

IN THE MATTER OF
MORRIS L. RAUER, TRADING AS EARL CHROME
MANUFACTURING COMPANY

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

Docket 3426. Complaint, May 13, 1938—Decision, June 26, 1939

Where an individual engaged in sale and distribution of radios, clocks, cocktail shakers, coffee sets, and novelty merchandise, to purchasers in other States—

- (a) Furnished with his said products, for use in sale thereof by his merchant customers, punchboards for sale and distribution in accordance with a plan by which person securing, out of 2,500 tubes on board, certain number as result of 5-cent chance purchased by him, became entitled to or won the radio, or other article being thus sold or disposed of by said individual to or through particular merchant, 8 other designated numbers entitled winners each to 50 cents in trade, and 30 other numbers entitled winners each to 25 cents in trade, and person punching last available punch in each of 25 sections into which board was divided received 50 cents in trade, and merchant was reimbursed for such trade furnished from his general stock, and said individual's agent called upon and collected for said individual from merchant about every 2 weeks from 50 to 60 percent of amount received by merchant for punches; and

Placed thereby in hands of others means of conducting lotteries in the sale of his said merchandise, contrary to the established public policy of the United States Government and in violation of the criminal laws, and in competition with those who do not use the same or similar methods of distribution;

With result that many persons, because of element of chance involved, were induced to buy and sell his said products in preference to merchandise offered and sold by competitors who, as aforesaid, do not use such or similar method of distribution, and from whom, as a result, trade was thereby diverted to said individual; and

- (b) Represented, through inclusion of word "manufacturing" in trade name used by him, that he was the manufacturer of products which he sold, facts being he did not make such merchandise and neither owned, operated, nor controlled any plant in which such merchandise was made;

With result of causing purchasing public to believe that he was the manufacturer of the products sold by him and was a manufacturer for the purchase of the products of whom there is a preference on the part of a considerable portion of purchasing public as securing them thereby lower prices, superior quality, and other advantages, and with result that trade was diverted to said individual from his competitors who do not falsely represent that they are the manufacturers of the products which they sell:

Held, That such practices, as above set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. D. C. Daniel and *Mr. P. C. Kolinski* for the Commission.

Nash & Donnelly, 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 *Morris L. Rauer*, individually and trading as *Earl Chrome Manufacturing Co.*, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the 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, *Morris L. Rauer*, is an individual trading under the name of *Earl Chrome Manufacturing Co.*, with his principal office and place of business located at 2757 Lincoln Avenue, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of radios, clocks, cocktail shakers, coffee sets, and other articles of novelty merchandise, to purchasers thereof located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from his principal place of business in Chicago, Ill., to purchasers thereof 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 merchandise 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 partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise 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, as described in paragraph 1 hereof, respondent sells and has sold to dealers such assortments of said merchandise, so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of respondent's assortments substantially illustrates the sales plan or method used in the sale and distribution of his products to the purchasing public, and is as follows: This assortment consists of a radio and trade credits, together with a device commonly called a punchboard. The punchboard is divided

Complaint

29 F. T. C.

into 25 sections. Sales are 5 cents each, and each purchaser is entitled to 1 punch from said board. When a punch is made from said board a number is disclosed. The board bears statements informing prospective purchasers that a certain number entitles the purchaser thereof to a radio; that certain other numbers entitle the purchasers thereof to 25 cents in trade; that certain other numbers entitle the purchasers thereof to 50 cents in trade, and that the last punch in each section entitles the purchaser thereof to 50 cents in trade. The purchaser punching numbers calling for specified amounts "in trade" are entitled to and receive from the dealer operating said board articles of merchandise of values equal to said specified amounts "in trade." A purchaser who does not qualify by obtaining the number calling for a radio or 1 of the numbers calling for 25 cents or 50 cents in trade, or the last number in 1 of said sections, receives nothing for his money other than the privilege of punching a number from said board. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The said radio and trade credits are thus distributed to the purchasers of said punches from said board wholly by lot or chance.

Respondent sells and distributes various assortments of his merchandise and sells and furnishes various punchboards for distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The dealers to whom respondent sells or furnishes said punchboards use the same in 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 is contrary to an established public policy of the Government of the United States, and which is in violation of criminal laws.

