

IN THE MATTER OF

N. R. BASKIN, INDIVIDUALLY, AND TRADING AS AMERICAN RADIO COMPANY, AMERICAN NOVELTY COMPANY, AND AMERICAN RADIO AND NOVELTY COMPANY

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

Docket 2401. Complaint, May 20, 1935—Decision, Jan. 20, 1938

Where an individual engaged in sale and distribution of radios, bathroom scales, clocks, cameras, and variety of other so-called novelty merchandise, together with "sales booklets," and "sales cards" or "pull boards" and "punch boards" as instrumentality for sale of his said products in conjunction therewith and through use of lottery and chance schemes thereby entailed, as operated by customers whom he (1) solicited thus to sell his said products, (2) supplied, in response to their inquiry, with certain literature and materials descriptive of one or more of his aforesaid articles, and with circular letter descriptive of his sales plans and methods of operation, list of prizes and order blank, and (3) compensated, upon undertaking such sale, through merchandise or money, as case might be—

- (a) Represented, in soliciting customers and persons to buy and sell his said products under aforesaid plan, in advertising therefor in various magazines circulated among members of the buying public, that he was offering "New Sales Plan" and "New Free Gift Plan" involving giving away of radios and other products, and that persons made as much as \$100 a week under former and \$150 a week under latter, while giving away merchandise, facts being said scheme did not constitute "New Sales Plan" or "New Free Gift Plan," neither he nor his customers or customers' agents handed out or distributed free gifts, but each article distributed required payment of valuable consideration, and he was thus compensated, either in money or services or both, representations as to earnings, as possibility and representation applicable to most, constituted gross exaggeration of benefits or profits to be expected or derived by persons dealing with him, who could not determine whether or not they could make any such sums until after purchase and resale of his said merchandise, with resultant benefits to him of such sales as they might and did effect;

With tendency and capacity to induce members of public to buy his said products and undertake and effect distribution thereof to members of buying and consuming public, and with result, substantially, of such sale and distribution, to his benefit and profit and to injury and prejudice of competitors; and

- (b) Offered, sold, and distributed his aforesaid products as above set forth, together with sales cards, pull boards, or punch boards, for distribution to ultimate consumers or purchasers under plans by which, as case might be, chance purchaser received article being thus disposed of or nothing other than chance, dependent upon success or failure in selection of right name, as finally revealed under so-called master seal, and paid, in accordance

with particular plan, fixed or varying amount or nothing, dependent upon disclosure after purchase, selection and removal of seal, in competition with many who condemn use and encouragement of such cards or methods as not legitimate and as gambling devices and involving operation in violation of law and public policy of most of the States and of the United States, and as a lottery, and involving acquisition of business unfairly among members of the trade, and as otherwise contrary to good morals, and refrain therefrom;

With effect of diverting substantial trade in commerce to said individual from competitors who do not encourage or employ such methods and are not free so to do:

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

Before *Mr. John W. Bennett* and *Mr. John J. Keenan*, trial examiners.

Mr. Jay L. Jackson 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 N. R. Baskin, an individual doing business under the trade names American Radio Company, American Novelty Company, and American Radio and Novelty 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 thereto would be in the public interest, hereby issues its complaint, stating therein its charges as follows:

PARAGRAPH 1. Respondent is an individual doing business under the trade names American Radio Company, American Novelty Company, and American Radio and Novelty Company, with his principal office and place of business in the city of Chicago, State of Illinois. Respondent, for more than one year last past, has been engaged in the sale and distribution of radios, liquor serving sets, sales booklets, punch sales cards, punch sales boards, and other articles of merchandise to wholesale dealers, retail dealers, distributors, and agents located at points in the various States of the United States, and causes said products when so sold to be transported from his principal place of business in the city of Chicago, Ill., or from the State of origin of the shipment, to purchasers thereof in other States of the United States and in the District of Columbia, at their respective

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places of business and there is now and has been for more than 1 year last past, a course of trade in commerce by the said respondent in such merchandise between and among the States of the United States and in the District of Columbia. In the course and conduct of the said business, respondent is in substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of radios, liquor serving sets, other merchandise, sales books, punch sales cards and punch sales boards in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, the respondent sells and has sold to wholesale dealers, retail dealers and to individual distributors merchandise so arranged as to involve the use of a lottery scheme or game of chance when resold and distributed to the ultimate purchasers thereof in accordance with respondent's sale plan.

