

## Syllabus

IN THE MATTER OF  
STONE BROS., INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3878. Complaint, Aug. 26, 1939—Decision, Dec. 29, 1939*

Where a corporation engaged in sale and distribution of candy, liquor chests, utility chests, and other articles of merchandise to purchasers in the various other States and in the District of Columbia; in soliciting the sale of and in selling and distributing its 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 ultimate consumers wholly by lot or chance, and included (1) assortments consisting of liquor chests and candy filled section thereof and push card for sale and distribution of such merchandise under plan in accordance with which person selecting by chance from list displayed on card, feminine name corresponding to that concealed under card's master seal received such liquor "cabinet" and glasses filled with candies and in accordance with which amount paid for chance was dependent upon number secured as displayed by removal from card of particular disc selected, and (2) merchandise with which various other push cards for use in sale and distribution of such merchandise by means of game of chance, gift enterprise, or lottery scheme, and varying from that described in detail only, were supplied, and in accordance with which plans direct or indirect retail dealer purchasers of merchandise in question displayed and sold same to purchasing public; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of its said product 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 was determined wholly by lot or chance, and there was involved game of chance or sale of a chance to procure 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 it in sale and distribution of its merchandise and element of chance involved therein and were thereby induced to buy and sell its products in preference to merchandise offered and sold by its competitors aforesaid who do not use such or equivalent method, and with effect through use of and because of such game of chance of unfairly diverting trade in commerce to it from its competitors aforesaid:

*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.

## Complaint

30 F. T. C.

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

*Immenhausen & Banovitz*, 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 Stone Bros., Inc., 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, Stone Bros., Inc., is a corporation organized and existing under the laws of the State of Illinois. Its principal office and place of business was formerly located at 800 South Ada Street, Chicago, Ill., but is now located at 1838 West 33d Street, Chicago, Ill. Respondent is now, and for some time last past has been engaged in the sale and distribution of candy, liquor chests, utility chests, 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 its aforesaid places of business in 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 corporations and with partnerships and individuals 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 its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing its 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 change. One of respondent's assortments substantially illustrates the sales plan or method used in the sale and distribution of its merchandise to the purchasing public, and is as follows:

This assortment consists of a liquor chest, 1 section of which is packed with candy, together with a device commonly called a push card. One of respondent's push cards bears 60 small, partially perforated discs on the face of which is printed the word "Push." Above each of said discs is printed a feminine name with ruled columns on the face of said push card for writing in the name of the customer opposite the feminine name selected. Concealed within each of said discs is a number which is disclosed when the disc is pushed or separated from the card. The said numbers are effectively concealed from purchasers and prospective purchasers until the disc 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 above the said discs. The person selecting the feminine name corresponding to one under the master seal receives a premium or prize. Persons selecting certain designated numbers also receive prizes. Push card bears a legend or instruction as follows:

Pick your Favorite Girl's Name  
WIN THIS BEAUTIFUL LIQUOR CABINET  
And Glasses Ready to Serve  
Filled With Delicious Candies  
Nos. 1 to 10 Pay What You Punch—All Others Pay 10¢  
Do Not Remove Seal Until All Punches Are Sold

Sales of respondent's merchandise by means of said push card are made in accordance with the above described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards for use in the sale and distribution of its 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. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public 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 its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its merchandise and the sale of said

## Findings

30 F. T. C.

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 its 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 its 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 August 26, 1939, issued and subsequently served its complaint in this proceeding upon respondent, Stone Bros., Inc., 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 November 28, 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, Stone Bros., Inc., is a corporation organized and existing under the laws of the State of Illinois. Its principal office and place of business was formerly located at 800 South Ada Street, Chicago, Ill., but is now located at 1838 West 33d Street, Chicago, Ill. Respondent is now, and for some time last past has been engaged in the sale and distribution of candy, liquor chests, utility chests 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 its aforesaid places of business in 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 corporations and with partnerships and individuals 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 its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing its 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. One of respondent's assortments substantially illustrates the sales plan or method used in the sale and distribution of its merchandise to the purchasing public, and is as follows:

## Findings

30 F. T. C.

This assortment consists of a liquor chest, 1 section of which is packed with candy, together with a device commonly called a push card. One of respondent's push cards bears 60 small, partially perforated discs on the face of which is printed the word "Push." Above each of said discs is printed a feminine name with ruled columns on the face of said push card for writing in the name of the customer opposite the feminine name selected. Concealed within each of said discs is a number which is disclosed when the disc is pushed or separated from the card. The said numbers are effectively concealed from purchasers and prospective purchasers until the disc 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 above the said discs. The person selecting the feminine name corresponding to one under the master seal receives a premium or prize. Persons selecting certain designated numbers also receive prizes. The push card bears a legend or instruction as follows:

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WIN THIS BEAUTIFUL LIQUOR CABINET  
And Glasses Ready to Serve  
Filled With Delicious Candies  
Nos. 1 to 10 Pay What You Punch—All Others Pay 10¢  
Do Not Remove Seal Until All Punches Are Sold"

Sales of respondent's merchandise by means of said push card are made in accordance with the above described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards for use in the sale and distribution of its 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. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public 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 its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its merchandise and the

363

## Order

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 its 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 its 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 it 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.

## Order

30 F. T. C.

*It is ordered*, That the respondent, Stone Bros., Inc., a 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 candy, liquor chests, utility chests or any other 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 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 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.

## Syllabus

IN THE MATTER OF  
MARTIN BENJAMIN ROTHMAN TRADING AS ESQUIRE  
PRODUCTS

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

*Docket 3902. Complaint, Sept. 28, 1939—Decision, Dec. 29, 1939*

Where an individual engaged in sale and distribution of radios, waffle irons, silverware, and other articles of merchandise to purchasers in various other States; in soliciting sale of and in selling and distributing his said merchandise—

- (a) 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 ultimate consumers wholly by lot or chance and included distribution to purchasing public of certain literature and instructions and push cards, order blanks, and illustrations of goods concerned and circulars explaining his plan of selling his merchandise and allotting it as premiums or prizes to operators of said cards and to purchasing public, in accordance with which and push card's legend person selecting by chance from list of feminine names displayed on card name corresponding with that concealed under card's large master seal received choice of radio, automatic waffle iron, 34-piece Wm. A. Rogers tableware with chest, or table broiler griddle, and those securing by chance certain numbers as set out in legend received premiums or prizes, and amount paid or free chance was dependent upon number disclosed by disc selected on card; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in sale of his merchandise in accordance with aforesaid or similar plan under which fact as to whether purchaser received article of merchandise or nothing for amount of money paid, or article free, and which of said articles, if any, purchaser received was determined wholly by lot or chance, 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 a 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 said individual in sale and distribution of his merchandise, and element of chance involved therein and were thereby induced to buy and sell his goods in preference to merchandise offered and sold by competitors who do not use same or equivalent method, and with effect through use of such method and because of said game of chance of unfairly diverting trade in commerce to him from his competitors aforesaid; and

- (b) Represented through prices set out on his push cards and other printed matter circulated through the mails to customers and prospective customers in the various States and in the District of Columbia that his automatic pencils had a retail value in excess of the usual retail selling price thereof and had retail value and selling price of one dollar, facts being their said value and selling price was substantially less than such amount;