

IN THE MATTER OF
**MUTUAL PRINTING COMPANY, IN ITS OWN NAME AND
RIGHT, AND TRADING AS MUTUAL SALES PROMOTION
SERVICE**

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

Docket 3166. Complaint, June 29, 1937—Decision, Mar. 2, 1939

Where a corporation engaged in selling its sales stimulator or sales-promotion plan or trade-promotion cards, which were so designed and arranged that their use constituted lottery scheme or gift enterprise when used by retail merchants in promoting and increasing sales of merchandise of such merchants to consuming public, and which included (1) groups of cards arranged for punching out \$5 in trade, or \$10 in trade, as case might be, and which had enclosed or concealed within their so-called secret panels, for disclosure when total amount provided for on cards had been punched out, legends entitling chance holder of card to amounts ranging, in trade, from 20 cents to \$5 for the \$5 cards, and from 40 cents to \$10 for the \$10 cards, and (2) other groups intended for use by proprietors of service stations in sales of oil and gas aggregating \$17, and providing for awards ranging from 1 quart of oil to 25 quarts thereof, or for equivalent—

Sold to retail customers assortments of such sales promotion or trade cards, together with a variety of display posters and advertising matter for use of such retailer customers in use and distribution of said cards, and together with punch for canceling numbers arranged around the border thereof to indicate amount of sale made in each instance, and with suggestion for use of such cards by its retail merchant customers, who distributed same to their own customers and prospective customers and honored awards shown under secret panels thereof, 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 those who are opposed to such methods and refrain therefrom;

With result that many of the consuming public, by reason of lot or chance feature connected with its said cards, were induced to deal with or purchase merchandise from retailers using said cards in preference to purchasing from merchants using sales-booster schemes or plans or devices of competitors which had connected with them no element of lot or chance, and with further result, by reason of such last-mentioned fact, that many of such merchants, who cannot use more than one type of sales-promotion or price-concession card or coupon at the same time, were induced to purchase its said cards in preference to devices or plans of competitors, and trade was thereby diverted from them to it, competitors aforesaid who refrain from use of such methods were put to competitive disadvantage, and sales of competing sales plans or promotion schemes or premium cards or coupons by competitors were injuriously affected; to the prejudice and injury of the public and competitors, and in restraint upon, and to the 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.

Mr. Norman Asher and *Mr. Lester Asher*, of Chicago, Ill., for respondent.

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 Mutual Printing, Inc., a corporation in its own name and right, and trading as Mutual Printing Co., Inc., and Mutual Sales Promotion Service, 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 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 a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 751 East Sixty-fourth Street, Chicago, Ill. The respondent, trading as Mutual Printing Co., Inc., and as Mutual Sales Promotion Service, is now, and for some time last past has 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, and causes and has caused its said products, when so sold, to be transported from its 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; and there is now, and has been for more than 1 year last past, a course of trade and commerce by said respondent in such sales-promotion cards between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and with 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 its business as described in paragraph 1 hereof, respondent sells and has sold cards so designed and arranged as to involve the use of a lottery scheme or gift enter-

Other cards 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 secret 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.

Respondent furnishes 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 respondent sells assortments of said sales-promotion cards, distribute the same to their customers and prospective customers and honor the awards as shown under the secret panel of said cards. One method advocated or suggested by respondent 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 secret panel is opened and the customer is entitled to merchandise of the said merchant in the amount shown by the legend under the said secret panel, free of charge.

PAR. 4. There are in competition with respondent, 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 respondent's said cards, many retail merchants are induced to purchase respondent's said cards in preference to the devices manufactured and distributed by respondent's competitors and trade is thus diverted to respondent from its said competitors.

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

PAR. 6. The use by the respondent of said method in designing and arranging its said cards is a practice of the sort which the com-

mon 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 respondent of said method has a dangerous 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 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 therefrom.