The said sales books, punch sales cards, and punch boards are sold separately and also in combination with other merchandise. Several of said merchandise combinations are composed of radios and sales books, radios and 100-hole sales boards, liquor serving sets and punch sales cards, and other merchandise in combination with the sales books, punch sales cards, and 100-hole sales boards, respectively, which radios, liquor serving sets, and other merchandise is to be given to agents in furtherance of said sale plan as compensation for services rendered in the promotion of a lottery scheme or game of chance and as prizes to purchasers who are holders of chances bearing a name or other legend as follows:

The booklets, punch sales cards, and punch boards contain 100 names more or less or other legends which are sold at not less than 1 cent nor more than 35 cents (with 10 names free). The said names or other legends have concealed thereunder from the purchasers the figures indicating the amount to be paid therefor, and they do not know until after the selection has been made and the secret purchase price has been disclosed how much they must pay for the privilege of selecting the chance or whether they will receive one of the free chances. The booklets, punch sales cards, and punch boards contain a master seal, and the name, number, or other legend concealed thereunder is not disclosed until after all the chances have been sold and the purchaser receiving the chance bearing the name or other legend corresponding to the name or other legend appearing under the master seal receives the merchandise offered as a prize and the other purchasers receive nothing of value for the money which they have paid.

The purchasing public, in accordance with respondent's sale plan, are thus induced to purchase the name, number, or other legend from the booklet, punch card, punch board, or other method of lottery scheme or game of chance in the hope that they may select by chance and purchase the prize winning name, number, or other legend concealed under the master seal and thus obtain a valuable article of merchandise either free or at a cost not to exceed 35 cents, which article of merchandise is distributed wholly by chance, and which has a value much greater than the maximum charge of 35 cents.

PAR. 3. The wholesale dealers, retail dealers, and individual distributors to whom respondent sells his merchandise expose said booklets, punch cards, punchboards, and said merchandise combinations for sale and resell said booklets, punch cards, punchboards, and merchandise combinations to individuals who sell the chances in the said sales books, punch sales cards, and 100-hole punch sales boards, respectively, to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of his customers the means of conducting lotteries in the sales of his merchandise as a means of inducing purchasers thereof to purchase respondent's said merchandise in preference to similar merchandise offered for sale and sold by his competitor.

PAR. 4. The sale of said merchandise to the purchasing public as above alleged involves a game of chance or the sale of a chance to procure such merchandise in the manner alleged. Such game of chance and the sale of such chance to procure such merchandise in the manner alleged are contrary to the established public policy of the State of Illinois and of the Government of the United States, and are contrary to local criminal statutes of many States of the United States.

By reason of said facts, many persons, firms, and corporations who sell and distribute such merchandise in competition with respondent as above alleged are unwilling to offer for sale, and they refrain from selling, merchandise so assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a lottery or a game of chance.

PAR. 5. Many dealers in and ultimate purchasers of such merchandise are attracted by respondent's said method and manner of combining said merchandise and by the element of chance involved in the sale and distribution thereof in the manner above described and are thereby induced to purchase said merchandise sold by respondent in preference to similar merchandise offered for sale and

sold by said competitors of the respondent who do not use the same or equivalent methods.

Many dealers are induced to purchase such merchandise so offered for sale and sold by respondent in preference to similar merchandise sold by competitors, because said ultimate purchasers thereof give preference to respondent's said merchandise on account of said lottery and game of chance so involved in the sale whereby the recipient has the chance of obtaining the merchandise free or at a cost not exceeding 35 cents rather than at the normal retail price, which is much greater than 35 cents.

PAR. 6. During the times above mentioned in paragraph 1 hereof, the respondent in the regular course of his business has been and now is soliciting the sale of merchandise through advertisements published in newspapers, magazines, and other periodicals circulating among the public and among the various States of the United States, and in circulars, pamphlets and booklets which respondent has caused to be distributed among the public of the various States.

