

IN THE MATTER OF
**NORTH WESTERN PRINTING HOUSE, INC., IN ITS OWN
NAME AND RIGHT AND TRADING AS FEDERAL TRADE
BUILDERS; AND LOUIS ROVNER AND MORRIS LEAVITT
AS OFFICERS THEREOF; AND EDWIN J. PEARSON AS
EMPLOYEE THEREOF**

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

Docket 3429. Complaint, May 19, 1938—Decision, Feb. 21, 1939

Where a corporation and three individuals, officers thereof and in direction and control of its sales policies and business activities, acting together and in cooperation, and engaged in the manufacture, sale, and distribution of sales-promotion cards which were so designed and arranged as to involve use of a lottery scheme or gift enterprise when used by dealers in promoting and increasing sales of their merchandise to consuming public, and for the use of which, through their literature and representatives, they suggested various methods involving, in all cases, lottery scheme, game of chance, or gift enterprise, and which consisted of several groups of such sales-promotion cards involving, in all cases, lottery scheme or gift enterprise and varying only in detail, and which included, as illustrative—

(1) Group of cards arranged for punching out \$5 in trade, enclosed and concealed within so-called "Lucky Seal" of which cards were legends varying in amount from 20 cents to \$5, and entitling customer of merchant securing same to such varying amount as thus determined by chance, with other cards similarly arranged in principle, but providing for purchases up to \$10 worth of merchandise and the winning of amounts up to \$10 by legends under seal, and with still other cards prepared primarily for gasoline filling and service stations and providing for recording purchase of 100 gallons of gasoline and 10 quarts of oil by the numbers arranged around the border, and for the winning of from 1 to 25 quarts of oil by legends under seal; and—

(2) Group of "Bank Day" cards provided with number on detachable tag thereof, and place for insertion of holder's name and address, and providing for weekly or, in some cases, as arranged, for daily or semiweekly, biweekly, or monthly drawings and awards to the particular customer of the merchant involved securing by chance, along with purchase therefrom, card containing lucky number as thus determined wholly by lot or chance—
Sold, along with various display posters and circulars, and with advertisements for use by dealer customers in distributing and using such cards, such various assortments of sales-promotion cards as above described and suggested, to dealer purchasers for distribution to said dealer's customers and prospective customers, and the honoring of the awards as shown thereon as above set forth and indicated; contrary to the established public policy of the United States Government, and in competition with various manufacturers and distributors of sales-promotion cards, premium cards, price concession cards, coupons, and trading stamps which, when used by

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dealers, do not involve a lottery scheme, game of chance, or gift enterprise, and in competition with many who make and sell various cards or devices for promoting or increasing sales of dealers and are unwilling to offer or sell cards or devices so designed and arranged, as above or otherwise, as to involve game of chance, lottery scheme, or gift enterprise, and refrain therefrom;

With result that consuming public was induced to deal with or purchase merchandise from dealers using their cards, in preference to dealers using devices of their competitors, because of lottery scheme, game of chance, or gift enterprise connected with former, and were thereby induced to purchase their said cards in preference to devices of competitors, and substantial trade was thus unfairly diverted to them from their said competitors, and with tendency unduly to hinder competition or create monopoly through tendency and capacity to exclude from sales-promotion card trade competitors who do not adopt and use same or equivalent or similar methods involving same or equivalent or similar elements of chance, lottery scheme, or gift enterprise:

Held, That such acts and 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.

Mr. William Shapiro, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by the authority vested in it by said act, the Federal Trade Commission having reason to believe that North Western Printing House, Inc., a corporation in its own name and right and trading as Federal Trade Builders, and Louis Rovner and Morris Leavitt, individually and as officers of corporate respondent, and Edwin J. Pearson, individually and as an employee of corporate respondent, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to 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. Respondent North Western Printing House, Inc., is a corporation organized and operating under the laws of the State of Illinois and is doing business in its own name and also under the trade name, Federal Trade Builders. Respondent Louis Rovner is the president of corporate respondent and Morris Leavitt is the vice president and secretary of said corporation. Edwin J. Pearson is the general manager of the corporate respondent. The individual respondents direct and control the sales policies and business activities of the corporate respondent and all of the respondents act together and in cooperation in doing the acts and things hereinafter alleged.

