

Syllabus

IN THE MATTER OF
FRANK SPORS, TRADING AS SPORS COMPANY

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

Docket 3165. Complaint, June 29, 1937—Decision, June 19, 1940

Where an individual engaged in sale and distribution of drugs, cosmetics, foods, and other merchandise, including household notions and other novelties, to dealers, specialty salesmen, house-to-house peddlers and others in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar merchandise in commerce, as aforesaid, and, as thus engaged, in soliciting through advertisements in various periodicals and specialty magazines prospective agents and salesmen to apply for copies of his catalog, and in forwarding to those requesting it such copies, containing descriptions and prices of some four thousand items sold by him, and also in sending therewith leaflets and circulars describing other items—

- (a) Represented that he manufactured or imported all or a major portion of the products sold by him through use of legend "Wholesale Importers and Manufacturers," set forth without further qualification on his catalogs and in some of the other advertising material above referred to, and that his business was larger than was the fact, through depiction on said catalogs of what purported to be building housing his said business;

Facts being that major portion of articles sold by him was purchased in domestic open market, and volume of business in certain items which he did make constituted not more than 15 percent of his total volume of business, nearly all of his items were of domestic rather than foreign origin, and structure which housed his business was building with only basement and first floor rather than two stories depicted in advertising material referred to, and his concern or business was not a manufacturing or importing one, and one doing large volume of business, and one for dealing with which, as such, there is preference on part of substantial portion of purchasing public as offering, in their belief, lower prices, superior quality, and other advantages; and

- (b) Sold and distributed various devices, assortments, and plans of merchandising which involved operation of gift enterprises, gaming devices, or lottery schemes in sale and distribution of merchandise to ultimate consumers and included various pull cards, punchboards, push cards, and sale boards for use in sale and delivery to purchasing public, in accordance with method suggested, of specified articles of merchandise wholly by lot or chance and, among others, assortments of number of articles, together with push cards, for use in sale and distribution of said articles and in accordance with card's explanatory legend, by which those securing by chance, for 2 cents paid, or nothing, depending on number punched, received a table lighter and certain other numbers became entitled to Scotty Dog Novelty, and last punch on card also received such a lighter, and which included also various other assortments, together with which it supplied such boards and devices for use in sale thereof and involving

Complaint

31 F. T. C.

sales plans or methods similar to that above described and varying therefrom in detail only; and—

Supplied thereby to and placed in hands of others means of conducting lotteries in sale of his merchandise in accordance with such sales plans or methods above described by retailers and peddlers who, as direct or indirect purchasers of his said products, sold same to purchasing public in accordance with such plans or methods involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws and in competition with many who are unwilling to adopt in sale of their goods such or any methods contrary to public policy and refrain therefrom;

With effect of causing substantial portion of purchasing public to buy his merchandise in preference to that of his competitors and with result that substantial trade was diverted to him from competitors 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. Arthur F. Thomas*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Mr. Edwin C. Kraus and *Mr. George T. Havel*, of Le Center, Minn., for respondent.

COMPLAINT

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Frank Spors, an individual, trading as Spors Co., has been and is using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, and it appearing to said 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, Frank Spors, is an individual having his principal office and place of business in the city of Le Center, State of Minnesota. He has been for more than 1 year last past engaged in the sale and distribution of cosmetics, perfumes, manicure sets, mercurochrome, shaving creams, thread, tape measures, can openers, egg beaters, knife sharpeners, and general line of drug sundries and household notions to retail dealers and peddlers purchasing for resale, and also to the public direct. In the course and conduct of his business he offers said products for sale and sells the same in commerce between the State of Minnesota and the several States of the United States and the District of Columbia.

PAR. 2. When said products are sold respondent transports or causes them to be transported from his place of business in the State of Minnesota to purchasers thereof located in States of the United States other than the State of Minnesota and in the District of Columbia.

There has been for more than 1 year last past and there still is a constant current of trade and commerce in said products so sold by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is now and for more than 1 year last past has been engaged in substantial competition with other individuals and firms, partnerships, and corporations, engaged in the manufacture, sale, and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent in soliciting the sale and in the selling of his products and for the purpose of creating a demand on the part of the consuming public, has advertised his products through the media of newspaper and magazine advertisements, catalogs, price lists, and other printed matter, all of which are published, issued, and circulated through the United States mails to his customers and prospective customers in the various States of the United States and in the District of Columbia.

