

Syllabus

IN THE MATTER OF
PRUDENTIAL SALES CORPORATION

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

Docket 3839. Complaint, June 29, 1939—Decision, May 2, 1940

Where a corporation engaged in the sale and distribution of electric dry shavers, wrist watches, electric roasters, pen and pencil sets, blankets, and various other articles of merchandise to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of like or similar articles in commerce as aforesaid; in soliciting sale of and in selling and distributing its said merchandise—

- (a) Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes by which such merchandise was sold and distributed to ultimate consumers thereof wholly by lot or chance and which involved distribution to purchasing public of certain literature and instructions, including among other things, (1) push cards, order blanks, illustrations of merchandise involved and circulars explaining his plan of selling such merchandise and allotting it as premiums or prizes to the operators of said push cards under plan, among others, by which person selecting from a list of 25 feminine names displayed on card, name corresponding to that concealed under card's large master seal, after sale of all chances, received electric dry shaver or article of merchandise being thus disposed of, and person securing certain number as disclosed by disk pushed received combination pen or pencil, and under which amount paid for chance was dependent upon number secured in accordance with card's explanatory legend, and (2) various push cards accompanied by such order blanks, etc., for use in sale and distribution of its merchandise by means of game of chance, gift enterprise, or lottery scheme, and in accordance with sales plans 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 in the sale of its said products by persons to whom it furnished said push cards, and who used same in purchasing, selling, and distributing its merchandise in accordance with the aforesaid sales plan, under which fact as to whether purchaser received an article of merchandise or nothing for amount of money paid, and which of said articles purchaser was to receive, if any, were determined wholly by lot or chance, contrary to an 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 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 sales plan or method in the sale and distribution of its merchandise, and by elements of chance involved therein, and were thereby induced to buy and sell its products in preference to those of said competitors who do not use same or equivalent

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method, and with effect of unfairly diverting substantial trade in commerce as above set forth to its competitors who do not use such or equivalent methods; and

Where said corporation engaged as aforesaid—

- (b) Represented through various false, deceptive and misleading statements and representations on the said push cards and in its advertising matter circulated in commerce that its electric dry shaver had a retail value of \$15, facts being that said products had no such value, but were of inferior quality and workmanship, and had a retail value of substantially less than such amount;
- (c) Made use of trade name "Packard," in bold type, on its said push cards, disseminated as aforesaid, together with the picture of an electric dry shaver, and beneath or to the side of said trade name, thus printed, and in small letters words, "Combination Pen and Pencil" so set-out as to be inconspicuous and not readily discernible to purchasers and prospective purchasers, notwithstanding fact product in question was not Packard Electro Shaver, but product of inferior quality and workmanship, and of substantially smaller value;

With result of causing members of purchasing public through arrangement of such depiction and word Packard as aforesaid, to have an erroneous and mistaken belief that electric shaver there referred to was genuine Packard Electro Shaver, retailing for \$15, and preferred on part of purchasers and prospective purchasers because of quality and workmanship thereof; and

- (d) Made use of word, unqualified, "wool", in bold type in its advertisements relating to blankets so sold by it in the course and conduct of its business as hereinbefore described, together with words in much smaller type and in another portion of advertising "Guardsman Has Over 80 Percent Wool Content Guaranteed", with word "wool" so arranged and set-out as readily to attract the attention of purchasers or prospective purchasers while other matter last referred to was so arranged and set out as to be inconspicuous and not readily discernible by purchasers and prospective purchasers, notwithstanding fact said product was not composed entirely of wool as below set forth, or of any type or kind of wool;

With effect of causing members of purchasing public to have a mistaken and erroneous belief that said blankets, thus advertised, were composed entirely of wool as understood in wool trade, and by purchasing public, when used alone or without appropriate or adequate qualifications, as meaning new and unused fiber from the fleece or hair of the sheep or lamb, or of the Angora or Cashmere goat, or of the Camel, Alpaca, Llama, or Vicuna, and as such highly prized by purchasing and consuming public for its qualities of warmth and durability;

