

Syllabus

IN THE MATTER OF
WILLIAM A. FREW TRADING AS PARADISE PRODUCTS
COMPANY, ETC.

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

Docket 3603. Complaint, Sept. 23, 1938—Decision, Mar. 20, 1940

Where an individual engaged in sale and distribution, under various trade names, of candy, garden seed, watches, blankets, and various and numerous other articles of merchandise to purchasers in various other States and in the District of Columbia; in selling and distributing his products as aforesaid—

Made use of various sales plans or methods involving sale and distribution of his said merchandise by means of game of chance, gift enterprise, or lottery scheme, and distribution to general public of certain advertising literature, catalogs and sales circulars for use in such sale and distribution under various plans and methods involving same principle and including (a) assortment of number of packages or boxes of candy and various other articles of merchandise to be given as prizes to purchasers of candy under scheme by which particular recipient of particular article was determined by number concealed under tab on pull card on back cover of his catalogs or circulars as disclosed by customer's chance selection, and operator of card was compensated by cash commission or premium; and (b) assortment of number of items of merchandise for sale and distribution through circular and pull card listing items in question and prices thereof and under scheme in accordance with which number disclosed under tab or card selected by customer by chance determined article received and amount paid, and whether customer received, as set forth on card, one of articles of apparent higher value and price than that therefor designated on card aforesaid, and card's operator was compensated as above set forth; and

Supplied thereby to and placed in the hand of others means of conducting lotteries, gift enterprises, or games of chance, in sale of his merchandise in accordance with sales plans above set forth, under which prizes or other articles of merchandise received in connection with purchase of candy were determined wholly by lot or chance, and facts as to whether purchaser received article of apparent greater value and higher regular price than that designated therefor, and which of said articles purchaser received and amount which he was required to pay were likewise thus determined, and involving in sale of merchandise to purchasing public, as above set forth, game of chance, gift enterprise, or lottery scheme, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use such or any methods involving game of chance, gift enterprise, or lottery scheme, or sale of a chance to win something by chance or any other methods contrary to public policy and refrain therefrom;

With the result that many persons were attracted by his said methods and by element of chance involved in sale of such merchandise as above described and were thereby induced to buy or sell his products in preference to merchandise offered and sold by said competitors who do not use such or

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equivalent methods, and with result, through use of such methods and because of said game of chance, gift enterprise, or lottery, of unfairly diverting trade and custom to him from his said competitors who do not use such or equivalent methods, 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.

Mr. D. C. Daniel 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 William A. Frew, 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 public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, William A. Frew, is an individual with his principal office and place of business located in the city of Paradise, State of Pennsylvania. Respondent is now, and for some time last past has been, engaged in the sale and distribution of candy, garden seed, watches, blankets, towels, musical instruments, housekeeping sets, bedspreads, flashlights, cameras, tableware, toilet sets, and numerous other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. In carrying on said business, respondent has adopted and used various trade names, among which are Paradise Products Co., Paradise Seed Co., Paradise Candy Co., Paradise Chocolate Co., Square Deal Co., Lancaster County Seed Co., Lancaster Seed Co., Garden Spot Seed Co., Garden Seed Co. of America, and Good Luck Gardens. Respondent causes and has caused said products, when sold, to be shipped or transported from his aforesaid place of business in Pennsylvania, to purchasers thereof in various other States of the United States and in the District of Columbia at the respective points of location of said customers. 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 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 sells and distributes, and has sold and distributed, said products by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to the general public certain advertising literature, catalogs, and sales circulars. In selling and distributing his merchandise, respondent has made use of various sales plans or methods differing in detail in accordance with the particular merchandise offered for sale, but all involving the same principle.

One of said plans involves the sale of a number of packages or boxes of candy, together with various other articles of merchandise, which other articles of merchandise are to be given as prizes to purchasers of said packages or boxes of candy in the following manner:

The catalog or circular of respondent has on the back cover thereof a number of partially perforated tabs or pulls, each of which has a legend or design. Sales are 20 cents each, and each purchaser of a package or box of candy is entitled to separate one of the said tabs from the catalog or circular, and on the reverse side thereof appears a legend stating the particular prize or the number of the particular prize to which such purchaser is entitled without additional charge. The inside of the back cover of said circular has a legend that a piece of blank paper is to be pasted over, the legend showing the particular prize which is to be distributed, and purchasers and prospective purchasers are thus unable to ascertain which prize they will receive until a purchase has been made and the particular tab separated from the circular or catalog. The person operating the pull card receives his choice of a cash commission or a premium for selling said boxes of candy, together with the prizes offered by respondent in connection therewith. The prizes or other articles of merchandise which ultimate purchasers receive in connection with the purchase of a package or box of candy are thus determined wholly by lot or chance.

