

IN THE MATTER OF
EDWARD HARRIS AND DOROTHY HARRIS, TRADING AS
ACE BUSINESS BUILDERS

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

Docket 3171. Complaint. July 12, 1937—Decision, Feb. 27, 1939

Where two individuals engaged in selling their so-called business stimulator or sales-promotion plan or trade-promotion cards which were so designed and arranged that use thereof constituted a lottery or gift enterprise when used by retail merchant in promoting and increasing sales of his merchandise to consuming public, and which consisted of cards arranged for punching out \$5 or \$10 in trade, as case might be, and had concealed within their so-called "Treasure Chest," for disclosure, when card, as suggested, had been punched out through merchandise sales made to customer to which given, legends entitling chance holder to amounts in trade ranging from 20 cents to \$5 for the \$5 cards, and from 40 cents to \$10 for the \$10 cards—

Sold to retail dealer customers such cards, together with variety of display posters and advertising matter for such customers in use and distribution of said cards, and punch for canceling numbers arranged on border to indicate amount of sale, and with suggestion for use thereof by their said retail customer merchants who distributed said cards to their customers and prospective customers and honored awards as shown thereon, and thereby knowingly supplied to and placed in the hands of others means of operating lotteries, games of chance, or gift enterprises, contrary to public policy, and in competition with many who are opposed to use or sale of trade-promotion cards or systems which involve lotteries, games of chance, or gift enterprises and refrain from sale thereof;

With effect of inducing many of the consuming public to deal with or purchase merchandise from retail merchants using cards sold by them in preference to purchasing from merchants using sales-booster plans or schemes or devices of competitors which have connected with them no element of lot or chance, and with result, by reason of such fact, that many of such merchants, who cannot use more than one type of sales-promotion or price-concession card or coupon at same time, were induced to purchase cards sold by them in preference to devices or plans of competitors, and trade was thus diverted to them from their competitors, and with result that sales of competing plans or promotion schemes or premium cards or coupons of competitors were injuriously affected; to the prejudice and injury of the public and competitors, and to the restraint and detriment of freedom of fair and legitimate competition:

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. William C. Reeves*, trial examiner.

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

Complaint

COMPLAINT

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 Edward Harris and Dorothy Harris, individually and as copartners trading as Ace Business Builders, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, 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. The respondents, Edward Harris and Dorothy Harris, are individuals and are doing business as a partnership under the trade name Ace Business Builders, with their principal office and place of business located at 417 South Dearborn Street, Chicago, Ill. Respondents are now, and for more than 1 year last past have been engaged in the manufacture of sales-promotion cards and in the sale and distribution thereof to retail merchants located at points in the various States of the United States. 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 in other States of the United States at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondents in such sales-promotion cards between and among the States of the United States. In the course and conduct of said business, respondents are in competition with other partnerships and with corporations and individuals 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.

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 retail merchants 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 the same lottery scheme or gift enterprise and vary only in detail. The sales-promotion cards in one such group are herein described for the purpose of showing

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arrangement, design, and principle involved. On the front such cards are as follows:

10	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	15
10	Keep this Hidden Treasure Chest Card																		15
10	YOU CAN WIN UP TO \$5.00																		15
10																			15
10	Under this																		15
10	Treasure																		15
10	Chest																		15
10	\$	is your award																\$	15
10	Warning! Void if Opened!																		15
10	Cut Here																		15
10	EVERY CARD A WINNER—NO BLANKS																		15
10	(Read Rules on Other Side)																		15
10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	15	

Under the "Treasure Chest" panel is the following:

"When properly punched good for 20¢ in trade."

The "Treasure Chest" referred to on the said card is a panel partially perforated to indicate where it may be opened, but until the said panel is opened the legend thereunder is effectively concealed from the holder of the said card. The said legends under the "Treasure Chest" panel vary in amount from 20 cents to \$5. The legend under the said panel is effectively concealed until the panel has been opened and the amount which the holder of said card will receive in trade is thus determined wholly by lot or chance. On the reverse or back of the said sales-promotion cards is the following language:

EVERY CARD WINS—Awards Up to \$5

These awards are given in appreciation of your patronage. When this card is fully punched, present same to us intact. We will then open the TREASURE CHEST and you will receive the award printed thereon ABSOLUTELY FREE. SHOULD YOU OPEN THE TREASURE CHEST, THIS CARD BECOMES VOID.

Patronize us always—It will pay you.

(Merchant's Ad)

Other cards manufactured and distributed by the respondents 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 panel. In some groups the legends begin with 20 cents and go to \$10, and in other groups they begin with 40 cents and go to \$10.