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Respondents have their principal office and place of business located at 631 West Jackson Boulevard, Chicago, Ill. Respondents are now, and for some time last past have been, engaged in the manufacture of sales-promotion cards and in the sale and distribution thereof to dealers located at points 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 in the city of Chicago, State of Illinois, to purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia, at their respective places of business. There is now, and has been for some time last past, a course of trade by said respondents in such sales-promotion cards 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 respondents are in competition with other corporations and with individuals and partnerships engaged in the manufacture of sales-promotion cards, trade cards, discount cards, premium cards, coupons and trading stamps and in the sale and distribution thereof 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 their business as described in paragraph 1 hereof, respondents sell and have sold cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise, when used by dealers in promoting and increasing sales of their merchandise to the consuming public. The respondents manufacture and distribute several groups of sales promotion cards but they all involve a lottery scheme or gift enterprise and vary only in detail. Two of such groups are herein described for the purpose of showing arrangements, design and principle involved.

(a) One group has on the front of such cards the following:

5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
15																			5
15																			
15																			10
15																			10
15																			10
15																			10
15																			10
15																			10

THIS CARD A SURE WINNER

(Read Rules on Other Side)

15 15 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10

Under the "SEAL" is the following:

Good for 20¢ in Trade.

The seal referred to on said card has a dotted line near the margin thereof with the words "Cut Here" to indicate where it may be opened, but until the said seal is opened the legend thereunder is effectively concealed from the holder of said card. The said legends under the seal vary in amount from 20 cents to \$5. The amount which the holder of said card will receive in trade is thus determined wholly by lot or chance.

On the reverse side or back of the said sales-promotion card is the following language:

When this card is fully punched, present same to us intact. We will then open the LUCKY SEAL. You will receive the award printed thereon ABSOLUTELY FREE. SHOULD YOU OPEN THE LUCKY SEAL, CARD BECOMES VOID.

(Merchant's advertisement)

Other cards in this group manufactured and distributed by the respondent provide for recording the sale of \$10.00 worth of merchandise by the numbers arranged around the border of the card and provide for the winning of amounts up to \$10.00 by the legends under the seal. Other cards in the same group are prepared primarily for automobile gasoline filling and service stations and provide for recording the purchase of 100 gallons of gasoline and 10 quarts of oil by the numbers arranged around the border of the card and provide for the winning of from one to 25 quarts of oil by the legends under the seal.

(b) Sales promotion cards in another group have printed on the front thereof the following:

Your Number Today is No. 2003 Please Sign and Deposit in Box Provided. NAME _____ ADDRESS _____	Unclaimed Awards \$ Added To Next Award	WEEKLY BANK DAY \$ 2003 For our customers
	We Give a Weekly Award of \$5.00 Cash	
	(Merchant's advertisement)	
	Awards Drawn Weekly by a Customer at 6 P. M. Thursday	
Should your number be drawn, you must present this card in person not later than 12 noon on Friday.		

The above-described "Bank Day" card is distributed by respondents through dealer customers to persons making purchases from such dealer customers and the stub, as shown above, is deposited in a con-

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tainer provided for that purpose and drawings are held and awards made weekly. The person to whom such award is made is determined by selecting at random one of the stubs from the container above referred to. The person to whom the weekly award is made is thus determined wholly by lot or chance.

Other "Bank Day" trade cards manufactured and distributed by respondents provide for daily, semiweekly, biweekly, and monthly awards and have awards in varying amounts.

Respondents furnish their dealer customers with various display posters and circulars and with advertisements to be used and which are used by said dealer customers in distributing and using said cards.

PAR. 3. The dealers to whom respondents sell assortments of said sales-promotion cards, distribute the same to their customers and prospective customers and honor the awards as shown under the seal or as described on the bank-day cards. The respondents in their literature and by their representatives suggest various methods for the use of said cards by their dealer customers, all of which methods involve a lottery, game of chance, or gift enterprise.

PAR. 4. There are in competition with respondents various manufacturers and distributors of sales-promotion cards, premium cards, price-concession cards, coupons, and trading stamps, which, when used by dealers, do not involve a lottery scheme, game of chance, or gift enterprise. Many persons, firms, and corporations who make and sell various cards or devices for promoting or increasing sales of dealers are unwilling to offer for sale or sell cards or devices so designed and arranged as above alleged or otherwise designed and arranged as to involve a game of chance, lottery scheme, or gift enterprise, and such competitors refrain therefrom.

PAR. 5. The consuming public is induced to deal with or purchase merchandise from dealers using respondents' cards in preference to dealers using the devices of respondents' competitors because of the lottery scheme, game of chance, or gift enterprise connected with respondents' said cards. By reason thereof dealers are induced to purchase respondents' said cards in preference to devices of respondents' competitors and trade is thus unfairly diverted to respondents from their said competitors.