- (e) Represented in its advertising matter disseminated among various States as before set out, and in the course and conduct of its said business as above described, certain sports jackets which it thus offered, as actually made from Elkskin, chrome tanned skin of the Elk, and possessing the desirable and preferable qualities of said product, through use of such statements as "Genuine Elkskein," "Feel its soft, pliable Elkskein," and "Only Sportster uses genuine Elkskein," notwithstanding fact said sports jackets were not made from Elkskin and did not possess desirable and preferable qualities and characteristics thereof, but had only a fraction of value of sports jackets made from the genuine, which was soft, pliable, light in weight, washable and exceedingly durable, was highly prized for its desirable qual-

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ities by purchasing and consuming public and especially sportsmen, and preferred by many such users to any other material for use in garments for sport and outdoor wear; and

- (f) Made such false, deceptive and misleading statements, and representations in its circulars, concerning the awarding of gifts, prizes, and premiums to its agents and distributors as "A free gift for you," "Get busy immediately and see just how simple it is to own these valuable articles *absolutely free of cost*," "You will receive *absolutely free* an electric dry shaver," "For disposing of this sales card you receive for yourself an electric dry shaver *without cost to you*," notwithstanding fact its so-called gifts, prizes or premiums were not given away "free" or "without cost" to its agents or distributors, but constituted regular compensation paid by it to them for selling its merchandise, and ordinary and usual method employed by it in so compensating its said agents and distributors, and cost of such gifts was included in that of other articles of merchandise sold by them, and sale of which they were required to procure before receiving from it said so-called gifts, prizes or premiums;

With effect of misleading and deceiving members of the purchasing public and prospective agents and distributors of its said merchandise into erroneous and mistaken belief that said statements and representations were true, and of causing such members to buy substantial amounts of its said products, because of such belief, and causing prospective agents or distributors to sell or distribute its merchandise in preference to that of competitors, including sellers and distributors of like or similar products who do not make such false and misleading statements and representations concerning their products, nor hold out certain gifts, prizes or premiums as free or without cost when such is not the fact, and with effect of unfairly diverting trade to it from 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 method of competition in commerce and unfair and deceptive acts and practices therein.

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

Nash & Donnelly, 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 Prudential Sales Corporation, 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 in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Prudential Sales Corporation, is a corporation organized and existing under the laws of the State of Illinois,

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with its principal office and place of business located at 230 East Ohio Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of electric dry shavers, wrist watches, electric roasters, smoking ensembles, blankets, clocks, radios, silverware, electric mixers, vacuum cleaners, sports jackets, pen and pencil sets, flashlights, 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 Illinois to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade 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 hereinabove described, 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. The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions including, among other things, push cards, order blanks, illustrations of its said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's push cards bears 25 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 25 small, partially perforated disks on the face of each of which is printed the word "push," and immediately below each of said disks is printed one of the feminine names printed alphabetically elsewhere on the card. Concealed within each disk is a number which is disclosed when the disk 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

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feminine names appearing elsewhere on the said card. The push card bears legends or instructions as follows:

Name under Seal Receives a
 \$15.00
ELECTRIC DRY SHAVER
 Shave the Modern Way
 No. 29
 Receives a
PACKARD
 Combination Pen & Pencil.
 Do not
 remove seal
 until entire
 card is sold.
 Nos. 1 to 29 Pay What You
 Draw. Nos. Over 29 Pay
 Only 29¢. No Higher.
 Write your name on the reverse side
 opposite name you select.

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's merchandise, in accordance with the aforesaid sales plan. 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 plan hereinabove set forth. The use by respondent of said sales plan or method 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 plan or method 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.