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 an article of merchandise at a price much less than the normal retail price thereof, or a specified amount "in trade," which said amount is greatly in excess of the sum to be paid therefor. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent as above alleged are unwill-

ing to adopt and use said method or any method involving the use of 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 method and by the element of chance involved in the sale of said merchandise in the manner above alleged, and are thereby induced to buy and sell 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 the respondent, because of said game of chance, has the tendency and capacity to and does unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of his business as hereinabove described, respondent has included within his trade name the word "manufacturing." Respondent has used continuously, for some time last past, and is now using the word "manufacturing" in said trade name under which he carries on his business. Respondent has also used and is using the word "manufacturers" within the phrase "Manufacturers and Distributors," with which to describe his said business. In soliciting the sale of and selling his products in commerce as hereinabove alleged, respondent causes and has caused his said trade name and the phrase "Manufacturers and Distributors" to appear on his letterheads, invoices and other printed matter. All of said printed matter has been and is distributed in and among the various States of the United States and in the District of Columbia to customers and prospective customers of the respondent. The use of the word "manufacturing" in respondent's trade name and the word "manufacturers" within the phrase "Manufacturers and Distributors" serves as a representation that respondent owns, operates, or controls the factory or mill wherein the products which he sells are made or manufactured.

In truth and in fact respondent does not now, nor has he ever made or manufactured said products. Respondent does not own or operate any mill or factory wherein the products sold by him are made or manufactured. Respondent has at all times herein alleged filled, and now fills, orders received by him with products made or manufactured in factories or mills which he does not own, operate, or control.

PAR. 6. There is a preference on the part of certain purchasers and prospective purchasers located in the various States of the United States and in the District of Columbia, for buying said products and like or similar products directly from the manufacturer or mill pro-

ducing the same. There is an impression and belief existing among certain of said purchasers or prospective purchasers of said products that a saving of the middleman's profit may be obtained, that a more uniform line of goods may be purchased, and that other advantages may be obtained by purchasing goods directly from a manufacturer or mill operator.

The use by respondent of the word "manufacturing" in his trade name and the word "manufacturers" within the phrase "Manufacturers and Distributors," as hereinabove alleged, has the tendency and capacity to mislead and deceive, and has misled and deceived, purchasers by causing them to mistakenly and erroneously believe that the respondent actually owns and operates or controls the factories or mills in which said products are made or manufactured, and to purchase respondent's products on account of such mistaken and erroneous beliefs. The aforesaid representations by respondent have the tendency and capacity to, and do, unfairly divert trade to respondent from individuals, partnerships, and corporations who are actually manufacturing products like or similar to the products of respondent, or who sell and distribute like or similar products, both of which classes sell their respective products in commerce between and among the various States of the United States and in the District of Columbia, and do not misrepresent their business status. In consequence thereof injury has been done, and is being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, on May 13 A. D. 1938, the Federal Trade Commission issued and served its complaint in this proceeding upon the respondent, Morris L. Rauer, individually and trading as "Earl Chrome Manufacturing Company," charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, no answer being filed by the respondent, testimony and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel and P. C. Kolinski, attorneys for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly appointed by it. John A. Nash

appeared as attorney for the respondent, but introduced no testimony or other evidence in opposition to the complaint. The testimony and other evidence introduced on behalf of the Commission were duly recorded and filed in the office of the Commission. Thereafter, the proceedings came on for final hearing on the said complaint, the testimony and other evidence, and brief in support of the complaint; no brief being filed in opposition thereto. And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Morris L. Rauer, for 21 years has been engaged in the business of selling merchandise by means of punchboards. Respondent, from 1936 to 1937, conducted his business under the trade name "Earl Chrome Manufacturing Company," and since that time as "Earl Chrome Company." For the past 2 years respondent's principal place of business has been located at 2757 Lincoln Avenue, Chicago, Ill. Respondent sells and distributes radios, clocks, cocktail shakers, coffee sets, and novelty merchandise to purchasers thereof in States other than the State in which respondent's place of business is located and from which said shipments are made.

PAR. 2. Respondent, in the course and conduct of his said business was and is in competition with individuals, partnerships, and corporations engaged in the sale and distribution of like or similar articles of merchandise in interstate commerce.

PAR. 3. Respondent disposes of his merchandise in Wisconsin, Indiana, and Iowa, through his agents residing in said States, to whom he pays salaries, and, if they sell a certain amount of merchandise, they receive additional compensation in the form of commissions. These agents receive the merchandise from respondent together with punchboards, and they visit stores located in their territories and place same with the merchants. The respondent distributes 4 types of punchboards, which differ only in minor details; the punchboard used in disposing of radios is typical. This board is divided into 25 sections of 100 tubes each, or a total of 2,500 tubes, each constituting a punch. Each of these tubes contains a roll of paper bearing a number which is not disclosed until the tube has been punched. The merchant operating this board collects from his patrons 5 cents for each punch, and the person punching the tube bearing the number 100 wins a radio. Eight other designated numbers entitle the winners each to 50 cents in trade and 30 other numbers entitle the win-

Findings

29 F. T. C.

ners each to 25 cents in trade. The person punching the last available punch in each section also receives 50 cents in trade. Patrons punching other than such winning numbers receive nothing. The merchandise other than the radio is furnished by the merchant from his general stock, but he is reimbursed therefor by the respondent.