PAR. 7. The respondent, in shipping the said cards to its customers, assorts and packs them so that such customers know the amount of award stated under the secret panel, thus the retail merchants to whom respondent sells its 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 respondent's said cards in preference to card or devices of respondent's competitors.

PAR. 8. The aforesaid method, acts, and practices of the respondent are all to the prejudice of the public and respondent's 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 29, 1937, issued its complaint in the above-entitled proceeding and caused same to be served upon the respondent, Mutual Printing Co., a corporation, trading in its own name and right and trading as Mutual Sales Promotion Service (named in the complaint herein as Mutual Printing, Inc., a corporation in its own name and right, and trading as Mutual Printing Co., Inc., and Mutual Sales Promotion Service), charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent entered its appearance

herein on August 20, 1937, and filed an answer to said complaint. Testimony was taken and evidence received at Chicago, Ill., on May 13, 1938, in support of the charges stated in the complaint, at the instance of Henry C. Lank, and D. C. Daniel, counsel for the Commission, and testimony was taken and evidence received on May 18, 1938, on behalf of said respondent at the instance of its counsel, Norman Asher, before William C. Reeves, an examiner for said Commission, all of which testimony has been reduced to writing and filed in the office of the Commission together with numerous pieces of documentary evidence received as exhibits. Briefs were filed by counsel for the Commission and counsel for the respondent. Counsel for the respondent waived oral argument. Thereafter, this proceeding came on for final hearing before the Commission upon the complaint herein and the answer thereto, the testimony taken and evidence received, and the briefs of counsel for the Commission and the respondent, and the Commission having duly considered the same and being 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. The corporate name of the respondent is Mutual Printing Co. It has carried on business under its own corporate name and also under the name and style of Mutual Sales Promotion Service. It was organized in 1929 under the laws of the State of Illinois, with principal place of business at Chicago in said State. Since its organization it has been engaged in the business of selling what it terms a sales stimulator or sales-promotion plan which has been sold by it to retail merchants in various States of the United States and respondent has caused the printed matter intended for use in the operation of said plan to be transmitted from its place of business in Chicago, Ill., through and into or into various other States of the United States, to the respective purchasers thereof, and in the course and conduct of its said business has been and is now in active competition with various persons and partnerships and other corporations also engaged in the sale of various types of sales stimulators or sales-promotion plans, in commerce among several of the States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has 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

\$10 and provide for awards ranging from 40 cents in trade to \$10 in trade. Other groups sold by respondent are intended for use by proprietors of service stations in sales of oil and gas aggregating \$17 and provide for awards ranging from 1 quart of oil to 25 quarts of oil, or their equivalent. Respondent furnishes its customers with a variety of display posters and advertising matter to be used by such customers in the use and distribution of such cards, also furnishes such customers with a punch for canceling the numbers arranged around the border of such cards to indicate the amount of the sale made in each instance.

The retail merchants to whom respondent sells, and has 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 secret panel of said cards. One method advocated or suggested by respondent and used by a substantial number of retail merchant customers of respondent 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 secret panel is opened and the customer is entitled to merchandise of the said merchant in the amount shown by the legend under the secret panel, without additional charge.

PAR. 4. Employees or officers of concerns manufacturing and distributing trading stamps and other trade booster cards not involving a lot or chance feature were called as witnesses and testified in this matter. The Commission finds that manufacturers and distributors of trading stamps, 99 cents and other price-concession cards, and premium coupons are in competition with the respondent and the business of such concerns is competitive with the business of the respondent. 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 respondent's merchandise 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 respondent's cards has the capacity to and does induce many of the consuming public to deal with or purchase merchandise from retail merchants using respondent's cards in preference to retail merchants using the sales-booster schemes or plans or devices of respondent's competitors 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

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respondent's said cards in preference to devices or plans of respondent's competitors, and trade is thus diverted to respondent from its said competitors.

PAR. 5. The use of respondent's cards by retail merchants by the methods described herein constitutes a lottery, game of chance, or gift enterprise, and the sale of such cards by respondent and their use by customers of respondent, as described, is contrary to public policy. The Commission finds that competitors of respondent are opposed to such methods and refrain therefrom. Such competitors are thereby put to a competitive disadvantage.

