

IN THE MATTER OF
MAX LEVIN, TRADING AS WESTERN NOVELTY COMPANY
COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4055. Complaint, Mar. 11, 1940—Decision, May 1, 1940

Where an individual engaged in the sale and distribution of knives, cameras, razors, and various other articles of merchandise to dealer purchasers in various other States and in the District of Columbia—

Sold and distributed certain assortments thereof which were so packed and assembled as to involve the use of game of chance, gift enterprise, or lottery scheme, when sold and distributed to consumers thereof and included (1) in the case of one such assortment, along with other articles of merchandise involved, a punchboard for use in sale and distribution of such articles under a plan and in accordance with said board's explanatory legend, by which those securing for the 5 cents paid certain numbers became entitled to \$2.50 in cash, others became thus entitled to \$1.00, still others became thus entitled to 25 cents in trade, while holders of certain other specified numbers were entitled to receive articles of merchandise attached to board, and purchasers who did not qualify by obtaining one of the numbers thus specified received nothing for their money, and (2) various other assortments, together with various push cards and punchboard devices for use in sale and distribution of merchandise concerned to the purchasing public by means of game of chance, gift enterprise or lottery scheme, and involving sales plans or methods substantially the same as 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 sale of his merchandise to purchasing public by dealer purchasers thereof who used such punchboard and push card devices in sale and distribution of its said product in accordance with the aforesaid sales plan or methods involving games of chance or sale of a chance to procure an article of merchandise, a sum of money or a credit in trade of much greater value than price to be paid therefor, contrary to an established policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt said or any method involving use of game of chance or sale of chance to win something by chance, or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said method and by element of chance involved in sale of said merchandise as above described, and were thereby induced to buy and sell his said goods in preference to those offered and sold by said competitors who did not use same and equivalent methods, and with effect through use of such method and because of said game of chance of unfairly diverting trade in commerce to him from his competitors aforesaid who do not use such or equivalent method, 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. Samuel D. Menin, of Denver, Colo., 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 Max Levin, individually and trading under the name of Western Novelty 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, Max Levin, is an individual doing business under the name of Western Novelty Co., with his principal office and place of business located at 1729 Lawrence Street, Denver, Colo. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of knives, cameras, razors, pens, pencils, cigarette lighters, and various other articles of merchandise to dealers. He causes, and has caused, said products, when sold, to be shipped or transported from his aforesaid place of business in the State of Colorado to purchasers thereof in the various other States of the United States 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 his business, respondent is in competition with other individuals, and with partnerships and corporations 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 his 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 the following manner: This assortment consists of a device commonly known as a punchboard, with a number of articles of

merchandise attached thereto. Said punchboard contains a number of small sealed tubes, each of which tubes contains a small slip of paper with a number printed thereon. Sales are 5 cents each. The board bears statements or legends informing purchasers and prospective purchasers that the holders of certain specified numbers are entitled to and receive \$2.50 in cash; that the holders of certain other specified numbers are entitled to and receive \$1 in cash; that the holders of certain other specified numbers are entitled to and receive 25 cents "in trade"; that the holders of certain other specified numbers are entitled to and receive the said articles of merchandise attached to said board. A purchaser who does not qualify by obtaining one of the specified numbers receives nothing for his money. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the number punched separated or removed from said board. The said sums of money, the amounts "in trade" and the said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various assortments of his merchandise and sells and furnishes various push card and punchboard devices for use in the sale and 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 and furnishes said punchboard and push card 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 the means of conducting lotteries in the sale of his merchandise in accordance with the sales plans or methods hereinabove described. The use by respondent of said methods in the sale of such merchandise and the sale of such merchandise by and through the use thereof and by the aid of said 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.

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, a sum of money or a credit "in trade" of much greater value than the price to be paid therefor. 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 the use of a game of chance or a 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 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 his said competitors who do not use the same or equivalent 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 the 11th day of March 1940, issued and on the 13th day of March 1940, served its complaint in this proceeding upon respondent, Max Levin, individually and trading under the name of Western Novelty Co., charging him 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 April 18, 1940, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

Findings

30 F. T. C.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Max Levin, is an individual who for some time last past did business under the name of Western Novelty Co., with his principal office and place of business located at 1729 Lawrence Street, Denver, Colo. Respondent was engaged in the sale and distribution of knives, cameras, razors, pens, pencils, cigarette lighters, and various other articles of merchandise to dealers. He caused said products, when sold, to be shipped or transported from his aforesaid place of business in the State of Colorado to purchasers thereof in the various other States of the United States and in the District of Columbia at their respective points of location. There was 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 his business, respondent was in competition with other individuals and with partnerships and corporations 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 his business as described in paragraph 1 hereof, respondent sold and distributed 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 was sold and distributed to the consumers thereof. One of said assortments was sold and distributed to the purchasing public in the following manner: This assortment consisted of a device commonly known as a punchboard, with a number of articles of merchandise attached thereto. Said punchboard contained a number of small sealed tubes, each of which tubes contained a small slip of paper with a number printed thereon. Sales were 5 cents each. The board bears statements or legends informing purchasers and prospective purchasers that the holders of certain specified numbers are entitled to and receive \$2.50 in cash; that the holders of certain other specified numbers are entitled to and receive \$1 in cash; that the holders of certain other specified numbers are entitled to and receive 25 cents "in trade"; that the holders of certain other specified numbers are entitled to and receive the said articles of merchandise attached to said board. A purchaser who did not qualify by obtaining one of the specified numbers received nothing for his money. The numbers were effectively concealed from purchasers and prospective purchasers until a punch had been made and the number punched separated or removed from said board. The said sums of money, the amounts "in trade" and the said articles of merchandise were thus distributed to the purchasing public wholly by lot or chance.

Respondent sold and distributed various assortments of his merchandise and furnished various push card and punchboard devices for use in the sale and 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 sold and furnished said punchboard and push card 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 the means of conducting lotteries in the sale of his merchandise in accordance with the sales plans or methods hereinabove described. The use by respondent of said methods in the sale of such 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 was and 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, a sum of money or a credit "in trade" of much greater value than the price to be paid therefor. Many persons, firms, and corporations who sell or distribute and have sold and distributed merchandise in competition with the respondent, as above found, were and are unwilling to adopt and use said methods or any method involving the use of a game of chance or a sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors did and do 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 did not and do not use the same or equivalent methods. The use of said methods by the respondent, because of said game of chance, had a 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 his said competitors who did not and do not use the same or equivalent methods. As a result thereof, substantial injury was done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

Order

30 F. T. C.

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 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 the respondent, Max Levin, individually and trading under the name of Western Novelty Co., 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 knives, cameras, razors, pens, pencils, cigarette lighters, 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 or distributing said merchandise or any other merchandise so packed and assembled that sales of said merchandise or any other merchandise to the general public are to be made or may be made by means of a lottery, gaming device or gift enterprise.

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

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

1164

Order

4. Selling or otherwise distributing 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.

IN THE MATTER OF
EHRHART CONRAD COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4068. Complaint, Mar. 20, 1940—Decision, May 1, 1940

Where a corporation engaged in sale and distribution of food products to retail dealer purchaser in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of like or similar products in commerce as aforesaid—

Sold and distributed its food products under various plans or methods involving lot or chance in such sale and distribution and including (1) plan under which it thus sold and distributed under label "Plee-zing" its products, together with Plee-zing Treasure Chest devices or cards or booklets for use in sale and distribution of such products to consuming public, in accordance with which plan and explanatory legend displayed on card customers of its retail dealer to whom were distributed such cards or devices became entitled, upon the filling of their respective cards with 100 of the treasure-chest receipts, given with each 25-cent purchase of its said products, to cash awards ranging from 50 cents to \$5, and in exchange for the 15-cent cash redemption value assigned to card or booklet, as determined and disclosed by statement revealed through breaking of card's seal, when filled with the 100 receipts, and returned for said purpose to dealer, whom it compensated for rewards or prizes thus paid; and (2) various other plans or methods of distributing or selling its said food products by lot or chance similar to that above described and varying therefrom in detail only; and

Supplied thereby to and placed in the hands of others means of conducting lotteries, gift enterprises, or games of chance in sale of such products to consuming public, in accordance with said sales plans or methods involving game of chance or sale of a chance, to procure articles or products or sums of money of much greater value than amounts to be paid therefor, contrary to the established public policy of the United States Government, and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving games of chance or sale of a chance to win something by chance, or any other method contrary to public policy and refrain therefrom;

With effect of inducing consuming or purchasing public to buy its said product in preference to like or similar products offered or sold by its competitors, and with result that many dealers and ultimate purchasers of products similar to those distributed by it were attracted by its said sales plans and methods and by element of chance in sale thereof as above described, and were thereby induced to purchase such products from it in preference to similar goods sold by competitors who do not use same or similar methods, and with capacity and tendency, because of game of chance or sale of a chance to win something by chance, to divert trade to it unfairly from said competitors who do not use same or equivalent or similar methods: