

Syllabus

IN THE MATTER OF

MILLS SALES COMPANY OF NEW YORK, INC., AND
DAVID JACOBY, EVELYN JACOBY, JOSEPH JACOBY,
ESTELLE J. KRUGER AND WALTER JACOBY, INDI-
VIDUALLY AND AS OFFICERS OF MILLS SALES COM-
PANY OF NEW YORK, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3910. Complaint, Oct. 5, 1939—Decision, Apr. 12, 1940*

Where a corporation and four individuals who were officers thereof and formulated, directed, dictated, and controlled all of its acts, policies, and practices, as below set forth, engaged in sale and distribution of cosmetics, shaving and dental creams, drug and household sundries, pen and pencil sets, and various other articles of merchandise, and of push cards and punchboards to purchasers in various of the States and in the District of Columbia—

(a) Sold and distributed certain assortments of their merchandise together with push cards and punchboards which involved the operation of games of chance, gift enterprises, or lottery schemes, by which such merchandise might be distributed to ultimate consumers or purchasers thereof wholly by lot or chance under variety of plans and including schemes by which customer received for 5 cents paid specified articles of merchandise or nothing other than privilege of making push or punch in accordance with success or failure in securing from card or board certain specified numbers, or under similar schemes dependent upon explanatory legends placed on cards or boards by dealer purchasers thereof in case of devices arranged for such purpose; and

Supplied thereby to and placed in the hands of others means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of such merchandise as exposed, offered and sold by retail dealer purchasers thereof in accordance with such sales plan or method involving game of chance or sale of a chance to procure such articles at prices much less than normal retail prices thereof, contrary to an established public policy of the United States and in violation of criminal laws, and in competition with many who are unwilling to adopt and use said or any sales plan or 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 the result that many dealers in and ultimate consumers of such merchandise were attracted by their sales plan or method because of the element of chance involved therein and above described, and were thereby induced to purchase their merchandise in preference to like and similar products offered and sold by said competitors who do not use same or similar sales plan or method and with capacity and tendency to divert unfairly to them trade from their competitors aforesaid and deprive purchasing public of benefit of free competition in merchandise in question;

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- (b) Sold and distributed to dealers many kinds of push cards and punchboards involving chance or lottery feature in sale and distribution of various specified articles of merchandise by dealer purchasers of said cards and boards, who sold and distributed candy, cigarettes, clocks, and various other articles through use of such devices, packed and assembled therewith and in accordance with explanatory legends set forth on devices in question as bought by them and under or pursuant to which legend and plan purchasers securing lucky or winning numbers received articles, the prices of which were much less than normal retail prices thereof, and purchasers obtaining numbers not so specified received nothing other than privilege of making push or punch from card or board, or in accordance with such legend or plan as dealer purchasers placed on said devices and involving chance or lottery feature as hereinabove described; and in accordance with which legends and schemes, retail dealers as direct or indirect purchasers of said assortments as arranged as aforesaid set forth, exposed same to purchasing public and sold and distributed articles in question by means of such push cards or punchboards and in accordance with particular sales plan thereon displayed involving game of chance or sale of a chance to procure articles of merchandise at prices much less than normal retail prices thereof, contrary to an established public policy of the United States Government and in violation of criminal laws;

With result that many dealers in and ultimate consumers of such merchandise were induced to deal, use or purchase same from dealers selling or distributing such products by means of their aforesaid push cards and punchboards and because of lottery features involved therewith and inherent therein, in competition with many who, under a powerful moral compulsion not to use in connection with sale or distribution of their merchandise such devices, and faced with alternative of consenting to use thereof or suffering loss of substantial trade, do not sell and distribute their products by means of such push cards, punchboards, or similar devices because of element of chance or lottery features involved therein, and as involving practices are contrary to public policy of the United States Government, and refrain from supplying to or placing in the hands of others such or similar devices for use in connection with sale and distribution of their merchandise to general public by lot or chance, and with result further of teaching and encouraging gambling among members of public and supplying to and placing in hands of others means of conducting lotteries, games of chance, or gift enterprises in the sale and distribution of their merchandise; all to the injury of the public:

- Held*, (1) That such acts and practices of said corporation and individuals in selling and distributing their assortments of merchandise, together with said push card and punchboard devices above set forth, were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition in commerce and unfair acts and practices therein; and
- (2) That such acts and practices in selling and distributing said devices, separate and apart from other merchandise, to dealers for use in sale and distribution of said dealers' products, as above set forth, were all to the prejudice and injury of the public and constituted unfair acts and practices in commerce.