In these advertisements, the respondent has caused statements to be made, among others, as follows:

New Free Gift Plan—Brings you up to \$150.00 weekly! Give away Radios and Liquor Sets—Hand Out Free Gifts. Collect dollars from men who haven't a dime. Make up to \$150.00 weekly. Brand new plan starts you making money first day. Two "Knock Out" Gifts Given Away. GUARANTEED AMERICAN AC-DC Radio, true tone—great volume. Great selectivity and distance. Beautiful cabinet with self-contained ground and aerial. Use anywhere. Also unique Liquor Set. Beautiful metal banded, charred oak, half-gallon barrel, complete with chromium plated revolving stand and glasses. Nothing else like it in the country. These are the most attractive deals out. Write quick for complete line.

A "BRANDY" NEW DEAL.—MAKE UP TO \$100.00 A WEEK—Giving Away Beautiful Liquor Serving Sets—Thanks to repeal. Biggest money making plan in years. No experience necessary. Income starts right away. Yes, sir. Through our unique "Punch Sales Card" plan, you actually give away these beautiful Liquor Serving Sets and make up to \$100.00 cash each week for yourself. Everybody is a prospect—stores, offices, factories, individuals, lodges, and clubs will "jump at" this chance to receive absolutely Free This Beautiful Liquor Serving Set. SENSATIONAL NEW SALES PLAN—Our new, unique sales plan allows you to actually give away free Beautiful Liquor Serving Sets. Charred barrel, made of finest oak wood, holds approximately ½ gallon, and is beautifully finished with chromium bands and spigot. Revolving tray with glasses makes serving easy. No home is now complete without this Beautiful Liquor Serving Set. Get full details of our sensational plan at once.

MAKE UP TO \$100.00 A WEEK With Our New Sales Plan—Biggest money-maker out. American Radio—guaranteed. Self-contained aerial and ground. Super-dynamic speaker. True tone. Great volume. Wonderful distance. Distributors now making up to \$100 weekly with new 100-hole sales boards (10¢ each), taking in \$28.50. Order today. Send \$3, pay balance C. O. D.—or write for details.

When you explain to them how they may receive these gifts absolutely without cost, they will want both of them and that will mean repeat business for you.

The sales booklets for the Liquor Serving Sets contain 80 names, which are sold at not less than 1¢ or more than 35¢ (with 10 names free). The total receipt from this salesbook is \$21.50 and you deliver two Beautiful Liquor Serving Sets, costing you \$5.35 each, which leaves you a net profit of \$10.70 on each deal.

It has been proved that the most effective manner of securing agents for the distribution of these salesbooks is to have a sample of the article to show. This is particularly true where you are securing agents who happen to be clerks in stores, refreshment establishments, etc., or employed in offices or factories. The instant you show these articles, they want them! And when you tell them that they can actually get them *Absolutely Free*, simply by co-operating with you, *You Have Another Agent Started*.

PAR. 7. The statements in the advertisements mentioned above in paragraph 6 hereof that the "New Free Gift Plan Brings You Up to \$150 Weekly," "Make Up to \$100 a Week With Our New Sale Plan," "Biggest Money-Maker Out," "Distributors Are Now Making Up to \$100 Weekly With New 100 Hole Sales Board," and that the radios or other merchandise are being given away free are false and misleading statements in that the plan is not new, the distributors or agents do not regularly earn up to \$100 per week as alleged therein, such earnings being special and unusual, and they are not the normal results which may be expected in the distribution of respondent's merchandise; no radios, liquor serving sets, or other merchandise are given away free but the respondent receives the full wholesale value thereof for all articles distributed by him; the agent receives merchandise as compensation for his services; and the ultimate purchaser, or recipient, receives merchandise through devices or plans of merchandising which involve the operation of lottery schemes or games of chance in violation of public policy and certain criminal statutes. Such false and misleading statements and advertisements of such lottery schemes and games of chance induce agents or individuals to solicit the sale of and sell the merchandise of the respondent, and thus prevent them from soliciting the sale and selling the merchandise of competitors of the respondent, thereby diverting substantial trade from the competitors of the respondent to the respondent.

