

Syllabus

IN THE MATTER OF

CARLTON, INC., IN ITS OWN NAME AND RIGHT AND
TRADING AS CARLTON SALES COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3181. Complaint, July 21, 1937—Decision, Aug. 11, 1937

Where a corporation engaged in offer and sale of various articles of men's and ladies' wear, including men's shirts, pajamas, neckties, and hosiery, and ladies' dresses, lingerie, and hosiery, to purchasers in the various States; in soliciting sale of and in selling and distributing its merchandise in interstate commerce—

Furnished various devices and plans of merchandising involving operation of games of chance, gift enterprises, or lottery schemes under which said merchandise was distributed to ultimate consumers thereof wholly by lot or chance, and distribution to public by it, through the mails and in interstate commerce, of certain literature, instructions, and sales outfits, including paper push cards, order blanks and advertisements depicting its said merchandise, and circulars explaining its plan of selling same and of allotting it as premiums or prizes to operators of push cards in question, and under which plans or methods, and in accordance with explanatory legends contained on said cards, customer making selection of one of a number of feminine names thereon contained paid up to certain specified maximum amount for a chance or received chance free, in accordance with particular number pushed from disc opposite name selected, and card's aforesaid legend, and under which customer received, for his free or paid-for chance as above explained, one of articles being thus disposed of, in accordance with his success or failure in selecting name corresponding to that concealed under master disc, and last punch also received one of articles being thus disposed of, value of which, in any case, was in excess of cost of chance or push, and thereby conducted lotteries, or placed in hands of others means of conducting lotteries, in sale of its merchandise in accordance with such sales plan involving game of chance or sale of a chance to procure its merchandise free or at a price much less than normal retail price thereof, in violation of public policy long recognized in the common law and criminal statutes and contrary to an established public policy of the United States Government, and in competition with many who sell and distribute merchandise but are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance or any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by said method and by element of chance involved in sale as above set forth, and were thereby induced to buy and sell its merchandise in preference to that offered and sold by said competitors who do not use same or equivalent method, and with effect, by reason of said game of chance, of diverting trade and custom to it from its said competitors who do not use such or equivalent method:

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

Mr. Henry C. Lank and Mr. P. C. Kolinski 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 Carlton, Inc., a corporation, in its own name and right and trading as Carlton Sales Company, hereinafter referred to as respondent, has been and is 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 interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located at 17 North Wabash Avenue, Chicago, Ill. Respondent advertises, offers for sale, and sells its merchandise, hereinafter referred to, under its own corporate name, and also advertises, offers for sale, and sells its merchandise under the trade name of Carlton Sales Company. Respondent is now, and for some time last past has been, engaged in offering for sale and selling various articles of men's and ladies' wear, including men's shirts, pajamas, neckties, and hosiery, and ladies' dresses, lingerie, and hosiery, to purchasers thereof located in various States of the United States. It causes said merchandise when sold to be shipped or transported from its principal place of business in the State of Illinois into and through other States of the United States to the purchasers thereof at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the States of the United States. In the course and conduct of its business, respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing its merchandise in interstate commerce, has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes

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by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The methods and practices adopted and used by respondent are substantially as follows:

Respondent distributes and has distributed to the public through the United States mails in interstate commerce certain literature, instructions, and sales outfits, including paper push cards, order blanks, and advertisements containing illustrations of its merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of the push cards. Said push cards bear a number of feminine names with a blank space opposite each for writing in the name of the customer. Said push cards have a corresponding number of partially perforated discs marked "PUSH," below each of which is printed one of the feminine names printed alphabetically elsewhere on the cards. Concealed within each disc is a number which is disclosed when the disc is pushed or separated from the cards. The push cards have a master disc, concealed within which is one of the feminine names appearing elsewhere on the said cards. The push cards bear printed legends or instructions, one of which is as follows:

(MASTER DISC)

2-3-10-20-30-35-40-50

Are Free Numbers

and

Have Equal Chance

 Lucky Name Under Seal

and

Last Name Punched

Each Receives Choice

of

One of the Following Items

LADIES

Item A is 1 Lovely Dress

Item B is 1 Pure Silk Slip

Item C is 3 Pair French Panties

Item D is 2 Pair Pure Silk Ringless Full Fashioned Hose

MEN

Item F is 1 Broadcloth Shirt

Item G is 1 Fine Pajamas

Item H is 2 Fine Silk Ties

Item K is 4 Pair Silk Sox

Pay What You Draw 1¢ to 15¢

Numbers Over 15 Pay Only 15¢

Write Your Name Opposite Name You Select on Reverse Side.

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The other push cards bear similar legends, but vary in detail. Such variations cover the merchandise to be distributed, the quantity thereof, the price to be paid therefor, and the number of pushes which are free. Said articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is of a greater value than the cost of a single push from said push cards. Sales of merchandise by means of said push cards are made in accordance with the specified legends or instructions. The fact as to whether a customer receives a specified article of merchandise or nothing for the amount paid is thus determined wholly by lot or chance, and the fact as to whether a customer receives his "PUSH" free, or pays an amount from 1¢ to 15¢ therefor, is also determined wholly by lot or chance.

PAR. 3. Respondent, in selling its said merchandise in connection with the aforesaid push cards, conducts lotteries or places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The sale of respondent's merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondent's merchandise free or at a price much less than the normal retail price thereof. The use by respondent of said method in the sale of its merchandise, and the sale of its merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States.

PAR. 4. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to and does divert trade and custom to respondent from its said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid acts and practices of respondent are all to the injury and prejudice of the public and respondent's competitors, as hereinabove alleged. Said acts and practices 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 July 21, 1937, issued and on July 22, 1937, served its complaint in this proceeding upon the respondent, Carlton, Inc., a corporation, in its own name and right and trading as Carlton Sales Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, respondent filed answer thereto dated July 28, 1937, admitting the statements and allegations of the complaint to be true. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, and the Commission, having duly considered the matter and being now 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:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located at 17 North Wabash Avenue, Chicago, Ill. Respondent advertises, offers for sale, and sells its merchandise, hereinafter referred to, under its own corporate name, and also advertises, offers for sale, and sells its merchandise under the trade name of Carlton Sales Company. Respondent is now, and for some time last past has been, engaged in offering for sale and selling various articles of men's and ladies' wear, including men's shirts, pajamas, neckties, and hosiery, and ladies' dresses, lingerie, and hosiery, to purchasers thereof located in various States of the United States. It causes said merchandise when sold to be shipped or transported from its principal place of business in the State of Illinois into and through other States of the United States to the purchasers thereof at their respective points of location. There is now, and has been for some

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time last past, a course of trade and commerce by said respondent in such merchandise between and among the States of the United States. In the course and conduct of its business, respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing its merchandise in interstate commerce, has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The methods and practices adopted and used by respondent are substantially as follows:

Respondent distributes and has distributed to the public through the United States mails in interstate commerce certain literature, instructions, and sales outfits, including paper push cards, order blanks, and advertisements containing illustrations of its merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of the push cards. Said push cards bear a number of feminine names with a blank space opposite each for writing in the name of the customer. Said push cards have a corresponding number of partially perforated discs marked "PUSH," below each of which is printed one of the feminine names printed alphabetically elsewhere on the cards. Concealed within each disc is a number which is disclosed when the disc is pushed or separated from the cards. The push cards have a master disc, concealed within which is one of the feminine names appearing elsewhere on the said cards. The push cards bear printed legends or instructions, one of which is as follows:

(MASTER DISC)

2-3-10-20-30-35-40-50
Are Free Numbers
and
Have Equal Chance

Lucky Name Under Seal
and
Last Name Punched
Each Receives Choice
of
One of the Following Items

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LADIES

- Item A is 1 Lovely Dress
- Item B is 1 Pure Silk Slip
- Item C is 3 Pair French Panties
- Item D is 2 Pair Pure Silk Ringless Full Fashioned Hose

MEN

- Item F is 1 Broadcloth Shirt
 - Item G is 1 Fine Pajamas
 - Item H is 2 Fine Silk Ties
 - Item K is 4 Pair Silk Sox
- Pay What You Draw 1¢ to 15¢
Numbers Over 15 Pay Only 15¢

