondents "sell" such retailer the plan, including the merchandise given as a prize, at a price which is equivalent to one cent per key for the keys furnished, and represent that respondents, when the prize merchandise has been distributed, will pay to the retailer the sum of one cent for each key returned to the respondents for refund, thereby return-

ing to the retailer all of the money paid to the respondents, if all of the keys are returned, and that the retailer thereafter will have the agency for, and receive a commission on the sales of, respondents' radios, food beaters and food mixers distributed in the particular territory where the retailer is located. Respondents' said agents and field representatives, in the course of their employment further represent that respondents will furnish envelopes within which the customers of the retailers are to place their keys, and upon which they are to place their names and addresses, to be returned to the retailer so that the keys may be fitted into the padlock, thus securing for the retailer and respondents a list of prospective purchasers of radios, food beaters, and food mixers. Respondents' said agents and field representatives, in the course of their employment, further represent that respondents will supply to the retailer five thousand circulars descriptive of the plan, and will furnish a corps of girls to distribute such circulars.

Respondents further represent through the use of contract forms, circulars, and other printed matter, and through their agents and field representatives that the radios to be distributed are "Majestic" radios. Said word "Majestic" is a trade name for radios manufactured by Grigsby-Grunow Company, which are well and favorably known to the purchasing public, and preferred by a substantial portion of the purchasing public to radios not of an established brand or sold under a recognized trade name.

PAR. 5. In truth and in fact, the lottery plan or scheme so distributed by the respondents is not a sales promotion plan to get their products before the purchasing public, but is a scheme to dispose of their said products to retailers. The respondents do not redeem the keys returned to them by retailers participating in the plan at the rate of one cent each, and do not return to such retailers all, or a substantial part, of the money paid the respondents. In truth and in fact, the respondents do not furnish envelopes in which the keys are to be placed and returned to the retailers by customers, nor do they supply to retailers 5,000 circulars and a corps of girls to distribute such circulars. The representations made by the respondents in regard to the envelopes, circulars and brand of radios furnished are not true, for respondents demand and receive a substantial deposit at the time the retailer agrees to participate in the plan, and the prize merchandise, paraphernalia, and devices used in the plan are shipped to the retailer cash on delivery, and full payment is made by the retailer before inspection.

The radios distributed by the respondents are not the brand of radios known to the purchasing public as "Majestic," manufactured

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by Grigsby-Grunow Company. Said so-called "Majestic" radios are inferior to the real MAJESTIC radios manufactured by the Grigsby-Grunow Company and are of the type that is commonly known as a "gyp" radio, which means a radio not manufactured and distributed by a reputable and responsible firm.

Respondents fail and refuse to return to retailers the moneys paid when discovery of the misrepresentations of the said respondents' agents and field representatives is made, and a demand is made upon the respondents for such refund.

PAR. 6. The aforesaid misrepresentations of respondents' said agents and field representatives are false and misleading, and have the tendency and capacity to, and do, cause many retailers erroneously to believe that said representations are true, and cause a substantial portion of such retailers to participate in said plan, and to purchase merchandise from the said respondents, because of such erroneous belief, thereby unfairly diverting substantial trade in said commerce to the respondents from their competitors, who truthfully represent their merchandise and sales plans, to the injury of said competitors in said commerce, and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondents, Standard Distributors, Inc., a corporation, and Louis H. Gellar, an individual, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (the respondents never having filed answer thereto), and the agreed Stipulation of Facts entered into between the respondents herein, Standard Distributors, Inc., a corporation, and Louis H. Gellar, an individual, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of an Act of Congress, approved September

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26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Standard Distributors, Inc., a corporation, its officers, representatives, agents, and employees, and the respondent, Louis H. Gellar, individually, and as president of the aforesaid Standard Distributors, Inc., in connection with the sale, offering for sale, or distribution of radios, food beaters, food mixers, or other articles of merchandise in interstate commerce, cease and desist from:

