

Syllabus

IN THE MATTER OF
W. D. BOYCE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3358. Complaint, Mar. 15, 1938—Decision, Sept. 14, 1938*

Where a corporation engaged in publication, distribution, and sale of a monthly periodical to purchasing subscribers in other States—

- (a) Conducted, as an essential part of its said business, purported puzzle contests, and advertised same and its aforesaid periodical under name of its advertising manager, without disclosing his connection therewith, in its own and in various other periodicals and papers of general circulation throughout the several States, and initially contacted prospects through postcards attached to advertisements and double reply, postage prepaid, postcards addressed to said manager, and represented or implied that said advertisements to enter such contest were those of an individual and not of the company or concern publishing and selling aforesaid magazines;
- (b) Set forth in said advertisements, among numerous other false and misleading representations relating to said contests, and in resulting correspondence, that various automobile or cash, as specified, were given as prizes to winners, and that only qualification or requirement to win a prize was a prompt solution of the purported puzzle, and that no further effort or money was required therefor;
- (c) Gave or offered, at different stages, certain credits and bonuses in large figures which purportedly gave recipient substantial advance standing and made him sure winner of a "promptness prize," and made it appear in the advertisement and conduct of such contests that offers were made exclusively to individual addressed and that he had been selected for special individual favor or been granted exclusive advantage in the contest, and represented that form letters written to contestants and prospective contestants were purely personal to one addressed, and that each one addressed was in advanced position over all others, with little remaining to do to win grand prize, or was practically sure to be winner of one of first or other large money prizes;

Facts being solving purported puzzle did not qualify any contestant to win any prize, but such winning was dependent entirely upon procuring subscriptions for said magazine, not disclosed fully or at all in its aforesaid deceptive, misleading, and unfair advertisements, and plan was primarily not puzzle contest at all, but scheme and method which was intended to procure, through such deception and misrepresentations, large subscription sales force to sell subscriptions for its said magazine;

With intent and effect of having numerous innocent and unsuspecting contestants become sales people for it in the nature of subscription solicitors, as a result of such plan and practice, and "come-on" and inducing correspondence employed by it in carrying out the same, through which plan, and form letters used in carrying out the same, sent to all contestants alike as above indicated, contestants were led to believe, and with increasing emphasis, that they were among the few leaders in contest, as same

Complaint

27 F. T. C.

supposedly neared its close, large subscription sales force was secured by it and substantial number of consuming public were induced to subscribe to and purchase substantial number of its magazines, and trade was unfairly diverted to it through said unfair plan or scheme from those engaged in distribution and sale of periodicals in commerce who did not employ such false and misleading representations or scheme or method to promote or attempt to promote the sale of their periodicals:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Wm. T. Chantland 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 W. D. Boyce Co., a corporation, has been and is now using unfair methods of competition in commerce as defined by 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, W. D. Boyce Co., is a corporation incorporated under the laws of the State of Illinois, with main office and principal place of business at 54 West Illinois Street, Chicago, Ill. Respondent is now and for some time has been engaged in the business of publishing, distributing, and selling in commerce, as herein set out, a monthly magazine called "Blade and Ledger."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said magazine when sold to subscribers, to be transported from its place of business in the State of Illinois to the purchasing subscribers thereof located at various points in States of the United States other than the State from which shipments are made. Respondent now maintains a constant current of trade in commerce in said magazine, distributed and sold by it between and among the various States of the United States.

PAR. 3. In the course and conduct of its said business, respondent is now and has been in substantial competition with other individuals and with firms and corporations likewise engaged in the business of publishing, distributing and selling magazines, in commerce among and between the various States of the United States.

Complaint

Throughout the continuance of said business and commerce respondent, as an essential part of its business, has conducted purported puzzle contests and, in connection therewith, has carried advertisements of its magazine and of such contests, put out under the name of an individual, viz, its advertising manager, without disclosing his connection with respondent, in its own magazine and in various other papers and magazines having a general circulation throughout the several States of the United States. Initial contact with prospects was also made by post cards attached to advertisements, and by double post cards, the postage on the return reply card to be paid by the addressee, viz, the respondent's advertising director. Continuously during the course of its business and as a part thereof, respondent has made false and fraudulent representations in its advertising and correspondence as carried on in connection with its purported contest schemes.

