

IN THE MATTER OF

BELMONT SALES COMPANY, ROBERT C. BUNDY, INDIVIDUALLY AND TRADING AS JACKSON SALES COMPANY AND AS AN OFFICER OF BELMONT SALES COMPANY; AND MILDRED BUNDY, INDIVIDUALLY AND AS AN OFFICER OF BELMONT SALES COMPANY

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

Docket 3422. Complaint, May 13, 1938—Decision, June 6, 1940

Where an individual engaged in offer and sale of bedspreads, blankets, silverware, and other various articles to purchasers in various States of the United States—

Furnished various devices and plans of merchandising, which involved operation of games of chance, gift enterprises, or lottery schemes through which his merchandise was distributed to ultimate consumer by lot or chance wholly, and included distribution to purchasing public of certain advertising literature embracing push cards, order blanks, depictions of merchandise and explanation of his plan or method of selling same and allotting it as premiums or prizes to operators of said push cards under plan, among others, in accordance with which person securing by chance certain numbers as disclosed through separation of card's discs received specified articles, and person selecting from list of girls' names displayed on card name corresponding to that concealed under card's master seal received article, and under which amount paid for chance was dependent upon numbers selected as disclosed under card's tabs, and value of various articles was greater than cost of any single number and under which person selecting name or numbers other than those above indicated received nothing for his money, and made use of various other assortments, along with push cards for sale and distribution thereof by means of a game of chance, gift enterprise, or lottery scheme, similar in principle of operation 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 his merchandise in accordance with aforesaid sales plan or method by persons to whom he furnished said devices and who used same in selling and distributing his said products in accordance with such plans or methods, involving a game of chance or sale of a chance to procure articles without cost or at prices much less than normal retail prices thereof contrary to an established public policy of the United States Government and in violation of criminal statutes, and in competition with many who were and are unwilling to adopt and use said or any method involving element of chance or sale of a chance to win something by chance or any other method contrary to public policy, and have refrained therefrom;

With result that many persons were attracted by his said method or sales plans and by element of chance involved in sale and distribution of his said merchandise as above described, and were thereby induced to buy and sell

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his products in preference to those offered and sold by his said competitors who do not use such or equivalent methods, and with effect, through use of said methods and because of said game of chance, of unfairly diverting trade and custom to him from his said competitors who are unwilling to and do not use same or equivalent methods as unlawful; 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.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. D. C. Daniel for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondents.

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 Belmont Sales Co., a corporation, and Robert C. Bundy, individually and trading as Jackson Sales Co. and as an officer of Belmont Sales Co., and Mildred Bundy, individually and as an officer of Belmont Sales Co., hereinafter referred to as respondents, have violated the provisions of the 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 Belmont Sales Co. is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 53 West Jackson Boulevard, Chicago, Ill. Respondents Robert C. Bundy, and Mildred Bundy are president and secretary respectively, of the corporate respondent. Robert C. Bundy is also individually trading under the name of Jackson Sales Co. All of said respondents have their principal offices at the same address as said respondent corporation. Respondents also operate a shipping department at 422 South Dearborn Street, in said city and State. The individual respondents direct and control the sales policies and business activities of the corporate respondent, and all of said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for some time last past have been engaged in offering for sale, and selling bedspreads, blankets, silverware, cosmetics, quilts, toilet sets, shirts, princess slips, clocks, roller skates, manicure sets, pocketbooks, and other articles of novelty merchandise, to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise, when sold, to be

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shipped or transported from their said places of business in the State of Illinois 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 in such merchandise so sold and distributed by respondents in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their business, respondents are in competition with other corporations and individuals, and with partnerships engaged in the sale and distribution of like and 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 their business as described in paragraph 1 hereof, respondents in soliciting the sale of and in selling and distributing their merchandise, have 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 distributed to the ultimate consumers thereof wholly by lot or chance. The method and sales plan adopted and used by respondents were and are substantially as follows: Respondents cause and have caused to be distributed to the purchasing public, in commerce as herein described, certain advertising literature, including, among other things, push cards, order blanks, advertisements containing illustrations of merchandise, catalogs, and circulars explaining respondents' plan of selling such merchandise and of allotting it as premiums or prizes to operators of the push cards.

