

Syllabus

IN THE MATTER OF
PUBLIX PRINTING CORPORATION

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

Docket 3742. Complaint, Mar. 21, 1939—Decision, May 31, 1939

Where a corporation engaged in manufacture, sale, and distribution of sales promotion cards, which were so designed and arranged as to involve use of a lottery scheme or gift enterprise when used by dealers in promoting and increasing sales of their merchandise to the consuming public and which included several groups involving in all cases lottery scheme or gift enterprise and varying in detail only, one of which included cards arranged for punching out and recording sales to a total amount of \$5.20 and had enclosed or concealed within a secret panel on card legend entitling holder of card, when opened, to amounts in trade ranging from 20 cents to \$5 and others of which provided for recording sales totaling \$10 worth of merchandise by numbers arranged around the border of the card and for the winning of amounts from 20 cents up to \$10 by holder of card and in accordance with particular legend concealed under secret panel—

Sold to retail merchant customers assortments of such sales promotion cards, together with various display posters and advertisements for merchant's use in distributing and making use of cards in question through distribution, as suggested, to customers of merchant making purchases and the punching out on the margin of the cards of the amount of such purchases, and the awarding of amounts to customer in accordance with legend revealed within secret panel of particular card, upon the completion thereon of the total amount of purchases, and provided with other suggested methods involving in all cases lottery, game of chance or gift enterprise, its various merchant customers, by whom said sales promotion cards were distributed to customers and prospective customers and awards shown on secret panels thereon honored; contrary to an established public policy of the United States Government and in violation of criminal law and in competition with various manufacturers and distributors of such promotion cards, premium cards, price concession cards, and coupon trading 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 cards or devices for promoting or increasing sales of dealers and who are unwilling to offer or sell cards or devices so designed and arranged as above set forth, or otherwise so designed and arranged as to involve a 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 its devices because of lottery scheme, game of chance, or gift enterprise connected therewith, in preference to purchasing merchandise from dealers using devices of its competitors, and dealers were thereby induced to buy its said cards in preference to devices of competitors and trade was unfairly diverted to it from its competitors aforesaid:

Complaint

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. D. C. Daniel for the Commission.

Mr. Samuel H. Solomon, of Chicago, Ill., for respondent.

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 Publix Printing Corporation, a corporation, 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, Publix Printing Corporation, is a corporation organized and doing business under the laws of the State of Illinois with its principal office and place of business located at 633 South Plymouth Court, Chicago, Ill. Respondent 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 dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, its said sales cards, when sold, to be transported from its principal place of business in the city of Chicago, Ill., to purchasers thereof located in the various States of the United States, other than the State of Illinois, 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 corporations and with partnerships 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 and in the District of Columbia.

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 enterprise when used by dealers in promoting and increasing sales of their merchandise to the consuming public. The respondent

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Complaint

manufactures and distributes several groups of sales promotion cards, but they all involve a lottery scheme or gift enterprise and vary only in detail. The sale promotion cards in one such group are herein described for the purpose of showing arrangement, design and principle involved. On the front of such card is the following:

5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
25	Use this card and find ?																			

Under the secret panel is the following:

When properly punched good for

20¢

IN TRADE

The secret panel referred to on the said card is 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 said card. The said legends under the secret panel vary in amount from 20 cents to \$5. The legend under the secret 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 card is the following language:

PROFIT SHARING PLAN

In appreciation of your patronage, we have devised a new plan whereby we share our profits with you. When this card is fully punched, present same to us intact. We will then open the "Covered Wagon" and you will receive the award printed thereon Absolutely Free. Should You Open the "Covered Wagon" the Card Becomes Void. Present this card when making purchases. It will pay you to trade here.

Complaint

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AWARDS UP TO \$5.00—NO BLANKS

(Merchant's advertisement)

Other cards manufactured and distributed by the respondent provide for recording the sales of \$10 worth of merchandise by the numbers arranged around the border of the card and provide for the winning of amounts from 20 cents up to \$10 by the legends under the secret panel.

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 merchants is as follows: the cards are distributed without cost 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, without additional charge. The respondent in its literature and by its representatives suggests various methods for the use of said cards by its dealers, all of which methods involve a lottery, game of chance, or gift enterprise.

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 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 its 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 purchasing merchandise from dealers using the devices of respondent's competitors, because of the lottery scheme,

game of chance, or gift enterprise connected with respondent's said cards. By reason thereof, dealers are induced to purchase respondent's said cards in preference to devices of respondent's competitors. The sale and distribution of the aforesaid sales cards has the tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors, 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 21, 1939 issued and served its complaint in this proceeding upon respondent, Publix Printing Corporation, a corporation, charging it 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 May 3, 1939 the respondent filed its answer in which answer it 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 the 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, Publix Printing Corporation, is a corporation organized and doing business under the laws of the State of Illinois with its principal office and place of business located at 633 South Plymouth Court, Chicago, Ill. Respondent 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 dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, its said sales cards, when sold, to be transported from its principal place

Findings

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of business in the city of Chicago, Ill., to purchasers thereof located in the various States of the United States, other than the State of Illinois, 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 corporations and with partnerships 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 and in the District of Columbia.

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 enterprise when used by dealers in promoting and increasing sales of their merchandise to the consuming public. The respondent manufactures and distributes several groups of sales promotion cards, but they all involve a lottery scheme or gift enterprise and vary only in detail. The sale promotion cards in one such group are herein described for the purpose of showing arrangement, design and principle involved. On the front of such card is the following:

5	5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	5
25	Use this card and find ? THE UNKNOWN TREASURE Under this Covered Wagon Is Your Award Picture of covered wagon Cut here Warning! Void if Tampered or Opened EVERY CARD PAYS AN AWARD No Blanks No Blanks YOU CAN WIN UP TO FIVE DOLLARS See other side for Rules and Instructions	15
5	10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 15 15 15	5

Under the secret panel is the following:

When properly punched good for

20¢

IN TRADE

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Findings

The secret panel referred to on the said card is 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 said card. The said legends under the secret panel vary in amount from 20 cents to \$5. The legend under the secret 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 of back of the said sales promotion card is the following language:

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(Merchant's Advertisement)

Other cards manufactured and distributed by the respondent provide for recording the sales of \$10 worth of merchandise by the numbers arranged around the border of the card and provide for the winning of amounts from 20 cents up to \$10 by the legends under the secret panel.

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 merchants is as follows: The cards are distributed without cost 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, without additional charge. The respondent in its literature and by its representatives suggests various methods for the use of said cards by its dealers, all of which methods involve a lottery, game of chance, or gift enterprise.

PAR. 4. There are in competition with the respondent various manufacturers and distributors of sales promotion cards, premium cards, price concession cards, coupons, and trading stamps, which, when used by dealers, do not involve a lottery scheme, game of chance, or gift enterprise. Many persons, firms, and corporations who 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 its 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 purchasing merchandise from dealers using the devices of respondent's competitors, because of the lottery scheme, game of chance, or gift enterprise connected with respondent's said cards. By reason thereof, dealers are induced to purchase respondent's said cards in preference to devices of respondent's competitors. The sale and distribution of the aforesaid sales cards has the tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors.

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 the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waves all intervening procedure and further hearing as to the said facts, and the Commission having made its findings as to the facts and conclusion that said respondent is violating the provisions of the Federal Trade Commission Act.

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Order

It is ordered, That the respondent, Publix Printing Corporation, 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 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 made 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 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.