Another assortment sold and distributed by respondent consists of a number of articles of merchandise, and such assortment is sold and distributed to the consuming public in the following manner:

A portion of one of said sales circulars consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to said list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs under each of which is concealed the name of one of the articles of merchandise appearing in said list and the price thereof. The name of the article of merchandise and the price thereof are so con-

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cealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list above referred to opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles induce members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull card tabs receives an article which has apparent greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay are determined wholly by lot or chance.

When the person operating the pull card has succeeded in selling all the articles of merchandise, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said operator the merchandise designated on said card, together with a premium or cash award as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers in accordance with the list filled out when the tabs were detached from the pull card.

PAR. 3. The persons to whom respondent furnishes and has furnished the said circulars and pull cards use the said pull cards in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plans. Respondent thus supplies to, and places in the hands of others, the means of conducting lotteries, gift enterprises, or games of chance in the sale of his merchandise in accordance with the said sales plans hereinabove set forth. The use by respondent of said methods in the sale of his merchandise, and the sale of his merchandise by and through the use thereof and by the aid of said methods, is a practice of the sort which is contrary to an established public policy of the Government of the United States and 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, gift enterprise, or a lottery scheme. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondent as above alleged are unwilling to adopt and use said methods or any methods involving a game of chance, gift enterprise, or a lottery scheme or the sale of a chance to win something by chance, or any other methods which are contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale of such merchandise in the manner above described, 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 equivalent methods. The use by respondent of said methods because of said game of chance, gift enterprise, or lottery scheme has the capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or equivalent methods, 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 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, the Federal Trade Commission, on September 23, 1938, issued, and thereafter served its complaint in this proceeding upon respondent William A. Frew, 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 and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised

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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, William A. Frew, is an individual with his principal office and place of business located in the city of Paradise, State of Pennsylvania. Respondent is now, and for some time last past has been, engaged in the sale and distribution of candy, garden seed, watches, blankets, towels, musical instruments, housekeeping sets, bedspreads, flashlights, cameras, tableware, toilet sets, and numerous other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. In carrying on said business, respondent has adopted and used various trade names, among which are Paradise Products Co., Paradise Seed Co., Paradise Candy Co., Paradise Chocolate Co., Square Deal Co., Lancaster County Seed Co., Lancaster Seed Co., Garden Spot Seed Co., Garden Seed Co. of America, and Good Luck Gardens. Respondent causes and has caused said products, when sold, to be shipped or transported from his aforesaid place of business in Pennsylvania, to purchasers thereof in various other States of the United States and in the District of Columbia at the respective points of location of said customers. 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 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 sells and distributes, and has sold and distributed, said products by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to the general public certain advertising literature, catalogs, and sales circulars. In selling and distributing his merchandise, respondent has made use of various sales plans or methods differing in detail in accordance with the particular merchandise offered for sale, but all involving the same principle.

One of said plans involves the sale of a number of packages or boxes of candy, together with various other articles of merchandise, which other articles of merchandise are to be given as prizes to

purchasers of said packages or boxes of candy in the following manner:

The catalog or circular of respondent has on the back cover thereof a number of partially perforated tabs or pulls, each of which has a legend or design. Sales are 20 cents each, and each purchaser of a package or box of candy is entitled to separate one of the said tabs from the catalog or circular, and on the reverse side thereof appears a legend stating the particular prize or the number of the particular prize to which such purchaser is entitled without additional charge. The inside of the back cover of said circular has a legend that a piece of blank paper is to be pasted over, the legend showing the particular prize which is to be distributed, and purchasers and prospective purchasers are thus unable to ascertain which prize they will receive until a purchase has been made and the particular tab separated from the circular or catalog. The person operating the pull card receives his choice of a cash commission or a premium for selling said boxes of candy, together with the prizes offered by respondent in connection therewith. The prizes or other articles of merchandise which ultimate purchasers receive in connection with the purchase of a package or box of candy are thus determined wholly by lot or chance.

Another assortment sold and distributed by respondent consists of a number of articles of merchandise, and such assortment is sold and distributed to the consuming public in the following manner:

A portion of one of said sales circulars consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to said list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs under each of which is concealed the name of one of the articles of merchandise appearing in said list and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list above referred to opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise as com-

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pared to the price the prospective purchaser will be required to pay in the event he secures one of said articles induce members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull card tabs receives an article which has apparent greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay are determined wholly by lot or chance.