PAR. 6. The respondent, in selling and distributing said cards, has knowledge that they are, and will be, used by its customers in the operation of a lottery, game of chance, or gift enterprise. The respondent thus supplies to and places in the hands of others the means of operating lotteries, games of chance, and gift enterprises. The sale and distribution of such cards by the respondent injuriously affects the sale of competing sales plans or sales-promotion schemes or premium cards or coupons by competitors of respondent, and the use of such methods by the respondent in the sale and distribution of its merchandise is prejudicial and injurious to the public and to respondent's competitors, and is a restraint upon, and a detriment to, the freedom of fair and legitimate competition.

PAR. 7. In the latter part of 1936 and the early part of 1937 respondent received and filled each month from 400 to 750 orders for groups of the Lucky Clover cards. Respondent has thus sold and distributed substantial quantities of said sales promotion cards in commerce between and among various States of the United States.

CONCLUSION

The acts and practices of the respondent as set forth in the foregoing findings are all to the prejudice and injury of the public and to competitors of the respondent 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 and the answer of respondent, 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, briefs filed herein (respondent 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, Mutual Printing Co., a corporation in its own name and right and trading as Mutual Sales Promotion Service (named in the complaint herein as Mutual Printing, Inc., a corporation in its own name and right, and trading as Mutual Printing Co., Inc., and Mutual Sales Promotion Service), its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of 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 respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
DR. W. B. CALDWELL, INC.

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

Docket 2957. Complaint, May 1, 1937¹—Decision, Mar. 8, 1939

Where a corporation engaged in manufacturing a liquid laxative medicinal preparation which it designated as "Dr. Caldwell's Syrup Pepsin," "Syrup Pepsin," and "Syrup of Pepsin," and which included as ingredients syrup and pepsin as vehicle for senna and cascara sagrada, active ingredients therein and long used singly or in combination as laxatives and long in common use as such, and in selling and distributing its said preparation to wholesale and retail dealers in the various States and in the District of Columbia for resale to purchasing public, and in distributing also to the public in various States and in said District sample bottles in substantial quantity, in response to invitations in its advertising to send for such samples, and, as aforesaid engaged, in substantial competition with others engaged in sale and distribution of medicinal and other preparations designed, intended, and used in treatment of ailments and conditions for which it recommended use of its said product—

- (a) Represented, in advertisements thereof which it caused to be disseminated in commerce through newspapers and other publications circulated throughout the United States, and in continuities broadcast from radio stations of extrastate audience, that its said preparation was a liquid laxative and that physicians and hospitals preferred such laxatives, facts being constipation is not a disease or ailment, but symptom thereof, there are numerous drugs having laxative and cathartic properties prescribed by doctors in treatment of such condition, dependent upon age and condition of patient and reaction thereof to drug or drugs used, and physicians do not prefer such laxatives because of their liquidity, but use or prescribe type of laxative depending solely on diagnosis of patient and do not use a liquid unless thus indicated;
- (b) Represented, as aforesaid, that patients returning from hospitals do so with their systems functioning properly and normally for the reason that liquid laxatives are used in such institutions, facts being patients do not always return from confinement therein with their systems thus functioning and for aforesaid reason, many patients suffering from constipation return from hospital confinement with their systems continuing to function improperly and abnormally, and successful treatment of patients suffering from such condition in hospitals is not dependent upon use of liquid laxative solely because of liquidity thereof;
- (c) Represented that liquid laxative generally used was its said product, and that it was not a habit-forming laxative but, on the contrary, would correct laxative habit caused by use of other such products, facts being its said preparation was not the liquid laxative generally used or prescribed by hospitals and physicians and used by members of the public, it was habit-forming in sense that continued use of any laxative is habit-forming, and use thereof in place of other laxatives did not correct habit of taking such products;

¹ Amended.