PAR. 6. The use by respondents of said methods in designing and arranging their said cards and distributing the same for redistribution to the public is a practice of the sort which is contrary to the established public policy of the Government of the United States and is in violation of criminal laws. The use by respondents of said method has a tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has a tendency and

capacity to exclude from the sale-promotion card trade competitors who do not adopt and use the same methods or equivalent or similar methods involving the same or equivalent or similar methods involving the same or equivalent or similar elements of chance, lottery scheme, or gift enterprise.

PAR. 7. The aforesaid acts and practices of the 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 May 19, 1938, issued, and on May 20, 1938, served its complaint in this proceeding upon respondents charging them 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 respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an 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 the 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 North Western Printing House, Inc., is a corporation organized and operating under the laws of the State of Illinois and is doing business in its own name and also under the trade name, Federal Trade Builders. Respondent Louis Rovner is the president of corporate respondent and Morris Leavitt is the vice president and secretary of said corporation. Edwin J. Pearson is the general manager of the corporate respondent. The individual respondents direct and control the sales policies and business activities of the corporate respondent and all of the respondents act together and in cooperation in doing the acts and things hereinafter alleged. Respondents have their principal office and place of business

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PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise, when used by dealers in promoting and increasing sales of their merchandise to the consuming public. The respondents manufacture and distribute several groups of sales-promotion cards but they all involve a lottery scheme or gift enterprise and vary only in detail. Two of such groups are herein described for the purpose of showing arrangements, design and principle involved.

5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
15	Keep This Card—It May be																5
15	WORTH UP				Under								TO \$5.00				5
15	This																10
15	Every card wins				SEAL				WARNING!								10
15	Your																10
15	No Blanks				FREE				Void if Opened								10
15	Award																10
15	cut here																10

15 15 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10

"Good for 20¢ in Trade."

The seal referred to on said card has a dotted line near the margin thereof with the words "Cut Here" to indicate where it may be opened, but until the said seal is opened the legend thereunder is effectively concealed from the holder of said card. The said legends under the seal vary in amount from 20 cents to \$5. The amount which the holder of said card will receive in trade is thus determined wholly by lot or chance.

On the reverse side or back of the said sales-promotion card is the following language:

When this card is fully punched, present same to us intact. We will then open the LUCKY SEAL. You will receive the award printed thereon ABSOLUTELY FREE. SHOULD YOU OPEN THE LUCKY SEAL, CARD BECOMES VOID.

(Merchant's advertisement)

Other cards in this group manufactured and distributed by the respondent provide for recording the sale of \$10 worth of merchandise by the numbers arranged around the border of the card and provide for the winning of amounts up to \$10 by the legends under the seal. Other cards in the same group are prepared primarily for automobile gasoline filling and service stations and provide for recording the purchase of 100 gallons of gasoline and 10 quarts of oil by the numbers arranged around the border of the card and provide for the winning of from 1 to 25 quarts of oil by the legends under the seal.

(b) Sales-promotion cards in another group have printed on the front thereof the following:

Your Number Today is No. 2003 Please sign and Deposit in Box Provided. NAME _____ ADDRESS _____	Tear Here	Unclaimed Awards Added To Next Award	\$ BANK	Weekly DAY \$	2003
	For our customers				
	We Give a Weekly Award of \$5.00 Cash (Merchant's advertisement)				
	Awards Drawn Weekly by a Customer at 6 P. M. Thursday				
		Should your number be drawn, you must present this card in person not later than 12 noon on Friday.			

The above-described "Bank Day" card is distributed by respondents through dealer customers to persons making purchases from such dealer customers and the stub, as shown above, is deposited in a container provided for that purpose and drawings are held and awards

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made weekly. The person to whom such award is made is determined by selecting at random one of the stubs from the container above referred to. The person to whom the weekly award is made is thus determined wholly by lot or chance.

Other "Bank Day" trade cards manufactured and distributed by respondents provide for daily, semiweekly, biweekly, and monthly awards and have awards in varying amounts.

Respondents furnish their dealer customers with various display posters and circulars and with advertisements to be used and which are used by said dealer customers in distributing and using said cards.

PAR. 3. The dealers to whom respondents sell assortments of said sales-promotion cards, distribute the same to their customers and prospective customers and honor the awards as shown under the seal or as described on the bank-day cards. The respondents in their literature and by their representatives suggest various methods for the use of said cards by their dealer customers, all of which methods involve a lottery, game of chance, or gift enterprise.

