

IN THE MATTER OF
KAUFMANN BROS. & BONDY, INC.

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

Docket 3881. Complaint, Aug. 28, 1939—Decision, Apr. 22, 1940

Where a corporation engaged in sale and distribution of pipes and other articles of merchandise to purchasers in the various other States and in the District of Columbia; in soliciting sale of and in selling and distributing its merchandise—

Furnish various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery scheme, through which said merchandise was sold and distributed to ultimate consumers thereof wholly by lot or chance, and distribution of various push cards and punchboards for use in sale and distribution thereof by means of game of chance, gift enterprise, or lottery scheme, in accordance with various plans and including as typical (1) scheme by which persons succeeding in selecting from list of 50 girls' names that corresponding to name concealed under card's master seal as disclosed after sale of chances thereon, received pipe being thus disposed of, and customer paid for chance amount dependent upon number secured from disc accompanying name of girl selected, so that fact as to whether purchaser received said article or nothing for amount of money paid was determined by lot or chance; (2) scheme under which number of pipes being thus disposed of were secured by certain purchasers securing particular numbers, and purchasers who did not secure one of numbers in question or punch last number in one of four sections into which boards were divided received nothing further for their nickels; and (3) various other assortments of pipes and punchboards involving lot or chance feature and similar to those above described and varying therefrom in detail only; and

Supplied thereby to, and placed in the hands of, others means of conducting lotteries in the sale of its products, in accordance with sales plans above set forth, by retail dealer purchasers, whether as direct or indirect buyers of products in question, who exposed and sold same to purchasing public in accordance with such plans involving game of chance or sale of a chance to procure an article of merchandise at price much less than normal retail price thereof contrary to an established public policy of the United States Government and in violation of the criminal laws;

With the result that many persons were attracted by said sales plans or methods employed by it in sale and distribution of its merchandise and by element of chance involved therein, and were thereby induced to buy and sell such merchandise in preference to that offered and sold by competitors who do not use same or equivalent methods and with result, through use of such methods and because of said game of chance, of diverting unfairly trade to it from its competitors aforesaid; 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.

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

Abberley, Bryde, MacFall & Amon, of New York City, 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 Kaufmann Bros. & Bondy, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH. 1. Respondent, Kaufman Bros. & Bondy, Inc., is a corporation organized and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 740 Broadway, West New York, N. J. Respondent is now, and for sometime last past has been, engaged in the sale and distribution of pipes and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be transported from its aforesaid place of business in New Jersey to purchasers thereof, at their respective points of location, in the various other States of the United States and in the District of Columbia. There is now, and has been for sometime last past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing its merchandise furnishes, and has furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. Respondent distributes, and has distributed, various push cards and punchboards for use, or which are used, in the sale and distribution of its pipes and other merchandise to the consuming public by means of a game of chance, gift enterprise, or lottery scheme. Certain of said assortments are hereinafter described for the

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purpose of showing the methods used by respondent, but this list is not all inclusive of the various assortments, nor does it include all of the details of the several plans which respondent has been or is using in the distribution of pipes and other articles of merchandise by lot or chance:

(a) One assortment consists of a pipe, together with a device commonly called a push card. The push card contains 50 partially perforated discs, and on the face of each disc is printed the word "Push." Beneath each disc is a feminine name and a space is provided on the face of said card for writing in the name of the purchaser opposite the feminine name selected. Concealed within each of said discs is a number which is disclosed when the disc is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the said card. The purchaser selecting the feminine name corresponding to the one under the master seal receives the pipe. The push card bears a legend or instructions as follows:

Select Your Favorite Girl's Name
and Receive a \$10.00
(picturization of a pipe)
Flame Grain Kay Woodie.
Numbers 1 to 35 pay what you draw
Numbers 36 to 50 pay only 25¢
No higher.

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

Respondent sells and distributes, and has sold and distributed, various assortments of pipes along with push cards involving a lot or chance feature, but such assortments are similar to the one above described and vary only in detail.

(b) Another assortment consists of a number of pipes, together with a device commonly called a punchboard. Said pipes are distributed to the consuming public by means of said punchboard in the following manner:

The sales are 5 cents each, and when a punch is made from the board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing prospective purchasers as to which numbers

entitle the purchaser thereof to receive a pipe. The punches on the board are arranged in four sections, and the purchaser of the last punch in each section receives a pipe. A purchaser who does not qualify by obtaining one of the numbers calling for one of the pipes or by punching the last number in one of the sections, receives nothing for his money other than the privilege of punching a number from the board. The pipes are worth more than 5 cents each, and a purchaser who obtains one of the numbers calling for a pipe or makes the last punch in one of the sections receives a pipe for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the number punched or separated from the board. The pipes are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of pipes along with punch boards, involving a lot or chance feature. Such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged, involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of its merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered

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for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent, because of said game of chance, has a tendency and capacity to and does unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia, to respondent from its said competitors who do not use the same or equivalent methods and as a result thereof substantial injury is being and has been done by respondent to competition in common between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 28, 1939 issued and served its complaint in this proceeding upon respondent Kaufmann Bros. & Bondy, Inc., 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 January 24, 1940, the respondent filed its answer in which answer it admitted all the material allegations of fact set forth in said complaint. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, and the Commission having duly considered the matter and being 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. Repondent, Kaufmann Bros. & Bondy, Inc., is a corporation organized and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 740 Broadway, West New York, N. J. Respondent is now, and for some time last past has been, engaged in the sale and distribution of pipes and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be transported from its aforesaid place of business in New Jersey to purchasers thereof, at their respective points of location, in the various other