PAR. 5. In the aforesaid ways and by the aforesaid means respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by him. Many articles and items of merchandise listed in said catalogs, price lists, and in newspaper and magazine advertisements, are described as possessing retail values and prices greatly in excess of the actual selling prices of respondent to retailers or other purchasers, and greatly in excess of the actual retail values or prices thereof. A number of the said items and articles of merchandise described in the aforesaid advertisements, catalogs, and price lists have retail prices stamped or printed on the labels attached thereto or on the containers in which they are offered for sale and sold to the public.

PAR. 6. Representative of such statements and representations referred to in paragraph 5, made by the respondent on the containers regarding the selling price and value of the commodities offered for sale by him are the following:

"William A. Woodbury Milk of Magnesia Dental Cream—Selling Price 50¢" whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 13¢ per unit.

Complaint

31 F. T. C.

"Super-pure Palm and Olive Oil Shaving Cream—Selling Price 25¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 8¢ per unit.

"Pine Tar Soap—Selling Price per package 15¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 8¢ per package.

"Cedo Pad—Selling Price 10¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 4¢ per unit.

"Zipper Billfold—Selling Price 95¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 45¢ per unit.

"Lever Style Self Filling Fountain Pen—Selling Price 59¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 26¢ per unit.

"Baby Calculator—Selling Price 98¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 49¢ per unit.

"Utility Cake Turner—Selling Price 15¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 7¢ per unit.

"New Dunbar Duplex Razor and Blade Set—Selling Price 25¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 9¢ per unit.

"Prophyson Tooth Brushes—Selling Price 15¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 7¢ per unit.

"The Little Scientist Microscope Set—Selling Price 95¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 39¢ per unit.

"Deluxe Two-way Stretch Combination Girdle and Brassiere—Selling Price \$1.25," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 79¢.

"Mother of Pearl Cross—Selling Price 59¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 39¢.

"Ear Drops Made of Imitation Pearls—Selling Price 19¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 8¢.

"Baby Pearl Necklaces—Selling Price 10¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 5¢.

"Three-Strand Imitation Pearl Necklaces—Selling Price 69¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 25¢.

"Imitation Vanilla Flavor—Selling Price 75¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 19¢.

PAR. 7. Said catalogs of respondent contain representations relative to several hundred other articles of various kinds and descriptions where fictitious retail prices are imprinted upon the labels or cartons thereof.

PAR. 8. Over a period of many years manufacturers in many trades have adopted and followed the custom of marking or stamping on

the article or item of manufacture or on the container thereof the retail price at which the said manufacturers suggest that the retailer should sell the item, or article to the ultimate consumer.

This suggested retail price so stamped or marked is intended to represent the cost of the manufacture of the article, plus a reasonable profit for the manufacturer and the retailer and, consequently, to represent the approximate retail sale value of the item. The public generally understands this custom and has been led to, and does, place its confidence in the price markings so stamped and the representations so made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

PAR. 9. For many years a substantial portion of the consuming public has had, and has expressed, a marked preference for cosmetics, perfumes, manicure sets, mercurochrome, shaving creams, thread, tape measures, can openers, egg beaters, knife sharpeners, and general line of drug sundries and household notions which are composed of superior ingredients or materials, and which are produced by the manufacturer thereof with the intent and design of selling said products for prices in excess of the general and usual range of prices for similar products, or for products made of inferior ingredients or materials. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail price on said products as indicating the superior quality and character of the product and its higher value.

PAR. 10. Whenever a genuinely superior product so stamped or marked with the retail price thereon is offered for sale at a substantially reduced price, the general purchasing public is led to believe, and does believe, that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail price thereof over ordinary products sold for their regular price, which is lower than the normal retail value of the superior product in the customary course of trade.