PAR. 8. The use of said methods by respondent has and has had the tendency and capacity unfairly, because of said lottery scheme and game of chance and said false and misleading advertising, to divert and has diverted to respondent trade and custom from his said competitors who do not use the same or equivalent methods. It has and has had the tendency and capacity unfairly to exclude from said

merchandise trade all actual and potential competitors who are unwilling to and do not use the same or equivalent methods which are contrary to public policy, detrimental to public morals, and in violation of the criminal statutes of certain of the States of the United States; to substantially lessen competition in the sale of said merchandise and to deprive the purchasing public of the benefit of free competition in those said commodities.

PAR. 9. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and to respondent's competitors, as herein alleged. Such methods, acts, and practices constitute unfair methods of competition in commerce within the 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 May 20, 1935, issued, and on May 22, 1935, served, its complaint in this proceeding upon respondent, N. R. Baskin, an individual and doing business under the separate trade names of American Radio Company, American Novelty Company, and American Radio and Novelty Company, charging him 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 Jay L. Jackson, attorney for the Commission, in part before John W. Bennett, Esq., and in part before John J. Keenan, Esq., examiners of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Messrs. John A. Nash and Horace J. Donnelly, attorneys for respondent; and 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 arguments of counsel aforesaid; and the Commission, having duly considered the same 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. The respondent, N. R. Baskin, is an individual, operating and trading under the trade names American Radio Company, American Novelty Company, and American Radio and Novelty Company, with his principal place of business located at 32 Randolph Street in the city of Chicago, State of Illinois, and under these names is now, and at all times material to the complaint in this proceeding has been, engaged in the business of selling and distributing radios, liquor serving sets, bathroom scales, clocks, cameras, smoking sets, fountain pens, and a variety of other so-called novelty merchandise, together and in connection or in combination with so-called "sales booklets," sometimes described as "sales books" and "sales cards," including sales cards commonly designated as "pull boards" and "punchboards." Respondent solicits customers and sells his said products, by the methods hereinafter described, in most of the States of the United States, and causes said products, when sold or ordered, to be shipped and transported from his said place of business in the city of Chicago, State of Illinois, to customers and to purchasers thereof located in various States of the United States.

PAR. 2. In the course and conduct of the business of respondent, as aforesaid, respondent has been, and is now, in competition with corporations, firms, partnerships, and individuals engaged in the business of offering for sale, selling and distributing radios, liquor serving sets, bathroom scales, clocks, cameras, smoking sets, fountain pens, and a variety of other so-called novelty merchandise like that offered and sold by respondent, in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of the business, as aforesaid, it has been, and is, the practice of respondent, through the medium of advertising in various magazines, circulated to and among members of the buying public, such as *Billboard*, *Opportunity*, *How to Sell*, *Specialty Salesmen*, and *Radio Guide*, to solicit customers and persons to buy and sell respondent's products, in the course of which respondent states and represents, among other things, that respondent offers a "New Sales Plan" under which persons make as much as \$100 a week while giving away merchandise; that respondent offers a "New Free Gift Plan" which involves the giving away of radios and other merchandise, and that under said plan persons make up to \$150 a week while giving away merchandise. Upon response to such advertisements, respondent mails certain literature to the responding person, inclusive of materials descriptive of one or more of respondent's products, a circular letter descriptive of respondent's

sales plan and method of operation, list of prices, and an order blank. In some instances one of respondent's so-called "sales booklets" or "sales card" is further included with such literature. Respondent also circularizes and solicits members of the public direct with sales literature descriptive of his products and sales plan and with sales cards for use in the distribution and sale of his products.