One of said push cards has a number of partially perforated discs, and when a push is made and the disk removed from the card a number is disclosed. There are as many separate numbers as there are disks on the card, but the numbers are varied or assorted and are not arranged in numerical sequence. The numbers printed within said disks are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the disk separated from the card. The price varies, depending upon the number obtained. For numbers from 1 to 29 the purchaser pays the amount of the number in cents, and for all numbers over 29 the purchaser pays 29 cents, with the exception of numbers 1, 16 and 44, which said numbers are received without cost by the persons selecting the same. Directly below each disk there is printed a girl's name, and the card has a space prepared for recording the name of each purchaser of a push from the card opposite the corresponding girl's name. The card also has a master seal which, when removed, exposes a girl's name corresponding to one of the names appearing directly

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below said disks. The persons selecting numbers 1, 16, and 44 are entitled to and receive, without cost, specified articles of merchandise, and the purchaser selecting the name corresponding to the name under the master seal is entitled to and receives an article of merchandise. The name under the master seal is effectively concealed from purchasers and prospective purchasers until after all of said numbers have been pushed and the master seal removed from the card. Persons selecting names other than the name appearing under the master seal or numbers other than numbers 1, 16, and 44 receive nothing for their money other than the privilege of pushing a number from said card. Each of said articles of merchandise is of greater value than the cost of any single push from said card.

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, or whether a person shall receive an article of merchandise without cost, is thus determined wholly by lot or chance.

Respondents sell and distribute various assortments of merchandise, and furnish various push cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish said devices use same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their 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 the established public policy of the Government of the United States, and which is in violation of criminal statutes.

PAR. 4. The sale or distribution of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise without cost or at a price much less than the normal retail price thereof. Many persons, firms, and corporations who make or sell merchandise in competition with respondents as above alleged, are unwilling to adopt and use said method, or any method involving the element of chance, or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and said competitors refrain

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therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale and distribution of said merchandise in the manner above alleged, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has the tendency and capacity to and does unfairly divert trade and custom to respondents from their said competitors and to exclude from the novelty merchandise trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful. As a result thereof substantial injury is being and has been done to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition 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 13th day of May 1938, issued and thereafter served its complaint on the respondents, Belmont Sales Co., a corporation; Robert C. Bundy, individually and trading as Jackson Sales Company, and as an officer of Belmont Sales Co., and on Mildred Bundy, individually and as an officer of Belmont Sales Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, respondents having filed no answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel, attorney for the Commission, before Miles J. Furnas, a trial examiner of the Commission theretofore duly designated by it, which testimony and other evidence were duly recorded and filed in the office of the Commission. No testimony was introduced on behalf of said respondents other than a letter from the Secretary of State of the State of Illinois, dated December 6, 1938, in which letter it is stated that said corporate respondent filed articles of dissolution on January 4, 1938.

Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the testimony and other

evidence, and brief in support of the complaint. No brief was filed by or on behalf of respondents, and oral argument was waived by counsel for respondents. 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, Belmont Sales Co., was a corporation, organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 53 West Jackson Boulevard, in the city of Chicago, State of Illinois, but was dissolved on January 6, 1938, and had ceased doing business some time prior thereto. Respondents Robert C. Bundy and Mildred Bundy were, respectively, president and secretary of said corporate respondent. Respondent Robert C. Bundy was also individually trading under the name Jackson Sales Co. All of said respondents had their principal office at the same address as said respondent corporation.