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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 method 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 plan or method 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 an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial trade in commerce to respondent from its said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of its business as hereinabove related, respondent causes and has caused various false, deceptive and misleading statements, and representations to appear on its said push cards and in its advertising matter circulated in commerce among and between the various States of the United States, concerning its electric dry shavers, of which the following are examples but are not all-inclusive:

(a) The respondent represents and has represented its electric dry shavers to have a retail value of \$15. In truth and in fact they do not have such value. The said electric dry shavers are of inferior quality and workmanship and have a retail value of substantially less than \$15.

(b) The respondent further misleads and deceives, and has misled and deceived, a large and substantial portion of the purchasing public by placing or causing to be placed on the face of its push cards, which are disseminated as aforesaid, the picture of an electric dry shaver and beneath or to the side of the said picture in bold type the word "Packard." Beneath the aforesaid word "Packard," in small letters, are the words "Combination Pen and Pencil." The word "Packard" is in bold type and is so arranged and set out by respondent on said push cards as to readily attract the attention of purchasers or prospective purchasers thereto, while the words "Combination Pen and Pencil" are in small type and are so set-out as to be inconspicuous and not readily discernible by purchasers and prospective purchasers. By so placing, or causing to be placed, the picture of an electric dry shaver and the word "Packard" in bold type on said push cards in the

manner aforesaid, the respondent causes members of the purchasing public to have the erroneous and mistaken belief that the electric shaver referred to on said push cards is a genuine Packard Lectro Shaver which regularly retails for \$15 each. In truth and in fact the electric dry shavers offered for sale and sold by respondent pursuant to such sales plan are not Packard Lectro Shavers but are electric dry shavers of inferior quality and workmanship and have a value of substantially less than the value of a genuine Packard Lectro Shaver.

There is a preference on the part of certain purchasers and prospective purchasers located in the various States of the United States and in the District of Columbia, for buying Packard Lectro Shavers and shavers of a value of \$15, because of their quality and workmanship.

PAR. 6. In the course and conduct of its business, as hereinabove described, the respondent, in soliciting the sale of and in selling said blankets, places, or causes to be placed, the unqualified word "wool," in bold type, in its advertisements relative to such blankets. In much smaller type than is used for the word "wool" and in another portion of said advertising matter, there appears the statement "Guardsman Has Over 80 percent Wool Content Guaranteed." The word "wool" in bold type is so arranged and set-out in said advertisements as to readily attract the attention of purchasers or prospective purchasers thereto, while the statement "Guardsman Has Over 80 Percent Wool Content Guaranteed" is in small type and is so arranged and set-out in the said advertisements as to be inconspicuous and not readily discernible by purchasers and prospective purchasers.

The placing by respondent of the unqualified word "wool" in bold type, as above described, and the statement "Guardsman Has Over 80 Percent Wool Content Guaranteed" in small type, as above described, causes members of the purchasing public to have the mistaken and erroneous belief that the blankets advertised, as above alleged, are composed entirely of wool, as the word "wool" is defined herein. The word "wool" when used alone or without appropriate and adequate qualification, is understood in the wool trade and by members of the purchasing public to mean the new and unused fiber from the fleece or hair of the sheep or lamb, or of the Angora or Cashmere goat, or of the Camel, Alpaca, Llama, or Vicuna, and as such is highly prized by the purchasing and consuming public for its qualities of warmth and durability.

In truth and in fact said blankets of the respondent are not composed entirely of wool as the word "wool" is hereinabove defined. Said blankets are not composed entirely of any type or kind of wool.

PAR. 7. In the course and conduct of its business as hereinabove described, the respondent makes and has made various false, deceptive

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and misleading statements, and representations in its advertising matter disseminated among and between the various States of the United States, concerning the sports jackets which it sells, and has sold, as hereinabove described. Among such statements and representations, but not including all such statements and representations, are the following:

Genuine Elkskein
Feel its soft, pliable Elkskein
Only Sportster uses genuine Elkskein

Elkskin is the skin of an elk which has been tanned by what is known as the chrome process. It is exceedingly durable and possesses qualities greatly desired by the purchasing and consuming public. It is soft, pliable, light in weight, and may be washed. It is highly prized for these desirable qualities by the purchasing and consuming public, especially by sportsmen, and is preferred by many such users to any other material for use in garments for sport or outdoor wear. The respondent's sports jackets are not made from the skin of elk and have only a fraction of the value of sports jackets made from genuine elkskin.