PAR. 4. There are in competition with respondents various manufacturers and distributors of sales-promotion cards, premium cards, price-concession cards, coupons, and trading stamps, which, when used by dealers, do not involve a lottery scheme, game of chance, or gift enterprise. Many persons, firms, and corporations who make and sell various cards or devices for promoting or increasing sales of dealers are unwilling to offer for sale or sell cards or devices so designed and arranged as above found or otherwise designed and arranged as to involve a game of chance, lottery scheme, or gift enterprise, and such competitors refrain therefrom.

PAR. 5. The consuming public is induced to deal with or purchase merchandise from dealers using respondents' cards in preference to dealers using the devices of respondents' competitors because of the lottery scheme, game of chance, or gift enterprise connected with respondents' said cards. By reason thereof dealers are induced to purchase respondents' said cards in preference to devices of respondents' competitors and substantial trade is thus unfairly diverted to respondents from their said competitors.

PAR. 6. The use by respondents of said methods in designing and arranging their said cards and distributing the same for redistribution to the public is a practice of the sort which is contrary to the established public policy of the Government of the United States and is in violation of criminal laws. The use by respondents of said

method has a tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude from the sale-promotion card trade competitors who do not adopt and use the same methods or equivalent or similar methods involving the same or equivalent or similar elements of chance, lottery scheme, or gift enterprise.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer or respondents, in which answer respondents admit all 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 conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent North Western Printing House, Inc., a corporation, its officers, and Louis Rovner, Morris Leavitt, and Edwin J. Pearson, individually, and respondents' respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of sales-promotion cards, or any other sales-promotion schemes or any other merchandise, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing sales-promotion cards or any other device so designed that their use by the retail dealers constitute, or may constitute, the operation of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of retail dealers or others, sales-promotion cards or sales-booster plans, or schemes or any other devices which are used or which may be used without alteration or rearrangement thereof to conduct a lottery, game of chance, or gift enterprise when distributed to the consuming public.

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3. Furnishing or supplying to dealers display posters or circulars or other advertising literature bearing legends or statements informing the public as to the manner in which said sales-promotion cards or other lottery devices are to be or may be distributed and used.

It is further ordered, That within 60 days from the date of the service of this order upon said respondents, they 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.

Syllabus

IN THE MATTER OF

PUBLIX SALES CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 2561. Complaint, Sept. 27, 1935—Decision, Feb. 23, 1939

Where a corporation engaged as wholesale mail order house in sale and distribution of merchandise consisting of (1) worn, second-hand, used, and damaged clothing and shoes which it purchased at Government salvage sales and from clothing peddlers, from factories, and from large mail order houses which had had the particular merchandise returned to them for adjustment after use, and (2) unused merchandise consisting of factory rejects and stocks of bankrupt dealers bought by it, and in selling, as thus engaged, such merchandise to members of the purchasing public in various States and in the District of Columbia, in substantial competition with others similarly engaged in sale and distribution of worn, second-hand, used, and damaged clothing and shoes, and including many who do not in any manner misrepresent quality, condition and state of repair of their merchandise and do not make any other false statements in connection with sale and distribution thereof; in advertising with respect to its said goods and business status and practices in newspapers and other publications circulating among the various States and in said District, and in bulletins and catalogs distributed from its place of business to prospective purchasers in various States and in District aforesaid—

- (a) Represented that the merchandise thus offered had been purchased by it at auction sales, and represented that it was the largest wholesale distributor of rummage sale merchandise, and that its reputation as the largest cash buyer gave it a choice of the world's best bargains, and that through its large, competent staff of trained buyers it could supply merchandise whose value could not be beaten or equalled, facts being it bought very little of its merchandise at auction sales, but bought largest portion thereof from auctioneer purchasers at such sales, and was neither largest distributor of rummage sale merchandise nor largest cash buyer thereof, and did not have large, competent staff of trained buyers;
- (b) Represented that its merchandise had been factory dry-cleaned and re-blocked, repaired and pressed and was of high grade materials, attractive styles and new patterns, and represented excellent and tremendous values, and that when received by the purchaser it would be of good quality, recent style and cut, serviceable, etc., and saleable for immediate wear, and represented certain merchandise as all wool, and held out certain amounts as representing those for which various items of merchandise originally sold, facts being merchandise variously referred to and represented as aforesaid was not dry-cleaned and reblocked by factory which made same, and was not, as case might be, cleaned, repaired or pressed, or of high grade materials, or excellent values, and new patterns, but, in case of many items, was dirty, ripped, torn, and worn out, of inferior quality and materials, and in such condition as not to be usable for wear, merchandise represented as of latest style was of a style from 10 to 15 years old,