

Syllabus

IN THE MATTER OF

MARTIN M. SLATON, INDIVIDUALLY, AND TRADING AS
ALLIED GIFT SHOPCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3252. Complaint, Oct. 25, 1937—Decision, Mar. 16, 1939*

Where an individual engaged in sale and distribution of various novelties and articles of merchandise, including rotary clocks, electric razors, toasters, and other articles; in soliciting sale of and in selling and distributing his said products—

Furnished with such articles various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for distribution of such merchandise to ultimate consumer, wholly by lot or chance, and which included number of different types of push cards for use in sale and distribution of said products under plan and in accordance with said card's explanatory legends, pursuant to which amount paid by customer or, in case of some, receipt of free chance, was dependent upon number pushed by chance, and receipt of article being thus disposed of was dependent upon success or failure in selecting, from list on card, girl's name corresponding to that concealed under card's master seal and selectors of certain numbers, in case of some, received secondary prizes and under which, failing such contingencies, customers received nothing, and operator handling cards received for his services one of articles without additional charge; and

Supplied thereby and placed in the hands of others, means by which lotteries were conducted in the sale of his said merchandise in accordance with such sales plan, under which various articles were distributed to members of the public wholly by lot or chance and amount that each member of public was required to pay for chance to participate in lottery was also thus determined, and involving game of chance or sale of a chance to procure articles of merchandise for sums much below the prices for which they sell in usual course of trade, contrary to an established public policy of the United States Government and in violation of the laws of several of the States, and in competition with many engaged in sale of articles of like or similar grade and quality and who are not willing to sell such articles by any sales plan involving game of chance, gift enterprise, or lottery scheme, and refrain from use thereof;

With result that many persons were attracted by said sales plan and element of chance involved therein and were thereby induced to purchase articles from him and resell same to consuming public by use of such plan in preference to buying and reselling like or similar articles of merchandise offered by competitors who do not make use of such or equivalent sales plan, and he was thus able to sell substantial quantities of some of the articles dealt in by him and trade was diverted unfairly to him from competitors;

Complaint

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Held, That such acts and practices were all to the injury and prejudice 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.

Nash & Donnelly, 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 Martin M. Slaton, individually and trading as Allied Gift Shop, 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. Respondent is an individual doing business under the trade name and style of Allied Gift Shop, with his principal office and place of business located at 710 Michigan Theatre Building, Detroit, Mich. 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, rotary clocks, electric clocks, electric roasters, washing machines, electric mixers, electric toasters, vacuum cleaners, electric razors, fountain pen and pencil sets, radios, and raincoat combinations, in commerce between and among the various States of the United States. He causes and has caused said products when sold to be transported from his principal place of business in the State of Michigan to purchasers thereof in Michigan 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 the said merchandise, has furnished various devices and plans of merchandising which involve the operation of gift enterprises or lottery schemes and a distribution of such mer-

chandise to the ultimate consumers thereof wholly by lot or chance. Said devices or plans of merchandising consist of a variety of push cards, the use of which, in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent, was and is substantially as follows:

The said push cards bear a number of girls' names. Concealed under each name is a number. Also, under a master seal there is a name corresponding to one of the names on the card. Prospective purchasers select one of the names and remove the same disclosing the number thereunder. Persons selecting numbers from 1 to 29 pay in cents the amount of such number, and persons selecting numbers over 29 pay 29 cents for the privilege of selecting one of the names. The push cards bear various legends informing purchasers and prospective purchasers of the plan or method by which said push card is operated and by which the merchandise described thereon is to be distributed. When all the names have been purchased the master seal is removed, and the person who has selected the name corresponding to the name under the master seal receives the article of merchandise described without further charge, and the person, salesman, agent, or representative soliciting purchases of chances, as above described, also receives an article of merchandise without further charge or additional service. The numbers under the names are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting one of the names until the selection has been made and the name removed. The name under the master seal is concealed from purchasers and prospective purchasers until all the names have been selected. Those customers selecting names which do not correspond to the name under the master seal receive nothing but the privilege of making a selection for the money which they pay. The said articles of merchandise vary in value, but each of said articles of merchandise is of a greater value than the cost of a single push from said push card. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customers pay for a chance is determined wholly by lot or chance.

