

Complaint

IN THE MATTER OF

IRVING SCHWARTZ DOING BUSINESS AS LLOYD'S
DISTRIBUTING COMPANY

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

Docket 3277. Complaint, Dec. 3, 1937—Decision, Jan. 25, 1939

Where an individual engaged in sale and distribution of various articles of merchandise, including electric shavers, radios, and fountain pens, to purchasers in other States; in soliciting sale of and in selling and distributing his said products to customers and prospective customers and salesmen solicited through advertisements in periodicals—

Furnished such customers, prospective customers, and salesmen with a pull card for use in distribution of his said products to purchasing public by means of a lottery scheme or gift enterprise and under sales plan in accordance with which purchasers of chances paid therefor varying amounts or nothing in accordance with particular numbers secured from card, and obtained article of merchandise in accordance with success or failure in selecting girl's name corresponding with that under master seal, and operators of cards were compensated by receipt of articles being thus disposed of, and thereby conducted lotteries and placed in the hands of others means of conducting lotteries in sale of his merchandise, contrary to long-established public policy of the United States Government and the common law and criminal statutes, and in competition with those engaged in sale and distribution in interstate commerce of like or similar articles of merchandise who do not sell the same through lotteries or games of chance;

With result that many purchasers of said products were attracted by game of chance involved in his said sales method and were thereby induced to purchase his products in preference to similar goods of competitors who did not and do not use equivalent methods, and substantial volume of his merchandise was bought by public, and trade was thereby unfairly diverted to him from his competitors aforesaid:

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

Before *Mr. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

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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 Irving

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Schwartz, individually, and trading as Lloyd's Distributing Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said 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. The respondent is an individual, doing business in his own name and under the name and style of Lloyd's Distributing Co., and formerly trading under the name and style of Packard Distributing Co. Respondent has his principal office and place of business located at 521 Fifth Avenue, New York, N. Y. He is now, and for some time last past has been, engaged in the sale and distribution of various articles of merchandise including, among others, electric shavers, radios, and fountain pens, in commerce between and among the various States of the United States. He causes and has caused said products when sold to be shipped or transported from his place of business in the State of New York to purchasers thereof in New York and in other 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 and commerce by said respondent in such merchandise between and among the States of the United States. 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 similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof the respondent, in soliciting the sale of and in selling and distributing said merchandise, has furnished his customers and prospective customers with a device commonly called a "pull card," the use of which in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent involves the distribution of said merchandise to the purchasing public by means of a lottery scheme or gift enterprise. The method or sales plan suggested by respondent was and is substantially as follows:

The said pull card has a number of indicated squares, and in each square is a partially perforated tab marked "pull." Concealed under each tab is a number; within each of the said squares appears a girl's name. The said pull card also has a master tab or seal, and concealed within such master tab or seal is a name corresponding to one of the names on the card. Purchasers select one of the squares and remove the tab, disclosing the number thereunder. Persons

selecting numbers 1 and 12 to 35 pay in cents the amount of such number. Persons selecting numbers over 35 pay 35 cents. Persons selecting numbers 2 to 11, inclusive receive the same free of charge. The pull card bears a legend or legends informing purchasers and prospective purchasers of the plan or method by which said pull card is operated, and by which the merchandise described thereon is to be distributed. When all of the squares have been selected and the master seal removed, the person who selected the name corresponding to the name under the master seal receives the article of merchandise specified without further charge. Persons selecting numbers 20, 30, and 40 each receive a specified article of merchandise without further charge, and the person, salesman, agent, or representative soliciting sales by means of said card receives his choice of certain specified articles of merchandise without further charge or additional service. The numbers under the tabs are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting a particular name or whether the selection will be free of charge until the selection has been made and the tab removed. The name under the master seal is concealed from purchasers and prospective purchasers until all of the squares have been selected and the tabs removed. Thus, customers selecting names which do not correspond with the name under the master seal receive nothing but the privilege of making a selection for the money which they pay, except customers selecting numbers 20, 30, and 40, who each receive a specified article of merchandise. The person selecting the name corresponding to the name under the master seal and the persons selecting numbers 20, 30, and 40 receive an article of merchandise free of charge or for a price not exceeding 35 cents. The value of the various articles varies, but the retail value of each article is greater than 35 cents. The purchasing public is thus induced and persuaded into purchasing pulls from said card in the hope of selecting a prize-winning name or number and thus obtaining an article of merchandise for a price of 35 cents or less, or free of charge. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance or whether the same is free of charge is determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent

of said method in the sale of his merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondent, 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 respondent's said method and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to, and does, divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid acts and practices of respondent 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 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 December 3, 1937, issued, and on December 6, 1937, served its complaint in this proceeding upon respondent, Irving Schwartz, individually, and trading as Lloyd's Distributing Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of the said act. After the issuance of the said complaint, testimony and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel and H. C. Lank, attorneys for the Commission, and in opposition to the allegations of the complaint by John A. Nash,

attorney for the respondent, before Miles J. Furnas and William C. Reeves, examiners 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, briefs in support of the complaint, respondent not having filed brief, and oral argument not having been requested; and the Commission having duly considered the matter, and being now fully advised in the premises, finds 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, Irving Schwartz, is an individual doing business in his own name and under the name and style of Lloyd's Distributing Co. Prior to the time respondent began using the trade name "Lloyd's Distributing Company" respondent conducted his business under the name and style of Packard Distributing Co.

Respondent's principal office and place of business is located at 521 Fifth Avenue, in the city of New York, N. Y.

Respondent is now and has been since about the month of April 1937 engaged in the business of selling and distributing various articles of merchandise, including, among others, electric shavers, radios, and fountain pens, in commerce among and between the various States of the United States.

Respondent causes said products, when sold, to be transported from his place of business in the State of New York to purchasers thereof located at various points in States of the United States other than the State from which said shipments are made.

Respondent maintains a course of trade and commerce in said merchandise sold and distributed by him between and among the various States of the United States.

Respondent is now, and has been, in substantial competition with other individuals and with partnerships and corporations likewise engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In soliciting the sale of, and in selling and distributing his merchandise, respondent has furnished his customers and prospective customers with a device commonly called a pull card, the use of which involves the distribution of said merchandise to the purchasing public by means of a lottery scheme or gift enterprise. In order to

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procure orders for his merchandise, respondent distributed to customers and prospective customers approximately 70,000 pull cards during the years 1937 and 1938.

Respondent also solicited the services of salesmen to sell his products by inserting advertisements in magazines, which advertisements read in part as follows:

The Best and Fastest Moving Deal in the Nation.

Greatest Sales Board Item—Sales Board Operators, Agents, Distributors—Clean Up With \$15 Nationally Advertised Packard Lektro-Shaver.

Respondent enclosed with each pull card a circular letter in which prospective customers were urged to distribute respondent's merchandise by means of the pull card. One of said letters contained the following paragraphs:

Either of these gifts can be obtained with very little effort on your part. You merely show the Packard Lektro-Shaver and DeWald Radio illustrations to your friends, neighbors, co-workers in your office, shop, etc.—explain to them how they may obtain one of these marvelous and useful articles for the small sum of 1¢ up to 35¢.

Upon completion of the sales card you then fill out the inclosed order blank. Upon receipt of your order we will make shipment of the two (2) Packard Lektro-Shavers or the two (2) 5-tube DeWald radios or one (1) of each article, together with the three (3) beautiful fountain pen desk sets, all charges prepaid.

The method or sales plan used, and now used, by respondent and which respondent set forth for the guidance of his customers in the circular letters distributed by him, and in other circulars which respondent distributed with the said pull cards, is, and was, as follows:

The pull card distributed by respondent has printed thereon a number of girls' names and immediately under each name is a partially perforated disk which conceals a number. Near the upper right-hand corner of the card is a larger disk in the form of a seal which conceals a name corresponding to one of the names on the card. Purchasers select one of the squares and remove the tab disclosing the number thereunder. Persons selecting numbers 1 and 12 to 35 pay in cents the amount of each number. Persons selecting numbers over 35, pay 35 cents. Persons selecting numbers 2 to 11, inclusive, receive the same free of charge. Each pull card bears a legend informing the purchasers and prospective purchasers of the plan or method by which said pull card is operated, and by which the merchandise described thereon is to be distributed.

