

Syllabus

IN THE MATTER OF
JACK PUZES, TRADING AS THE NOVELTY HOME
FURNISHER

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

Docket 4023. Complaint, Feb. 7, 1940—Decision, June 25, 1940

Where an individual engaged in sale and distribution of clocks, coffee makers, silverware, cameras, lamps, and other articles of merchandise to purchasers in the various other States and in the District of Columbia, in competition with others engaged in sale and distribution of like or similar articles of merchandise in commerce as aforesaid; in soliciting sale of and selling and distributing his said products—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for sale and distribution of products in question to ultimate consumers wholly by lot or chance, and distribution to purchasing public of certain literature and instructions, including, among other things, push cards, order blanks, illustrations of goods, and circulars explaining his plan of selling merchandise and allotting it as premiums or prizes to operators of such cards and to purchasing and consuming public through the use of (1) push cards under plan in accordance with which purchaser selecting by chance from list of feminine names displayed on card name corresponding with that concealed under card's master seal received premium or prize, and under which, as above described, retail value of articles of merchandise being sold and distributed was greater than amount paid by purchasers for privilege of making punch, and through use of (2) other push cards accompanied by such order blanks, instructions and other printed matter for use in sale and distribution of his goods through means of game of chance, gift enterprise, or lottery scheme, and in accordance with sales plan or method in case of all similar to that herein described and varying therefrom in detail only; and

Supplied thereby to and placed in hands of others means of conducting lotteries in the sale of his merchandise, in accordance with sales plan above set forth, by persons to whom he furnished and who used such push cards in purchasing, selling, and distributing said products in accordance with such plan, under which articles, retail value of which was greater than amount paid therefor by purchasers, were distributed to purchasing and consuming public wholly by lot or chance, and 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 the criminal laws, and in competition with many who are unwilling to adopt and use any or said method involving game of chance or sale of a chance to secure something by chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his merchandise and element of chance involved therein, and were thereby induced to buy and sell his said

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products in preference to those offered and sold by his competitors aforesaid, who do not use same or equivalent method, and with effect through use of such method by him and because of said game of chance, of unfairly diverting trade in commerce to himself from his said competitors who do not use same or equivalent method:

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

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

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

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 Jack Puzes, an individual trading as The Novelty Home Furnisher, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Jack Puzes, is an individual trading as The Novelty Home Furnisher. His principal office and place of business is located at 53 West Jackson Boulevard, Chicago, Ill. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of clocks, coffee makers, silverware, cameras, lamps, and other articles of merchandise. Respondent causes, and has caused, said merchandise when sold, to be transported from his aforesaid place of business in the State of Illinois to purchasers thereof, at their respective points of location, in the various States of the United States other than Illinois and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is, and has been, in competition with other individuals and with partnerships and corporations 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 his business as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing his merchandise, furnishes and has furnished,

various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions, including, among other things, push cards, order blanks, illustrations of the said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears a number of small partially perforated disks on the face of which is printed the word "push." Below each of said disks is printed a feminine name with ruled columns on the reverse side of said push card for writing in the name of the customer opposite the feminine name selected. Concealed within each of said disks is a number which is disclosed when the disk is pushed or separated from the card. The said numbers are effectively concealed from purchasers and prospective purchasers until the disk is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing below the said disks. The person selecting the feminine name corresponding to the one under the master seal receives a premium or prize. The retail value of the articles of merchandise sold and distributed by means of the said push card is greater than the amount paid by purchasers for the privilege of making a punch on said card. The said articles of merchandise are thus distributed to the purchasing and consuming public wholly by lot or chance.

