

Complaint

27 F. T. C.

IN THE MATTER OF
MADISON MILLING COMPANY

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

Docket 3439. Complaint, May 21, 1938—Decision, July 29, 1938

Where a corporation, engaged in the manufacture of flour and in the sale and distribution thereof—

Supplied to dealer purchasers of its said product lottery card for display and use in connection with sale of its said flour, under plan by which purchaser of such flour from particular dealer customer, successful in chance selection of that 1 of 40 numbers on card corresponding to number concealed beneath master seal, was entitled to receive and was awarded a 49-pound sack of flour without further charge, and thereby supplied to and placed in the hands of others means of conducting a lottery in the sale of its said product in accordance with aforesaid plan, and in violation of the established policy of the United States Government and of the criminal laws, and in competition with many who are unwilling to offer or sell their flour by the aforesaid, or any other method involving a game of chance or lottery, and refrain therefrom;

With tendency and capacity to induce purchasers of flour to buy its said product in preference to that offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of said product were attracted by said method and element of chance involved in sale thereof, as above set forth, and were thereby induced to purchase said flour thus sold by it in preference to that offered and sold by competitors who do not use same or equivalent methods, and with capacity and tendency, because of such game of chance, to divert to it trade and custom from its competitors who do not use the same or equivalent methods, to exclude from the trade involved all competitors unwilling to and who do not use such methods as being against public policy and unlawful, and to lessen competition in said trade and create a monopoly thereof in it and such other distributors of flour as use the same or similar methods, and to deprive the purchasing public of the benefit of free competition, and with capacity and tendency to eliminate from trade in question all actual competitors, and exclude therefrom all potential competitors, who do not adopt and use such or equivalent methods:

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

Mr. Henry C. Lank for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Madison Milling Co., a corporation, hereinafter referred to as respondent, has violated the

provisions of the said act, and it appearing to the 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, Madison Milling Co., is a corporation organized and doing business under the laws of the State of Minnesota, with its offices and principal place of business located at Madison, Minn. Respondent is now, and for some time last past has been, engaged in the manufacture of flour and in the sale and distribution thereof to dealers. Respondent causes, and has caused, its products, when sold, to be transported from its principal place of business in the city of Madison, Minn., to purchasers thereof located in the State of Minnesota and in other States of the United States, at their respective places of business. There is now and has been for some time last past a course of trade and commerce by said respondent in such flour between and among the various States of the United States. In the course and conduct of its business, respondent is in competition with other corporations and with individuals and partnerships likewise engaged in the sale and distribution of flour 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 to dealers flour by means of a method involving the use of a lottery scheme when sold and distributed to the consumers thereof. Said method of sale consists in furnishing dealers, who purchase respondent's flour, with a lithographed poster known as a lottery card. The dealers to whom said card is furnished display the card to the purchasing public. The card contains 40 blank spaces for registration of the signatures of purchasers of flour, and each space is accompanied by a number, the numbers running consecutively from 1 to 40. Each purchaser of flour makes a choice of a number and writes his signature in the blank opposite such number selected. On the card is a master seal under which is concealed a number. When the card is completely filled with the names of purchasers, the master seal is broken, revealing a number from 1 to 40, and the purchaser whose name is registered opposite the number corresponding with the number found under the master seal is entitled to receive and is awarded a 49-pound sack of flour without additional charge. The number printed under the master seal is effectively concealed from purchasers and prospective purchasers until all purchases have been made. The said 49-pound sack of flour is thus awarded to the purchaser of flour wholly by lot or chance.

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The following is a facsimile of the legend appearing on said lottery card:

(Illustration of sack of flour)

(Master Seal)

BUY
A SACK OF
MADISON'S BEST FLOUR
You have a chance of winning
THIS 49 POUND SACK OF FLOUR
FREE

To one of the 40 purchasers whose names are listed below, and on the numbered line, which corresponds to the number under the seal on this card, this 49 pound sack of MADISON'S BEST FLOUR will be given free when all the lines are filled.

Choose the numbered line you like best, write name and address.

