

Syllabus

IN THE MATTER OF
JEAN LAWRENCE, INDIVIDUALLY AND TRADING
AS WELLS SALES COMPANY

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

Docket 3767. Complaint, Apr. 17, 1939—Decision, Sept. 8, 1939

Where an individual engaged in sale and distribution of radios, waffle irons, tableware, griddles, automatic pencils, and other articles of merchandise to purchasers in various other States and in the District of Columbia, in soliciting, selling, and distributing his said products—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery scheme for sale and distribution of such products to ultimate consumers wholly by lot or chance, and which included certain literature and instructions and push cards, order blanks, depictions of said merchandise, and circulars explaining plan of selling same and of allotting it as premiums or prizes to operators of said cards and to purchasing and consuming public under plan in accordance with which person selecting by chance from 64 feminine names displayed on card, name corresponding to that concealed under card's seal, received choice, in accordance with card's explanatory legend and as there described, of radio, automatic waffle iron, or Wm. A. Rogers Tableware, with tarnishproof chest, or Nesco Table Broiler-Griddle, and in accordance with which amount, if any, paid by customer for chance was contingent upon number secured by chance depending on disk of card pushed, and three numbers, as announced, and last sale entitled those securing said numbers or making such purchase to "\$1.00 Wahl Eversharp Pencil"; and

Supplied thereby to and placed in hands of others means of conducting lotteries in the sale of his merchandise in accordance with sales plan above set forth, under which fact as to whether purchaser received article of merchandise or nothing for amount of money paid or article of merchandise free and which of said articles of merchandise purchaser was to receive, if any, was determined wholly by lot or chance, and involving game of chance or sale of 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 said sales plan or method employed by him in sale and distribution of his merchandise and by element of chance involved therein and were thereby induced to buy and sell such products in preference to those offered and sold by his 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 unfairly trade in commerce to him from his said competitors who do not use such or equivalent method:

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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 and unfair and deceptive acts and practices in commerce.

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

Glickman & King, 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 Jean Lawrence, individually and trading as Wells Sales 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, Jean Lawrence, is an individual trading as Wells Sales Co. His principal office and place of business was formerly located at 201 North Wells Street, Chicago, Ill., but he is now located at 4930 North Monticello Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of radios, waffle irons, tableware, griddles, automatic pencils, 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 Illinois to purchasers thereof in the various other States of the United States 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 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 64 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 64 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 SEAL RECEIVES
CHOICE OF
(SEAL) ESQUIRE JR. RADIO
ESQUIRE TWIN AUTOMATIC
WAFFLE IRON
34-piece WM. A. ROGERS
TABLEWARE
(With Tarnishproof Chest)
NESCO TABLE BROILER-GRIDDLE
Numbers 11 to 29 pay what you draw
All numbers over 29 pay 29¢
No Higher
10—FREE NUMBERS—10
1-2-3-4-5-6-7-8-9-10 are FREE
4—ADDITIONAL GIFTS—4
Numbers 9-19-29 and last sale each
receive \$1.00 Wahl Eversharp Pencil

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

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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 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 April 17, 1939, issued and served its complaint in this proceeding upon respondent, Jean Lawrence, an individual trading as Wells Sales 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, Jean Lawrence, is an individual trading as Wells Sales Co. His principal office and place of business was formerly located at 201 North Wells Street, Chicago, Ill., but he is now located at 4930 North Monticello Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of radios, waffle irons, tableware, griddles, automatic pencils, 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 Illinois to purchasers thereof in the various other States of the United States 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 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, vari-

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ous 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 64 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 64 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 SEAL RECEIVES

CHOICE OF

ESQUIRE JR. RADIO

ESQUIRE TWIN AUTOMATIC

WAFFLE IRON

34-piece WM. A. ROGERS

TABLEWARE

(With Tarnishproof Chest)

NESCO TABLE BROILER-GRIDDLE

Numbers 11 to 29 pay what you draw

All numbers over 29 pay 29¢

No Higher

10—FREE NUMBERS—10

1-2-3-4-5-6-7-8-9-10 are FREE

4—ADDITIONAL GIFTS—4

Numbers 9-19-29 and last sale each
receive \$1.00 Wahl Eversharp Pencil

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 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.

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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, Jean Lawrence, individually and trading as Wells Sales 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, waffle irons, griddles, tableware, automatic pencils, 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.

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IN THE MATTER OF
AMERICAN OIL COMPANY AND GENERAL FINANCE, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF PARAGRAPHS (A) AND (F) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY THE ROBINSON-PATMAN ACT, APPROVED JUNE 19, 1936

Docket 3843. Complaint, July 7, 1939—Decision, Sept. 9, 1939

Where a corporation engaged in distributing and selling, in commerce, gasoline and other petroleum products in various States and in the District of Columbia, and in delivering such products in said District at gasoline stations therein in tank wagons from its bulk plants in State of Virginia, and in selling its said products in said District to various dealer purchasers, including corporate concern which (1) was engaged in business, among other things, of selling and financing sale of taxicabs and in the leasing and operating of a gasoline station in said District at which it sold gasoline and petroleum products of said corporation at retail to taxicab operators and to general public, and which concern (2) purchased products of such corporation from it under provisions of so-called Commercial Consumer Contracts and agreements of said corporation, by which concession of 1½ cents per gallon from the posted retail tank-wagon price, subject to certain minimum and maximum charge, was on specific condition that all products thus purchased were for buyer's own consumption and not for resale in whole or in part to purchaser's employees or to any other person, firm, or corporation—

Discriminated in price between said concern and other retail gasoline dealers in said District who purchased and dealt in gasoline and petroleum products of said corporation, through sale, at prices substantially lower than those charged by it to other retail dealers, of its said products to such concern, which resold products, thus purchased by it at said price concessions on express and specific condition that they were for purchaser's own consumption only and not for resale, to the public and to its owned and controlled taxicabs; to the injury of other retail gasoline dealers in competition with it who were required to and did pay said corporation and other suppliers full posted retail dealer tank-wagon prices applicable on date and at point of delivery.

With result that effect of such discrimination in price had been and might be substantially to lessen competition in line of commerce in which said concern and other retail gasoline dealers in said District were engaged, and to injure, destroy and prevent competition with said corporation, and with said concern which received benefit of discrimination aforesaid:

Held, That such discrimination in price in sale of the gasoline and petroleum products of said corporation between said concern and other competing retail gasoline dealers in said District, constituted a violation of section 2 (a) of the Clayton Act, as amended by Robinson-Patman Act; and

Where said concern engaged as aforesaid, and subsequent to the execution of the first of said contracts providing for such concessions on the express provision, above set forth, that purchase was for buyer's own consumption and not for resale, and well knowing that prices thus fixed in said various