

IN THE MATTER OF
EARL M. LOBAN, INDIVIDUALLY AND TRADING AS CEN-
TURY BUSINESS SERVICE, ACME DIVIDEND SYSTEM
AND CENTURY PUBLISHING COMPANY, INC.

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

Docket 3731. Complaint, Mar. 6, 1939—Decision, Apr. 20, 1939

Where an individual engaged in 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 public and which included—

(1) Group of cards arranged for punching out and recording amounts of merchants' customers' sales with totals ranging, as the case might be, from \$5.50 to \$20, and which contained concealed legends on cards entitling holder, upon completion of total sales provided for on card, to amounts ranging from 20 cents to \$5 in accordance with particular legend secured by chance by holder of particular card; and

(2) Other sales promotion cards for use in various types of business but involving same general plan;

Sold to dealers such assortments, together with various display circulars and advertisements for use in distributing and using said cards in various ways involving lottery, game of chance, or gift enterprise in suggested distribution by dealer customers, by whom said cards were distributed to own customers and prospective customers and awards thereon made as called for by particular concealed legends as contained on particular cards when treated so as to reveal nature of such particular legend and chance award thus called for; contrary to an established public policy of the United States Government and in competition with various sellers and distributors of sales promotion cards, premium cards, price competition cards, coupons, and trade stamps, which, when used by dealers do not involve lottery scheme, game of chance, or gift enterprise, and in competition with many who sell and distribute various sales cards or devices for increasing sales of dealers and who are unwilling to offer or sell cards or devices designed and arranged as above found, or otherwise designed or arranged so 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 his cards in preference to purchasing merchandise from dealers using devices of his competitors because of lottery scheme, game of chance, or gift enterprise connected with said cards, and with result, through his use of such methods in designing and arranging his cards and distributing them as aforesaid, of unfairly diverting trade to himself from his said competitors who do not use such or equivalent methods:

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

Mr. L. P. Allen, Jr. for the Commission.

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Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Earl M. Loban, individually and trading as Century Business Service, Acme Dividend System and Century Publishing Co., Inc., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Earl M. Loban, is an individual trading as Century Business Service, Acme Dividend System and Century Publishing Co., Inc., with his principal office and place of business located at 401 and 402 Lafayette Building, Waterloo, Iowa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of sales promotion cards to dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, his said sales cards, when sold, to be transported from his principal place of business in the city of Waterloo, Iowa, to purchasers thereof located in the various States of the United States, other than the State of Iowa, and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent 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, respondent is in competition with other individuals and with corporations and with partnerships engaged in the sale and distribution of sales promotion cards, trade cards, discount cards, premium cards, coupons, and trading stamps 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 his business in commerce, 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 enterprise, when used by dealers in promoting and increasing sales of their merchandise to the consuming public. The respondent sells and distributes several groups of sales promotion cards, but they all involve a 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 arrangement, design and principle involved. On the front of such cards is the following:

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20	20	20	20	20	15	15	15	15	15	15	15	15	15	15
20	20	20	20	20	25	25	25	25	25	25	25	25	25	25

COURTESY GIFT CARD

The "CONCEALED
COURTESY GIFT"
within the square at
right may be of a 25c
50c, \$1.00, \$2.50,
or \$5.00 "in trade"
value!

**NO COURTESY GIFT
LESS THAN 25c**

No card honored if mutilated. Do not Mutilate

Present this card to us each time your cash purchases amount to 10c or over.

When they total the amount punched in the margin we will pay you the '

"Courtesy Gift."

No. C11

10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
50	50	50	35	35	35	35	5	5	5	5	5	5	5	5

In the ruled square referred to on the face of the card is printed in invisible ink amounts ranging from 25 cents to \$5. These amounts are revealed upon the application of sufficient heat to scorch the chemicals in the said ink, but until such heat is applied the legend in the said square is effectively concealed from the holder of said card. 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:

SAVE

THIS

CARD

IT IS VALUABLE

This is a new and interesting plan whereby we show our appreciation of your patronage through a "Courtesy Gift."

THANK YOU

Name_____

[Merchant's advertisement]

Other cards in this group, sold and distributed by the respondent, provide for recording sales of from \$5.50 to \$20 worth of merchandise by the numbers ranged around the border of the card and provide for the winning of amounts from 25 cents to \$5 by the legends written with invisible ink in the ruled or blank squares or blank circles. Other cards in the same group are prepared primarily for

automobiles, gasoline, and service stations and provide for the purchase of 75 gallons of gasoline and 5 quarts of oil by the numbers ranged around the border of the card and provide for the winning of from 25 cents to \$5 in trade by the legend written in invisible ink in the blank circle therein.

The respondent sells and distributes other sales promotion cards for use in various types of business, but the ones described above illustrate the general plan of such cards.

Respondent furnishes his dealers with various display posters and circulars and with advertisements to be used and which are used by said dealers in distributing and using said cards.

PAR. 3. The dealers 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 when the squares and circles on the said cards are scorched so as to reveal the legend written in invisible ink. The respondent in his literature and by his representations suggests various methods for the use of said cards by their dealers, all of which methods involve a lottery, game of chance, or gift enterprise.

PAR. 4. There are in competition with respondent various sellers 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 sell and distribute various cards or devices for promoting or increasing the 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 use by respondent of said methods in designing and arranging his said cards and distributing the same for redistribution to the public, is a practice of the sort which is contrary to an established public policy of the government of the United States and is in violation of criminal laws. The consuming public is induced to deal with or purchase merchandise from dealers using respondent's cards in preference to using the devices of respondent's competitors, because of the lottery scheme, game of chance, or gift enterprise connected with respondent's said cards. The use by respondent of said methods in designing and arranging his said cards and distributing them as aforesaid, because of said game of chance, has a tendency and capacity to and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method,

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and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 March 6, 1939, issued and served its complaint in this proceeding upon Earl M. Loban, individually, and trading as Century Business Service, Acme Dividend System and Century Publishing Co., Inc., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 24, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint, and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto; 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, Earl M. Loban, is an individual trading as Century Business Service, Acme Dividend System and Century Publishing Co., Inc., with his principal office and place of business located at 401 and 402 Lafayette Building, Waterloo, Iowa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of sales promotion cards to dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, his said sales cards, when sold, to be transported from his principal place of business in the city of Waterloo, Iowa, to purchasers thereof located in the various States of the United States, other than the State of Iowa, and in the District of Columbia, at their respective points of location. There is now, and

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has been for some time last past, a course of trade by said respondent 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, respondent is in competition with other individuals and with corporations and with partnerships engaged in the sale and distribution of sales promotion cards, trade cards, discount cards, premium cards, coupons, and trading stamps 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 his business in commerce, 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 enterprise, when used by dealers in promoting and increasing sales of their merchandise to the consuming public. The respondent sells and distributes several groups of sales promotion cards, but they all involve a 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 arrangement, design and principle involved. On the front of such cards is the following:

20 20 20 20 20 15 15 15 15 15 15 15 15 15 15
20 20 20 20 20 25 25 25 25 25 25 25 25 25 25

COURTESY GIFT CARD

The "CONCEALED
COURTESY GIFT"
within the square at
right may be of a 25¢,
50¢, \$1.00, \$2.50,
or \$5.00 "in trade"
value!

NO COURTESY GIFT

LESS THAN 25¢

No card honored if mutilated. Do not Mutilate

Present this card to us each time your
cash purchases amount to 10¢ or over. When
they total the amount punched in the margin
we will pay you the "Courtesy Gift."

No. C11

10 10 10 10 10 10 10 10 10 10 10 10 10 10 10
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chemicals in the said ink, but until such heat is applied the legend in the said square is effectively concealed from the holder of said card. 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:

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This is a new and interesting plan whereby we show our appreciation of your patronage through a "Courtesy Gift."

THANK YOU

Name -----

[Merchant's advertisement]

Other cards in this group, sold and distributed by the respondent, provide for recording sales of from \$5.50 to \$20 worth of merchandise by the numbers ranged around the border of the card and provide for the winning of amounts from 25 cents to \$5 by the legends written with invisible ink in the ruled or blank squares or blank circles. Other cards in the same group are prepared primarily for automobiles, gasoline and service stations and provide for the purchase of 75 gallons of gasoline and 5 quarts of oil by the numbers ranged around the border of the card and provide for the winning of from 25 cents to \$5 in trade by the legend written in invisible ink in the blank circle therein.

The respondent sells and distributes other sales promotion cards for use in various types of business, but the ones described above illustrate the general plan of such cards.

Respondent furnishes his dealers with various display posters and circulars and with advertisements to be used and which are used by said dealers in distributing and using said cards.

PAR. 3. The dealers 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 when the squares and circles on the said cards are scorched so as to reveal the legend written in invisible ink. The respondent in his literature and by his representations suggests various methods for the use of said cards by their dealers, all of which methods involve a lottery, game of chance or gift enterprise.

PAR. 4. There are in competition with respondent various sellers and distributors of sales promotion cards, premium cards, price con-

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cession 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 sell and distribute various cards or devices for promoting or increasing the 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 use by respondent of said methods in designing and arranging his said cards and distributing the same for redistribution to the public, is a practice of the sort which is contrary to an established public policy of the Government of the United States and is in violation of criminal laws. The consuming public is induced to deal with or purchase merchandise from dealers using respondent's cards in preference to using the device of respondent's competitors, because of the lottery scheme, game of chance, or gift enterprise connected with respondent's said cards. The use by respondent of said methods in designing and arranging his said cards and distributing them as aforesaid, because of said game of chance, has a tendency and capacity to and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 answer of the respondent in which answer respondent admitted all the material allegations of fact set forth in said complaint, and states that he waives 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Earl M. Loban, individually and trading as Century Business Service, Acme Dividend System, and Century Publishing Co., Inc., or trading under any other name or names, his representatives, agents, and employees directly or through

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any corporate or other device in connection with the offering for sale, sale and distribution of 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 or 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.

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 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
UNITED STATES RUBBER COMPANY AND U. S. TIRE
DEALERS CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECS. (a) AND (d) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914.

Docket 3685. Complaint, Jan. 6, 1939—Decision, Apr. 25, 1939

Where a corporation which was engaged chiefly in producing, manufacturing, distributing, and selling rubber and rubber products of many kinds, including automotive vehicle tires, i. e., casings and tubes, directly and through certain wholly owned or controlled subsidiary corporations, some of which, in turn, owned or controlled, through voting stock ownership, still other operating companies, and which, together with its various subsidiaries, was one of the four largest manufacturers of tires in the United States, selling and distributing its tires, directly and through its subsidiaries, in competition with others engaged in manufacture and sale of such products, to and through, principally, (1) manufacturers of automotive vehicles using tires for original equipment and spares, (2) certain wholesalers, mail order houses, and retail store chains for whom tires were made by it and who resold same under their own private brands or trade-marks, and (3) wholesale and retail tire dealers and service stations numbering many thousands and located in many cities and towns throughout the United States; and operations of which various wholesalers, mail order houses, retail store chains, and wholesale and retail tire dealers and service stations, as above set forth, were competitive in resale by said wholesalers, mail order houses, and chains of said tires purchased from it and its subsidiaries under private brands or trade-marks in competition with other dealers selling tires of said corporation and subsidiaries under their own brands, and also, in some places, in resale of its said products at retail between customers purchasing such tires as "distributors" (and service stations of oil companies purchasing as "distributors") and "service station dealers" and other retailers purchasing tires from said corporation and subsidiaries or their distributors—

(a) Discriminated in price between certain mail order houses and chain stores and other purchasers, through sale to such mail order houses and chains of large quantities of tires bearing the brands, markings, and designs specified, respectively, by said purchasers, at prices different and lower than the prices charged and allowed by it to other purchasers of its tires of like grade and quality bearing its own brands, and under contracts entered into with such mail order houses and chains, by whom tires thus purchased by them and bearing their own brands, markings, and designs were resold and offered for resale throughout the United States or in large territories therein, in substantial competition with other dealers in tires manufactured by it under its own brands, and by other manufacturers;

With the result that effect of such discrimination in price had been and might be substantially to lessen competition and to create a monopoly of the line of commerce in which it and its subsidiaries were engaged, and in line of commerce in which purchasers from it, as above set forth, were engaged, and to