Before *Mr. Randolph Preston*, trial examiner.

Mr. D. C. Daniel for the Commission.

Mr. Nathan Gross, of New York City, for respondents.

COMPLAINT

Count 1

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 Mills Sales Co. of New York, Inc., a corporation, and David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger, and Walter Jacoby, individually and as officers of Mills Sales Co. of New York, Inc., hereinafter referred to as respondents, have 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, Mills Sales Co. of New York, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 901 Broadway, New York, N. Y., and a branch store located at 87 Orchard Street, New York, N. Y. Respondents, David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger, and Walter Jacoby are the president, vice president, treasurer, secretary, and assistant secretary, respectively, of corporate respondent Mills Sales Co. of New York, Inc. The individual respondents have their principal place of business at the same address as the corporate respondent, and said respondents formulate, direct, dictate, and control all of the acts, policies and practices of the corporate respondent, as hereinafter described. The aforesaid corporation is now and for some time last past has been engaged in the sale and distribution of cosmetics, shaving and dental creams, drug and household sundries, perfumes, notions, pen and pencil sets, comb and brush sets, billfolds, and various other articles of merchandise to dealers in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause and have caused said products when sold to be transported from their aforesaid places of business in New York, N. Y., to purchasers thereof in various States of the United States other than New York 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 said respondents in such merchandise

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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, respondents are now and for some time last past have been in competition with other individuals and corporations and with partnerships 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 said business, as described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of their merchandise, together with push cards and punchboards, which said push cards and punchboards involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is, or may be, distributed to the ultimate consumers or purchasers thereof wholly by lot or chance.

Some of said push cards and punchboards have printed on the upper portions of the faces thereof instructions or legends showing the sales plan or method by which said articles of merchandise are to be sold or distributed to the purchasing public. Others of said push cards and punchboards have blank spaces at the tops of the faces thereof upon which blank spaces the purchasers of said cards and boards place instructions or legends of similar import and meaning. Sales are generally 5 cents each and said push cards and punchboards have a number of partially perforated disks or holes, and each purchaser is entitled to a push or punch from said push card or punchboard, and when a push or punch is made, a disk or printed slip is separated and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to specified articles of merchandise. Persons obtaining numbers not so specified receive nothing for their money other than the privilege of making a push or punch from said card or board. The said articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

PAR. 3. Retail dealers who purchase or procure respondents' said assortments of said merchandise, together with said push card and punchboard devices, either directly or indirectly, from respondents, expose the same to the purchasing public and sell or distribute said merchandise in accordance with the sales plan or method described in paragraph 2 hereof. Respondents thus supply to and place in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale or distribution of said merchandise, in accordance with the aforesaid sales plan or method.

PAR. 4. The sale of said merchandise to the purchasing public, in the manner above described, involves a game of chance or the sale of a chance to procure said articles of merchandise at prices much less than the normal retail prices thereof. The use by respondents of said sales plan or method in the sale of their said merchandise and the sale of said merchandise by and through the use thereof and by the aid of such sales plan or method is a practice of the sort which is contrary to an established public policy of the United States and in violation of criminal laws. Many persons, firms, and corporations who sell and distribute like or similar merchandise in competition with respondents, as above alleged, are unwilling to adopt and use said method or sales plan, or any sales plan or 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.

PAR. 5. Many dealers in, and ultimate consumers of, said merchandise are attracted by respondents' said sales plan or method because of the element of chance involved therein, as hereinabove alleged, and are thereby induced to purchase respondents' said merchandise in preference to like or similar merchandise offered for sale and sold by respondents' said competitors who do not use the same or a similar sales plan or method. The use of said sales plan or method by respondents has the capacity and tendency to unfairly divert to respondents trade from their competitors who do not use the same or an equivalent or similar sales plan or method and to deprive the purchasing public of the benefit of free competition in said merchandise.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Count 2

