

IN THE MATTER OF

M. LINKMAN & COMPANY

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

Docket 4018. Complaint, Feb. 5, 1940—Decision, Mar. 20, 1940

Where a corporation engaged in manufacture of pipes and in sale and distribution thereof, including certain assortments which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme, when sold and distributed to consumers thereof, and which consisted of (1) number of Dr. Grabow pipes, together with punchboard, for use in sale and distribution of such products, and cigarettes supplied by dealer-operator of board, under plan and in accordance with board's explanatory legend, by which customers securing by chance certain numbers or legends paid for their chances amounts ranging from 1¢ to 5¢ and received nothing and those securing certain other legends or punching last slip in each of four sections into which board was divided received, as case might be, one of said pipes or package of cigarettes supplied as above set forth; and (2) various assortments of merchandise with various other lottery devices for use in distribution thereof to purchasing public by means of game of chance, gift enterprise, or lottery scheme involving substantially same sales plans or methods employed as that above described and varying therefrom in detail only—

Sold such assortments, together with said lottery devices, to dealer purchasers by whom devices in question were used in sale and distribution of its said merchandise in accordance with such sales plans or methods, and thereby supplied to and placed in the hands of others means of conducting lottery in sale of its said products in accordance with such plans or methods as above set forth, involving in sale of merchandise to purchasing public game of chance or sale of chance to procure article without cost, 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 said or any methods involving use of a 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 the result that many persons were attracted by its said methods and by element of chance involved in sale of such merchandise in manner above described, and were thereby induced to buy and sell its products in preference to merchandise offered and sold by said competitors who do not use same or equivalent methods, and with result, through use of said methods and because of said game of chance, of unfairly diverting trade in commerce to it from its competitors aforesaid who do not use such or equivalent sales plans or 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 in commerce and unfair and deceptive acts and practices therein.

Mr. D. C. Daniel for the Commission.

Mr. Charles L. Schwartz, 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 M. Linkman & 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 public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, M. Linkman & Co., is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 1150 West Fullerton Avenue, Chicago, Ill. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture of pipes and in the sale and distribution thereof, to dealers located in the various States of the United States and in the District of Columbia. It causes and has caused said pipes when sold to be shipped or transported from its aforesaid place of business in the State of Illinois to purchasers thereof in the various States of the United States other than the State of Illinois and in the District of Columbia at their respective points of location. There is now, and for more than 1 year last past has been, 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 its business, respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar 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 sells and has sold to dealers certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the consumers thereof. One of said assortments is sold and distributed to the purchasing public in substantially the following manner: This assortment consists of a number of "Dr. Grabow" pipes, together with a device commonly known as a punchboard. Said punchboard contains a number of small sealed tubes, each of which tubes contains a small slip of paper. Each of said slips of paper has printed thereon

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either "Put 1¢," "Put 2¢," "Put 3¢," "Put 4¢," "Put 5¢," "Take Dr. Grabow Pipe" or "Take 1 pkg. (20) cigarettes". Said tubes are divided into four sections. Purchasers who punch the slips with "Put 1¢," "Put 2¢," "Put 3¢," "Put 4¢," or "Put 5¢," pay the amounts specified on said slips and receive nothing therefor unless such slip is the last slip in that particular section. The person punching the last slip in either section is entitled to and receives one of said pipes. Purchasers who punch said slips of paper with "Take Dr. Grabow pipe" or "Take 1 pkg. (20) cigarettes" appearing thereon are entitled to and receive without cost the articles of merchandise so designated. The cigarettes are supplied by the dealer operating said punchboard. The facts as to whether a person pays 1¢, 2¢, 3¢, 4¢ or 5¢ and receives nothing in return therefor, unless such slip is the last slip in one of said sections, and whether a person receives a pipe or a package of cigarettes without cost are thus determined wholly by lot or chance.

Respondent sells and distributes various assortments of its merchandise and sells and distributes various other lottery devices for use in the distribution of such merchandise to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods employed in connection with each of said assortments are substantially the same as the sales plans or methods hereinabove described, varying only in detail.

PAR. 3. The dealers to whom respondent sells or furnishes said lottery devices use the same in selling and distributing respondent's merchandise in accordance with the aforesaid sales plans or methods. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of its merchandise in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said methods in the sale of its merchandise, and the sale of such 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 or the sale of a chance to procure an article of merchandise without cost. 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 methods or any methods involving the use of a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted

by respondent's said methods and by the element of chance involved in the sale of said merchandise in the manner above alleged and are thereby induced to buy and sell respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the respondent, because of said game of chance, has the 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 equivalent sales plans or methods. 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 the 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 February 5, 1940, issued and thereafter served its complaint in this proceeding upon respondent, M. Linkman & Co., a corporation, 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 February 24, 1940, 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 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, M. Linkman & Co., is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 1150 West Fullerton Avenue, Chicago, Ill. Respondent is now, and for more