PAR. 11. The retail prices so stamped or printed as aforesaid upon respondent's products are greatly in excess of the actual selling price of the said items or articles of merchandise by the retailer to the consuming public, and are in excess of their true and actual values. The retail prices so stamped or printed as aforesaid are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price marked.

Complaint

31 F. T. C.

PAR. 12. The respondent in soliciting the sale and in the selling of his products, and for the purpose of creating a demand on the part of the consuming public for such products, now causes, and for more than 1 year last past has caused, himself to be represented through his letterheads, circulars, order blanks, and general business stationery, and by pictorial representations of his place of business as an importer and manufacturer of the goods, wares, and merchandise herein set out.

PAR. 13. The respondent further represents, through the use of an exaggerated pictorial representation of his place of business appearing in his catalogs as well as pictorial representations of the alleged various departments of his place of business, that his business is larger and more extensive than is actually the fact.

PAR. 14. A substantial portion of the purchasing public has shown a marked preference for dealing with and purchasing items of merchandise from manufacturers and importers and those who operate on a large scale and do a large volume of business, believing that superior quality, lower prices, and other advantages can be secured by dealing with such manufacturers and importers.

PAR. 15. In truth and in fact, the respondent is not a manufacturer, importer, or a large scale operator.

PAR. 16. The false and misleading advertising and representations hereinabove set out, together with the false and fictitious price markings herein set out on the part of the respondent place in the hands of the aforesaid peddlers and retailers buying for resale, an instrument and a means whereby said peddlers and retailers may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to represent, and offer for sale, and sell, the various wares and merchandise herein referred to as genuinely superior products produced by the manufacturers thereof, with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for the retail price stamped on the products or their containers.

PAR. 17. There are among the competitors of the respondent in commerce as herein defined manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, value and price of their respective products. There are also among the competitors of respondent manufacturers and distributors of like and similar products who do not advertise or represent through fictitious price marks affixed to said merchandise which greatly exceed the actual intended retail sale value or retail sale price of the merchandise offered for sale that said merchandise has a value or price greater than it actually possesses.

PAR. 18. There are also among the competitors of the respondent distributors of like and similar products who do not advertise or represent themselves to be manufacturers and importers, or that they are large scale operators.

PAR. 19. In the course and conduct of his business as hereinbefore described, the respondent in soliciting the sale of and in selling and distributing his merchandise, has furnished and does furnish various devices and plans of merchandising which involve or which are designed to involve the operation of gift enterprises, gaming devices, or lottery schemes in the sale and distribution of such merchandise to the ultimate consumer thereof. Said devices or plans of merchandising consist of various pull cards, punchboards, push cards, and sales boards, the use of which in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent, involves the sale or distribution of specified articles of merchandise wholly by lot or chance.

One of the push cards which respondent furnishes together with an assortment of merchandise is as follows:

The assortment consists of a number of Scotty Dog novelties together with two cigarette table lighters and one 200-sale push card. Sales by means of said card are 2 cents each, and when a push or selection has been made a number is disclosed. There are 200 pushes and the numbers run from 1 to 200, but are not arranged in numerical sequence. The card bears legends or statements as follows:

ONLY 2C
A CHANCE
NO. 95 RECEIVES \$1.00
TABLE LIGHTER
Nos. 1 to 10 Pay Nothing
Nos. 20-30-40-50-60-70-80-90-100
120-130-140-150-170-180-190
Receive a Scotty
Dog Novelty
Last punch on card receives
\$1.00 Table Lighter

The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the number separated from the card. The merchandise is distributed to the consuming public in accordance with the legends printed on said card.

Complaint

31 F. T. C.

The fact as to whether a purchaser receives one of the articles of merchandise or nothing other than the privilege of punching a number from said card for the price of 2 cents is thus determined wholly by lot or chance. The fact as to whether a person pays 2 cents for a chance or receives the same free of charge is also determined wholly by lot or chance. The normal retail value of the merchandise does not exceed the total cost of all the chances on said card, but each of the articles of merchandise is worth more than 2 cents or the price of a single punch.

The purchasing public are thus persuaded and induced into purchasing a push from said card in the hope of obtaining one of the articles of merchandise for the price of 2 cents.