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

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said push cards use the same in purchasing, selling, and distributing respondent's merchandise, in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove

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set forth. The use by respondent of said sales plan or method 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 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 respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 7, 1940, issued and subsequently served its complaint in this proceeding upon respondent Jack Puzes, individually and trading as The Novelty Home Furnisher, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce

in violation of the provisions of said act. Thereafter the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. The proceeding regularly came on for the final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Jack Puzes, is an individual trading as The Novelty Home Furnisher. His principal office and place of business is located at 53 West Jackson Boulevard, Chicago, Ill. Respondent is now, and for more than 1 year last past has been engaged in the sale and distribution of clocks, coffee makers, silverware, cameras, lamps, and other articles of merchandise. Respondent causes, and has caused, said merchandise when sold, to be transported from his aforesaid place of business in the State of Illinois to purchasers thereof, at their respective points of location, in the various States of the United States other than Illinois and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is, and has been, in competition with other individuals and with partnerships and corporations 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 his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing his merchandise, furnishes and has furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions, including, among other things, push cards, order blanks, illustrations of the said merchandise and circulars explaining respondent's plan of selling merchandise and of

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allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears a number of small partially perforated disks on the face of which is printed the word "push." Below each of said disks is printed a feminine name with ruled columns on the reverse side of said push card for writing in the name of the customer opposite the feminine name selected. Concealed within each of said disks is a number which is disclosed when the disk is pushed or separated from the card. The said numbers are effectively concealed from purchasers and prospective purchasers until the disk is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing below the said disks. The person selecting the feminine name corresponding to the one under the master seal receives a premium or prize. The retail value of the articles of merchandise sold and distributed by means of the said push card is greater than the amount paid by purchasers for the privilege of making a punch on said card. The said articles of merchandise are thus distributed to the purchasing and consuming public wholly by lot or chance.

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

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said push cards use the same in purchasing, selling, and distributing respondent's merchandise, in accordance with the afore-said sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method 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 plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute merchandise in competition with the respondent, as above found, are unwilling to adopt and use said

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method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Jack Puzes, an individual, trading as The Novelty Home Furnisher, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of clocks, coffee makers, silverware, cameras, lamps, or any other articles of merchandise, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling 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.

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2. Supplying to or placing in the hands of others any merchandise together with punchboards, push or pull cards, or any 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 said merchandise to the public.

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

4. 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.

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IN THE MATTER OF

CHARLES L. KLAPP, TRADING AS THE CARDINAL CO.
AND AS THE CARDINAL COMPANY OF ST. LOUISCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3879. Complaint, Aug. 26, 1939—Decision, June 26, 1940*

Where an individual engaged in sale and distribution of certain medicinal preparations, consisting of two formulae known as FEMALADE, to purchasers in various other States and in the District of Columbia; in advertisements of his said products which he disseminated and caused to be disseminated through the mails, by insertions in newspapers and periodicals of general circulation, and in circulars and other printed or written matter distributed in commerce among the various States, and by other means in commerce, and which were intended and likely to induce purchase of his said products—

- (a) Represented that his said medicinal preparations, consisting of tablet formula and liquid formula, were cures or remedies for delayed menstruation and competent and effective treatments therefor, and would accomplish desired results without fail, facts being said medicinal preparation consisting of tablet formula was not a cure or remedy for such condition and did not constitute competent or effective treatment therefor and would not accomplish results claimed by him as above set forth, and was not safe and harmless, in that it contained aloes, extract cotton root bark, extract black hellebore, oil savin, and extract ergot in quantities sufficient to cause serious and irreparable injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and use thereof might result in gastro-intestinal disturbances leading to excessive uterine hemorrhage, and, in those cases where used to interfere with normal course of pregnancy, might result in uterine infection causing septicemia or blood poisoning, might also produce very severe circulatory condition tending to produce abortion in some instances, often with violent poisonous effects upon system, and result in severe toxic conditions, in some instances producing gangrenous condition in lower limbs or other serious or irreparable injury to health, and said liquid preparation, "for obstinate cases," contained insufficient quantities of liquid ingredients to be of any therapeutic or curative value, if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and would not accomplish results claimed and was not a cure or remedy for delayed menstruation and did not constitute competent or effective treatment therefor; and
- (b) Failed to reveal in his said advertisements that use of FEMALADE tablets, under conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in serious and irreparable injury to health;

With effect, through use of aforesaid false, deceptive, and misleading statements and representations, disseminated as above set forth, of misleading and deceiving substantial portion of purchasing public into erroneous and