Respondents furnish the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 3. The retail merchants 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 panel of said cards. One method advocated or suggested by respondents and used by a substantial number of retail merchant customers is as follows: The cards are distributed free to customers and prospective customers of said retail merchants and when purchases are made punches corresponding to the amount of such purchases are made around the margin of said card, and when all the numbers around the margin of said card are punched the panel is opened and the customer is entitled to merchandise of the said merchant in the amount shown by the legend under the said panel free of charge.

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 retail merchants do not involve a lottery scheme or gift enterprise. By reason of the lottery scheme or gift enterprise connected with the distribution and use of the respondents' said cards, many retail merchants are induced to purchase respondents' said cards in preference to the devices manufactured and distributed by respondents' competitors, and trade is thus diverted to respondents from their said competitors.

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

PAR. 6. The use by the respondents of said method in designing and arranging their said cards 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. 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 competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance, lottery scheme, or gift enterprise. Many persons, firms, and corporations who make and sell various cards or devices for promoting or increasing sales of retail

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merchants 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. 7. The respondents, in shipping the said cards to their customers, assort and pack them so that such customers know the amount of award stated under the panel; thus the retail merchants to whom respondents sell their cards are enabled to perpetrate a fraud on their customers. This practice has the capacity and tendency to induce, and does induce retail merchants to purchase respondents' said cards in preference to cards or devices of respondents' competitors.

PAR. 8. The aforesaid method, acts, and practices of the respondents are all to the prejudice of the public and respondents' competitors, as hereinabove alleged. Said method, acts, and practices 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 July 12, 1937, issued, and thereafter served its complaint in this proceeding upon the respondents, Edward Harris and Dorothy Harris, individually and as copartners trading as Ace Business Builders, 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by the respondents (respondents not being represented by counsel), before William C. Reeves, an examiner for the Commission heretofore 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, the answer thereto, testimony, and other evidence, and brief in support of the complaint (respondents 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 that this proceeding is in the interest

FINDINGS AS TO THE FACTS

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 that their use constitutes a lottery scheme or gift enterprise when used by retail merchants in promoting and increasing sales of the merchandise of such merchants to the consuming public. One type of the card so sold by respondents is substantially as follows:

[illegible]

The Treasure Chest referred to on the said card was partially perforated to indicate where it might be opened, but until said chest

was opened, the legend thereunder was effectively concealed from the holder of said card. The said legends under the Treasure Chest varied in amount from 20 cents to \$5. Thus the amount which the holder of said card would receive in trade was determined wholly by lot or chance.

On the reverse or back of said sales promotion cards was the following:

EVERY CARD WINS—AWARDS UP TO \$5.00

These awards are given in appreciation of your patronage. When this card is fully punched, present same to us intact. We will then open the Treasure Chest and you will receive the award printed thereon **ABSOLUTELY FREE.**

SHOULD YOU OPEN THE TREASURE CHEST, THIS CARD BECOMES VOID.

PATRONIZE US ALWAYS—IT WILL PAY YOU

(MERCHANT'S ADVERTISEMENT)

PAR. 3. Each of the cards included in one of the groups sold by respondents is intended for use in sales of merchandise aggregating \$5 and the cards in such group provide for awards ranging from 20 cents in trade to \$5 in trade; the cards in other groups sold by respondents are intended for use in sales of merchandise aggregating \$10 and provide for awards ranging from 40 cents in trade to \$10 in trade. Respondents furnish their customers with a variety of display posters and advertising matter to be used by such customers in the use and distribution of said cards; respondents also furnish their customers with a punch for canceling the numbers arranged along the border of such cards to indicate the amount of the sale made in each instance.

The retail merchants to whom respondents sell and have sold assortments of said sales-promotion cards or trade cards distribute the same to their customers and prospective customers, and honor the awards as shown under the Treasure Chest of said cards. One method advocated or suggested by respondents and used by a substantial number of retail merchant customers of respondents is as follows: The cards are distributed free to customers and prospective customers of said retail merchants and when purchases are made numbers corresponding to the amount of such purchase are punched from the margin of said card and when all the numbers around the margin of said card are punched the Treasure Chest is opened and the customer is entitled to merchandise of the said merchant in the amount shown by the legend under the Treasure Chest without additional charge.

PAR. 4. Employees or officers of concerns manufacturing and distributing trade stamps and other trade-booster cards not involving a lottery or chance feature were called as witnesses and testified in this

matter. The Commission finds that manufacturers and distributors of trading stamps, 99-cent and other price-concession cards, and premium coupons are in competition with the respondents and the business of the respondents. Retail merchants desiring to install some plan by which to boost sales of their merchandise cannot use more than one type of sales-promotion or price-concession card or coupon at the same time and retail merchants purchasing the cards sold by the respondents are not then in the market for other trade-booster schemes or plans which do not involve a lot or chance feature.