After respondent's agent has placed the merchandise and punchboard with the merchant, he calls upon the merchant about every 2 weeks and collects from 50 to 60 percent of the amount received by the merchant for punches and at certain intervals delivers the amount so collected to the respondent at his place of business in Chicago.

In approximately 300 instances, merchants located in the several States hereinbefore mentioned have placed orders directly with the respondent at his place of business in Chicago, and he has shipped his merchandise and punchboards directly to them in such cases, and the same method of disposing of the merchandise was used as hereinbefore set forth and the proportion of receipts due the respondent from such sales of punches was collected by respondent's agents in the same manner as when the merchandise was originally placed by them.

There are others engaged in selling in interstate commerce merchandise similar to that sold by respondent who do not use punchboards in connection with the sale of their merchandise because such method is contrary to public policy.

PAR. 4. Many persons, because of the element of chance involved, have been induced to buy and sell the respondent's merchandise in preference to the merchandise offered for sale by respondent's competitors who do not use the same or similar methods of distribution, and as a result, trade has been diverted from such competitors to the respondent.

PAR. 5. Respondent, by the sales methods hereinbefore described, places in the hands of others the means of conducting lotteries in the sale of his said merchandise, and the said method of sale and distribution of his merchandise is contrary to the established public policy of the Government of the United States and in violation of the criminal law.

PAR. 6. Respondent, by use of the trade name "Earl Chrome Manufacturing Company," represents himself to be the manufacturer of the products which he sells, when in fact he does not manufacture said merchandise and neither owns, operates, or controls any factory or plant in which said merchandise is manufactured. Said representations of respondent cause the purchasing public to believe that he manufactures the products sold by him. A considerable portion of the purchasing public prefer to buy from the manufacturer, in the

belief that they thereby secure lower prices, superior quality, and other advantages, and, as a result, trade is diverted to the respondent from his competitors who do not falsely represent that they are the manufacturers of the products which they sell.

CONCLUSION

The practices of the respondent as set forth in the foregoing findings as to the facts are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce in violation of the Federal Trade Commission Act

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, brief filed herein by counsel for the Commission (respondent having offered no proof, filed no brief, and oral argument not having been requested), 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, Morris L. Rauer, individually, and trading as Earl Chrome Manufacturing Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of radios, clocks, cocktail shakers, coffee sets, 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 any merchandise so packed and assembled that sales of such merchandise to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of others any merchandise together with punchboards, push or pull cards, or any other lottery device, or separately, for the purpose of enabling said persons to sell or distribute said merchandise by the use of said punchboards, push or pull cards, or any other lottery device.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

Order

29 F. T. C.

4. Representing that respondent is the manufacturer of the merchandise which he sells and distributes unless and until he owns and operates or directly and absolutely controls the plant or factory wherein said merchandise is manufactured by him.

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.

Complaint

IN THE MATTER OF
KING CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914*Docket 3437. Complaint, May 21, 1938—Decision, June 26, 1939*

Where a corporation engaged in manufacture, sale, and distribution of candy to dealer purchasers in various States—

Furnished or sold, with certain assortments of candy, various push cards and punchboards for use in display, sale, and distribution thereof under a plan in accordance with which purchaser selecting by chance, for 10 cents paid, feminine name corresponding to that concealed under card's master seal, received a package of candy; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of its products, in accordance with aforesaid or similar sales plan, by retail dealer purchasers of its candies, who exposed and sold same to purchasing public in accordance therewith, contrary to an established policy of the United States Government, and in competition with many who are unwilling to offer or sell their products so packed and assembled as above described for sale by any method involving game of chance or lottery, and refrain therefrom;

With effect of inducing purchasers of candy to buy its said product in preference to that offered and sold by competitors, and of excluding from candy trade all competitors who do not adopt and use such or similar method involving elements of chance or lottery, and with result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing same and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase such candy, thus packed and sold by it, in preference to that offered and sold by competitors who do not use similar methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its competitors who do not use similar methods, exclude from trade in question all competitors who are unwilling to and do not use such methods as against public policy, lessen competition in said trade, and create monopoly in it and in such other distributors of candy as use same or similar methods, and deprive purchasing public of benefit of free competition:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. D. C. Daniel for the Commission.

Mr. Hugo Swan, of Dallas, Tex., 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 King Candy Co., a