Said purported puzzle contest advertisements are generally identical or similar in form and substance. Among the false and misleading representations contained in such advertisements and the resulting correspondence are those to the effect or which carry the implication that:

1. The only requirement to win a prize is prompt solution of the purported simple puzzle. In no place does the contact advertisement disclose the requirement of sales of subscriptions to respondent's magazine as a necessity for the prize winning, when in fact such subscriptions and sales constitute the primary purpose and requisite.

2. No money is required.

3. Annually in such alleged puzzle contest a number of automobiles (8 in 1936 and 11 in 1937), are given to winners of the first prize, or if the winners so elect, \$500 in cash instead of an automobile. Besides these first prizes many other prizes are offered, including so-called "promptness prizes."

4. The advertisement for persons to enter the contest is that of an individual and not that of a company or of a concern publishing and selling the magazine.

5. Offers are apparently made exclusively to the individual addressed and it is made to appear that such individual has been selected for special individual favor or has been granted an exclusive advantage in the contest.

6. Certain credits and bonuses are given or offered at different stages of the contest in large figures which purportedly give the recipient substantial advanced standing.

7. Letters written to contestants and prospective customers are purely personal to the one addressed.

Complaint

27 F. T. C.

8. Each contestant to whom letters are addressed is in an advanced position over all others in the contest and has only a little remaining to do in order to win.

9. Each person addressed in letters is practically sure to be a winner of one of the first or other money prizes.

Solving the advertised purported puzzle does not qualify any contestant to win any prize. Prize winning is dependent entirely upon procuring subscriptions for respondent's magazine, and respondent's advertisements are deceptive, misleading and unfair in that they fail fully or at all to disclose that prizes can be won only by procuring a large number of subscribers to said magazine.

In addition to said advertisements, respondent carries on an extensive follow up, "come on" and inducing correspondence relating to the purported puzzle contests, including promises of prizes for promptness, the primary purpose and effect of which is to have the numerous innocent and unsuspecting contestants become sales people for respondent in the nature of subscription solicitors. To heighten the zeal of said supposed contestants and to induce them to increase their sales and subscription activity of respondent's magazine, respondent has a series of form letters made up to appear as though individual, which set forth increasingly the near certainty or certainty that each recipient contestant will win large money and other prizes of great value by procuring promptly a number of subscribers. Contestants are led to believe that they are among the few leaders in the contest with increasing emphasis as the contest supposedly nears its close. These letters are form letters and are in and of themselves frauds and misrepresentations in that all contestants are not in an identical favorable position as stated in the letters.

The whole plan is primarily not a puzzle contest at all, but constitutes a scheme and method in unfair competition intended to and resulting in the procurement through such deception and misrepresentations of a large subscription sales force by respondent to sell subscriptions in its magazines. Said plan or scheme and methods are unfair to all those who are engaged in selling magazines in interstate commerce who do not employ such false and misleading representations and plan or scheme and method, and they tend unfairly to divert trade to respondent from such competitors who do not employ them.

PAR. 4. As a result of said respondent's false and misleading representations, plans, or schemes and methods as above set out, a substantial number of the consuming public have been induced to subscribe for and purchase a substantial number of respondent's magazines with the result that trade has been unfairly diverted to

respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling magazines in interstate commerce who do not promote or attempt to promote the sale thereof by false and misleading representations, plans, schemes, or methods. As a result thereof substantial injury has been and is now being done by respondent to competitors in commerce among and between the various States of the United States.

PAR. 5. The above and foregoing acts, practices and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 16, 1938, issued and served its complaint in this proceeding upon respondent, W. D. Boyce 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 and service of said complaint, respondent having filed no answer, but being in default, testimony and other evidence in support of the allegations of said complaint were introduced by Wm. T. Chantland, attorney for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, 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, testimony, and other evidence, and brief in support of the complaint (respondent not having filed brief); 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, W. D. Boyce Co., is a corporation incorporated under the laws of the State of Illinois, with main office and principal place of business at 54 West Illinois Street, Chicago, Ill. Respondent for a number of years last past has been engaged in the business of publishing, distributing, and selling in commerce, as here-

in set out, a monthly magazine called "Blade and Ledger," and being engaged in business as aforesaid, caused said magazine when sold to subscribers, to be transported from its place of business in the State of Illinois to the purchasing subscribers thereof located at various points in States of the United States other than the State from which shipments are made, and maintained a course of trade in commerce in said magazine, distributed and sold by it between and among the various States of the United States.