1.-----	21-----
2.-----	22-----
3.-----	23-----
etc.-----	etc.-----

PAR. 3. Retail dealers who purchase respondent's flour directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting a lottery in the sale of its products in accordance with the sales plan hereinabove set forth. Said sales plan has a tendency and capacity to induce purchasers of flour to purchase respondent's flour in preference to flour offered for sale and sold by its competitors.

PAR. 4. The sale of said flour to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a sack of flour. The use by respondent of said method in the sale of flour and the sale of flour by and through the use thereof, and by the aid of said method, is a practice of the sort which is contrary to an established policy of the Government of the United States and in violation of the criminal laws. The use by respondent of said method has a tendency unduly to hinder competition or to create a monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude from the flour trade competitors who do not adopt and use the same method or equivalent or similar methods involving the same or equivalent elements of chance or lottery. Many persons, firms, and corporations who make and sell flour in competition with the respondent as above alleged are unwilling to offer for sale or to sell their products by the method above alleged, or by any other method involving a game of chance or lottery, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of flour are attracted by respondent's said method of selling said flour, and by the

element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said flour so sold by respondent in preference to flour offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has a capacity and tendency, because of said game of chance, to divert to respondent trade and custom from its competitors who do not use the same or equivalent methods, to exclude from the flour trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are against public policy and unlawful, to lessen competition in the flour trade, to create a monopoly of said flour trade in respondent and in such other distributors of flour as use the same or similar or equivalent methods, and to deprive the purchasing public of the benefit of free competition. The use of said method by respondent has the capacity and tendency to eliminate from said flour trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same method or equivalent methods.

PAR. 6. The aforesaid acts and practices of respondent as herein alleged are all 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 21, 1938, issued, and thereafter served, its complaint in this proceeding upon the respondent, Madison Milling Co., a corporation, 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, the respondent duly filed its answer, dated June 24, 1938, in the office of the Commission, which answer admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the answer of the respondent, 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. The respondent, Madison Milling Co., is a corporation organized and doing business under the laws of the State of Minne-

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sota, with its offices and principal place of business located at Madison, Minn. Respondent is now, and for some time last past has been, engaged in the manufacture of flour and in the sale and distribution thereof to dealers. Respondent causes, and has caused, its products, when sold, to be transported from its principal place of business in the city of Madison, Minn., to purchasers thereof located in the State of Minnesota and in other States of the United States, at their respective places of business. There is now and has been for some time last past a course of trade in commerce by said respondent in such flour between and among the various States of the United States. In the course and conduct of its business, respondent is in competition with other corporations and with individuals and partnerships likewise engaged in the sale and distribution of flour 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 to dealers flour by means of a method involving the use of a lottery scheme when sold and distributed to the consumers thereof. Said method of sale consists in furnishing dealers, who purchase respondent's flour, with a lithographed poster known as a lottery card. The dealers to whom said card is furnished display the card to the purchasing public. The card contains 40 blank spaces for registration of the signatures of purchasers of flour, and each space is accompanied by a number, the numbers running consecutively from 1 to 40. Each purchaser of flour makes a choice of a number and writes his signature in the blank opposite such number selected. On the card is a master seal under which is concealed a number. When the card is completely filled with the names of purchasers, the master seal is broken, revealing a number from 1 to 40, and the purchaser whose name is registered opposite the number corresponding with the number found under the master seal is entitled to receive and is awarded a 49-pound sack of flour without additional charge. The number printed under the master seal is effectively concealed from purchasers and prospective purchasers until all purchases have been made. The said 49-pound sack of flour is thus awarded to the purchaser of flour wholly by lot or chance.

The following is a facsimile of the legend appearing on said lottery card:

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Choose the numbered line you like best, write name and address,

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3.....	23.....
etc.....	etc.....

PAR. 3. Retail dealers who purchase respondent's flour directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting a lottery in the sale of its products in accordance with the sales plan hereinabove set forth. Said sales plan has a tendency and capacity to induce purchasers of flour to purchase respondent's flour in preference to flour offered for sale and sold by its competitors.