PARAGRAPH 1. Respondent, Mills Sales Co. of New York, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 901 Broadway, New York, N. Y., and a branch store located at 87 Orchard Street, New York, N. Y. Respondents, David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger and Walter Jacoby are the president, vice-president, treasurer, secretary, and assistant secretary, respectively, of corporate respondent, Mills Sales Co. of New York, Inc. The individual respondents have their

principal place of business at the same address as the corporate respondent, and said respondents formulate, direct, dictate, and control all of the acts, policies, and practices of the corporate respondent, as hereinafter described. The aforesaid corporation is now, and for some time last past has been, engaged in the sale and distribution of devices commonly known as push cards and punchboards to dealers in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause and have caused said devices, when sold, to be transported from their aforesaid places of business in New York, N. Y., to purchasers thereof in various States of the United States, other than the State of New York, 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 said respondents in such push card and punchboard devices 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 their business, as described in paragraph 1 hereof, respondents have sold and distributed to dealers push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used by said dealers in making sales of their merchandise to the consuming public. Respondents have sold and distributed many kinds of said push cards and punchboards, but all of said push cards and punchboards involve the same chance or lottery features when used in connection with the sale or distribution of merchandise, and vary only in detail. The majority of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push card and punchboards vary in accordance with the individual device, but each purchaser is entitled to one push or punch from the device, and when a push or punch is made a disc or printed slip is separated and a number disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail prices of said articles of merchandise. Persons obtaining numbers not so specified receive nothing for their money other than the privilege of making a push or punch from said card or board. The

articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Dealers purchasing said punchboards or push cards without said printed instructions or legends thereon place printed instructions or legends of similar import and meaning on the faces of said push cards or punchboards on the blank space provided therefor. The said legends or instructions placed on the faces of said devices by said dealers involve the same chance or lottery features as those legends or instructions placed or printed on the faces of the others of said devices by respondents.

PAR. 3. Many persons, firms, and corporations who sell and distribute candy, cigarettes, clocks, razors, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia have purchased respondents' said push card and punchboard devices, and have packed and assembled assortments comprised of various articles of said merchandise, together with said push card and punchboard devices. Retail dealers who have purchased such assortments, either directly or indirectly, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards or punchboards in accordance with the sales plan as described in paragraph 2 hereof. Many dealers in, and ultimate consumers of, said merchandise have been induced to deal with or purchase said merchandise from dealers selling or distributing the same by means of respondents' said push cards and punchboards because of the lottery features involved therewith and inherent thereto. Said persons, firms, and corporations have many competitors who sell or distribute like or similar articles of said merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punchboard devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell and distribute their said merchandise by means of push card or punchboard devices or similar devices because of the element of chance or lottery features involved therein and because such practices are contrary to public policy of the Government of the United States and such competitors refrain from supplying to or placing in the hands of others such push card or punchboard devices or any other similar devices to be used in connection with the sale and distribution of the merchandise of such competitors to the general public by lot or chance.

PAR. 4. The sale of said merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure said articles of merchandise at prices much less than the normal retail price thereof. The use by said dealers of said sales plan or method in the sale of their merchandise and the sale of their merchandise by and through the use thereof and by the aid of said sales plan or method 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.

The sale or distribution of said push cards and punchboards by respondents as hereinabove alleged teaches and encourages gambling among members of the public and supplies to, and places in the hands of, others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their said merchandise, all to the injury of the public.

PAR. 5. The aforesaid acts and practices of respondents, as hereinabove alleged, are all to the prejudice and injury of the public and constitute unfair 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 October 5, 1939, issued, and thereafter served, its complaint in this proceeding upon respondents Mills Sales Co. of New York, Inc., a corporation, and David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger and Walter Jacoby, individually and as officers of Mills Sales Co. of New York, Inc., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' request 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 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, Mills Sales Co. of New York, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 901 Broadway, New York, N. Y., and a branch store located at 87 Orchard Street, New York, N. Y. Respondents, David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger and Walter Jacoby, are the president, vice-president, treasurer, secretary, and assistant secretary, respectively, of corporate respondent Mills Sales Co. of New York, Inc. The individual respondents have their principal place of business at the same address as the corporate respondent, and said respondents formulate, direct, dictate, and control all of the acts, policies and practices of the corporate respondent as hereinafter described. The aforesaid corporation is now and for some time last past has been engaged in the sale and distribution of cosmetics, shaving and dental creams, drug and household sundries, perfumes, notions, pen and pencil sets, comb and brush sets, billfolds, and various other articles of merchandise to dealers in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause and have caused said products when sold to be transported from their aforesaid places of business in New York, N. Y., to purchasers thereof in various States of the United States other than New York 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 said respondents 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, respondents are now and for some time last past have been in competition with other individuals and corporations and with partnerships 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 said business, as described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of their merchandise, together with push cards and punchboards, which said push cards and punchboards involve the operation of games of chance, gift enterprises or lottery schemes by which said merchandise is, or may be, distributed to the ultimate consumers or purchasers thereof wholly by lot or chance.