PAR. 2. In the course and conduct of its said business, respondent was in substantial competition with other individuals and with firms and corporations likewise engaged in the business of publishing, distributing, and selling magazines, in commerce among and between the various States of the United States, and throughout the continuance of said business and commerce respondent, as an essential part of its business, conducted purported puzzle contests and, in connection therewith, carried advertisements of its magazine and of such contests, put out under the name of an individual, viz, its advertising manager, without disclosing his connection with respondent, in its own magazine and in various other papers and magazines having a general circulation throughout the several States of the United States, and also made initial contact with prospects by post cards attached to advertisements, and by double post cards, the postage on the return reply card to be paid by the addressee, viz, the respondent's advertising director, and continuously during the course of its business and as a part thereof, respondent made false and fraudulent representations in its advertising and correspondence as carried on in connection with its purported contest schemes.

PAR. 3. Respondent's puzzle contest advertisements were generally identical or similar in form and substance. Among the false and misleading representations contained in such advertisements and the resulting correspondence are those to the effect or which carry the implication that:

1. The only requirement to win a prize is prompt solution of the purported simple puzzle. In no place did the contact advertisement disclose the requirement of sales of subscriptions to respondent's magazine as a necessity for the prize winning, when in fact such subscriptions and sales constituted the primary purpose and requisite.

2. No money was required.

3. Annually in such alleged puzzle contest a number of automobiles (8 in 1936 and 11 in 1937), were given to winners of the first prize, or if the winners so elected, \$500 in cash instead of an automobile. Beside these first prizes many other prizes were offered, including so-called "promptness prizes."

4. The advertisements for persons to enter the contest were those of an individual and not those of the company or of a concern publishing and selling the magazine.

5. Offers were apparently made exclusively to the individual addressed and it was made to appear that such individual had been selected for special individual favor or had been granted an exclusive advantage in the contest.

6. Certain credits and bonuses were given or offered at different stages of the contest in large figures which purportedly gave the recipient substantial advanced standing, and a sure winner of a "promptness prize."

7. Letters written to contestants and prospective customers were purely personal to the one addressed.

8. Each contestant to whom letters were addressed was in an advanced position over all others in the contest and had only a little remaining to do in order to win a grand prize.

9. Each person addressed in letters was practically sure to be a winner of one of the first or other large money prizes.

PAR. 4. The truth and facts are that solving the purported puzzle did not qualify any contestant to win any prize, and that prize winning was dependent entirely upon procuring subscriptions for respondent's magazine, and respondent's advertisements were deceptive, misleading, and unfair in that they failed fully or at all to disclose that prizes could be won only by procuring a large number of subscribers to said magazine.

PAR. 5. Respondent, in addition to said advertisements, carried on an extensive follow up or "come on" and inducing correspondence relating to the purported puzzle contests, including promises of prizes for promptness, the primary purpose and effect of which was to have the numerous innocent and unsuspecting contestants become sales people for respondent in the nature of subscription solicitors. To heighten the zeal of said supposed contestants and to induce them to increase their sales and subscription activity for respondent's magazine, respondent had a series of form letters made up to appear as though individual, which were sent to all contestants alike and which set forth increasingly the near certainty or certainty that each recipient contestant would win large money and other prizes of great value by procuring promptly a number of subscribers. Contestants were led to believe that they were among the few leaders in the contest with increasing emphasis as the contest supposedly nears its close. These letters were form letters and were in and of themselves frauds and misrepresentations in that all contestants could not be and were not in an identical favorable position as represented in the letters.

Order

27 F. T. C.

PAR. 6. The whole plan was primarily not a puzzle contest at all, but constituted a scheme and method in unfair competition intended to and resulting in the procurement through such deception and misrepresentations of a large subscription sales force by respondent to sell subscriptions for its magazines, and said plan or scheme and methods were unfair to all those engaged in selling magazines in interstate commerce who did not employ such false and misleading representations and plan or scheme and method, and tended unfairly to divert trade to respondent from such competitors who did not employ them.