The various pull cards, punch boards, push cards, and sales boards furnished by the respondent with various assortments of merchandise involve the same plan or principle as that described immediately above, but vary in detail and vary in the assortments of merchandise distributed.

PAR. 20. The retailers and peddlers to whom respondent sells his merchandise resell the same to the purchasing public. The respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the plan of operation hereinabove set forth. The said plan of operation has the tendency and capacity of inducing purchasers thereof to purchase respondent's said merchandise in preference to like or similar merchandise offered for sale and sold by his competitors.

PAR. 21. The sale and distribution of merchandise to the purchasing public as above alleged involve a game of chance, or the sale of chance, to procure such articles of merchandise in the manner alleged.

The use by 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 such methods, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to the established public policy of the United States Government.

PAR. 22. Many individuals, firms, partnerships, and corporations who sell and distribute merchandise in competition with the respondent as above alleged are unwilling to offer for sale, or to sell, merchandise by any method involving a game of chance or any other method that is contrary to public policy, and such competitors refrain from so doing.

PAR. 23. Many dealers in and ultimate purchasers of merchandise as distributed by respondent are attracted by respondent's said methods or sales plans and by the element of chance involved in the sale

or purchase thereof in the manner above described, and are thereby induced to purchase said merchandise of respondent in preference to merchandise offered for sale and sold by competitors of respondent who do not use the same or equivalent methods.

The use of said methods or sales plans by respondent has the tendency and capacity, because of said game of chance, to and does divert to respondent trade from his said competitors who do not use the same or equivalent methods; to exclude from said trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in said trade and to tend to create a monopoly of said trade in respondent, and to deprive the purchasing public of the benefit of free competition in said trade.

As a result thereof, injury has been, and is now being done by respondent to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 24. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead a substantial portion of the purchasing and consuming public in the several States of the United States by inducing them to mistakenly and erroneously believe that:

1. The various items of merchandise described in respondent's catalogs and other advertising media were and are of superior value and were and are sold and distributed by respondent with the intent and purpose that said products should be sold at retail prices closely approximating the prices stamped thereon.

2. The said products, because of the price marks affixed or stamped thereon, are composed of superior ingredients and are products which ordinarily retail in the usual course of trade for prices closely approximating the prices stamped on the merchandise.

3. The respondent is a manufacturer.

4. The respondent is an importer.

5. The respondent is a large-scale operator and distributor.

PAR. 25. The foregoing false and misleading statements and representations on the part of respondent have induced and still induce a substantial number of retailers and peddlers as well as consumer purchasers of said products to buy the products offered for sale, sold, and distributed by respondent on account of the aforesaid erroneous and mistaken beliefs. As a result thereof trade has been unfairly diverted from competitors of respondent engaged in similar businesses who do not engage in similar practices. As a consequence thereof substantial injury has been and is being done by respondent to com-

Findings

31 F. T. C.

petition in commerce between and among the various States of the United States.

PAR. 26. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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, 1937, issued and thereafter served its complaint in this proceeding upon the respondent Frank Spors, trading as Spors Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent entered an appearance and filed an answer to the complaint, and thereafter, beginning on May 31, 1938, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes and R. A. McQuat, attorneys for the Commission, and in opposition to the allegations of the complaint by Edwin C. Kraus and George F. Havel, attorneys for the respondent, before A. F. Thomas, 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. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and oral arguments, 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. The respondent, Frank Spors, is an individual trading under the name of Spors Co. and having his principal place of business located in Le Center, Minn. He is now and for many years last past has been engaged in the sale and distribution of drugs, cosmetics, foods, and other merchandise, including household notions and other novelties, to dealers, specialty salesmen, house-to-house peddlers, and others. Respondent causes his said merchan-

dise, when sold, to be transported from his place of business in the State of Minnesota to the purchasers thereof located 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 his said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

The respondent has been and is in substantial competition with other individuals, and with corporations and firms also engaged in the sale and distribution of similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, and for the purpose of creating a demand for his product and inducing the purchase thereof, the respondent causes advertisements to be inserted in various periodicals and specialty magazines, in which advertisements the respondent solicits prospective agents and salesmen to apply for a copy of his catalogue. To those requesting it, the respondent forwards a copy of his catalogue, which contains descriptions and prices of approximately 4,000 items of merchandise sold by the respondent. Along with the catalogue the respondent sends leaflets and circulars describing other items in the respondent's stock. Respondent's catalogues and some of the other advertising material bear, in connection with respondent's trade name and in large and conspicuous type, the legend "Wholesale Importers and Manufacturers." Such catalogues carry also a picture of what purports to be the building in which respondent's business is housed, the building being portrayed as a two-story building of large dimensions.