The term "Elkskein" is a slightly distorted spelling of the word "elkskin" and is a misleading simulation thereof. The respondent's use in its advertising matter of the term "Elkskein" to describe, designate or refer to its sports jackets serves as representation that said sports jackets so described or designated are actually made from elkskin, the chrome tanned skin of the elk, and possess the desirable and preferable qualities and characteristics of elkskin. The sports jackets sold and distributed by respondent, as hereinabove described, are not made from elkskin and do not possess the desirable and preferable qualities and characteristics of elkskin.

PAR. 8. In the course and conduct of its business, as hereinabove described, respondent causes, and has caused, various false, deceptive and misleading statements, and representations to appear in its sales circulars concerning the awarding of gifts, prizes, and premiums to its agents or distributors. Among and typical of said statements and representations are the following:

A free gift for you
Get busy immediately and see just how simple it is to own these valuable articles *absolutely free of cost*
You will receive *absolutely free* an electric dry shaver
For disposing of this sales card you receive for yourself an electric dry shaver *without cost to you*

In truth and in fact, the aforesaid so-called gifts, prizes, or premiums are not given away "free" or "without cost" by respondent to

its agents or distributors. The so-called gifts are not free but are the regular compensation paid by respondent to its agents or distributors for selling respondent's merchandise, and such method is the ordinary and usual method used by respondent in compensating said agents or distributors for selling its merchandise. The cost of said so-called gifts is included in the cost of other articles of respondent's merchandise sold by the said agents or distributors. The respondent requires its agents or distributors to procure the sale of or sell said articles of merchandise for respondent before they receive the so-called gifts, prizes, or premiums from respondent.

PAR. 9. The use by the respondent of the statements and representations described in paragraphs 5, 6, 7, and 8 hereof has the capacity and tendency to, and does, mislead and deceive members of the purchasing public and prospective agents or distributors of respondent's merchandise into the erroneous and mistaken belief that said statements and representations are true and causes said members of the purchasing public to purchase substantial amounts of respondent's merchandise because of said erroneous and mistaken belief and causes said prospective agents or distributors to sell and distribute respondent's merchandise in preference to selling and distributing merchandise of competitors of the respondent. There are among the competitors of respondent described in paragraph 1 hereof sellers and distributors of like or similar products who do not make such false and misleading statements and representations concerning their products, nor do they hold out certain gifts, prizes, or premiums to be free or without cost when such is not the fact.

PAR. 10. The acts and practices of respondent, hereinabove set forth, have the tendency and capacity to, and do, unfairly divert trade to respondent from said competitors. 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. 11. 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 June 29, 1939, issued and thereafter served its complaint in this proceeding upon respondent Prudential

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Sales Corporation, 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 December 12, 1939, 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 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 AS TO THE FACTS

PARAGRAPH 1. Respondent, Prudential Sales Corporation, is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 230 East Ohio Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of electric dry shavers, wrist watches, electric roasters, smoking ensembles, blankets, clocks, radios, silverware, electric mixers, vacuum cleaners, sports jackets, pen and pencil sets, flashlights, 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 Illinois to purchasers thereof, at their respective points of location, in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade 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 hereinabove described, 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

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wholly by lot or chance. The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions including, among other things, push cards, order blanks, illustrations of its said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's push cards bears 25 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 25 small, partially perforated disks on the face of each of which is printed the word "push," and immediately below each of said disks is printed one of the feminine names printed alphabetically elsewhere on the card. Concealed within each disk is a number which is disclosed when the disk 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 elsewhere on the said card. The push card bears legends or instructions as follows:

Name under Seal Receives a
\$15.00

ELECTRIC DRY SHAVER

Shave the Modern Way

No. 29
Receives a
PACKARD
Combination Pen & Pencil.

