

Syllabus

IN THE MATTER OF

GENERAL AMERICAN SALES CORPORATION, AND DAVID
C. BASKIN, ARNOLD SIMON, AND FAYE SIMONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3706. Complaint, Feb. 11, 1939—Decision, June 14, 1940*

Where a corporation and an individual who was its president, general manager, and director, and controlling stock owner and in charge of the active management thereof, engaged in offer and sale of electric razors, cameras, radios, pencils, pencil sets, and other articles of merchandise to purchasers in various other States, in course and conduct of their said business and acting together and in cooperation with each other in doing acts and things here set forth, and in competition with others engaged in sale or distribution of like or similar articles of merchandise in commerce among the various States and in the District of Columbia—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes by which such merchandise was distributed to ultimate consumer thereof wholly by lot or chance, and distribution to purchasing public of certain advertising literature including, among other things, push cards, order blanks, and advertisements containing illustrations of products in question and explaining their plan or method of selling and distributing such merchandise and allotting it as premiums or prizes to operators of said push cards under plans including (1) assortments of articles such as Eversharp pencils and Spartus Candid Cameras for sale and distribution under a plan in accordance with which person selecting by chance from list of girls' names displayed on push card that corresponding to name concealed under card's master seal received said camera, and persons selecting by chance three certain numbers received Eversharp Pencil, and others received nothing for money paid, and under which plan amount paid by customer or purchaser for chance was dependent upon particular number pushed by chance and certain numbers were free, and including (2) various other assortments of merchandise and push cards supplied therewith for use in sale and distribution of their merchandise by means of games of chance, gift enterprises, or lottery schemes; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in sale and distribution of their said products in accordance with said sales plan or method as above set forth by persons to whom they furnished or supplied said devices and who made use thereof in selling or distributing their said merchandise in accordance with such sales plan or method, under which fact as to whether purchaser received any of said articles of merchandise, value of each of which was greater than cost of pushing any one disk, or anything for amount of money paid, or which of said articles, if any, purchaser would receive, or whether purchaser received article of merchandise without cost was determined wholly by lot or chance, and involving game of chance, or sale of chance, to procure, as aforesaid, articles of merchandise without cost or at price much less than normal retail price thereof, con-

Complaint

31 F. T. C.

trary to an established public policy of the United States Government and in violation of criminal statutes, and in competition with many who are unwilling to adopt and use such or any method involving element of chance or sale of a chance to win something by chance or any other methods contrary to public policy, and have refrained therefrom;

With result of diverting unfairly trade and custom to themselves from their competitors aforesaid who are unwilling to and do not use such or equivalent methods because 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 of competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

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

Mr. L. P. Allen, Jr., 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 General American Sales Corporation, a corporation, and David C. Baskin, Arnold Simon, and Faye Simon, individuals, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, General American 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 32 West Randolph Street, Chicago, Ill. Respondent David C. Baskin, an individual, is principal stockholder, President and a director of the corporate respondent. Respondents Arnold Simon and Faye Simon are individuals and are directors and officers of the corporate respondent. Respondents David C. Baskin, Arnold Simon, and Faye Simon formulate, control, and direct the practices and policies of the corporate respondent. All of the individual respondents have their offices at the same address as corporate respondent. 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 the sale and distribution of electric razors, cameras, radios, pencils, pen and pencil sets, and other articles of merchandise in commerce between and

among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia at their respective points of location. There is now and has been for some time last past a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are and have been in competition with other corporations and individuals, and with partnerships engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof respondents, in soliciting the sale of and in selling and distributing their merchandise in commerce, as commerce is hereinabove described, furnish and 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 sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondents was and is substantially as follows:

Respondents distribute and have distributed to the purchasing public in commerce, as commerce is hereinabove described, certain literature and instructions including, among other things, push cards, order blanks, illustrations of their said products, and circulars explaining respondents plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondents' push cards bears 63 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 63 small partially perforated disks and on the face of each of said disks is printed one of the feminine names appearing alphabetically on the reverse side of the card. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. Such number indicates the amount to be paid by the person selecting the feminine name appearing under said disk. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The purchaser receiving the chance bearing the name corresponding to the name appearing under the master seal receives the