PAR. 3. The Commission finds that the use by the respondent of the legend, "Wholesale Importers and Manufacturers" in connection with his trade name, and without any accompanying words to limit the application of such legend, serves as a representation to the public that respondent manufactures or imports all or a major portion of the products sold by him.

The major portion of the articles sold by respondent is purchased by him in the domestic open market and is not manufactured by him. Respondent does, however, manufacture a cement and a few novelty items, including cigar lighters and stocking darners. He also mixes certain extracts and fruit nectars. Respondent's volume of business in the items manufactured by him constitutes not more than 15 percent, of his total volume of business. Nearly all of respondent's items of merchandise are of domestic rather than foreign

Findings

31 F. T. C.

origin, the only items imported being certain novelty items and a small quantity of reproduction pearls.

PAR. 4. The Commission further finds that the pictorial representation of respondent's purported place of business as a two-story building of large dimensions serves as a representation to the public that respondent's business is much larger than is the fact. The structure which houses respondent's business is, in fact, a building 105 feet by 105 feet and having only a basement and first floor, rather than the two stories depicted in respondent's advertising material.

PAR. 5. There is a preference on the part of a substantial portion of the purchasing public for dealing with business concerns which manufacture or import their products and which do a large volume of business, such portion of the public believing that by dealing with such concerns lower prices, superior quality and other advantages may be obtained. In judging the volume of business done by a concern, the public is influenced by the size of the building in which the concern is housed.

PAR. 6. Among the many items offered for sale by respondent and described in said catalogue, are various devices and plans of merchandising which involve the operation of gift enterprises, gaming devices, or lottery schemes in the sale and distribution of merchandise to the ultimate consumer thereof. Said devices or plans of merchandising consist of various pull cards, punchboards, push cards, and sale boards, the use of which in connection with the sale and delivery to the purchasing public, by the method or plan suggested by respondent, involves the sale or distribution of specified articles of merchandise wholly by lot or chance. One of respondent's assortments consists of a number of articles of merchandise, together with a device commonly known as a push card. This card contains a number of partially perforated discs, under each of which is concealed a number. The card bears legends or instructions as follows:

ONLY 2¢
A CHANCE

NO. 95 RECEIVES
\$1.00 TABLE LIGHTER

NOS. 1 TO 10 PAY NOTHING

Nos. 20-30-40-50-60-70-80-90-100
120-130-140-150-170-180-190
Receive a Scotty Dog Novelty

Last Punch on Card Receives
\$1.00 Table Lighter

The said numbers are effectively concealed from purchasers and prospective purchasers until a number has been pushed or removed from said card. The said articles of merchandise are distributed to the purchasers who select the above designated numbers in accordance with the above-described sales plan. Persons who do not select the numbers so designated receive nothing for their money. Each of said articles of merchandise has a greater retail value than 2 cents, the amount of a sale on said card. The facts as to whether a purchaser pays 2 cents or nothing for the number selected and what article of merchandise, if any, the purchaser is to receive, with the exception of the last number punched on said card, are thus determined wholly by lot or chance.

The respondent sells and distributes various assortments of said merchandise and furnishes and supplies various punchboard and push card devices for use in the sale of such assortments, but the sales plans or methods used in connection with all of said devices are similar to the one hereinabove described, varying only in detail.

PAR. 7. Retail dealers and peddlers who purchase respondent's said merchandise, either directly or indirectly, sell the same to the purchasing public in accordance with the above-described sales plans or methods. The sale and distribution of said merchandise by said sales plans or methods involve 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. The respondent in so selling and distributing said merchandise thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plans or methods hereinabove described. The use by respondent of said sales plans or methods in the sale of his merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said sales plans or methods, is a practice of a sort which is contrary to an established public policy of the Government of the United States and violation of criminal laws. Many of respondent's competitors are unwilling to adopt, in the sale of their merchandise, such methods or any methods which are contrary to public policy, and such competitors refrain therefrom.