PAR. 4. As more fully hereinafter shown, the aforesaid sales cards are devices or instruments used, and intended to be so used, in effecting sale and distribution of respondent's products to members of the buying and consuming public. In some instances they appear as a single or double leaf card and sometimes are attached to, or within, a so-called "booklet." In either instance these materials carry, together with one or more of the aforesaid trade names of respondent and business address, pictorial and printed matter descriptive of one or more of the products offered and sold by respondent. The cards themselves are the devices for effecting the sale and disposition of the particular article or articles of merchandise so described and represented. Some of said cards entail disposition by respondent of two units of the same article of merchandise, one unit of which follows the sales card while the other unit is delivered to, and taken by, respondent's customer or the operator of the card as his consideration for effecting disposition and sale of the names appearing on the said card, the money income from which is remitted to respondent. In other instances the respondent's customers buy only one article of merchandise incident to each card and are left to take their profits in the form of money retained out of the money taken in from completed disposition and sale of the cards. Customers are encouraged and urged to employ others to effect disposition and sale of the cards and the merchandise incident thereto, this to the end of promoting a maximum business with customers. The merchandise incident to each card is sold and delivered to the customer in combination with the card, but in connection with a great number of these cards, the merchandise may be ordered and purchased by the customer subsequent to order and purchase of the cards. Each card, therefore, is so arranged and intended to entail and effect, and the said cards do effect, either immediately or eventually, the order and purchase from respondent of one or more articles of merchandise for each card eventually sold and disposed of by respondent's customers.

PAR. 5. The sales cards employed by respondent, as aforesaid, vary with the particular product or products offered and sold in connection therewith, but they all work and are operated on the same principle. Each entails the ultimate solicitation and sale to members of the buying and consuming public of one or more of the names, representing

chances, appearing on the face of seals, one name to each seal. In some instances the seals are arranged in such a way as to be pulled off, in others punched or pushed out. Accordingly, the cards are appropriately described as "pullboards" or "punchboards," depending upon the manual method by which the seal is either pulled off or pushed out. Each person solicited and selecting a name pays a consideration for each name drawn, except that with certain cards 10 free names or selections are provided for, the amount of which consideration is not disclosed at the time of purchase and selection, but immediately thereafter upon the inside portion of the seal after the same has been pulled off or punched out. With some cards the consideration varies from 1 cent to 29 cents; with others, from 1 cent to 35 cents. In all cases the total moneys taken by the completed sale of names on each card is sufficient to cover, and respondent receives from his customers, the list purchase price of all merchandise, and for each unit thereof, delivered by respondent to customers in connection with such card, and in most instances the total money taken in by completed sale and disposition of such cards is greatly in excess of all or any cost incident to purchase and supply of the merchandise connected therewith.

The purchase and selection of the names appearing on the so-called sales cards are all made by purchasers with a view to selecting that name which will correspond with the name which appears under a master seal in the upper corner of the card when the said seal is removed. The master seal is removed and the winning name therein disclosed only after all the visible names on the card have been purchased and drawn. Thus, at the time of purchase and drawing, the purchaser does not and cannot know either the amount of the consideration he pays for the same or whether or not he becomes thereby entitled to receive such article of merchandise as is described and offered in connection with the said card. A few of said cards allow of more than one winner, sometimes as many as three articles of merchandise being offered, but in most instances only one article of merchandise is offered, and only one purchaser of the group purchasing from the card receives, or becomes entitled to receive, the particular article so offered.

PAR. 6. Contrary to the advertising representations made by respondent, the selling plan under which he has been operating and operates is not a "new sales plan" or a "new" or "free gift plan." Neither respondent nor his customers or customer's agents "hand out" or distribute "free gifts," but each article of merchandise distributed by respondent, his customers, or customer's agents requires the payment of a valuable consideration, and for all merchandise distributed by respondent he receives a valuable consideration, either in the

form of money or services, or both. Further contrary to respondent's advertising representations, it does not appear that any of his customers have made or make as much as \$150 or \$100 a week. As a possibility and representation applicable to most persons undertaking to operate under respondent's selling plan, the said representation is a gross exaggeration of the benefits or profits to be expected or derived by persons dealing with respondent. Persons dealing with respondent in response to the said representations have no way of determining whether they can make \$150 or \$100 a week until after they have undertaken the purchase and resale of respondent's merchandise, during which, however, respondent receives the benefits of such sales as such persons may and do effect.

The aforesaid representations to the effect that respondent operates a new selling plan by which persons hand out, or give away, free gifts, and by which persons can make up to \$150 and \$100 per week are, and each of them is, false and misleading and have the tendency and capacity to induce members of the public to buy products of respondent, and to undertake and effect distribution of respondent's products to members of the buying and consuming public. The same substantially results in the sale and distribution of respondent's products to members of the buying and consuming public, inures to the benefit and profit of respondent, and is all to the injury and prejudice of respondent's competitors.

