

IN THE MATTER OF
WORTHMORE SALES PROMOTION SERVICE,
INCORPORATED

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

Docket 2946. Complaint, Oct. 15, 1936—Decision, Jan. 4, 1938

Where a corporation engaged in manufacture and printing of sales promotion or trade cards, arranged for recording or punching out thereon purchases of customers or consumers to whom distributed, and in sale and distribution thereof to retail merchants in the various States, in competition with concerns making and distributing trading stamps and other trade booster cards which did not involve lot or chance feature, and including 99¢ and other price concession cards and premium coupons—

Sold, distributed, and supplied cards, as aforesaid described, so designed and arranged as to confer upon the customer-holders of such used-up or punched-out cards amounts in trade ranging from 20¢ to \$5.00 or \$10.00, in accordance with concealed legend under card's secret panel and particular style of card employed, and furnished therewith, to retail merchant customers, various display posters and advertisements and card punch, for their use in distributing and making use of such cards, and thereby knowingly supplied to and placed in the hands of others means of operating lotteries, games of chance, and gift enterprises in the use, without alteration or rearrangement, of such cards, sales booster plans or schemes, in competition with those who are opposed to such methods and refrain therefrom;

With effect of inducing many of the consuming public to deal with or purchase merchandise from retailers using its aforesaid cards in preference to those using sales booster plans or schemes or devices which have connected therewith no element of lot or chance, and with result that many retailers were induced to buy its said cards in preference to those of competitors, such refraining competitors as aforesaid were thereby put to competitive disadvantage, sale of competing sales plans or sales promotion schemes or premium cards or coupons by competitors was injuriously affected, to the prejudice and injury of the public and competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Nash & Donnelly, of Chicago, Ill., 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 Worthmore Sales Promotion Service, Incorporated, a corporation, 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. The respondent, Worthmore Sales Promotion Service, Incorporated, is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 6256 Champlain Avenue, Chicago, Ill. The respondent is now and for more than one year last past has been engaged in the manufacture of sales promotion cards and in the sale and distribution thereof to retail merchants, located at points in the various States of the United States, and causes and has caused its said products, when so sold, to be transported from its principal place of business in the city of Chicago, State of Illinois, to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for more than one year last past, a course of trade and commerce by said respondent in such sales promotion cards between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and with individuals engaged in the manufacture of sales promotion cards, trade cards, discount cards, premium cards, coupons, and trading stamps, and in the sale and distribution thereof 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 sells and has sold cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise when used by retail merchants in promoting and increasing sales of their merchandise to the consuming public.

The respondent manufactures and distributes several groups of sales promotion cards, but they all involve the same lottery scheme or gift enterprise and vary only in detail. The sales promotion cards in one such group are herein described for the purpose of showing

[illegible]

When Properly Punched, Good for
20 Cents
IN TRADE

NO BLANKS—AWARDS UP TO \$5.00

BUY ALL YOUR NEEDS FROM US—YOU MAY BE A BIG WINNER
(MERCHANT'S ADVERTISEMENT)

Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 3. The retail merchants to whom respondent sells assortments of said sales promotion cards, distribute the same to their customers and prospective customers and honor the awards as shown under the secret panel of said cards. One method advocated or suggested by respondent and used by a substantial number of retail merchant customers is as follows: The cards are distributed free to customers and prospective customers of said retail merchants and when purchases are made, punches corresponding to the amount of such purchases are made around the margin of said card and when all the numbers around the margin of said card are punched, the secret panel is opened and the customer is entitled to merchandise of the said merchant in the amount shown by the legend under the said secret panel, free of charge.

PAR. 4. There are in competition with respondent, various manufacturers and distributors of sales promotion cards, premium cards, price concession cards, coupons, and trading stamps, which when used by retail merchants do not involve a lottery scheme or gift enterprise. By reason of the lottery scheme or gift enterprise connected with the distribution and use of the respondent's said cards, many retail merchants are induced to purchase respondent's said cards in preference to the devices manufactured and distributed by respondent's competitors and trade is thus diverted to respondent from its said competitors.

PAR. 5. The consuming public are induced to deal with or purchase merchandise from retail merchants, using respondent's cards in preference to retail merchants using the devices of respondent's competitors, because of the lottery scheme or gift enterprise connected with respondent's said cards. By reason thereof, retail merchants are induced to purchase respondent's said cards in preference to devices of respondent's competitors and trade is thus diverted to respondent from its said competitors.

PAR. 6. The use by the respondent of said method in designing and arranging its said cards 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. The use by respondent of said method has a dangerous tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent of similar element of chance, lottery scheme, or gift enterprise.