Do not
remove seal
until entire
card is sold.

Nos. 1 to 29 Pay What You
Draw. Nos. Over 29 Pay
Only 20c. No Higher.

Write your name on the
reverse side opposite name
you select.

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser receives an article of merchandise or

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nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's merchandise, in accordance with the aforesaid sales plan. 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 plan hereinabove set forth. The use by respondent of said sales plan or method 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 plan or method 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, firms, and corporations, who sell or distribute merchandise in competition with the respondent, as above found, are unwilling to adopt and use said method 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 plan or method 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 an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial 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 an equivalent method.

PAR. 5. In the course and conduct of its business as hereinabove related, respondent causes and has caused various false, deceptive,

and misleading statements, and representations to appear on its said push cards and in its advertising matter circulated in commerce among and between the various States of the United States, concerning its electric dry shavers, of which the following are examples but are not all-inclusive:

(a) The respondent represents and has represented its electric dry shavers to have a retail value of \$15. In truth and in fact they do not have such value. The said electric dry shavers are of inferior quality and workmanship and have a retail value of substantially less than \$15.

(b) The respondent further misleads and deceives, and has misled and deceived, a large and substantial portion of the purchasing public by placing or causing to be placed on the face of its push cards, which are disseminated as aforesaid, the picture of an electric dry shaver and beneath or to the side of the said picture in bold type the word "Packard." Beneath the aforesaid word "Packard," in small letters, are the words "Combination Pen and Pencil." The word "Packard" is in bold type and is so arranged and set-out by respondent on said push cards as to readily attract the attention of purchasers or prospective purchasers thereto, while the words "Combination Pen and Pencil" are in small type and are so set-out as to be inconspicuous and not readily discernible by purchasers and prospective purchasers. By so placing, or causing to be placed, the picture of an electric dry shaver and the word "Packard" in bold type on said push cards in the manner aforesaid, the respondent causes members of the purchasing public to have the erroneous and mistaken belief that the electric shaver referred to on said push cards is a genuine Packard Lectro Shaver which regularly retails for \$15 each. In truth and in fact the electric dry shavers offered for sale and sold by respondent pursuant to such sales plan are not Packard Lectro Shavers but are electric dry shavers of inferior quality and workmanship and have a value of substantially less than the value of a genuine Packard Lectro Shaver.

There is a preference on the part of certain purchasers and prospective purchasers located in the various States of the United States and in the District of Columbia, for buying Packard Lectro Shavers and shavers of a value of \$15, because of their quality and workmanship.

PAR. 6. In the course and conduct of its business, as hereinabove described, the respondent, in soliciting the sale of and in selling said blankets, places, or causes to be placed, the unqualified word "wool," in bold type, in its advertisements relative to such blankets. In much smaller type than is used for the word "wool" and in

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another portion of said advertising matter, there appears the statement "Guardsman Has Over 80 Percent Wool Content Guaranteed." The word "wool" in bold type is so arranged and set-out in said advertisements as to readily attract the attention of purchasers or prospective purchasers thereto, while the statement "Guardsman Has Over 80 Percent Wool Content Guaranteed" is in small type and is so arranged and set-out in the said advertisements as to be inconspicuous and not readily discernible by purchasers and prospective purchasers.

The placing by respondent of the unqualified word "wool" in bold type, as above described, and the statement "Guardsman Has Over 80 percent Wool Content Guaranteed" in small type, as above described, causes members of the purchasing public to have the mistaken and erroneous belief that the blankets advertised, as above found, are composed entirely of wool, as the word "wool" is defined herein. The word "wool" when used alone or without appropriate and adequate qualification, is understood in the wool trade and by members of the purchasing public to mean the new and unused fiber from the fleece or hair of the sheep or lamb, or of the Angora or Cashmere goat, or of the Camel, Alpaca, Llama, or Vicuna, and as such is highly prized by the purchasing and consuming public for its qualities of warmth and durability.

