

IN THE MATTER OF
SPRINGFIELD MILLING CORPORATION

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

Docket 3436. Complaint, May 21, 1938—Decision, Aug. 27, 1938

Where a corporation engaged in manufacture of flour and sale and distribution thereof to dealers—

Supplied dealer-purchasers with lithographed posters or lottery cards containing blank spaces for 50 signatures, and master seal, under which was concealed winning number entitling to clothes hamper particular consumer-purchaser who had selected and recorded thereon such number, and signature, and thereby supplied to and placed in the hands of others means of conducting lottery in sale of its said product, in accordance with aforesaid plan, contrary to established policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to offer or sell their products by such or any other method involving game of chance or lottery and refrain therefrom;

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

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

Mr. D. C. Daniel 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 Springfield Milling Corporation, 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, Springfield Milling Corporation, 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 Springfield, 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 Springfield, 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 fifty 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 50. 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 50, 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 clothes hamper 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 clothes hamper 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:

Complaint

27 F. T. C.

(Master Seal)

BUY A SACK OF

WHITE SWAN

FLOUR

You have a chance of winning

This Beautiful

Clothes Hamper

FREE!

To one of the 50 purchasers whose names are listed below, and on the numbered line, which corresponds to the number under the seal on this card, this very attractive Clothes Hamper will be given Free when all lines are filled. Choose the numbered line you like best, write name and address.

1_____	26_____
2_____	27_____
3_____	28_____
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 clothes hamper. 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 Springfield Milling Corporation, 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, respondent filed in the office of the Commission an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, 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 Springfield Milling Corporation 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 Springfield, 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 Springfield, 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 by said respondent in such flour in commerce 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 50 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 50. 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 50, 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 clothes hamper 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 clothes hamper 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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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 described involves a game of chance or the sale of a chance to procure a clothes hamper. 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 described 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.

CONCLUSION

The aforesaid acts and practices of respondent 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 and the answer of respondent admitting all of the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, 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, Springfield Milling Corporation, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of flour in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Shipping to or placing in the hands of dealers lottery cards for the purpose of enabling such dealers by the use thereof to dispose of or sell flour;

2. Mailing, shipping, or transporting to dealers lottery cards so prepared or printed as to enable said dealers by use thereof to sell or distribute flour;

3. Selling or otherwise disposing of flour by the use of lottery cards;

4. Selling or otherwise disposing of flour by any sales plan or method depending on lot or chance.

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

IN THE MATTER OF
PRO-KER LABORATORIES, INC.

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

Docket 2894. Complaint, Aug. 10, 1936—Decision, Aug. 31, 1938

Where a corporation engaged in distribution and sale of its "Pro-Ker" bottled liquid hair preparation, to and through wholesaler and drug store purchasers in other States, in substantial competition with others engaged in distribution and sale of kindred hair preparations in commerce among the various States and in the District of Columbia; in advertising its said product in newspapers and magazines of general circulation, and through advertising folders and literature circulated throughout the various States—

Represented that said "Pro-Ker" preparation was a competent treatment for falling hair, baldness, or any other hair trouble, which would grow hair or replace fallen with new hair, and prevent hair from falling out, and which got at the cause or root of all hair trouble and would correct, rid, end or cure any hair trouble or scalp disorder and force nature to replace fallen hair and produce new growth, and which would produce vital, healthy, and strong scalp and create perfect hair growing condition enabling user to have abundant healthy hair, through such statements as "Guaranteed Treatment Against Baldness," "No matter what your age. No matter how great your hair loss—whether you suffer from dandruff, oiliness, itchy scalp * * * guaranteed to replace every hair that falls from the first moment of use—and promptly to correct the secondary condition," "* * * produces a healthy scalp," "Today every man can be assured that he need not get bald," "* * * means the end of hair troubles," etc.;

Facts being preparation in question consisted mainly of water and emulsion of Glauber salts and fatty oils, said product contained nothing that had any effect in altering the normal physiological process of replacing falling hair, was not beneficial in prevention of baldness or loss of hair resulting from constitutional ailment, for which only treatment is one directed at ailment itself, nor competent treatment for any local condition of scalp causing falling hair or baldness, which, as local, may be due to variety of causes requiring different types of treatment, nor for dandruff, treatment of which is both local and internal, nor for excessive oil in hair, and it would not enable user to rid, end, correct, or cure any hair trouble or scalp disorder, force nature to replace fallen hair, or new growth, or make scalp vital, healthy, or strong, or create the perfect hair-growing condition, or make healthy abundant hair, and there was nothing in product in question, or combination of ingredients involved, that in any way affected the skin, its structures or appendages in such a way as to affect growth of hair;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and with result that public, acting under mistaken and erroneous beliefs induced by such false and misleading statements and representations, purchased substantial