Many persons, firms, and corporations who make and sell various cards or devices for promoting or increasing sales of retail merchants are unwilling to offer for sale or sell cards or devices so designed and arranged as above alleged or otherwise designed and arranged as to involve a game of chance, lottery scheme or gift enterprise and such competitors refrain therefrom.

PAR. 7. The respondent, in shipping the said cards to its customers, assorts and packs them so that such customers know the amount of award stated under the secret panel, thus the retail merchants to whom respondent sells its cards are enabled to perpetrate a fraud on their customers. This practice has the capacity and tendency to induce and does induce retail merchants to purchase respondent's said cards in preference to cards or devices of respondent's competitors.

PAR. 8. The aforesaid method, acts, and practices of the respondent are all to the prejudice of the public and respondent's competitors, as hereinabove alleged. Said method, acts, and practices constitute unfair methods of competition in 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.

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 October 15, 1936, issued and served complaint in this proceeding upon respondent, Worthmore Sales Promotion Service, Incorporated, 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, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank, counsel for the Commission, and in opposition thereto by John A. Nash, counsel for the respondent, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral argument of counsel aforesaid; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this

FINDINGS AS TO THE FACTS

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells, and has sold, cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise when used by retail merchants in promoting and increasing sales of the merchandise of such retail merchants to the consuming public. The respondent, at the time it commenced business, manufactured and distributed a sales promotion or trade card, the front of which was substantially as follows:

5 5

15 15

KEEP THIS TREASURE CARD
YOU MAY WIN up to \$5.00

\$	Under this SECRET PANEL IS YOUR AWARD Warning! Void if Opened	\$
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NO BLANKS—EVERY CARD A WINNER
(Read Rules On Other Side)

15 15

**When Properly Punched, Good for
20 Cents
IN TRADE**

The secret panel referred to on the said card was partially perforated to indicate where it might be opened, but until said panel was opened, the legend thereunder was effectively concealed from the holder of said card. The said legends under the secret panel varied in amount from 20¢ to \$5.00. Thus, the amount which the holder of said card would receive in trade was determined wholly by lot or chance.

On the reverse or back of said sales promotion cards was the following:

NO BLANKS—AWARDS UP TO \$5.00

These awards are given in appreciation of your patronage. When this card is fully punched, present same to us intact. We will then open the SECRET PANEL. You will receive the award printed thereon ABSOLUTELY FREE. SHOULD YOU OPEN THE SECRET PANEL, THIS CARD BECOMES VOID.

BUY ALL YOUR NEEDS FROM US—YOU MAY BE A BIG WINNER

(MERCHANT'S ADVERTISEMENT)

This particular card was discontinued some time prior to the taking of testimony in this case. The respondent, however, has manufactured and distributed, and is manufacturing and distributing, various cards identical in principle but varying somewhat in detail. On some of the cards which the respondent manufactures and distributes the "secret panel" is referred to by the respondent as "mystery star." Other cards are referred to by respondent as "play ball" coupons.

Some of the cards manufactured and distributed by the respondent provide for the recording and sale of \$10.00 worth of merchandise by the numbers arranged around the border of the card and provide for the winning of amounts up to \$10.00 by the legends under the secret panel. In some groups, the legends begin with 20¢ and go to \$10.00 and in other groups they begin with 40¢ and go to \$10.00.

Respondent furnishes its retail merchant customers with various display posters and advertisements to be used by said retail merchants in distributing and using said cards, and also furnishes such customers with a punch for punching or cancelling the numbers arranged around the border of the said cards.

The retail merchants to whom respondent sells, and has sold, assortments of said sales promotion cards or trade cards, distribute the same to their customers and prospective customers, and honor the awards as shown under the secret panel of said cards. One method advocated or suggested by respondent and used by a substantial number of retail merchant customers of respondent is as follows: The cards are distributed free to customers and prospective

customers of said retail merchants and when purchases are made numbers corresponding to the amount of such purchase are punched from the margin of said card and when all the numbers around the margin of said card are punched the secret panel is opened and the customer is entitled to merchandise of the said merchant in the amount shown by the legend under the secret panel, without additional charge.

PAR. 3. Employees or officers of concerns manufacturing and distributing trading stamps and other trade booster cards not involving a lot or chance feature were called as witnesses and testified in this matter. The Commission finds that manufacturers and distributors of trading stamps, 99¢ and other price concession cards, and premium coupons are in competition with the respondent and the business of such concerns is competitive with the business of the respondent. Retail merchants desiring to install some plan by which to boost sales of their merchandise cannot use more than one type of sales promotion or price concession card or coupon at the same time and retail merchants purchasing respondent's merchandise are not then in the market for other trade booster schemes or plans which do not involve a lot or chance feature.