In truth and in fact said blankets of the respondent are not composed entirely of wool as the word "wool" is hereinabove defined. Said blankets are not composed entirely of any type or kind of wool.

PAR. 7. In the course and conduct of its business as hereinabove described, the respondent makes and has made various false, deceptive and misleading statements, and representations in its advertising matter disseminated among and between the various States of the United States, concerning the sports jackets which it sells, and has sold, as hereinabove described. Among such statements and representations, but not including all such statements and representations, are the following:

Genuine Elkskein
Feel its soft, pliable Elkskein
Only Sportster uses genuine Elkskein

Elkskin is the skin of an elk which has been tanned by what is known as the chrome process. It is exceedingly durable and possesses qualities greatly desired by the purchasing and consuming public. It is soft, pliable, light in weight, and may be washed. It is highly prized for these desirable qualities by the purchasing and consuming public, especially by sportsmen, and is preferred by many

such users to any other material for use in garments for sport or outdoor wear. The respondent's sports jackets are not made from the skin of elk and have only a fraction of the value of sports jackets made from genuine elkskin.

The term "Elkskein" is a slightly distorted spelling of the word "elkskin" and is a misleading simulation thereof. The respondent's use in its advertising matter of the term "Elkskein" to describe, designate or refer to its sports jackets serves as representation that said sports jackets so described or designated are actually made from elkskin, the chrome tanned skin of the elk, and possess the desirable and preferable qualities and characteristics of elkskin. The sports jackets sold and distributed by respondent, as hereinabove described, are not made from elkskin and do not possess the desirable and preferable qualities and characteristics of elkskin.

PAR. 8. In the course and conduct of its business as hereinabove described, respondent causes, and has caused, various false, deceptive and misleading statements and representations to appear in its sales circulars concerning the awarding of gifts, prizes, and premiums to its agents or distributors. Among and typical of said statements and representations are the following:

A free gift for you

Get busy immediately and see just how simple it is to own these valuable articles *absolutely free of cost*

You will receive *absolutely free* an electric dry shaver

For disposing of this sales card you receive for yourself an electric dry shaver *without cost to you*

In truth and in fact, the aforesaid so-called gifts, prizes, or premiums are not given away "free" or "without cost" by respondent to its agents or distributors. The so-called gifts are not free but are the regular compensation paid by respondent to its agents or distributors for selling respondent's merchandise, and such method is the ordinary and usual method used by respondent in compensating said agents or distributors for selling its merchandise. The cost of said so-called gifts is included in the cost of other articles of respondent's merchandise sold by the said agents or distributors. The respondent requires its agents or distributors to procure the sale of or sell said articles of merchandise for respondent before they receive the so-called gifts, prizes or premiums from respondent.

PAR. 9. The use by the respondent of the statements and representations described in paragraphs 5, 6, 7, and 8 hereof has the capacity and tendency to, and does, mislead and deceive members of the purchasing public and prospective agents or distributors of respondent's merchandise into the erroneous and mistaken belief that said statements and representations are true and cause said

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members of the purchasing public to purchase substantial amounts of respondent's merchandise because of said erroneous and mistaken belief and causes said prospective agents or distributors to sell and distribute respondents merchandise in preference to selling and distributing merchandise of competitors of the respondent. There are among the competitors of respondent described in paragraph 1 hereof sellers and distributors of like or similar products who do not make such false and misleading statements and representations concerning their products, nor do they hold out certain gifts, prizes or premiums to be free or without cost when such is not the fact.