States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing its merchandise has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. Respondent has distributed various push cards and punchboards for use, or which are used, in the sale and distribution of its pipes and other merchandise to the consuming public by means of a game of chance, gift enterprise or lottery scheme. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various assortments, nor does it include all of the details of the several plans which respondent has used in the distribution of pipes and other articles of merchandise:

(a) One assortment consists of a pipe, together with a device commonly called a push card. The push card contains 50 partially perforated discs, and on the face of each disc is printed the word "Push." Beneath each disc is a feminine name and a space is provided on the face of said card for writing in the name of the purchaser opposite the feminine name selected. Concealed within each of said discs is a number which is disclosed when the disc is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the said card. The purchaser selecting the feminine name corresponding to the one under the master seal receives the pipe. The push card bears a legend or instructions as follows:

Select Your Favorite Girl's Name
and Receive a \$10.00

(picturization of a pipe)

Flame Grain Kay Woodie

Numbers 1 to 35 pay what you draw

Numbers 36 to 50 pay only 25¢

No higher

The sale of respondent's pipe by means of said push card is made in accordance with the above-described legend or instructions. Said pipe is allotted to the customer or purchaser in accordance with the above legend or instructions. The fact as to whether a purchaser receives the pipe or nothing for the amount of money paid is thus determined by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of pipes along with push cards involving a lot or chance feature, but such assortments are similar to the one above described and vary only in detail.

(b) Another assortment consists of a number of pipes, together with a device commonly called a punchboard. Said pipes are distributed to the consuming public by means of said punchboard in the following manner:

The sales are 5 cents each, and when a punch is made from the board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing prospective purchasers as to which numbers entitle the purchaser thereof to receive a pipe. The punches on the board are arranged in four sections, and the purchaser of the last punch in each section receives a pipe. A purchaser who does not qualify by obtaining one of the numbers calling for one of the pipes or by punching the last number in one of the sections, receives nothing for his money other than the privilege of punching a number from the board. The pipes are worth more than 5 cents each, and a purchaser who obtains one of the numbers calling for a pipe or makes the last punch in one of the sections receives a pipe for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the number punched or separated from the board. The pipes are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of pipes along with punch boards, involving a lot or chance feature. Such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its merchandise and the sale of said merchandise

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by and through the use thereof and by the aid of said sales plans or methods, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found, involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of its merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent, because of said game of chance, has a tendency and capacity to and does unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia, to respondent from its said competitors who do not use the same or 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 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 of the material allegations of fact set forth in said complaint and the Commission having made its findings as to the facts and the conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Kaufmann Bros. & Bondy, Inc., 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 other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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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.

2. Supplying to or placing in the hands of others, any 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 or distributing such 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 any 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. Selling, or otherwise disposing of, any merchandise by the use of push or pull cards, punchboards or other lottery devices.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF
DANIEL A. BRENNAN AND ACCO PRODUCTS, INC.

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

Docket 3196. Complaint, Aug. 5, 1937—Decision, Apr. 23, 1940

Where an individual and a corporation, respectively interested and engaged in manufacture and sale of paper fasteners, as more specifically set forth as follows, namely:

I. Individual who was inventor and to whom letters patent had been issued on a number of paper fasteners, which, however, up to time herein concerned, had not been manufactured or sold under such patents, and who, for some 10 years last past, had pursued practice of coercing and intimidating manufacturers of such fasteners and retail stores throughout the country, and dealing therein, by means of threats of infringement suits in letters to former, and in circular letters to latter, not in good faith with any actual intention of bringing such infringement suits, but for purpose of obstructing, lessening, and destroying competition of persons threatened with corporation first referred to, and the competition of the paper fasteners made and sold by them with those made and sold by such corporation, with which, during course of said period, he had entered into contract to make and sell paper fasteners under all of his existing patents and all patents for such products to be acquired by him in the future; and

II. Corporation which, as above referred to, was engaged in manufacture and sale of paper fasteners and in distribution thereof to purchasers in various other States and in said District of Columbia in substantial competition in commerce, as aforesaid, with others similarly engaged in manufacture and sale in interstate commerce of such products, and which for many years had been principal manufacturer of such products in the United States and which it sold under trade name "Acco"—

- (a) Entered into a conspiracy to restrict, restrain, and suppress competition in manufacture, sale, and distribution of paper fasteners to customers located throughout the several States of the United States and the District of Columbia, by agreeing between themselves to circularize the manufacturers of and retail dealers in such products with letters threatening suit for infringement of patents owned by said individual, and to cooperate with each other in such conspiracy by exchanging information concerning the manufacturers, dealers in, and users of said product; and

Where said individual, pursuant to said conspiracy and in furtherance thereof—

- (b) Sent, on his letterhead and over his signature, not writing in good faith, and without ever bringing any infringement suit against any manufacturer, dealer in or user of paper fasteners, to certain stationers, list of which, as customers of certain competitors, he had requested of and received from said corporation, a letter purporting to be an infringement notice and purporting to recite unfavorable legal position, as regards patent infringements of patents owned by said individual, occupied by the various manufacturers of paper fasteners mentioned in letter in question, and to put