The lot or chance feature connected with respondent's cards has the capacity to and does induce many of the consuming public to deal with or purchase merchandise from retail merchants using respondent's cards in preference to retail merchants using the sales booster schemes or plans or devices of respondent's competitors which have connected with them no element of lot or chance and by reason of this last mentioned fact many retail merchants are induced to purchase respondent's said cards in preference to devices or plans of respondent's competitors, and trade is thus diverted to respondent from its said competitors.

PAR. 4. The use of respondent's cards by retail merchants by the methods described herein constitutes a lottery, game of chance, or gift enterprise. The Commission finds that competitors of respondent are opposed to such methods and refrain therefrom. Such competitors are thereby put to a competitive disadvantage.

PAR. 5. The respondent, in selling and distributing said cards, has knowledge that they are, and will be, used by its customers in the operation of a lottery, game of chance, or gift enterprise. The respondent thus supplies to and places in the hands of others the means of operating lotteries, games of chance and gift enterprises. The sale and distribution of such cards by the respondent injuriously affects the sale of competing sales plans or sales promotion schemes or premium cards or coupons by competitors of respondent, and the

use of such methods by the respondent in the sale and distribution of its merchandise is prejudicial and injurious to the public and to respondent's competitors, and is a restraint upon, and a detriment to, the freedom of fair and legitimate competition.

PAR. 6. The assortments purchased from the respondent by retail dealers are usually of 500 cards, although it is not unusual for a merchant to purchase an assortment consisting of 1,000 cards and while the exact extent of respondent's business was not shown, an officer of the respondent was called and testified as a witness, and the Commission finds that respondent had approximately 125 part-time salesmen and that at the time of the hearing respondent was receiving from 350 to 400 orders per month; that respondent's customers are located in practically all of the States of the United States.

CONCLUSION

The aforesaid acts and practices of respondent, Worthmore Sales Promotion Service, Incorporated, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation 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 answer of respondent, testimony and other evidence in support of the allegations of the complaint and in opposition thereto taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, briefs of counsel filed herein and oral arguments of Henry C. Lank, counsel for the Commission, and John A. Nash, counsel for the respondent, 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 Worthmore Sales Promotion Service, Incorporated, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of sales promotion cards or trade cards in interstate commerce, do cease and desist from:

1. Selling and distributing sales promotion cards so designed that their use by retail merchants constitutes or may constitute the operation of a lottery, game of chance, or gift enterprise;

2. Supplying to or placing in the hands of retail merchants or others sales promotion cards or sales booster plans or schemes which are used or which may be used without alteration or rearrangement to conduct a lottery, game of chance, or gift enterprise when distributed to the consuming public.

It is further ordered, That the respondent shall, within 30 days after the 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

T. G. COOKE, TRADING AS INSTITUTE OF APPLIED
SCIENCECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2731. Complaint, Feb. 27, 1936—Decision, Jan. 5, 1938*

Where an individual engaged in sale of certain correspondence courses pertaining to the subject of Forensic Ballistics, as commonly known, and consisting of three lessons which purported to tell the police officer proper things to do and not to do at scene of crime, correct scientific procedure for examination of firearms and bullets in police laboratories, together with list of necessary equipment for laboratory work, and, finally and third, to tell expert in firearms identification how to conduct himself in court, with statement of questions which would be asked by the lawyers and certain citations from available authorities, Federal and State; in advertising his aforesaid courses in numerous newspapers, magazines, and other periodicals of general circulation throughout the United States—
Represented to purchasing public that the same were full and complete courses of instruction in "Finger Print Work, Bertillon Identification, Photography, Ballistics and Secret Service Intelligence," facts being they were neither full and complete courses of instruction in Ballistics nor in Forensic Ballistics, but constituted, at most, incomplete outlines of latter subject as commonly known, and contained very little, if any, information of value to one desiring to become acquainted with former;

With effect of misleading purchasing public into erroneous belief that said representations were true, and into purchasing its said courses of instruction in reliance thereon, and with capacity and tendency to mislead and deceive substantial number of purchasing public into erroneous belief that all of its said representations were true and into purchase of a substantial amount of its said product on account of such beliefs, induced as aforesaid, and with result that trade was diverted to it from those engaged in sale and distribution of courses of instruction prepared, intended and sold for substantially same purpose and use and who truthfully advertise their products; to the injury of competitors 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. W. W. Sheppard*, trial examiner.

Mr. T. H. Kennedy and *Mr. Floyd O. Collins* for the Commission.

Mr. Gustav E. Beerly, of Chicago, Ill., 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