The lot or chance feature connected with the cards sold by respondents has the capacity to and does induce many of the consuming public to deal with or purchase merchandise from retail merchants using the cards sold by respondents in preference to retail merchants using the sales-booster schemes or plans or devices of competitors of respondents which have connected with them no element of lot or chance, and by reason of this last-mentioned fact many retail merchants are induced to purchase the cards sold by respondents in preference to devices or plans of competitors of respondents, and trade is thus diverted to respondents from their competitors.

PAR. 5. The use by retail merchants of the cards sold by respondents in the manner and by the methods described herein, constitutes a lottery, game of chance, or gift enterprise and the sale of such cards by respondents and the use of the cards by the customers of respondents is contrary to public policy. The Commission finds that many competitors of respondents are opposed to the use or sale of trade-promotion cards or systems which involve lotteries, games of chance, or gift enterprises and refrain from selling same. Such competitors are thereby put to a competitive disadvantage.

PAR. 6. The respondents, in selling and distributing said cards, have knowledge that they are, and will be, used by their customers in the operation of a lottery, game of chance, or gift enterprise. The respondents thus supply to and place in the hands of others the means of operating lotteries, games of chance, or gift enterprises. The sale and distribution of such cards by the respondents injuriously affects the sales of competing sales plans or sales-promotion schemes or premium cards or coupons by competitors of respondents, and the use of such methods by the respondents, in the sale and distribution of said cards, is prejudicial and injurious to the public and to competitors of respondents and is a restraint upon and a detriment to the freedom of fair and legitimate competition. Respondents have made sales of the cards to customers in a majority of the States of the United States.

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CONCLUSION

The acts and practices of the respondents as set forth in the foregoing findings, are all to the prejudice and injury of the public and to competitors of respondents and constitute unfair methods of competition in commerce within the intent and meaning of the provisions 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, the answer of respondents, testimony, and other evidence taken before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of the said complaint and in opposition thereto, brief filed by attorney for the Commission (respondents not having filed brief or requested oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Edward Harris and Dorothy Harris, individually, and as copartners trading as Ace Business Builders, or trading under any other name, their 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 plans or schemes 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 articles of merchandise so designed that their use by retail merchants constitutes or may constitute the operation of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others, sales-promotion cards or sales-promotion plans or schemes, or any other articles of merchandise 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.

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 the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

H. G. PAYNE, INDIVIDUALLY, AND TRADING AS
H. G. PAYNE COMPANY

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

Docket 3175. Complaint, July 16, 1937—Decision, Feb. 27, 1939

Where an individual engaged in sale and distribution of penknives, hunting knives, automatic razors, watches, clocks, and various other articles to wholesalers, jobbers, and retailers—

Supplied or furnished his customers with various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise was distributed to purchasing public wholly by lot or chance and which involved sale and distribution of punchboards and push cards, separately and with merchandise, for sale and distribution of his said products under a plan in accordance with which purchasers for 5 cents of chance on 1,500-hole punchboard, divided into 60 sections, received certain articles of merchandise as prizes or nothing, in accordance with success or failure in securing certain numbers, and last punch in each section entitled purchaser to 25 cents as a prize, and purchaser thus secured or failed to secure article of merchandise, value of which, in any event, exceeded that of cost of punch, and combined value of all of which articles was much less than the sum produced by sale of all punches, and under which plan, in some instances, customer received postcard for the 5 cents paid, with right to punch number from board; and

Supplied thereby to and placed in the hands of others, means of conducting lotteries in the sale and distribution of his said merchandise in accordance with aforesaid and similar sales plans involving game of chance or sale of a chance to procure articles of merchandise at prices much less than normal retail prices thereof; contrary to established public policy of the United States Government, and in violation of the laws of several states, and in competition with many who are engaged in sale and distribution of like or similar articles and who are unwilling to offer or sell their said merchandise by any method or sales plan which involves game of chance, gift enterprise, or lottery scheme, or any method contrary to public policy, and refrain therefrom;

With effect of inducing purchaser of his said merchandise to buy same in preference to like or similar merchandise offered and sold by competitors who do not use such plans or methods in sale and distribution of their products, and with result that many members of the purchasing public were attracted by element of chance involved in his said sales plan or method and thereby induced to purchase his said products in preference to like and similar merchandise of competitors who do not use same or equivalent methods, and with result that wholesalers and jobbers, by reason of such preference, were induced and persuaded to buy his said products in preference to like or similar articles sold or distributed by