Some of said push cards and punchboards have printed on the upper portions of the faces thereof instructions or legends showing

the sales plan or method by which said articles of merchandise are to be sold or distributed to the purchasing public. Others of said push cards and punchboards have blank spaces at the tops of the faces thereof upon which blank spaces the purchasers of said cards and boards place instructions or legends of similar import and meaning. Sales are generally 5 cents each and said push cards and punchboards have a number of partially perforated discs or holes, and each purchaser is entitled to a push or punch from said card or punchboard, and when a push or punch is made, a disc or printed slip is separated and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to specified articles of merchandise. Persons obtaining numbers not so specified receive nothing for their money other than the privilege of making a push or punch from said card or board. The said articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

PAR. 3. Retail dealers who purchase or procure respondents' said assortments of said merchandise, together with said push card and punchboard devices, either directly or indirectly, from respondents, expose the same to the purchasing public and sell or distribute said merchandise in accordance with the sales plan or method described in paragraph 2 hereof. Respondents thus supply to and place in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale or distribution of said merchandise, in accordance with the aforesaid sales plan or method.

PAR. 4. The sale of said merchandise to the purchasing public, in the manner above described, involves a game of chance or the sale of a chance to procure said articles of merchandise at prices much less than the normal retail prices thereof. The use by respondents of said sales plan or method in the sale of their said merchandise and the sale of said merchandise by and through the use thereof and by the aid of such sales plan or method is a practice of the sort which is contrary to an established public policy of the United States and in violation of criminal laws. Many persons, firms, and corporations who sell and distribute like or similar merchandise in competition with respondents, as above described, are unwilling to adopt and use said method or sales plan, or any sales plan or 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.

PAR. 5. Many dealers in, and ultimate consumers of, said merchandise are attracted by respondents' said sales plan or method because of the element of chance involved therein, as hereinabove described, and are thereby induced to purchase respondents' said merchandise in preference to like or similar merchandise offered for sale and sold by respondents' said competitors who do not use the same or a similar sales plan or method. The use of said sales plan or method by respondents has the capacity and tendency to unfairly divert to respondents trade from their competitors who do not use the same or an equivalent or similar sales plan or method and to deprive the purchasing public of the benefit of free competition in said merchandise.

PAR. 6. In the course and conduct of its business, the aforesaid corporation is now, and for some time last past has been, engaged in the sale and distribution of devices commonly known as push cards and punchboards separate and apart from any other merchandise to dealers in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause and have caused said devices, when sold, to be transported from their aforesaid place of business in New York, N. Y., to purchasers thereof in various States of the United States, other than the State of New York, 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 said respondents in such push card and punchboard devices in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. In the course and conduct of their business, as described in paragraph 6 hereof, respondents have sold and distributed to dealers push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used by said dealers in making sales of their merchandise to the consuming public. Respondents have sold and distributed many kinds of said push cards and punchboards, but all of said push cards and punchboards involve the same chance or lottery features when used in connection with the sale or distribution of merchandise, and vary only in detail. The majority of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used in the sale or distribution of various specified articles of merchandise. The prices of the sale on said push cards and punchboards vary in accordance with the individual device, but each purchaser is entitled to one punch or push from the device, and when a push or punch is made a

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disc or printed slip is separated and a number disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail pricess of said articles of merchandise. Persons obtaining numbers not so specified receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Dealers purchasing said punchboards or push cards without said printed instructions or legends thereon place printed instructions or legends of similar import and meaning on the faces of said push cards or punchboards on the blank space provided therefor. The said legends or instructions placed on the faces of said devices by said dealers involve the same chance or lottery features as those legends or instructions placed or printed on the faces of the others of said devices by respondents.