There is not sufficient evidence in the record to support the allegations of the complaint against respondent Mildred Bundy, individually and as an officer of the corporate respondent, or Robert C. Bundy as an officer of said corporation. In view thereof, the findings as to the facts hereinafter will refer only to the acts and practices of Robert C. Bundy individually and trading as Jackson Sales Co.

PAR. 2. Respondent Robert C. Bundy, for more than 1 year last past, has been engaged in offering for sale and selling bedspreads, blankets, silverware, cosmetics, quilts, toilet sets, shirts, princess slips, clocks, roller skates, manicure sets, pocketbooks, and other articles of novelty merchandise to purchasers thereof located in various States of the United States. Respondent has caused said merchandise, when sold, to be shipped or transported from his said place of business in the State of Illinois to purchasers thereof at their respective points of location in various other States of the United States. There has been, for more than 1 year last past, a course of trade in said merchandise by respondent in commerce between and among various States of the United States and in the District of Columbia. In the course and conduct of his business respondent was and is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. Respondent Robert C. Bundy, in the course and conduct of his business, furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprise, or lottery schemes, by which said merchandise was and is distributed to the ultimate consumer thereof wholly by lot or chance. Respondent causes and has caused to be distributed to the purchasing public, as aforesaid, certain advertising literature, including among other things push cards, order blanks, advertisements containing illustrations of said merchandise and explaining respondent's plans or methods of selling such merchandise and of allotting premiums or prizes to the operators of said push cards. One of said push cards had a number of partially perforated disks, and when a purchase was made, one of said disks was separated or removed from the card and a number was disclosed. There were as many separate numbers as there were disks on the card, but the numbers were varied or assorted and were not arranged in numerical sequence. The numbers printed in said disks were effectively concealed from purchasers and prospective purchasers until a selection was made and the disk separated from the card. The prices varied, depending on the number revealed when the disk had been punched. For the number 1 to 29 the purchaser paid the amount of the number in cents, and for all numbers over 29 the purchaser paid 29 cents, with the exception of numbers 1, 16, and 44, which said numbers were received without cost by the persons who selected the same. Directly below each disk was printed a girl's name, and the card had a space prepared for recording the name of each purchaser opposite the corresponding girl's name. Said push card also had a master seal which, when removed, disclosed a girl's name corresponding to one of the names that appeared directly below said disks. The persons selecting numbers 1, 16, and 44 were entitled to and did receive without cost specified articles of merchandise, and the person who selected the name which corresponded to the name of the master seal was entitled to and did receive an article of merchandise. The name under the master seal was effectively concealed from purchasers and prospective purchasers until after all of said numbers had been pushed and the master seal removed from the card. Persons who selected names other than the name which appeared under the master seal and numbers other than 1, 16, and 44 received nothing for their money. Each of said articles of merchandise was of greater value than the cost of any single number pushed from said card. The facts as to whether a purchaser received an article of merchandise or nothing for the amount of money paid; which of said articles of

merchandise the purchaser did receive, if any; and whether a person received an article of merchandise without cost, were thus determined wholly by lot or chance.

Said respondent sold and distributed various assortments of merchandise and furnished various push cards for use in the sale and distribution of merchandise by means of a game of chance, gift enterprise, or lottery scheme. All of said cards were and are operated on the same principle as the one hereinabove described, varying only in detail.

PAR. 4. The persons to whom respondent has furnished or supplied said devices have 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 set forth. The use by the respondent of said methods in the sale of his merchandise and the sale of such merchandise by and through the use thereof, and by the aid of said methods, is a practice of the sort which is contrary to an established public policy of the Government of the United States and is in violation of criminal statutes.

PAR. 5. The sale or distribution of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise without cost, or at prices much less than the normal retail prices thereof. Many persons, firms, and corporations who sell and distribute and have sold and distributed merchandise in competition with respondent, as above described, were and are unwilling to adopt and use said methods or any method involving the element of chance or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and said competitors have refrained therefrom. Many persons were attracted by respondent's said methods or sales plans and by the element of chance involved in the sale and distribution of said merchandise in the manner above described, and were 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 the tendency and capacity to, and does, unfairly divert trade and custom to said respondent from said competitors who are unwilling to, and who do not, use the same or equivalent methods, because the same are unlawful. As a result thereof, substantial injury has been and is being done by respondent to competition in commerce between and among various States of the United States.

