

IN THE MATTER OF
**CLAIR C. HERR, INDIVIDUALLY AND TRADING AS LAN-
CASTER SALTED NUT COMPANY**

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

Docket 3518. Complaint, July 30, 1938—Decision, Oct. 12, 1938

Where an individual engaged in manufacture and processing of salted nuts, and in sale and distribution of assortments thereof which were so packed and assembled as to involve use of a lottery scheme when sold to consumers thereof, and which were composed of (1) number of packages and number of tins of various kinds of nuts, together with punchboard, for sale under a plan, and in accordance with said board's explanatory legend, pursuant to which those selecting last 5 numbers in each of board's 100 sections received number without charge, and receipt of nuts and kind and quantity thereof received by purchaser for nickel paid, in lieu of contingency hereinbefore specified, was dependent upon chance number pushed from board, and pursuant to which maker of last punch on board was entitled to three of the pound tins included with assortment in question, and (2) other assortments similarly for sale by lot or chance under methods illustrated as aforesaid, but in varying detail—

Sold, to dealers for display and resale to purchasing public in accordance with aforesaid sales plans, such assortments and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his products in accordance therewith, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who, unwilling to offer or sell salted nuts, nut confections, and candy as above described or by sales plan or method involving game of chance or by any other method contrary to public policy, refrain therefrom;

With result that many dealers in and ultimate purchasers of such products were attracted by his said sales plan or method and by element of chance involved in use thereof as aforesaid, and thereby induced to purchase his products, thus packed and sold, in preference to salted nuts, nut confections, and candy offered and sold by said competitors who do not use such or any equivalent or similar method, and with tendency and capacity, because of said game of chance, to divert unfairly to him trade and custom from his said competitors as aforesaid, exclude from such salted nuts, nut confections, and candy trades all competitors who are unwilling to and do not use such or equivalent or similar method as unlawful, lessen competition in said trades, create monopoly thereof in him and such other distributors of such products as do use same or equivalent or similar method, deprive purchasing public of benefit of free competition in said trades, and eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent or similar method:

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

Mr. Henry C. Lank and 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 Clair C. Herr, individually, and trading as Lancaster Salted Nut Co., 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, Clair C. Herr, is an individual trading under the name Lancaster Salted Nut Co., with his principal office and place of business located at 10 Coral Street, Lancaster, Pa. Respondent is now, and for some time last past has been, engaged in the manufacture and processing of salted nuts and in the sale and distribution thereof to dealers in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, his said salted nuts, when sold, to be transported from his principal place of business aforesaid to purchasers thereof located in the various States of the United States and in the District of Columbia at their respective points of location. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of salted nuts, nut confections, and candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells, and has sold, to dealers certain assortments of salted nuts so packed and assembled as to involve the use of a lottery scheme when sold to the consumers thereof. One of said assortments is distributed to the purchasing public in the following manner:

This assortment consists of a number of packages and a number of tins of various kinds of nuts, together with a device commonly called a punchboard. The board is divided into 100 sections. Sales are 5 cents each and each purchaser is entitled to 1 punch from said board. When a punch is made from said board a number is disclosed. The board bears statements or legends informing purchasers and prospective purchasers that certain numbers entitle the purchasers thereof to 4 ounces of Brazil nuts; that certain other numbers entitle the purchasers thereof to 4 ounces of cashew nuts; that certain other numbers entitled the purchasers thereof to a small tin of mixed nuts; that certain other numbers entitled the purchasers

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thereof to 4 ounces of pecans; that certain other numbers entitles the purchasers thereof to a 1 pound package of peanuts; that certain other numbers entitled the purchasers thereof to a 1 pound package of mixed nuts; that certain other numbers entitled the purchasers thereof to a 1 pound package of cashew nuts; that the last punch on the board entitled the purchaser thereof to a 1 pound tin of mixed nuts, a 1 pound tin of cashew nuts and a 1 pound tin of peanuts; and that persons selecting the last 5 numbers in each section shall receive the same free. A purchaser who does not qualify by obtaining a number calling for a tin or package of said nuts or the last number on the board receives nothing for his money other than the privilege of punching a number from said board. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The said packages and tins of nuts are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of his salted nuts, and furnishes, and has furnished various punchboards for use in the sale and distribution of said salted nuts by means of a game of chance, gift enterprise, or lottery scheme. Such sales plans or methods vary in detail, but the above-described plan or method is illustrative of the plans involved.

PAR. 3. Retail dealers who purchase respondent's salted nuts 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 a means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. Such sales plan has a tendency and capacity to induce, and has induced, purchasers thereof to purchase respondent's said products in preference to salted nuts, nut confections, and candy offered for sale and sold by his said competitors.

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 a package or a tin of salted nuts. The use by respondent of said sales plan or method in the sale of salted nuts and the sale of salted nuts by and through the use thereof, and by the aid of said sales plan or 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 the tendency unduly to hinder competition, or to create a monopoly in this, to wit:

That the use thereof has the tendency and capacity to exclude from the salted nut, nut confections, or candy trades competitors who do

not adopt or use the same method or an equivalent or similar method involving the same or an equivalent element of chance or lottery scheme. Many persons, firms, and corporations who make and sell salted nuts, nut confections, and candy in competition with the respondent as above alleged are unwilling to offer for sale and sell the same by a sales plan or method as above described or by a sales plan or method which involves a game of chance or by any other method that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers and ultimate purchasers of salted nuts, nut confections, and candy are attracted by respondent's said sales plan or method and by the element of chance involved in the use thereof in the manner above described, and are thereby induced to purchase said products so packed and sold by respondent in preference to salted nuts, nut confections, and candy offered for sale and sold by said competitors of respondent, who do not use the same or an equivalent or similar method. The use of said method by respondent has a tendency and capacity, because of said game of chance, to divert to respondent trade and custom from his said competitors who do not use the same or an equivalent or similar method; to exclude from said salted nut, nut confections, and candy trades all competitors who are unwilling to and who do not use the same or an equivalent or similar method because the same is unlawful; to lessen competition in said trades; to create a monopoly of said trades in respondent and such other distributors of salted nuts, nut confections, and candy as use the same or an equivalent or similar method; and to deprive the purchasing public of the benefit of free competition in said trades. The use of said method by respondent has a tendency and capacity to eliminate from said trades all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent or similar 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 30, 1938, issued, and on August 2, 1938, served, its complaint in this proceeding upon the respondent, Clair C. Herr, individually and trading as Lancaster

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Salted Nut Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission by order entered herein granted respondent's motion for permission to withdraw his said answer and to substitute, therefore, his answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and substitute 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, Clair C. Herr, is an individual trading under the name Lancaster Salted Nut Co., with his principal office and place of business located at 10 Coral Street, Lancaster, Pa. Respondent is now, and for some time last past has been, engaged in the manufacture and processing of salted nuts and in the sale and distribution thereof to dealers in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, his said salted nuts, when sold, to be transported from his aforesaid principal place of business in Pennsylvania to purchasers thereof located in the various other States of the United States and in the District of Columbia at their respective points of location. There is now, and for some time last past has been, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of salted nuts, nut confections, and candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells, and has sold, to dealers certain assortments of salted nuts so packed and assembled as to involve the use of a lottery scheme when sold to the consumers thereof. One of said assortments is distributed to the purchasing public in the following manner:

This assortment consists of a number of packages and a number of tins of various kinds of nuts, together with a device commonly called

a punchboard. The board is divided into 100 sections. Sales are 5 cents each and each purchaser is entitled to 1 punch from said board. When a punch is made from said board a number is disclosed. The board bears statements or legends informing purchasers and prospective purchasers that certain numbers entitle the purchasers thereof to 4 ounces of Brazil nuts; that certain other numbers entitle the purchasers thereof to 4 ounces of cashew nuts; that certain other numbers entitle the purchasers thereof to a small tin of mixed nuts; that certain other numbers entitle the purchasers thereof to 4 ounces of pecans; that certain other numbers entitle the purchasers thereof to a 1 pound package of peanuts; that certain other numbers entitle the purchasers thereof to a 1 pound package of mixed nuts; that certain other numbers entitle the purchasers thereof to a 1 pound package of cashew nuts; that the last punch on the board entitles the purchaser thereof to a 1 pound tin of mixed nuts, a 1 pound tin of cashew nuts and a 1 pound tin of peanuts; that persons selecting the last 5 numbers in each section shall receive the same free. A purchaser who does not qualify by obtaining a number calling for a tin or package of said nuts or the last number on the board receives nothing for his money other than the privilege of punching a number from said board. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The said packages and tins of nuts are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of his salted nuts, and furnishes, and has furnished, various punchboards for use in the sale and distribution of said salted nuts by means of a game of chance, gift enterprise, or lottery scheme. Such sales plans or methods vary in detail but the above-described plan or method is illustrative of the plans involved.

PAR. 3. Retail dealers who purchase respondent's salted nuts 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 a means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. Such sales plan has a tendency and capacity to induce, and has induced, purchasers thereof to purchase respondent's said products in preference to salted nuts, nut confections, and candy offered for sale and sold by his said competitors.

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 a package or a tin of salted nuts. The use by respondent of said sales plan or method in the sale of salted nuts

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and the sale of salted nuts by and through the use thereof, and by the aid of said sales plan or 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 the tendency unduly to hinder competition, or to create a monopoly in this, to wit:

That the use thereof has the tendency and capacity to exclude from the salted nut, nut confections, or candy trades competitors who do not adopt or use the same method or an equivalent or similar method involving the same or an equivalent element of chance or lottery scheme. Many persons, firms, and corporations who make and sell salted nuts, nut confections, and candy in competition with the respondent are unwilling to offer for sale and sell the same by a sales plan or method as above described or by a sales plan or method which involves a game of chance or by any other method that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers and ultimate purchasers of salted nuts, nut confections, and candy are attracted by respondent's said sales plan or method and by the element of chance involved in the use thereof in the manner above described, and are thereby induced to purchase said products so packed and sold by respondent in preference to salted nuts, nut confections, and candy offered for sale and sold by said competitors of respondent, who do not use the same or any equivalent or similar method. The use of said method by respondent has a tendency and capacity, because of said game of chance, to unfairly divert to respondent trade and custom from his said competitors who do not use the same or an equivalent or similar method; to exclude from said salted nut, nut confections, and candy trades all competitors who are unwilling to and who do not use the same or an equivalent or similar method because the same is unlawful; to lessen competition in said trades; to create a monopoly of said trades in respondent and such other distributors of salted nuts, nut confections, and candy as use the same or an equivalent or similar method; and to deprive the purchasing public of the benefit of free competition in said trades. The use of said method by respondent has a tendency and capacity to eliminate from said trades all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent or similar method.

CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice and injury 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.

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Order

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 in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, 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, Clair C. Herr, individually and trading as Lancaster Salted Nut Co., or under any other name, his agents, representatives, and employees in connection with the offering for sale, sale, and distribution of salted nuts or any other products in interstate commerce or in the District of Columbia do forthwith cease and desist from:

1. Selling and distributing salted nuts or any other products so packed and assembled that sales of such salted nuts or other products to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of dealers assortments of salted nuts or any other products which are to be used or which may be used without alteration or rearrangement of the contents of such assortments to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the salted nuts or other products contained in said assortments to the general public.

3. Supplying to or placing in the hands of dealers assortments of salted nuts or any other products, together with a device commonly called a punchboard, or any other lottery device for use or which may be used in distributing or selling the said salted nuts or other products to the general public at retail.

4. Furnishing to dealers a device commonly called a punchboard or any other lottery device, either with packages or assortments of salted nuts or any other products, or separately, which punchboard or other lottery device is to be used or may be used in distributing or selling said salted nuts or other products to the general public.

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

IN THE MATTER OF
WILLARD TABLET 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 3100. Complaint, Apr. 8, 1937—Decision, Oct. 15, 1938

Where a corporation engaged in sale and distribution of certain medicinal tablets, together with printed matter containing advice of a dietary and hygienic nature, together referred to as the "Willard Treatment," and sold to retail druggists and, to a relatively small extent, by mail direct to ultimate purchasers at price of \$5 a bottle, along with which was included, as aforesaid, such printed matter with directions for diet, rest, and other hygienic measures, in competition with others engaged in sale and distribution of medicinal and other preparations and products designed and intended for use in treatment of same ailments and conditions as those for which it recommended its aforesaid tablets and treatment, and including many who do not in any manner misrepresent their said preparations and products or therapeutic properties thereof or make any false statements in connection with sale and distribution of such preparations and products; in advertising its said preparation and treatment in newspapers and other publications circulated between and among the various States and in bulletins distributed from its place of business to prospective purchasers in other States and in broadcasts from radio stations which conveyed programs emanating therefrom to listeners in various States—

- (a) Represented, through statements there made and reproductions therein of purported testimonials, that its said tablets and aforesaid printed material sold together therewith, or treatment, constituted a competent and adequate cure or remedy for, and had substantial therapeutic value in the treatment of, stomach and duodenal ulcers due to hyperacidity, poor digestion, acid dyspepsia, sour or upset stomach, gaseousness, bloating, heartburn, constipation, bad breath, sleeplessness, headaches, and jaded appetite, when such conditions were due to or persisted because of excess acid, through such statements as "has brought definite relief to hundreds of such stomach sufferers everywhere," "for stomach distress, such as heartburn, poor digestion, acid dyspepsia, and stomach ulcers, due to excessive acid. * * * has brought amazing relief to such stomach sufferers everywhere," and "reports sent to us by those who have been seeking desperately to find relief from ulcers, and who finally found that prayed-for help in the Willard Treatment should prove an inspiration to every person so afflicted," and through such purported testimonial statements, among others, as "I took about four bottles of the Willard Treatment, and I can eat anything now and work hard every day * * * had ulcers of the stomach for fourteen years," and "It is with great pleasure that I write you and thank you for what your wonderful treatment has done for me. I have suffered with ulcers of the stomach for the past eighteen years. I have taken many different kinds of medicine," facts being said tablets and instructions or treatment were not a competent and effective remedy or cure for