PAR. 8. Many persons, firms, and corporations who sell and distribute candy, cigarettes, clocks, razors, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia have purchased respondents' said push card and punchboard devices and have packed and assembled assortments comprised of various articles of said merchandise, together with said push card and punchboard devices. Retail dealers who have purchased such assortments, either directly or indirectly, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards or punchboards in accordance with the sales plan as described in paragraph 7 hereof. Many dealers in and ultimate consumers of, said merchandise have been induced to deal with or purchase said merchandise from dealers selling or distributing the same by means of respondents' said push cards and punchboards because of the lottery features involved therewith and inherent thereto. Said persons, firms, and corporations have many competitors who sell or distribute like or similar articles of said merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punchboard devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell

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and distribute their said merchandise by means of push card or punchboard devices or similar devices because of the element of chance or lottery features involved therein and because such practices are contrary to the public policy of the Government of the United States and such competitors refrain from supplying to or placing in the hands of others such push card or punchboard devices or any other similar devices to be used in connection with the sale and distribution of the merchandise of such competitors to the general public by lot or chance.

PAR. 9. The sale of said merchandise to the purchasing public in the manner described in paragraphs 7 and 8 hereof involve a game of chance or the sale of a chance to procure said articles of merchandise at prices much less than the normal retail price thereof. The use by said dealers of said sales plan or method in the sale of their merchandise and the sale of their merchandise by and through the use thereof and by the aid of said sales plan or method 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.

The sale or distribution of said push cards and punchboards by respondents as hereinabove described teaches and encourages gambling among members of the public and supplies to, and places in the hands of, others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their said merchandise, all to the injury of the public.

CONCLUSION

The aforesaid acts and practices of respondents in selling and distributing their said assortments of merchandise, together with said push card and punchboard devices, as hereinabove found, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act, and, the aforesaid acts and practices of respondents in selling and distributing said push card and punchboard devices, separate and apart from any other merchandise, to dealers for use in the sale and distribution of said dealers' merchandise, as hereinabove found, are all to the prejudice and injury of the public and constitute unfair 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 substitute answer

of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Mills Sales Co., of New York, Inc. a corporation, its officers, and David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger, and Walter Jacoby, individually and as officers of said Mills Sales Co. of New York, Inc., its and their respective representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of cosmetics, shaving and dental creams, drug and household sundries, perfumes, notions, pen and pencil sets, comb and brush sets, billfolds, 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. Selling and distributing any merchandise so packed and assembled that sales of such merchandise to the general public are to be made by means of a game of chance, gift enterprise, or lottery scheme.

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

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

5. 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 respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF
CURTICE BROTHERS COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECS. (a) and (d) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY SEC. 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3381. Complaint, Apr. 16, 1938—Decision, Apr. 15, 1940

Where a corporation engaged in packing, offering, selling, and distributing fruits, vegetables, and vegetable products to various types of food distributors, and, as thus engaged, in using, for future orders for goods to be shipped when harvested and packed, price lists R, A, and S, use of which, in selling at various prices therein listed, it did not make known to all customers, and which were respectively designated for customers who placed orders for less than 300 cases of its products, for those who placed minimum orders for 300 cases thereof for shipment in quantities of not less than 50, and for those who placed minimum orders for 1,000 cases for shipment in quantities of not less than 250, with A prices ranging from 2.5 percent to 8.3 percent, and with S prices ranging from 5.1 percent to 16.6 percent, lower than the prices at which its said products were sold through use of R list—

- (a) Discriminated in price between competing purchasers of products of like grade and quality sold by it in interstate commerce for use, consumption and resale, through selling its products to some of its customers at price fixed or determined by use of R, A, or S price lists, while selling products of like grade and quality to other customers competitively engaged therewith in use, consumption or resale of such products at prices fixed or determined by use of either of the other said lists; and
- (b) Discriminated in price between competing purchasers of its products of like grade and quality sold by it as above set forth, through selling its products at prices specified by said S list to customers who did not take required 1,000 minimum cases;

With the result that the effect of such discriminations in prices made by it as above set forth might be substantially to lessen competition and to injure, destroy, and prevent competition (1) between it and its competitors in the packing, sale and distribution of fruits, vegetables, and vegetable products; and (2) in the use, consumption, and resale of such products, between some of customers receiving the lower prices and some of the customers competitively engaged with former receiving such lower prices, and who deal in products in question and do not receive said prices, and with result that effect of such discriminations might also tend to create a monopoly in it in said line of commerce:

Held, That such corporation, under facts and circumstances set forth, discriminated in price in sale of its products between different purchasers in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act; and