PAR. 7. As a result of said respondent's false and misleading representations, plan, or scheme and method as above set out, a substantial number of the consuming public were induced to subscribe for and purchase a substantial number of respondent's magazines with the inevitable result that trade was unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling magazines in commerce who did not promote or attempt to promote the sale of their magazines by such or similar false and misleading representations, plan, scheme, or method.

CONCLUSION

The above and foregoing acts, practices and representations of the respondent are all to the prejudice and injury of the public and respondent's competitors as aforesaid, and are unfair methods of competition within the meaning and intent 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, testimony and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, brief filed herein in support of the complaint (respondent having waived brief), 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, W. D. Boyce Co., a corporation, its officers, representatives, agents, and employees, directly or indirectly through any corporate or other device, in connection with the offering for sale, sale and distribution of its magazines or other publications in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. Through puzzle contests or through any other means that respondent is operating anything other than a private business for profit.

2. That automobiles or other commodities are given or awarded for any cause other than as payment for securing subscriptions to respondent's magazines.

3. That the only qualification or requirement to win a prize is a prompt solution of the purported puzzle, and no further effort or money is required, when such are not the facts.

4. That any one other than the company or person actually conducting the said contest is conducting it.

5. That any entrant is in any preferred position, when such is not the fact.

6. That form letters sent out generally are individual letters truly describing the individual's purported preferred standing in the contest, when they do not truly state the facts.

7. That all the facts as to the money, work and effort required to win a prize or grand prize are disclosed, when in fact less than full disclosure is made.

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

IN THE MATTER OF
MASTER LOCK COMPANY

COMPLAINT, FINDINGS, CONCLUSION, OPINION AND ORDER IN REGARD TO THE
ALLEGED VIOLATION OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT.
15, 1914, AS AMENDED

Docket 3386. Complaint, Apr. 22, 1938—Decision, Sept. 14, 1938

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—QUANTITY DISCOUNTS—
INDIVIDUAL ORDER SIZE COST AND LARGE ANNUAL AGGREGATE PURCHASE

Belief, in granting of additional discount to customers whose annual purchases generally exceed \$10,000, that orders received from such customer group are larger and fewer in number in proportion to customer purchases, and therefore cost seller less per dollar of sales to bill, pack, and ship than orders received from customers whose annual purchases usually amount to less, is frequently not supported by the facts, it appearing, on the contrary, that not only do customers in the lower group often place a smaller percentage of orders amounting to less than \$5 each than do customers allowed the additional discounts, but that they frequently also place larger percentage of orders exceeding \$100 each than do customers accorded such additional discounts, and that average size of individual order received by sellers from customers granted extra discounts is frequently less than average size of individual order received from customers not granted such discounts.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (A)—QUANTATY DISCOUNTS—
COST SAVINGS—SIZE OF ORDERS AND AGGREGATE PURCHASES

Aside from differences in methods of sale and delivery, savings in the cost of serving different customers result from the differences in the size of the orders placed by such customers, irrespective of their aggregate purchases for a given period of time, large orders being usually assembled, priced, packed, billed, and delivered at a lower cost per dollar of sales than small orders.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (A)—QUANTITY DISCOUNTS—
COST SAVINGS—AGGREGATE ANNUAL PURCHASE BASIS—AS ALONE JUSTIFYING

Where a corporation engaged in manufacture, sale and distribution of padlocks—Paid or allowed to buyers, aggregate annual purchases of which amounted to \$10,000, additional 5 percent discount, and in some cases additional allowance for freight, not granted to buyer competitors whose aggregate annual purchases fell below said sum, which additional discount or allowance, absent any evidence that it employed different methods of sale and delivery in serving customers not accorded such discount than it used in serving those granted same, or that it cost it less per dollar of sales to make shipments to first-named, than to last-named group, did not make only due allowance for differences in cost of manufacture, sale, or delivery resulting from differing methods or quantities in which padlocks were to such purchasers sold or delivered;