Write Your Name Opposite Name You Select On Reverse Side

The other push cards bear similar legends, but vary in detail. Such variations cover the merchandise to be distributed, the quantity thereof, the price to be paid therefor, and the number of pushes which are free. Said articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is of a greater value than the cost of a single push from said push cards. Sales of merchandise by means of said push cards are made in accordance with the specified legends or instructions. The fact as to whether a customer receives a specified article of merchandise or nothing for the amount paid is thus determined wholly by lot or chance, and the fact as to whether a customer receives his "PUSH" free, or pays an amount from 1¢ to 15¢ therefor, is also determined wholly by lot or chance.

PAR. 3. Respondent, in selling its said merchandise in connection with the aforesaid push cards, conducts lotteries or places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The sale of respondent's merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondent's merchandise free or at a price much less than the normal retail price thereof. The use by respondent of said method in the sale of its merchandise, and the sale of its merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States.

PAR. 4. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above

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found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to, and does, divert trade and custom to respondent from its said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, Carlton, Inc., a corporation, in its own name and right and trading as Carlton Sales Company, are to the prejudice of the public and of respondent's 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 on the complaint of the Commission and the answer of respondent dated July 28, 1937, admitting the statements and allegations of the complaint to be true, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated 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."

It is ordered, That the respondent, Carlton, Inc., a corporation, in its own name and right and trading as Carlton Sales Company, its officers, agents, representatives, and employees, in connection with the offering for sale, sale and distribution of merchandise in interstate commerce, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others pushcards or similar devices for the purpose of enabling such persons to dispose of or sell such merchandise by the use thereof.

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2. Mailing, shipping, or transporting to members of the public pushcards or similar devices so prepared or printed as to enable said persons to sell or distribute such merchandise by the use thereof.

3. Selling or otherwise disposing of merchandise by the use of pushcards or similar devices.

4. In any manner selling, or otherwise disposing of merchandise, free of charge, or at varying prices, depending upon lot or chance.

It is further ordered, That the respondent, Carlton, Inc., a corporation, in its own name and right and trading as Carlton Sales Company, shall, within 30 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF

LIONEL DISTILLED PRODUCTS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2417. Complaint, May 27, 1935—Decision, Aug. 12, 1937

Where a corporation engaged, as rectifier and wholesaler of liquors, in purchasing and bottling whiskies, gins, and other spirituous beverages, and in making (1) gin, with a still which it used therefor, by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and (2) cordials of various kinds by processes of distillation, percolation, and maceration, and compounding, and in using small still in connection with some of aforesaid, and in selling its aforesaid various products to wholesaler and retailer purchasers in various States and in the District of Columbia, in substantial competition with those engaged in manufacture by distillation of whiskies, gins, and other spirituous beverages and in sale of same in trade and commerce among the various States and in said District, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and similarly selling same, and including among said competitors those who, as manufacturers and distillers from mash, wort, or wash of whiskies, gins, and other spirituous beverages sold by them, truthfully use words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names and on their stationery and advertising and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in purchasing, rectifying, blending, and bottling such various products, do not use aforesaid words as above set forth—

- (a) Represented, through use of words "Distilled Products" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, and through such statements on its stationery as "Ask for Lionel Products" and through labels reading "Bottled by Lionel Distilled Products, Inc.," or "Made by" or "Prepared by" Lionel Distilled Products, to its customers, and furnished them with a means of representing to their vendees, both retailers and ultimate consuming public, that the whiskies, gins, and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not distill said various beverages, thus bottled, labeled, sold, and transported by it, through process of original and continuous distillation from mash, wort, or wash and through continuous closed pipes and vessels until manufacture is complete, as long definitely understood from words "Distilled Products" used in connection with liquor industry and products thereof, in the trade and by the ultimate purchasing public, and did not own, operate, or control any place or places where such beverages are made by aforesaid process, and was not a distiller, for the

¹ Count 2 of the complaint, under National Industrial Recovery Act, dismissed.