PAR. 10. The acts and practices of the respondent, hereinabove set forth, have the tendency and capacity to, and do, unfairly divert trade to respondent from said competitors. 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 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, Prudential Sales Corporation, 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 electric shavers, wrist watches, electric roasters, smoking ensembles, blankets, clocks, radios, silverware, electric mixers, vacuum cleaners, sports jackets, pen and pencil sets, flashlights or any other merchandise in commerce, as

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commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

1. 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.

2. 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.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards or other lottery devices.

4. Representing as the customary or regular prices or values of respondent's electric shavers prices and values which are in fact fictitious and greatly in excess of the prices at which such electric shavers are customarily offered for sale and sold in the normal course of business.

5. Using the trade name "Packard" or the trade name of any other electric shaver in connection with a picture of an electric shaver, or separately, in such manner as to indicate that respondent is offering an electric shaver bearing such trade name when in fact the respondent uses such trade name to refer to an article of merchandise other than an electric shaver.

6. Using a trade name usually associated with a particular article of merchandise in connection with a picture of such article or separately in such a manner as to indicate that the merchandise offered by the respondent is the same as that usually associated with such trade name when the respondent is actually offering merchandise other than that usually associated with such trade name.

7. Using the word "wool" or any other word or term descriptive of wool to describe, designate or in any way refer to any fabric or product which is not composed wholly of wool, provided, however, that in the case of fabrics or products composed in part of wool and in part of other fabrics, such words may be used as descriptive of the wool content if there is used in immediate connection or conjunction therewith in letters of at least equal size and conspicuousness words truthfully describing and designating each constituent fiber or material thereof in the order of its predominance by weight beginning with the largest single constituent.

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8. Using the word "Elkskein" or any other simulation of the word "elkskin" to describe or refer to sports jackets or other articles of merchandise which are not made from the skin of an elk tanned by the chrome process.

9. Using the term "free" or any other term of similar import or meaning to describe or refer to goods, wares or merchandise regularly included in a combination offer with other articles of merchandise or which are given as compensation for services.

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

THE CHAPMAN HEALTH PRODUCTS COMPANY, JOHN W. CHAPMAN, AND NELLIE C. CHAPMAN, INDIVIDUALLY AND AS OFFICERS OF THE CHAPMAN HEALTH PRODUCTS COMPANY

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

Docket 4004. Complaint, Jan. 31, 1940—Decision, May 2, 1940

Where a corporation and two individuals who were officers thereof and formulated, controlled and directed its policies, acts, and practices, engaged in sale and distribution of their N. A. R. Tablets for rheumatism, neuritis, and arthritis, and of their Faid or Daintee preparation for obesity, and acting together and in cooperation with each other, in performing acts and practices below set forth; in advertisements of their said products which they disseminated and caused to be disseminated through the mails, through insertion in newspapers and periodicals of general circulation and through circular and other printed or written matter distributed in commerce, and otherwise, and which were intended and likely to induce purchase of their said preparations—

- (a) Represented that their said N. A. R. Tablets constituted a cure or remedy for rheumatism, neuritis, and arthritis, and possessed a therapeutic value for treatment thereof;

Facts being that preparation in question does not effect a cure or a remedy for said ailments and possesses no therapeutic value in the treatment thereof, except insofar as preparation's analgesic properties might afford temporary relief from the pains caused thereby; and

- (b) Represented that their said Faid or Daintee constituted a cure or remedy for obesity and a competent, safe and scientific treatment therefor, and that its use would have no ill effect upon the body;

Facts being said medicinal preparation is not a cure or remedy for said condition, does not constitute a competent, safe or scientific treatment therefor, and would not accomplish results claimed by them, and is not safe and harmless in that it contains dessicated thyroid and certain other drugs in quantities sufficient to cause serious and irreparable injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary and usual, and might produce nausea, muscular debility, gastrointestinal irritation, and various other conditions and also result, among other things, in chronic poisoning, permanent injury to tissues and organic functions and body mechanism and irreparable injury to the heart; and

- (c) Failed to reveal in its said advertisements that use of said preparation last referred to under conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health;