When all the squares have been selected and the master seal removed, the person who selected the name corresponding to the name under the master seal receives the article of merchandise specified without further charge.

Persons selecting numbers 20, 30, and 40, each receive a specified article of merchandise without further charge.

The numbers under the tabs are concealed from purchasers and prospective purchasers, and said purchasers do not know how much they will have to pay for the privilege of selecting a particular name or whether the selection will be free of charge until the selection has been made and the tab removed.

The name under the master seal is concealed from purchasers and prospective purchasers until all of the squares have been selected and the tabs removed. Customers selecting names which do not correspond with the name under the master seal receive nothing but the privilege of making a selection for the money which they pay, except customers selecting Numbers 20, 30, and 40, who each receive a specified article of merchandise.

The persons selecting the name corresponding to the name under the master seal and the persons selecting Numbers 20, 30, and 40 receive an article of merchandise free of charge or for a price not exceeding 35 cents.

In this manner the public is induced and persuaded into purchasing pulls from said card in the hope of selecting a prize-winning name or number and thus obtaining an article of merchandise for a price of 35 cents or less, or free of charge.

Respondent's merchandise is thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance or whether the same is free of charge is determined wholly by lot or chance. By use of the method above described, the respondent sold about 4,000 of the shavers and about 300 radios in the year 1937. During the first 2 months of the year 1938 respondent sold 200 shavers and approximately 25 radios.

PAR. 3. The Commission finds that the respondent, in selling his said merchandise in connection with the above-described pull card, conducted lotteries and placed in the hands of others the means of conducting lotteries in the sale of his merchandise.

The Commission further finds that the sale of respondent's merchandise to the purchasing public, as hereinabove described, involves a game of chance or the sale of a chance to procure respondent's merchandise, and that the use of said method in the distribution of merchandise is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established policy of the Government of the United States.

PAR. 4. There are among the competitors of respondent, individuals, firms, partnerships, and corporations likewise engaged in the business

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of selling and distributing in interstate commerce, like and similar articles of merchandise who do not sell their merchandise by use of lotteries or games of chance.

Many purchasers of said merchandise were attracted by the element of chance involved in respondent's sales method and were thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors who did not and do not use the same or equivalent methods.

Because of the said preference the public has purchased a substantial volume of respondent's merchandise with the result that trade has been unfairly diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of respondent, as hereinabove found, 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 (respondent having filed no answer), testimony and other evidence taken before Miles J. Furnas and William C. Reeves, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (counsel for respondent having filed no brief and not having requested oral argument), 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, Irving Schwartz, individually, and trading as Lloyd's Distributing Co., his agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of electric shavers, radios, and fountain pens, or any other merchandise, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of others, punchboards, push or pull cards, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.
2. Mailing, shipping, or transporting to agents or to distributors or members of the public punchboards, push or pull cards, or other

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lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of punchboards, push or pull cards or other lottery devices.

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

IN THE MATTER OF

BOYD HOUSER, TRADING AS BOYD HOUSER CANDY
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3506. Complaint, July 22, 1938—Decision, Jan. 25, 1939*

Where an individual engaged in sale and distribution of certain assortments of candy so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which were composed of (a) number of small bars of candy, number of quarter-pound bars, and number of half-pound bars, together with push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for 5 cents paid, 5-cent candy bar and right to make push and, dependent on success or failure in securing thereby one of certain numbers, privilege of exchanging said bar for one of the quarter- or half-pound bars, as case might be, and also, in case of person pushing last number in each of four sections into which card was divided, half-pound bar; and of (b) other assortments and cards varying only in size and detail—

Sold, to wholesale and retail jobbers, 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 said candy, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who sell and ship such product into States other than their respective points of location and are unwilling to sell their products by methods used by said individual and above described, or any other method involving game of chance or lottery, and refrain therefrom;

With result that many persons were attracted by his said sales plan or method of distribution of his candy and by element of chance involved, and were thereby induced to buy and sell such products in preference to those offered and sold by competitors who do not use same or similar method of distribution, and trade was unfairly diverted from such competitors to him;

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

Before *Mr. Charles F. Diggs*, trial examiner.

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 Boyd Houser, individually and trading as Boyd Houser Candy Co. has violated the provisions of said act and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest