

Complaint

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.

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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

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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, Midwest Grocery Co., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its offices and principal place of business located at 2435 South Western Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of groceries to retail dealers. Respondent causes and has caused its products, when sold, to be transported from said city to purchasers thereof located in various States of the United States at their respective points of location. There is now and has been for some time last past a course of trade by respondent in such products in commerce between and among various States of the United States. In the course and conduct of its business respondent is and has been in competition with other corporations and with individuals and partnerships likewise engaged in the sale and distribution of groceries in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of said business as described in paragraph 1 hereof, respondent sells and has sold groceries to retail dealers together with a sales plan or method involving a game of chance, gift enterprise, or lottery scheme when said groceries are sold and distributed by said dealers to the consuming public. The sales plan or method is substantially described as follows:

Respondent sells said dealers groceries and printed coupons and circulars. With each 25 cents purchase of groceries the customer is entitled to and receives a coupon with a number printed thereon. A list of said numbers is retained by respondent. A weekly selection at random of numbers from said list is made by respondent and the numbers thus selected are printed on circulars which are sold and distributed to said dealers who, in turn, distribute the same among the purchasers of said groceries. Persons holding coupons with numbers printed thereon corresponding to the numbers published in said circulars are entitled to and receive from respondent cash prizes ranging from \$2.50 to \$50.00. The fact as to which numbers entitle the holders thereof to cash prizes cannot be determined until purchases of said groceries have been made and the said list of numbers has been published in said circulars. Thus the cash prizes are awarded to the ultimate purchasers of said groceries wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's groceries 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 and has induced purchasers of groceries to purchase respondent's groceries in preference to groceries offered for sale and sold by its competitors.

PAR. 4. The sale of said groceries to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a cash prize. The use by respondent of said method in the sale of groceries, and the sale of groceries 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 public 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 grocery trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same or equivalent elements of chance or lottery. Many persons, firms, and corporations who make and sell groceries in competition with respondent as above alleged are unwilling to offer for sale or 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 or ultimate purchasers of groceries are attracted by respondent's said method of selling said groceries and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said groceries so sold by respondent in preference to groceries offered for sale and sold by respondent's competitors who do not use the same or an equivalent method. 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 an equivalent method, to exclude from the grocery trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is against public policy and unlawful, to lessen competition in the grocery trade, to create a monopoly of said grocery trade in the respondent and in such other distributors of groceries as use the same or an equivalent method, 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 grocery trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same or an equivalent method.

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 July 20, 1938, issued and thereafter served its complaint in this proceeding upon respondent, Midwest Grocery Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On September 1, 1938, the respondent filed its answer, in which answer it 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 the 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. Respondent, Midwest Grocery Co., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its offices and principal place of business located at Thirty-third Street and South Western Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of groceries to retail dealers. Respondent causes and has caused its products, when sold, to be transported from its aforesaid place of business in Illinois to purchasers thereof located in various States of the United States other than Illinois at their respective points of location. There is now, and has been for some time last past, a course of trade by respondent in such products in commerce between and among various States of the United States. In the course and conduct of its business respondent is and has been in competition with other corporations and with individuals and partnerships also engaged in the sale and distribution of groceries in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of said business as described in paragraph 1 hereof, respondent sells and has sold groceries to retail dealers together with a sales plan or method involving a game of chance, gift enterprise, or lottery scheme when said groceries are sold and distributed by said dealers to the consuming public. The sales plan or method is substantially described as follows:

Respondent sells said dealers groceries and printed coupons and circulars. With each 25-cent purchase of groceries the customer is entitled to and receives a coupon with a number printed thereon. A list of said numbers is retained by respondent. A weekly selection at random of numbers from said list is made by respondent and the numbers thus selected are printed on circulars which are sold and distributed to said dealers who, in turn, distribute the same among the purchasers of said groceries. Persons holding coupons with numbers printed thereon corresponding to the numbers published in said circulars are entitled to and receive from respondent cash prizes ranging from \$2.50 to \$50.00. The fact as to which numbers entitle the holders thereof to cash prizes cannot be determined until purchases of said groceries have been made and the said list of numbers has been published in said circulars. Thus the cash prizes are awarded to the ultimate purchasers of said groceries wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's groceries 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 and has induced purchasers of groceries to purchase respondent's groceries in preference to groceries offered for sale and sold by its competitors.

PAR. 4. The sale of said groceries to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure a cash prize. The use by respondent of said method in the sale of groceries, and the sale of groceries 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 public 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 grocery trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same or equivalent elements of chance or lottery. Many persons, firms, and corporations who make and sell groceries in competition with respondent as above found are unwilling to offer for

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sale or 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 or ultimate purchasers of groceries are attracted by respondent's said method of selling said groceries and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said groceries so sold by respondent in preference to groceries offered for sale and sold by respondent's competitors who do not use the same or an equivalent method. 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 an equivalent method, to exclude from the grocery trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is against public policy and unlawful, to lessen competition in the grocery trade, to create a monopoly of said grocery trade in the respondent and in such other distributors of groceries as use the same or an equivalent method, 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 grocery trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of respondent as herein alleged are all to the injury and 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 the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered. That the respondent, Midwest Grocery Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of groceries in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

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1. Selling and distributing to dealers groceries so packed and assembled that sales thereof are to be made, or are designed to be made to the general public, by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to, and placing in the hands of dealers, groceries together with coupons and circulars with numbers printed thereon, which said coupons and circulars are to be used, or are designed to be used, in the sale and distribution of said groceries to the general public by means of a game of chance, gift enterprise, or lottery scheme.

3. Supplying to, or placing in the hands of dealers, coupons with numbers printed thereon and circulars with numbers printed thereon, or any other device or devices, which are to be, or are designed to be, used in the sale and distribution of groceries, or any other products, to the general public by means of a game of chance, gift enterprise, or lottery scheme.

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
GATES MEDICINE COMPANY, INC.

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

Docket 3483. Complaint, July 9, 1938—Decision, Oct. 4, 1938

Where a corporation engaged in offer, sale, and distribution of "Rock-A-Water Tablets" for reduction of weight; in advertising its said product in newspapers and other advertising matter circulated among purchasers and prospective purchasers in the various States and in the District of Columbia—

Represented, under caption "*Reduce Safely Says Noted Authority*," that its said tablets would reduce 10 pounds in 11 days, and preparation was guaranteed to make user lose weight without dieting, facts being it did not constitute harmless agency for reduction of weight and could not be taken with impunity by all persons using same, and did not have approval of any noted authority and was not such a product as to assure anyone of any specific reduction within any definite period of time;

With effect of misleading and deceiving purchasers and prospective purchasers into false and erroneous belief that it constituted safe and harmless treatment for aforesaid purpose and had approval of a competent and noted authority, and that definite reduction, as aforesaid, could be assured through taking the same, and of thereby inducing its purchase in reliance upon such beliefs, and of diverting trade unfairly to it from those competitors who do not falsely or misleadingly represent the safety or efficacy of their products; to the substantial injury of competition in commerce:

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

Mr. Jay L. Jackson for the Commission.

Kay, Casto & Amos, of Charleston, W. Va., 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 Gates Medicine Co., Inc., 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, Gates Medicine Co., Inc., is a corporation organized, existing, and doing business, under and by virtue of the laws of the State of West Virginia, with its principal office and