Complaint

31 F. T. C.

merchandise offered as a prize. The name concealed under the master seal is not disclosed until after all chances have been sold. The push card bears legends or instructions as follows:

NAME UNDER SEAL RECEIVESA SPARTUS CANDID CAMERA

(cut)

Numbers 31-41-51

Each receives a guaranteed

THE WINNER

(cut)

EVERSHARP PENCIL

Nos. 1 to 25 pay 1 to 25

Nos. over 25 pay only 25

Do not remove
seal until all
sold

Write your name opposite name you select on reverse side.

(63 perforated disks)

Numbers 9, 10, 11, 12, 13, 14, 15, 16 are free

Sales of respondents' products 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 said articles of merchandise are thus distributed to the purchasing public wholly by lottery or chance.

Respondents furnish and have furnished various push cards, accompanied by said order blanks, instructions, and other printed matter, for use in the sale and distribution of their 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 the one hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondents furnish the said push cards use the 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 sales plan or method in the sale of their 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 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 respondents 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 respondents in the sale and distribution of their merchandise and the element of chance involved therein, 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 a tendency and capacity to and does unfairly divert trade to respondents from their said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being and has been done by respondents 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 respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' 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 February 1939, issued and thereafter served its complaint on the respondents, General American Sales Corporation, a corporation, and on David C. Baskin, Arnold Simon, and Faye Simon, individually and as officers of said corporation, charging them 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. Respondents filed no answer to the complaint.

Thereafter, on the 10th day of April 1939, Miles J. Furnas, an examiner of said Commission, was designated and appointed to take testimony and receive evidence in said proceeding, which said testimony was reduced to writing and filed in the office of the Commission, together with numerous items of documentary evidence received as exhibits. No testimony was introduced on behalf of respondents.

Findings

31 F. T. C.

Thereafter the proceeding regularly came on for final hearing before the Commission on the testimony and other evidence adduced at the hearing and briefs in support of the complaint and in opposition 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 General American Sales Corporation is an Illinois corporation, organized and doing business under the laws of said State, with its principal office and place of business located at 32 West Randolph Street, Chicago, Ill. Respondents David C. Baskin, Arnold Simon, and Faye Simon are respectively president, secretary, and treasurer of the corporate respondent; all of said respondents have their principal office and place of business at the same address as the respondent corporation.

There is not sufficient evidence in the record to support the allegations of the complaint as against Arnold Simon and Faye Simon, individually and as officers of the corporate respondent. In view of this, the findings of fact hereinafter set out will refer only to the acts and practices of the respondents General American Sales Corporation and David C. Baskin. The respondent David C. Baskin, an individual, is president, general manager, and director, and owner of 98 shares of the hundred shares of stock of the General American Sales Corporation outstanding and is in charge of the active management of the corporate respondent. The respondents General American Sales Corporation and David C. Baskin act together and in cooperation with each other in doing the acts and things herein found.

PAR. 2. Respondents, for more than 1 year last past have been engaged in the business of offering for sale and selling electric razors, cameras, radios, pencils, pencil sets, and other articles of merchandise, in commerce, to purchasers thereof located in various States of the United States. Respondents have caused said merchandise, when sold, to be shipped or transported from their said place of business in the State of Illinois to purchasers, at their respective points of location, in various States of the United States other than the State of Illinois, and there has been, for more than 1 year last past, a course of trade in said merchandise by respondents, in commerce between and among 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 individuals, part-

