

Syllabus

IN THE MATTER OF

ISAAC S. FRIEDMAN, AN INDIVIDUAL TRADING AS
WRIGHT PRODUCTS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3806. Complaint, June 3, 1939—Decision, Sept. 7, 1939*

Where an individual engaged in sale and distribution of hosiery, clocks, pen and pencil sets, manicure sets and other articles of merchandise to purchasers in various other States and in the District of Columbia, in soliciting, selling and distributing his merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for sale and distribution thereof to purchasing public, and distribution to said public of certain literature and instructions, including push cards, order blanks and depictions of merchandise in question in circulars explaining his plan of selling same, under which person selecting by chance from 35 feminine names displayed on card, name corresponding with name concealed under card's large seal received spinning-wheel clock of asserted \$5 value, and person receiving certain number received De Luxe Combination Pen and Pencil of asserted \$2 value, and amount paid by customer, if any, was contingent upon number selected by chance as determined by disk of card pushed, and operator of card was compensated by premium or prize; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with aforesaid or similar sales plans, varying in detail only therefrom, and under which fact as to whether purchaser received an article of merchandise or nothing for amount of money paid, or article of merchandise free, and which article of merchandise purchaser was to receive, if any, was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure an article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by his said sales plan or method employed in sale and distribution of his merchandise and by element of chance involved therein and were thereby induced to buy and sell such merchandise in preference to that offered and sold by competitors aforesaid who do not use such or equivalent method and with effect through use of such method and because of said game of chance of diverting trade unfairly to him from his competitors aforesaid who do not use such or equivalent method:

Held, That such acts and practices under the circumstances set forth were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition.

Complaint

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Before *Mr. Miles J. Furnas*, trial examiner.
Mr. L. P. Allen, Jr. for the Commission.

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 Isaac S. Friedman, an individual trading as Wright Products Co., 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, Isaac S. Friedman, is an individual trading as Wright Products Co. His principal office and place of business is located at 4303 North Keeler Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of hosiery, clocks, pen and pencil sets, manicure sets, and other articles of merchandise in commerce between and among 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 aforesaid place of business in the State of Illinois to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by 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, and has been, 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 in soliciting the sale of and in selling and distributing his merchandise furnishes, and has furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions, including, among other things, push cards, order blanks, illustrations of his said merchandise and

circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears thirty-five (35) feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has thirty-five (35) small, partially perforated disks on the face of which is printed the word "push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

Name under **LARGE SEAL** receives an
ANIMATED
SPINNING WHEEL CLOCK
 The New Sensational Time Piece **\$5.00 VALUE**

Number 20 Receives De Luxe Combination
 Pen and Pencil—Value \$2.00

Numbers 1 to 19 Pay Only
AMOUNT YOU DRAW
 Any Number Over 19 Pays Only 19¢

FREE—4 Numbers are FREE
 10—11—12—16
 You Pay nothing if you draw
 these numbers, yet have an
 equal chance

Do not remove seal until entire card is sold

WRITE YOUR NAME OPPOSITE
NAME YOU SELECT ON REVERSE SIDE

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid or an article of merchandise free, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondent furnishes, and has furnished, various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales

plan or method involved in connection with the sale of all of said merchandise by means of said push card is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said push cards 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 sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the 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. Many persons, firms, and corporations, who 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method, 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. 5. The aforesaid acts and practices of 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 June 3, 1939, issued and served its complaint in this proceeding upon respondent, Isaac S. Friedman, an individual trading as Wright Products Co., 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 July 31, 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 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, Isaac S. Friedman, is an individual trading as Wright Products Co. His principal office and place of business is located at 4303 North Keeler Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of hosiery, clocks, pen and pencil sets, manicure sets and other articles of merchandise in commerce between and among 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 aforesaid place of business in the State of Illinois to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by 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, and has been, 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 in soliciting the sale of and in selling and distributing his merchandise furnishes, and has furnished,

Findings

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various devices and plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions, including, among other things, push cards, order blanks, illustrations of his said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears thirty-five (35) feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has thirty-five (35) small, partially perforated disks on the face of which is printed the word "push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

Name under LARGE SEAL receives an
ANIMATED

SPINNING WHEEL CLOCK

The New Sensational Time Piece \$5.00 VALUE

Number 20 Receives De Luxe Combination
Pen and Pencil—Value \$2.00

Numbers 1 to 19 Pay Only

AMOUNT YOU DRAW

Any Number Over 19 Pays Only 19¢

FREE—4 Numbers are FREE
10—11—12—16

Do not
remove seal
until entire
card is sold

You Pay nothing if you draw
these numbers, yet have an
equal chance

WRITE YOUR NAME OPPOSITE
NAME YOU SELECT ON REVERSE SIDE

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends and instructions.

Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid or an article of merchandise free, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondent furnishes, and has furnished, various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said push cards use the same in purchasing, selling, and distributing respondent's merchandise, in accordance with the afore-said 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 sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found 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. Many persons, firms, and corporations, who sell or distribute merchandise in competition with the respondent, as above found, 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between

Order "

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and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of 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 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, Isaac S. Friedman, an individual trading as Wright Products Company, 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 hosiery, clocks, pen and pencil sets, manicure sets, or any other articles of 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, so as to enable such persons to dispose of or sell any merchandise by the use thereof.
2. Mailing, shipping or transporting to his agents or to distributors or to 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 within 60 days from the date of the service of this order upon the said respondent, he shall 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

G. BERNARDI

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

Docket 3857. Complaint, July 21, 1939—Decision, Sept. 7, 1939

Where an individual engaged in sale and distribution of his "Benaris" drug-containing medicinal preparation to purchasers in various other States and in the District of Columbia; in advertisements which he disseminated through the mails and through newspapers and periodicals of general circulation, and through continuities broadcast from radio stations of extrastate audience, and which were intended and likely to induce purchase of his said product—

- (a) Represented, directly and by implication, that said "Benaris" constituted a competent and effective cure or remedy for colds, chronic colds, catarrh, bronchitis, laryngitis, dryness of the throat, irritation and inflammation of the throat, inflamed and enlarged tonsils, hoarseness, rose or hay fever, and congestion of the nasal passages, and was an effective treatment and preventive of rose or hay fever, facts being it was not such a cure or remedy for said various ailments and conditions, nor effective treatment for and preventive of rose or hay fever;
- (b) Represented that said "Benaris" would neutralize the tissues and eliminate colds, and in all cases relieve headaches, and would penetrate the openings to the sinuses and relieve sinus congestion and assure a healthful efficient day, and bring new life and sensation to user thereof, facts being it was not beneficial in relief of headaches which were not due to congestion of mucous membranes of the air passages, sinus openings in many cases are clogged so as to prevent access of such preparation, in which cases it would not penetrate the openings to the sinuses or relieve congestion, and it would not neutralize tissues or eliminate colds, or insure a healthful or efficient day, or bring new life or sensation to user; and
- (c) Represented that by use of said "Benaris" greater diaphragmatic breathing could be obtained, resulting in finer head tones, and that it would increase resonance, volume, and quality of voice, facts being it would not cause such various results, as above claimed;

With effect of misleading and deceiving members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of his said drug-containing medicinal preparation, and with result, as direct consequence, that trade was diverted unfairly to him from his competitors who truthfully advertise the therapeutic value of their respective products; to the substantial injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, 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.

Mr. Robert Mathis, Jr. for the Commission.

Baker, Hostetler & Patterson, of Cleveland, Ohio, for respondent.