The various push cards furnished and distributed by respondent involve the same principle but vary in detail. Such variations cover the merchandise to be distributed, the quantity thereof, the number of pushes on said push cards, and the price or cost of the individual pushes.

PAR. 3. The persons to whom respondent furnishes said devices 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 articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who make, sell or distribute merchandise in competition with the 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 methods and by the element of chance involved in the sale or distribution thereof in the manner above described, and are thereby induced to buy and sell or distribute 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 October 25, 1937, issued and thereafter served its complaint in this proceeding upon the respondent, Martin M. Slaton, individually, and trading as Allied Gift Shop, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the complaint (no answer having been filed by respondent), testimony, and other evidence in support of the allegations of said com-

plaint were introduced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it (no testimony or evidence was tendered by respondent in opposition to the allegations of the complaint). 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, brief 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 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 respondent Martin M. Slaton, for a number of years has carried on business under the name and style of Allied Gift Shop, with his principal place of business in 710 Michigan Theater Building, in Detroit, Mich. He has been engaged in the business of selling and distributing various novelties, and articles of merchandise, including rotary clocks, electric razors, electric roasters, electric toasters, washing machines, rainette combinations, and pen and pencil sets. Respondent has caused said novelties and articles of merchandise when sold to be transported from his place of business in the State of Michigan to the respective purchasers thereof in the State of Michigan and various other States of the United States. In the course and conduct of his said business respondent has been and is now in active competition with various partnerships and corporations and other persons engaged in the sale and distribution of like and similar novelties and articles of merchandise between and among various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent, in soliciting the sale of articles of merchandise, and in the sale and distribution of same, has furnished with such articles of merchandise various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes by means of which the distribution of such merchandise to the ultimate consumer has been accomplished wholly by lot or chance. Said devices and plans of merchandising include a number of different types of push cards, similar in principle but varying in detail, which devices have been operated in the sale and distribution of articles of merchandise sold by respondent substantially as follows:

Each of the cards had printed thereon a number of girls' names, and beneath each name was concealed a number. In the use of the cards members of the public were solicited to select one or more of these names and to pay the number of cents indicated by the number concealed beneath each of the names selected, except that in the operation of one type of card selectors of numbers higher than 29 paid only 29 cents, and with another type of the cards selectors of numbers higher than 35 paid only 35 cents, and with still another type of the cards certain of the numbers were designated as "Free," and selectors of those numbers paid nothing. On each of the cards was a disk in the form of a seal which concealed a name which was the same as one of the names printed on the card. When all of the names on one of the cards had been selected the seal was then removed, and the name concealed thereby was disclosed, and the article of merchandise involved in the operation of the card was then given to the person who had selected the name on the card which was the same as the name concealed by the seal, without further charge, and selectors of names other than the name concealed by the seal received nothing. The cards of the various types furnished by the respondent differed as to the number of names printed thereon, and the articles of merchandise distributed by the use of the several types of cards were of different values, and the cards of some of the types provided for one or more secondary prizes to be given to selectors of certain of the numbers, and in the operation of certain types of cards so furnished by respondent the agent or salesman handling the cards also received for his services one of the articles of merchandise without additional charge. The amount of the value of each article of merchandise so distributed by the use of one of the cards was, in each instance, greater than the amount paid by a member of the public for any one of the names selected. By the use of these cards the various articles of merchandise were distributed to the members of the public wholly by lot or chance, and the amount that each member of the public was required to pay for a chance to participate in the lottery also was determined wholly by lot or chance.

PAR. 3. The persons to whom respondent has furnished the push cards described in paragraph 2 hereof, used same in purchasing merchandise from respondent, and reselling and distributing such merchandise in accordance with the sales plan described in said paragraph 2. Respondent, in this manner has supplied to others, and placed in their hands the means by which lotteries have been conducted in the resale of such merchandise in accordance with such sales plan. The use by respondent of said sales plan in the sale of such merchandise, and the resale of such merchandise by the use of such push

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cards and sales plans, is a practice of a sort which is contrary to an established policy of the Government of the United States, and is in violation of the laws of several of the States of the United States. Many competitors of respondent sell and have sold articles of merchandise of like or similar grade and quality to the articles of merchandise sold by respondent, and in competition with respondent, which competitors are unwilling to sell such articles of merchandise by any sales plan which involves a game of chance, gift enterprise, or lottery scheme, and refrain from the use of such plan, and as a result are placed at a disadvantage in competition. Respondent by means of such push cards and sales plan has sold approximately 3,000 rotary clocks; approximately 400 electric razors; approximately 400 rainette combinations, and smaller numbers of other articles of merchandise offered for sale by him.

PAR. 4. The sale of merchandise to the purchasing public by the sales plan and in the manner herein found, involves a game of chance or the sale of a chance to procure articles of merchandise for sums of money much below the prices at which such articles of merchandise sell in the usual course of retail trade. Many persons are attracted by said sales plan and the element of chance involved therein, and are thereby induced to purchase articles of merchandise from respondent and resell same to the consuming public by the use of such sales plan in preference to buying and reselling like or similar articles of merchandise offered for sale by competitors of respondent who do not make use of the same or an equivalent sales plan, and as a result the respondent has been able to sell substantial quantities of some of the articles of merchandise dealt in by him, which has caused trade to be diverted unfairly to respondent from his competitors.

CONCLUSION

The aforesaid acts and practices of respondent as hereinbefore 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 William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint (respondent having offered no proof in opposition thereto), brief filed by

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the attorney for the Commission (respondent not having filed brief or 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 Martin M. Slaton, individually and trading as Allied Gift Shop, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of clocks, electric razors, electric roasters, electric toasters, washing machines, Rainette combinations, pen and pencil sets, or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of, others push or pull cards, punchboards, 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, push or pull cards, punchboards, or other 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 push or pull cards, punchboards, or other lottery devices.

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

Syllabus

IN THE MATTER OF

VOSS CO., INC.

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

Docket 3490. Complaint, July 13, 1938—Decision, Mar. 16, 1939

Where a corporation engaged in sale and distribution of pharmaceutical tablets, composed of acetyl salicylic acid or aspirin, and magnesium oxide, to purchasers including, principally, wholesale druggists, in the various States and in District of Columbia, in substantial competition with others engaged in sale and distribution of similar pharmaceutical products or other products designed and intended for similar usage, and including those who do not misrepresent the therapeutic qualities of their products or otherwise misrepresent the same; in advertising its said product in various newspapers and magazines of interstate circulation, and in various other ways—

(a) Represented that said preparation was a new product or new discovery, which was superior to and would give more effective and quicker relief than ordinary aspirin, and counteracted toxic effects and would stop all pain, and that it was unqualifiedly safe for use;

Facts being it had been on the market since 1929, was not superior to and more effective than ordinary aspirin and would not give quicker relief, though it would perform substantially the same analgesic functions as said substance, would not counteract toxic effects or stop all pain, and was not one which could be indiscriminately used with safety by reason of aspirin ingredient of product, and fact that there are many people who are allergic to such substance and for whom said preparation would not be safe, and others cannot safely take such product into their systems beyond prescribed or usual dosage; and

(b) Represented, as aforesaid, that said product was a remedy, cure, or effective treatment for acid condition of the stomach, which would have beneficial alkalizing effect, and that it was also such a cure or remedy for headaches, neuralgia, neuritis, muscular and rheumatic pains, sleeplessness, period pains, nervousness and colds, and possessed therapeutic properties in excess of or different from ordinary aspirin;

Facts being it was not an effective cure or remedy for headaches and various other ailments and conditions above set forth, many of which are caused by systemic or organic disturbances in which its said product would not be a proper or effective treatment, and some of which are, in many cases, symptoms of organic disturbance, in treatment of which its said product would not be indicated or effective, and it would not be a cure or remedy for colds;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that said preparation possessed the properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of such public, because of such erroneous and mistaken belief, to purchase substantial quantities