When the person operating the pull card has succeeded in selling all the articles of merchandise, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said operator the merchandise designated on said card, together with a premium or cash award as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers in accordance with the list filled out when the tabs were detached from the pull card.

PAR. 3. The persons to whom respondent furnishes and has furnished the said circulars and pull cards use the said pull cards in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plans. Respondent thus supplies to, and places in the hands of others, the means of conducting lotteries, gift enterprises, or games of chance in the sale of his merchandise in accordance with the said sales plans hereinabove set forth. The use by respondent of said methods in the sale of his merchandise, and the sale of his merchandise by and through the use thereof and by the aid of said methods, is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above described involves a game of chance, gift enterprise, or a lottery scheme. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondent as above described are unwilling to adopt and use said methods or any method involving a game of chance, gift enterprise, or a lottery scheme or the sale of a chance to win something by chance, or any other methods which are contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale of such merchandise in the manner above described, and are thereby induced to buy and sell respondent's merchandise in prefer-

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ence to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use by respondent of said methods because of said game of chance, gift enterprise, or lottery scheme has the capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or equivalent methods, 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.

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 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 of 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 William A. Frew, individually and trading under the names of Paradise Products Co., Paradise Seed Co., Paradise Candy Co., Paradise Chocolate Co., Square Deal Co., Lancaster County Seed Co., Lancaster Seed Co., Garden Spot Seed Co., Garden Seed Co. of America, and Good Luck Gardens, 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 candy, garden seed, watches, blankets, towels, musical instruments, housekeeping sets, bedspreads, flashlights, cameras, tableware, toilet 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 and 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 game of chance, gift enterprise, or lottery scheme.

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2. Supplying to or placing in the hands of others assortments of any merchandise together with push or pull cards, punchboards or other lottery devices, which said push or pull cards, punchboards or other lottery devices are to be used, or may be used, in selling or distributing said merchandise to the public.

3. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling and distributing such merchandise to the public.

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

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.

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IN THE MATTER OF

WALTER KIDDE & COMPANY, INC., AMERICAN LA FRANCE
& FOAMITE INDUSTRIES, INC., C-O-TWO FIRE EQUIP-
MENT COMPANY, NATIONAL FOAM SYSTEM, INC., AND
FYROUT COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914, AND OF SEC. 3
OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AND AMENDMENTS
THERE TO

Docket 3929. Complaint, Oct. 18, 1939—Decision, Mar. 20, 1940

Where five corporations engaged in the manufacture or assembly of fire fighting equipment, including carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers, and in sale and distribution thereof to purchasers in the several States and in the District of Columbia, in competition among themselves, except insofar as such competition might have been hindered, lessened, restricted or restrained as below set forth; acting in concert with one another—

- (a) Fixed and agreed upon minimum prices and terms at which they were to and did sell parts, accessories, apparatus, and equipment used in manufacture or assembly of such systems and extinguishers, and including hose assemblies, cylinders, carrying straps, etc., and compiled and published such prices and terms thus agreed on and observed as "Schedule of Minimum Prices and Terms," as part of license agreements issued by one of their number to others under expired patent and unexpired patent governing successful manufacture, assembly and operation of aforesaid portable fire extinguishers, and to which license agreements schedule in question was affixed; and
- (b) Submitted, in response to invitation of Governmental agencies for competitive bids, bids which, pursuant to agreement and minimum price schedules aforesaid, were identical on such parts, accessories, apparatus, and equipment, and included, as listed in minimum schedule aforesaid, patented coupling, not controlled by or licensed to aforesaid maker of such license agreements, but sold by manufacturer thereof to anyone desiring to purchase same;

With result that such acts and practices of said manufacturers and assemblers in fixing and maintaining uniform prices of parts, accessories, and apparatus, as above set forth, actually hindered and prevented competition between and among them in sale of such parts, etc., in commerce, and had dangerous tendency so to do, and placed in them power to control and enhance prices and unreasonably restrained commerce in parts, accessories and apparatus aforesaid:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair methods of competition in violation of Section 5 of act of Congress approved Sept. 26, 1914, as amended; and

Where said license agreement maker—

Licensed one of other four concerns above set forth to make, sell, install and use invention set forth in such license agreement, under provision by which said licensee was required to purchase from it all of its requirements