PAR. 8. The use by the respondent of the acts and practices herein set forth has the tendency and capacity to, and does, cause a substantial portion of the purchasing public to purchase respondent's merchandise in preference to the merchandise of his competitors. As a result, substantial trade has been diverted by respondent from competitors engaged in commerce between and among the various States of the United States and in the District of Columbia.

Order

31 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce 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 answer of the respondent, testimony and other evidence taken before A. F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein and oral argument of Merle P. Lyon, counsel for the Commission, and Edwin C. Kraus, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Frank Spors, individually and trading as Spors Co., or trading under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of food, drugs, cosmetics, and other merchandise, including household notions and other novelties, do forthwith cease and desist from:

1. Using the term "Wholesale Importers and Manufacturers" or any other term of similar import or meaning, to describe the character of respondent's business operations, except in connection with such items of merchandise as are actually manufactured or directly imported by respondent.

2. Representing that all of the items of merchandise offered for sale by respondent are imported or manufactured by him, or that any designated item of merchandise offered for sale by the respondent is imported or manufactured by the respondent, when such item of merchandise has not been in fact so imported or manufactured by the respondent.

3. Representing, by means of pictorial representations or otherwise, that respondent's place of business is higher, larger or more spacious than is the fact.

4. Selling and distributing any merchandise so packed and assembled that sales of such merchandise to the general public are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme.

5. 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.

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

7. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

IN THE MATTER OF
ZONITE PRODUCTS CORPORATION

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

Docket 3363. Complaint, Mar. 22, 1938—Decision, June 19, 1940

Where a corporation engaged in manufacture of its "Larvex" liquid moth repellent for spraying clothing, upholstered furniture, rugs, and other non-washable fabrics, along with its "Larvex" powder which, mixed with water as directed, it recommended as rinse for blankets, sweaters, bathing suits, woolens, and other washable fabrics, and in sale to purchasers in all parts of the United States, including manufacturers and wholesale and retail dealers, for their own use and for resale to public by such wholesale and retail dealers, of said preparations, designed to protect articles aforesaid from the ravages of the worms or larvae of flying and other moths and to prevent damage occasioned thereby, and in substantial competition with others engaged in sale and distribution to purchasers in various States of various preparations for use in prevention of damage to fabrics and garments by moths and other insects, and including among its competitors manufacturers, compounders, and distributors of like and similar products or those designed and intended for similar usage, who do not unfairly disparage competitive goods or articles—

Unfairly disparaged many competitors and their respective products through representing that moth balls, cedar oil, tar, and various other products containing pyrethrum, naphthalene, or paradichlorobenzene fail to give adequate protection against moth damage, and by means of such statements in advertisements of its said "Larvex" in magazines and other forms of printed matter circulated and distributed among the trade and public in the several States as, "If you, too, want sure protection against moth damage, dont take chances with moth balls, chests, and other makeshift ways. Too much is at stake." and "WHY OTHER METHODS FAIL. It is not enough to try with insecticides, bug-killers, moth balls, cedar chests, and tarbags with obnoxious odors, to drive away or kill the flying moth. When you see the flying moth it is too late—she has already laid eggs in your woolen things—and old-fashioned methods don't baffle the hungry moth-worms which hatch from the eggs"; facts being there are many competitive products, as aforesaid referred to, on the market, such as moth balls, cedar oil, tar, and various other competitive products containing pyrethrum, naphthalene, or paradichlorobenzene, which when properly used, will protect fabrics and other articles against moth damage caused by moth worms and larvae;

With capacity and tendency through such statements and representation in its advertisements as above set forth to deceive and mislead manufacturers of fabrics and other articles, dealers therein and members of purchasing public into erroneous and mistaken belief that such disparaging statements and representations made by it were true, and that competitive products referred to as above set forth were of no value in protecting fabrics and other articles against moth damage caused by moth worms or larvae, and