The aforesaid sales cards, otherwise known as "pullboards" and "punchboards," are gambling devices used and useful only in the operation of a lottery or sale by chance. The operation of said cards constitutes a lottery under the laws of the United States and statutory laws of most of the States of the United States, and under the public policy proclaimed by these laws, use of such cards and sale methods, and the encouragement of such use, is condemned and prohibited. Many of respondent's competitors refrain from the use of such cards or methods and condemn their use and encouragement upon the ground that the same are not legitimate, that the said sales cards are gambling devices and their operation a violation of the law and public policy of most of the States of the United States, that their operation constitutes a lottery and that the acquisition of business through such means is unfair among members of the trade and otherwise contrary to good morals.

The aforesaid representations and practices employed by respondent have the tendency and capacity unfairly to divert, and do divert, substantial trade in said commerce to respondent from his competitors, who do not employ or encourage such methods and who are not free to use the same.

CONCLUSION

The aforesaid acts and practices of respondent N. R. Baskin are to the prejudice of the public and 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 before the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John W. Bennett and John J. Keenan, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Jay L. Jackson, counsel for the Commission, and by John B. 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 respondent, N. R. Baskin, his representatives, agents, and employes, in connection with the offering for sale, sale, and distribution in interstate commerce of all so-called novelty products offered for sale or sold by respondent, including radios, liquor serving sets, bathroom scales, clocks, cameras, smoking sets, fountain pens, and other similar or like articles of merchandise, and of so-called sales books or booklets and sales cards, cease and desist:

1. From in any way representing, directly or indirectly, to members of the buying and consuming public, that respondent offers or employs a sales plan in connection with his products, which plan is "new," or a "free gift plan," or a plan under which persons hand out or give away merchandise, and make up to \$150 or \$100 a week, when in fact the plan offered or employed by respondent is not "new," or is not a "new free gift plan," or under which merchandise is not given away free, or when in fact no substantial number of persons dealing with respondent make as much as \$150 or \$100 a week under the plan offered and employed by respondent.

2. From offering for sale, selling, or distributing, in connection with the sale and distribution of said so-called novelty products, any instrument or means, inclusive of sales books or sales cards, pullboards, or punchboards, which may be employed or used as a gaming device,

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or to conduct a lottery or sale by chance, in combination or connection with the sale or distribution of any product or products of novelty merchandise offered for sale, sold, or distributed by respondent.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Complaint

IN THE MATTER OF
CAPON WATER COMPANY ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2736. Complaint, Mar. 3, 1936—Decision, Jan. 20, 1938*

Where two corporations engaged, as case might be, in ownership and operation of certain springs and sale of water therefrom, and the president and manager thereof and owner of the majority of stock in both and controller and director of their activities in sale and distribution of said water, and in substantial competition, as thus engaged in sale of said water through dealers and direct to purchasing and consuming public in the several States and in the District of Columbia, with others engaged in sale and distribution of so-called mineral waters and drugs and medicinal preparations used and useful for treatment of the various diseases, ailments, and conditions for which they recommended their said water; in describing said water in advertising matter sent to those making inquiry in response to label contained on containers thereof and inviting such inquiry "For Specific Purposes and Physicians' Statements"—

Represented, through pamphlets, booklets, leaflets, and other written matter containing many statements purportedly made by doctors and laymen, as well as directly, that use of said water alone would cure kidney and bladder trouble, and gout and rheumatism, as well as nephritis, arthritis, neuritis, high blood pressure, constipation, and numerous other ailments and conditions, as there specified, notwithstanding fact use of said water alone would not, either externally or internally, cure said various diseases, ailments, and afflictions;

With effect of misleading and deceiving purchasing public and causing them erroneously to believe that use thereof alone would cure such various diseases, ailments, and conditions for which they represented same as a cure, and to cause such public, by reason of such erroneous belief, to buy their said water, and of thereby unfairly diverting trade to them from their competitors who do not use such acts and practices, to their substantial injury and to 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.

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

Mr. Edw. W. Thomerson for the Commission.

Mr. Phillip W. Austin, of Washington, D. C., for respondents.

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 Capon