

IN THE MATTER OF

NATHAN LEVIN, MAXWELL LEVIN, AND MORRIS W. LEVIN, INDIVIDUALLY AND TRADING AS 4-U COMPANY OF AMERICA

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

Docket 3476. Complaint, July 8, 1938—Decision, Sept. 27, 1938

Where a firm engaged in sale and distribution of citric acid, sodium citrate, lithium citrate, sodium tartrate, bottle crowns, and other products to dealers in the various States and in the District of Columbia, engaged in manufacture therewith of soda water and in bottling and capping same, and in sale thereof, as thus bottled and capped, in 24-bottle cases—

- (a) Supplied said bottle crowns, with numbers stamped inside thereon from 1 to 10 and 12 to 24, inclusive, and letter "U" in lieu of omitted number 11, for retailers' use in resale to consumer of bottled product composed of ingredients sold by it as aforesaid under scheme or plan by which chance purchaser securing bottle with number "4" or letter "U" crown was entitled to and did receive additional free bottle, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of said firm's products, in accordance with aforesaid plan or method, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win by chance, or other method contrary to public policy, and refrain therefrom;

With result that many were attracted by said sales plan or method employed in sale or distribution of said firm's products because of element of chance involved therein, and were thereby induced to buy and sell said products in preference to those offered and sold by competitors who do not use such or equivalent plan or method, and trade was unfairly diverted to them from their competitors who do not so do; to the injury of competition in commerce among the various States and in said District; and

- (b) Made such statements, in advertising literature which they distributed and caused to be distributed in connection with retail sales of soda water made from products sold and distributed by them, as "Slenderizing," "Energizing," "Invigorating," "Alkalizing," "Energize with 4-U, that healthful drink," "For acid stomach," and "Will relieve acid stomach and lift hangovers," facts being product thus described was neither slenderizing, energizing, invigorating, alkalizing, or healthful, nor of any material benefit in the treatment of an "acid stomach," and would not combat the various manifestations of alcoholism which are referred to as "hang-overs";

With effect of misleading substantial portion of purchasing public into erroneous belief that such statements and representations were true, and into purchase of substantial quantities of their said products as a result thereof, and of thereby diverting unfairly to them trade from competitor manufacturers and distributors of like and similar products who do not publish in

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their behalf untrue claims; to the substantial injury of competition in commerce as aforesaid:

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

Mr. D. C. Daniel for the Commission.

Mr. Benjamin Levin, of Philadelphia, Pa., for respondent.

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 Nathan Levin, Maxwell Levin, and Morris W. Levin, individually, and as copartners trading as 4-U Co. of America, hereinafter referred to as respondents, have violated the provisions of 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. Respondents, Nathan Levin, Maxwell Levin, and Morris W. Levin, are individuals doing business as copartners under the trade name of 4-U Co. of America with their principal office and place of business located at 611 North American Street, Philadelphia, Pa. Respondents are now, and for some time last past have been, engaged in the sale and distribution of citric acid, sodium citrate, lithium citrate, sodium tartrate, bottle crowns, and other products to dealers located in the various States of the United States and in the District of Columbia. Respondents cause, and have caused, their said products, when sold, to be transported from their principal place of business aforesaid to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by said respondents in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their business, respondents are in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of like and similar products and carbonated beverages or soda water in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Wholesale dealers who purchase and have purchased said products use, and have used, the same in the manufacture of soda water which is placed in bottles and capped with crowns. The bottles of soda water are, and have been, sold to the retail dealers who

in turn sell and distribute, and have sold and distributed, said bottles of soda water to the consuming public by means of a sales plan or method which involves the operation of a game of chance, gift enterprise, or lottery scheme, as follows:

The soda water is sold in cases containing 24 bottles thereof. On the inside of the crown on each bottle is printed either a number or the letter "U." The numbers range from 1 to 24 with the exception of number 11 which is omitted and the letter "U" substituted in lieu thereof. A purchaser who receives a bottle of soda water having a crown with either the number "4" or the letter "U" printed on the inside thereof is entitled to, and receives, an additional bottle of soda water without additional cost. The said numbers and the letter "U" are effectively concealed from purchasers and prospective purchasers until a purchase is made, the bottle selected, and the crown removed from said bottle. Thus said additional bottles of soda water are distributed to the purchasing public wholly by lot or chance.