nerships, and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. Respondents, General American Sales Corporation and David C. Baskin, in the course and conduct of their business, furnish and 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 was and is distributed to the ultimate consumer thereof wholly by lot or chance. Respondents cause and have caused to be distributed to the purchasing public, as aforesaid, certain advertising literature, including, among other things, push cards, order blanks, and advertisements which contain illustrations of said merchandise and explain respondents' plan or method of selling and distributing such merchandise and allotting it as premiums or prizes to the operators of said push cards. One of said push cards contains 63 partially perforated disks, and when a punch or push is made on any one of said disks it is separated from the card, disclosing a number. There are as many different numbers as there are disks on the cards, but these numbers are varied or assorted and are not arranged in numerical sequence, and they are effectively concealed within said disks from purchasers and prospective purchasers until a selection is made and a disk pushed or separated from the card. The charge for making a punch varies and depends upon the number revealed when the disk is punched. On the disks with numbers from 1 to 25, the purchaser pays for each disk pushed, the amount of the number thus disclosed, in cents. For all numbers over 25 only 25 cents is paid for each, and for the numbers 9, 10, 11, 12, 13, 14, 15, and 16, the pushes are made without cost to the persons making them. Directly below each disk is printed a girl's name, each differing from the others; on the reverse of said push card is a list of all the feminine names printed below the disks, and opposite each name in said list is a space prepared for recording the name of the purchaser following the girl's name corresponding to the one under the disk punched. Said push card also has a master seal which, when removed, exposes a girl's name corresponding to one of the names appearing below said disks. The persons whose pushes disclosed the numbers 31, 41, and 51 are entitled to and do receive without additional cost, a guaranteed Eversharp Pencil, and the person who has selected the name which corresponds to the name hidden within the master seal is entitled to receive, and does receive, without additional cost, the capital prize such as a Spartus Candid Camera. The name

under the master seal is effectively concealed from purchasers and prospective purchasers until all the disks have been pushed and their numbers revealed; then the master seal is removed from the card and the winning name disclosed. Persons who have selected names other than the name which appears under the master seal, and who obtained numbers other than the numbers 31, 41, and 51, receive nothing for the money they have paid. Each of said articles of merchandise is of greater value than the cost of pushing any one disk on said card. The fact as to whether a purchaser receives any article of merchandise, or anything, for the amount of money paid, or which of said articles of merchandise, if any, the purchaser does receive, or whether the purchaser receives an article of merchandise without cost, are thus determined wholly by lot or chance.

Said respondents sell and distribute various assortments of merchandise and furnish various push cards for use in the sale and distribution of their said merchandise by means of games of chance, gift enterprises, or lottery schemes.

PAR. 4. The persons to whom respondents have furnished or supplied such devices have used the same in selling or distributing respondents' merchandise in accordance with said sales plan or method. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale and distribution of their merchandise in accordance with the sales plan or method as hereinabove set forth. The use by respondents of said method in the sale and distribution of their merchandise, and the distribution of such merchandise by and through the use thereof and by the aid of such method, is a practice of a sort which is contrary to the established public policy of the Government of the United States and 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 a price much less than the normal retail price thereof. Many persons, partnerships, and corporations sell and distribute merchandise in commerce, in competition with respondents, as above described, who are unwilling to adopt such method 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.

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 said respondents from said competitors who are unwilling to use, and who do not use the same or equivalent methods because the same are unlawful. As a result thereof, substantial injury is being and has been done by respondents to competition in commerce between and among various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondents, General American Sales Corporation and David C. Baskin, as herein found are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair 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 (the respondents having filed no answer), 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, and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that respondents General American Sales Corporation and David C. Baskin have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent General American Sales Corporation, a corporation, its officers, and the respondent David C. Baskin, individually and as president and director of General American Sales Corporation, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of electric razors, cameras, radios, pencils, pen and pencil sets, and 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 any merchandise together with punch boards, 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

Order

31 F. T. C.

cards or other lottery devices are to be used or may be used in selling or distributing any 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.

It is further ordered, That the respondents General American Sales Corporation and David C. Baskin shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That this proceeding be, and the same hereby is, closed as to the respondents Arnold Simon and Faye Simon without prejudice to the right of the Commission to reopen the same and resume proceedings in the case in accordance with the Commission's regular procedure should future facts so warrant.