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than 1 year last past has been engaged in the manufacture of pipes and in the sale and distribution thereof, to dealers located in the various States of the United States and in the District of Columbia. It causes and has caused said pipes when sold to be shipped or transported from its aforesaid place of business in the State of Illinois to purchasers thereof in the various States of the United States other than the State of Illinois and in the District of Columbia at their respective points of location. There is now, and for more than 1 year last past has been, 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 its business, respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar 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 has sold to dealers certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise or lottery scheme when said merchandise is sold and distributed to the consumers thereof. One of said assortments was sold and distributed to the purchasing public in substantially the following manner: This assortment consisted of a number of "Dr. Grabow" pipes, together with a device commonly known as a punchboard. Said punchboard contains a number of small sealed tubes, each of which tubes contains a small slip of paper. Each of said slips of paper has printed thereon either "Put 1¢," "Put 2¢," "Put 3¢," "Put 4¢," and "Put 5¢," "Take Dr. Grabow pipe" or "Take 1 pkg. (20) cigarettes." Said tubes are divided into four sections. Purchasers who punch the slips with "Put 1¢," "Put 2¢," "Put 3¢," "Put 4¢," or "Put 5¢" pay the amounts specified on said slips and receive nothing therefor unless such slip is the last slip in that particular section. The person punching the last slip in either section is entitled to and receives one of said pipes. Purchasers who punch said slips of paper with "Take Dr. Grabow pipe" or "Take 1 pkg. (20) cigarettes" appearing thereon are entitled to and receive without cost the articles of merchandise so designated. The cigarettes are supplied by the dealer operating said punchboard. The facts as to whether a person pays 1¢, 2¢, 3¢, 4¢, or 5¢ and receives nothing in return therefor, unless such slip is the last slip in one of said sections, and whether a person receives

a pipe or a package of cigarettes without cost are thus determined wholly by lot or chance.

Respondent has sold and distributed various assortments of its merchandise and has sold and distributed various other lottery devices for use in the distribution of such merchandise to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods employed in connection with each of said assortments were substantially the same as the sales plans or methods hereinabove described, varying only in detail.

PAR. 3. The dealers to whom respondent has sold or furnished said lottery devices used the same in selling and distributing respondent's merchandise in accordance with the aforesaid sales plans or methods. Respondent thus supplied to and placed in the hands of others a means of conducting lotteries in the sale of its merchandise in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said methods in the sale of its merchandise, and the sale of such 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 or the sale of a chance to procure an article of merchandise without cost. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent as above described are unwilling to adopt and use said methods or any methods involving the use of a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons were attracted by respondent's said methods and by the element of chance involved in the sale of said merchandise in the manner above described and were thereby induced to buy and sell respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the respondent, because of said game of chance, had the tendency and capacity to, and did, 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 equivalent sales plans or methods. As a result thereof, substantial injury 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.

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CONCLUSION

The aforesaid acts and practices of the 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.

It is ordered, That the respondent, M. Linkman & Co., 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 pipes 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 pipes or other merchandise so packed and assembled that sales of such pipes or other 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.

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

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

4. Selling or otherwise disposing of pipes or other 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 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
BAYUK CIGARS, INC.

MODIFIED CEASE AND DESIST ORDER

Docket 1391. Order, Mar. 25, 1940

Modified order, pursuant to provisions of Section 5 (1) of Federal Trade Commission Act, in proceeding in question, in which (1) original order issued on February 8, 1928, 12 F. T. C. 19, and in which (2) Circuit Court of Appeals for Third Circuit, on June 14, 1930, 14 F. T. C., 708, rendered decree modifying said order, (3) on November 21, 1930, 14 F. T. C. 708, amended said decree, and (4) on June 26, 1939, 29 F. T. C. 1574, rendered its substitute decree, (vacating prior modifying decree of May 8, 1939, 28 F. T. C. 1958), modifying said amended decree and also modifying order in question of Commission in certain particulars and affirming the same in other particulars—

- (a) Requiring respondent, its officers, directors, agents, representatives, servants and employees, on and after two years from June 26, 1939, and in connection with sale or distribution of cigars from any of its factories in interstate commerce, to cease and desist from using, as in said order in detail below specified, trade-mark or trade name "Havana Ribbon," as descriptive of such cigars as sold by it under such trade or brand name, and from using the word "Havana," or word or words of similar import, for cigars not composed entirely or in substantial part of tobacco grown in Cuba, and that the various provisos be adhered to, as set forth, in event of such use for cigars composed only in part of such tobacco—
- (b) Authorizing and permitting said corporation, pending expiration of period in question, and in event of adoption by it of new brand name containing the word "Ribbon", but without the word "Havana," to accept such name with words "Formerly Havana Ribbon," as below set forth—
- (c) Requiring and directing such corporation within two years and thirty days from June 26, 1939, to file with the Commission report in writing setting forth with particularity the manner in which it has complied with the terms aforesaid of the instant modified order; and
- (d) Requiring said respondent, its officers, directors, agents, representatives, servants, and employees, in connection with sale or distribution of cigars as above set forth, to cease and desist from using (1) "MAPACUBA," or other word, or words, of similar import for cigars not composed in whole or in part of tobacco grown in Cuba, and subject to provisions below set forth in event of such use for cigars composed in part only of such tobacco, and (2) depiction, simulating the flag, emblem, insignia or coat-of-arms of Cuba, map of Cuba, Cuban tobacco fields, city or Harbor of Havana, Cuba, or depiction of similar import, in the advertising, branding, or labeling of any such cigars which are not composed in whole or in part of tobacco grown in Cuba, and subject to provisions set forth in event of such use in connection with cigars composed in part only thereof, and to cease and desist from (3) representing in any manner that any of its cigars contain or are composed in whole or in part of tobacco grown in Cuba, when such is not the fact.