1. Furnishing, supplying, or selling any device or paraphernalia which is to be used, or which may be used, in the distribution of said articles of merchandise to the public by means of lottery scheme, lottery sales plan, game of chance, or gift enterprise;

2. Furnishing, supplying to, or selling retail merchants paraphernalia and devices, a part of which is a large number of keys and a padlock, one of which said keys is to be distributed by said merchants to each of their customers with the purchase of a given amount of merchandise, and when a fixed number of such keys has been so distributed, said keys are to be collected by the said merchant and fitted, or tried to be fitted, into the said padlock, a small number of which keys only will fit or unlock said padlock, the holders of such keys being entitled to receive and to be given without additional charge one of said radios, food mixers, food beaters, or other articles of merchandise.

It is further ordered, That the respondent, Standard Distributors, Inc., a corporation, its officers, representatives, agents, and employees, and the respondent, Louis H. Gellar, individually, and as president of the aforesaid Standard Distributors, Inc., in connection with the sale, offering for sale, or distribution of merchandising and sales promotion plans or lottery schemes, cease and desist from:

1. Supplying to, or placing in the hands of, retail merchants, devices or paraphernalia which are to be used, or which may be used, to promote or increase the local sales of such retail merchandise by means of a lottery, gift enterprise, or game of chance;

2. Supplying to, or placing in the hands of retail merchants, a padlock and a number of keys, a small number of which keys only will unlock said padlock for use, or which are to be used, for increasing the sales of said retail merchants by means of a lottery scheme, gift enterprise, or game of chance.

And it is further ordered, That the said respondents, Standard Distributors, Inc., a corporation, its officers, agents, and employees, and Louis H. Gellar, individually and as president of the aforesaid Standard Distributors, Inc., in connection with the sale and offering for

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sale by them of radios in interstate commerce, do forthwith cease and desist from:

Representing, through use of the word "Majestic" as a brand name for radios, or through any other means of device, or in any other manner, that the radios offered for sale and sold by them are "Majestic" radios, or are made by Grigsby Grunow Company, until and unless they are actually offer for sale and sell "Majestic" radios made by Grigsby Grunow Company.

And it is hereby further ordered, That the said respondents shall within 60 days from the date of the service upon them of this order file with this Commission a report, in writing, setting forth the manner and form in which they shall have complied with this order.

IN THE MATTER OF
HOGAN ADVERTISING COMPANY, TRADING AS THE
SENDOL COMPANY

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

Docket 2881. Complaint, July 24, 1936—Decision, May 14, 1937¹

Where a corporation engaged in the sale and distribution of a proprietary medicine designated and known as "Sendol" and as alleged remedy for colds, headaches, and pains; in advertising the same in newspapers, magazines, pamphlets, by radio, and through testimonials and otherwise—

- (a) Falsely represented that said product was a safe medicine to administer in all cases and was a safe remedy to give to children; and
- (b) Falsely represented that it was effective and reliable in all cases of muscular, rheumatic or neuralgic aches and pains, and afforded quick relief in all cases of headaches, colds, aches or pains, and was an efficacious remedy in cases of nervousness or nervous exhaustion;

With effect of misleading and deceiving substantial portion of purchasing public into the erroneous belief that said representations were true, and with result that consuming public, as a direct consequence of mistaken and erroneous beliefs induced by such false and misleading statements and representations, purchased substantial volume of its said product, and trade was unfairly diverted to it from those of its competitors engaged in sale and distribution of products prepared for and sold as remedies for colds, headaches, and muscular aches and pains, and who truthfully advertise and represent the therapeutic value, and the effects to be derived from the use of, their said products; to the substantial injury of competition in commerce:
Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Robert S. Hall*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Terence M. O'Brien, of Kansas City, Mo., 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 the Hogan Advertising Company, a corporation, doing business under the firm name and style of the Sendol Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would

¹ Order published, as modified, as of May 29, 1937.