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CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce 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 (respondents not having filed an answer thereto), testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondents having offered no testimony or other evidence in opposition to the allegations of the complaint), brief of counsel for the Commission filed herein (respondents having filed no brief) and oral argument not having been requested, and the Commission having made its findings as to the facts and its conclusion that respondent Robert C. Bundy, individually and trading as Jackson Sales Co., has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Robert C. Bundy, individually and trading as Jackson Sales 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 bedspreads, blankets, silverware, cosmetics, quilts, toilet sets, shirts, princess slips, clocks, roller skates, manicure sets, pocketbooks, or any other merchandise, in commerce, as 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 push or pull cards, punchboards or other lottery devices, which said push or pull cards, punchboards or other lottery devices are to be used or may be used in selling and distributing said articles of merchandise or any other merchandise to the general public by means of a game of chance, gift enterprise, or lottery scheme.

2. Mailing, shipping or transporting to his agents or distributors, or to members of the public, push or pull cards, punchboards or other lottery devices so prepared and printed that sales of said merchandise or any other merchandise are to be made or may be made by the use thereof to the general public.

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

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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.

It is further ordered, That the case growing out of the complaint herein insofar as it relates to Belmont Sales Co., corporate respondent, and Mildred Bundy, individually and as an officer of said corporate respondent be, and the same hereby is, closed without prejudice because said corporate respondent has been dissolved and the evidence is not sufficient to sustain the allegations of the complaint relating to respondent Mildred Bundy.

IN THE MATTER OF
HERB JUICE-PHENOL COMPANY, INC., TRADING AS
POW-O-LIN LABORATORIES

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

Docket 4067. Complaint, Mar. 20, 1940—Decision, June 6, 1940

Where a corporation engaged in sale and distribution of its "Pow-O-Lin" medicinal preparation, for treatment of certain ailments, to purchasers in various other States and in the District of Columbia; in advertisements of its said product, which it disseminated and caused to be disseminated, through the mails and by various other means in commerce and otherwise, and including advertisements in newspapers and periodicals and radio continuities, and circulars, leaflets, pamphlets, and other advertising literature in which were reproduced, among other things, testimonials or purported testimonials—

Represented directly and indirectly that "constipation and faulty elimination" are characterized by, and associated with, following among other symptoms, namely, biliousness, indigestion, gas pains, headaches, dizziness, pains in back and chest, stiffness of the joints, swollen feet and ankles, nervousness, insomnia, loss of appetite and lack of energy, and that said preparation possessed beneficial therapeutic properties with respect to curling or remedying and competently treating constipation and "faulty elimination," and with respect to removing or overcoming symptoms hereinabove set forth, by reason of its use serving to eliminate tendency toward constipation;

Facts being its said product possessed no therapeutic properties in excess of those of a cathartic or laxative, and served no purpose other than to assist in the temporary evacuation of the intestinal tract, symptoms set out are not generally or usually characteristic or typical of any particular type or group of disorders and are not necessarily due to, and do not generally persist because of, constipation or "faulty elimination," use of said preparation would not serve as a remedy or cure for or eliminate or in any way affect any tendency to constipation, had no beneficial value in overcoming or removing specific symptoms set forth or in treating such symptoms other than to extent such symptoms might be temporarily relieved by evacuation of intestinal tract when due to, or persisting because of, constipation, and in those cases in which said symptoms are due to causes other than constipation, preparation in question would be of no value in treatment thereof;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false advertisements were true and with result, as consequence of such belief thus engendered, that substantial portion of purchasing public had been and were induced to buy its said preparation:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Maurice C. Pearce for the Commission.