PAR. 3. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale of their products in accordance with the sales plan or method hereinabove set forth. The use by respondents of said method in the sale of their products, and the sale of such products by and through the use thereof, and by the aid of said method, is a practice of a sort which is contrary to an established policy of the Government of the United States, and which is in violation of the criminal laws.

PAR. 4. The sale of said products to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an additional bottle of soda water without additional cost. Many persons, firms, and corporations who sell and distribute products in competition with the respondents as above alleged are unwilling to adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed in the sale and distribution of respondents' products because of the element of chance involved therein, and are thereby induced to buy and sell said products in preference to products offered for sale and sold by competitors of respondents who do not use the same, or an equivalent sales plan or method. The use of said sales plan or method by respondents, because of said game of chance, has a tendency and capacity to, and does, divert trade unfairly to the respondents from their said competitors who do not

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use the same or an equivalent sales plan or method. As a result thereof, injury is being done, and has been done, by respondents to competitors in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their business as aforesaid, respondents distribute and have distributed, and cause and have caused to be distributed, in commerce certain advertising literature containing various false, deceptive, and misleading statements and representations, of which the following are examples but are not all-inclusive:

Slenderizing.

Energizing.

Invigorating.

Alkalizing.

Energize with 4-U, that healthful drink.

For acid stomach.

Will relieve acid stomach and lift hang-overs.

In truth and in fact said soda water is not slenderizing, energizing, invigorating, alkalizing, or healthful; is not of any material benefit in the treatment of an "acid stomach"; and will not combat the various manifestations of alcoholism which are referred to as "hang-overs."

PAR. 6. The use by respondents of the false, deceptive, and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are among the competitors of respondents, as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products, who do not publish claims for their products which are untrue. By the use of the statements and representations aforesaid, trade is unfairly diverted to respondents from such competitors, and as a result thereof substantial injury is being, and has been, done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice of the public and of respondents' 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 July 8, 1938, issued and thereafter served its complaint in this proceeding upon respondents, Nathan Levin, Maxwell Levin, Morris W. Levin, individually, and as copartners trading as 4-U Co. of America, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 23, 1938, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, 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. Respondents, Nathan Levin, Maxwell Levin, and Morris W. Levin, are individuals doing business as copartners under the trade name of 4-U Co. of America with their principal office and place of business located at 611 North American Street, Philadelphia, Pa. Respondents are now, and for some time last past have been, engaged in the sale and distribution of citric acid, sodium citrate, lithium citrate, sodium tartrate, bottle crowns, and other products to dealers located in the various States of the United States and in the District of Columbia. Respondents cause, and have caused, their said products, when sold, to be transported from their aforesaid place of business in Pennsylvania to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by said respondents in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their business, respondents are in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of like and similar products between and among the various States of the United States and in the District of Columbia.

PAR. 2. Wholesale dealers who purchase and have purchased said products use, and have used, the same in the manufacture of soda

water which is placed in bottles and capped with crowns purchased from the respondents. The bottles of soda water are, and have been, sold to the retail dealers who in turn sell and distribute, and have sold and distributed, said bottles of soda water to the consuming public by means of a sales plan or method which involves the operation of a game of chance, gift enterprise, or lottery scheme, as follows:

The soda water is sold in cases containing 24 bottles thereof. On the inside of the crown on each bottle is printed either a number or the letter "U." The numbers range from 1 to 24 with the exception of number 11 which is omitted and the letter "U" substituted in lieu thereof. A purchaser who receives a bottle of soda water having a crown with either the number "4" or the letter "U" printed on the inside thereof is entitled to, and receives, an additional bottle of soda water without additional cost. The said numbers and the letter "U" are effectively concealed from purchasers and prospective purchasers until a purchase is made, the bottle selected, and the crown removed from said bottle. Thus said additional bottles of soda water are distributed to the purchasing public wholly by lot or chance.

PAR. 3. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale of their products in accordance with the sales plan or method hereinabove set forth. The use by respondents of said method in the sale of their products, and the sale of such products by and through the use thereof, and by the aid of said method, is a practice of a sort which is contrary to an established policy of the Government of the United States, and which is in violation of the criminal laws.

PAR. 4. The sale of said products to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an additional bottle of soda water without additional cost. Many persons, firms, and corporations who sell and distribute products in competition with the respondents as above alleged are unwilling to adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed in the sale and distribution of respondents' products because of the element of chance involved therein, and are thereby induced to buy and sell said products in preference to products offered for sale and sold by competitors of respondents who do not use the same, or an equivalent sales plan or method. The use of said sales plan or method by respondents, because of said game of chance, has a tendency and capacity to, and does, divert trade un-

fairly to the respondents from their said competitors who do not use the same or an equivalent sales plan or method. As a result thereof, injury is being done, and has been done, by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their business as aforesaid and in connection with the retail sales of soda water manufactured from said products sold and distributed by the respondents as hereinabove set out, respondents distribute and have distributed, and cause and have caused to be distributed, certain advertising literature containing various false, deceptive, and misleading statements and representations with regard to such soda water. The following statements and representations are examples but are not all-inclusive:

Slenderizing

Energizing

Invigorating

Alkalizing

Energize with 4-U, that healthful drink.

For acid stomach.

Will relieve acid stomach and lift hangovers.

In truth and in fact said soda water is not slenderizing, energizing, invigorating, alkalizing, or healthful; is not of any material benefit in the treatment of an "acid stomach"; and, will not combat the various manifestations of alcoholism which are referred to as "hangovers."

PAR. 6. The use by respondents of the false, deceptive, and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are among the competitors of respondents, as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products, who do not publish claims for their products which are untrue. By the use of the statements and representations aforesaid, trade is unfairly diverted to respondents from such competitors, and as a result thereof substantial injury is being, and has been, done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the injury and prejudice of the public and of respondents' 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 the respondents, in which answer respondents admit all of the material allegations of fact set forth in said complaint, and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered. That the respondents, Nathan Levin, Maxwell Levin, Morris W. Levin, individually, and as copartners trading under the name of 4-U Co. of America, or under any other trade name, their agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of citric acid, sodium citrate, lithium citrate, sodium tartrate, and bottle crowns in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Selling and distributing said products so arranged and assembled that sales of such products to the general public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme.

2. Furnishing to, or placing in the hands of, dealers said products, or any other products, together with a device, which said device is to be used, or may be used, in selling or distributing said products to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme.

3. Furnishing to dealers bottle caps or crowns with printed or impressed letters or numbers therein, either with other products or separately, which said bottle caps or crowns are to be used, or may be used, in selling or distributing said products to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme.

4. Advertising that soda water manufactured from said products is slenderizing, energizing, invigorating, alkalizing, or healthful; that said soda water will relieve an acid stomach and the after effects

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resulting from the excessive use of alcohol, commonly referred to as a "hangover"; and, from making any other representations of similar import and effect concerning said soda water.

It is further ordered, That the respondents, Nathan Levin, Maxwell Levin, and Morris W. Levin shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF
MIDWEST GROCERY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3501. Complaint, July 20, 1938—Decision, Sept. 27, 1938*

Where a corporation engaged in sale and distribution of groceries to retailer purchasers in various other States—

Supplied, with products sold as aforesaid, for retailers' use in sale and distribution thereof on basis of one with each 25-cent purchase, printed numbered coupons for distribution to consumer purchasers, under a plan and scheme in accordance with which consumer who secured by chance winning coupon numbers, as determined by said corporation's weekly drawings and announced by it in printed circulars distributed to retailer customers, was entitled to and did receive from it prizes in cash ranging in amount from \$2.50 to \$50.00, and thereby supplied to and placed in the hands of others means of conducting a lottery in the sale of its products in accordance with sales plan hereinbefore set forth, contrary to an established public 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 grocery products by aforesaid or any other method involving game of chance or lottery, and refrain therefrom;

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

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

Mr. D. C. Daniel for the Commission.

Mr. Joseph F. Elward, of Chicago, Ill., for respondent.

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 the Midwest Grocery Co., a corporation, hereinafter referred to as respondent, has