PAR. 4. The sale of said flour to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a sack of flour. The use by respondent of said method in the sale of flour and the sale of flour by and through the use thereof, and by the aid of said method, is a practice of the sort which is contrary to an established policy of the Government of the United States and in violation of the criminal laws. The use by respondent of said method has a tendency unduly to hinder competition or to create a monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude from the flour trade competitors who do not adopt and use the same method or equivalent or similar methods involving the same or equivalent elements of chance or lottery. Many persons, firms, and corporations who make and sell flour in competition with the respondent are unwilling to offer for sale or to sell their products by the method above described, or by any other method involving a game of chance or lottery, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of flour are attracted by respondent's said method of selling said flour, and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said flour so sold by respondent in preference to flour offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has a capacity and tendency, because of said game of chance, to divert to respondent trade and custom from its competitors who do not use the same or equivalent methods, to exclude from the flour trade all competitors who are un-

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willing to and who do not use the same or equivalent methods because the same are against public policy and unlawful, to lessen competition in the flour trade, to create a monopoly of said flour trade in respondent and in such other distributors of flour as use the same or similar or equivalent methods, and to deprive the purchasing public of the benefit of free competition. The use of said method by respondent has the capacity and tendency to eliminate from said flour trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same method or equivalent methods.

CONCLUSION

The aforesaid acts and practices of respondent, Madison Milling Co., are all 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 the Federal Trade Commission Act.

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 admitting all the material allegations of fact set forth in the complaint issued herein, and waiving all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Madison Milling Co., a corporation, its officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of flour in interstate commerce, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others lottery cards or other lottery devices or paraphernalia for the purpose of enabling such persons to dispose of such merchandise by the use thereof;

2. Mailing, shipping or transporting to dealers or agents lottery cards or other lottery devices or paraphernalia 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 such merchandise by the use of lottery cards or any other lottery devices or paraphernalia.

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

Syllabus

IN THE MATTER OF

RELIABLE SPECIALTY CORPORATION

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

Docket 2876. Complaint, July 15, 1936—Decision, Aug. 3, 1938

Where a corporation engaged in manufacture of patent and proprietary medicines, and in sale and distribution thereof to public directly and through retail dealers, and salesmen or canvassers; in advertising same through booklet called "Hints on Health and Beauty," and through circulars and "Directions for Use" packed with said products and distributed widely among the purchasing public—

- (a) Represented that one of its said preparations was a positive corn cure, which would remove all corns, and made use of such words as "positive corn cure," "corn cure," "corn remedy," or "corn and callous remedy," as a part of the trade name of its "Great Christopher Positive Corn Cure" or "Great Christopher Corn and Callous Remedy," and also represented that it was a proper treatment for moles, facts being that while said product, by virtue of composition thereof, might be used to certain extent for removal of corns, it was not a positive cure or remedy therefor, nor efficacious in treatment of moles;
- (b) Represented that the aforesaid preparation had been tested and approved by the United States Government, facts being it had not been tested or approved by any Department thereof;
- (c) Represented, through use of word "Food" as a part of the trade name of its product "Reliable Hair Food" that said preparation was a "food" for the hair or hair roots, and represented that it would supply starved hair roots with new life and vigor, and represented, through "before and after using" displays and otherwise, that said "Reliable Hair Food" or "Scalpolene" would grow hair on a bald, or nearly bald, head, and that said "Reliable Hair Food" or "Scalpolene," as thereafter designated, would positively prevent and cure dandruff, prevent premature baldness and grayness, and reduce damage by uric acid, and restore the hair roots to their normal condition, facts being said preparation was not in any sense a "hair food"; the "before and after" pictures were of the same individual at the same time, but so treated as to give illusion of a nearly bald appearance in the "before" one and a head of hair in the "after" one, and said various representations were also otherwise false in respect thereto;
- (d) Represented, through use of word "doctor" or abbreviation "Dr.," that its "Dr. King's Ointment" was made in accordance with a prescription, or under the supervision of the particular physician referred to, and that said ointment was an antiseptic for the treatment of sore, tender, and otherwise affected feet, as therein set forth, and for cuts, burns, bruises, eczema, and a variety of associated ailments, and that it would destroy the germs which cause blood poison and other similar forms of infection, facts being there was no Dr. King connected with it or its said product, same was not made in accordance with any doctor's prescription, and the various claims set forth with respect thereto were grossly exaggerated, and it was not a proper or competent treatment for the various ailments and conditions specified; and
- (e) Falsely represented the therapeutic qualities, properties, and effects, and