Modified Order

IN THE MATTER OF

LENOIR WOODFINISHING COMPANY, INC., AND ARTHUR
G. SPENCER, TRADING AS LENOIR SOLVENT COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 4048. Order, June 18, 1940

Order modifying prior order to cease and desist, made as of April 17, 1940, 30 F. T. C. 1027, 1032, in certain respects, so as to require respondent company, its officers, etc., and respondent individual, in his individual capacity and trading as hereinabove set forth, and their representatives, etc., in connection with offer of paints, etc., in commerce, to cease and desist from giving sums of money or other things of value to officials or employees of respondents' customers or prospective customers, without their knowledge or consent, as inducements to purchase or recommend respondents' said materials, or as payments for having done so, as in order below specifically set forth.

Mr. Gerard A. Rault for the Commission.

Mr. Don A. Walser, of Lexington, N. C., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the motion of the Commission's Chief Counsel that the order to cease and desist issued herein on April 17, 1940 be modified in certain respects specifically detailed in said motion, and it appearing that on May 23, 1940, the Commission ordered the respondents herein, within 10 days from the service upon them of a copy of said motion, to show cause why the order to cease and desist heretofore entered should not be modified as specified in said motion, and it further appearing that a copy of said order to show cause and said motion was served on the respondents herein on May 25 and 27, 1940, respectively, and it further appearing that respondents have failed to show cause within the 10-day period provided for why the motion of the Commission's Chief Counsel should not be granted, and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the respondents, Lenoir Woodfinishing Co., Inc., its officers, and Arthur G. Spencer, individually and trading as Lenoir Solvent Co., and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of their paints, varnishes, stains, thinners, sealers, and other wood finishing products, in com-

Modified Order

31 F. T. C.

merce, as commerce is defined in the Federal Trade Commission Act, do cease and desist from giving, or offering to give, sums of money, or other things of value to officials or employees of respondents' customers, or prospective customers, without the knowledge or consent of said customers, for the purpose of inducing said officials or employees to purchase respondents' wood finishing materials for use by their employers or to recommend the purchase of the same by their employers, or as payments to said officials or employees for having induced the purchase or recommended the use of respondents' products by their employers.

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

Syllabus

IN THE MATTER OF

MARVIN ALAN KOOLISH, TRADING AS CROWN DISTRIBUTING COMPANY AND CROWN 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 4041. Complaint, Feb. 28, 1940—Decision, June 18, 1940

Where an individual engaged in sale and distribution of radios, cameras, pen and pencil sets, and 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 and similar articles of merchandise in commerce as aforesaid; in soliciting sale of and in selling and distributing his merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes in sale and distribution to ultimate consumers of products in question, and distribution to purchasing public of certain literature and instructions including, among other things, push cards, order blanks, illustrations of his said merchandise, and circulars explaining his plan of selling same and of allotting it as premiums or prizes to operators of such push cards and to purchasing and consuming public, through use (1) of push cards under plan and in accordance with card's explanatory legend by which customer or purchaser selecting by chance from list of feminine names displayed on card name corresponding to that concealed under card's master seal, received specified candid camera, with roll of film, or article of merchandise being thus disposed of, and person securing by chance from numbers concealed in disks under said feminine names certain number received pen and pencil combination, and amount paid for such chances was dependent upon numbers secured by chance as announced, or through use of (2) various other push cards accompanied by order blanks, instructions and other printed matter for use in sale and distribution of merchandise by means of game of chance, gift enterprise, or lottery scheme and sales plan or method similar to that hereinabove 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 sales plan hereinabove set forth by persons to whom he furnished said push cards for use in purchasing, selling, and distributing his said products and who made use thereof in so doing in accordance with said plan, under which fact as to whether purchaser received article of merchandise or nothing for amount of money paid, and which of said articles of merchandise, if any, purchaser was to receive was thus determined wholly by lot or chance, and involving game of chance, or sale of a chance, to procure one of said articles at a price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving a game of chance or a sale of a chance to win something by chance or any other method contrary to public policy and refrain therefrom;