

Syllabus

IN THE MATTER OF

MORTON COHEN, TRADING AS LEE-MOORE & CO. AND
ADWELL SALES CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3938. Complaint, Nov. 2, 1939—Decision, June 26, 1940*

Where an individual engaged in sale and distribution of radios, knives, cigar lighters, fountain pens, cameras, pipes, watches, and various other articles of merchandise to purchasers in various States and in the District of Columbia, in competition with others engaged in sale and distribution of like or similar merchandise in commerce as aforesaid—

- (a) Sold to wholesalers, jobbers and retailers certain assortments of merchandise which were so packed or assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers and included (1) assortment consisting of two pen and pencil sets, three knives, two pipes, two cigar lighters, and watch and punchboard for use in sale and distribution of said articles under a plan and in accordance with said board's explanatory legend by which numbers secured by chance for five cents each by customer-purchasers determined which, if any, of said various articles, purchaser received, and under which person purchasing last number on board received the watch and person failing to qualify by obtaining one of lucky numbers or punching last number received nothing for his money other than privilege of punching number, and included (2) various other assortments of merchandise, along with punchboards involving lot or chance feature similar to that above described and varying therefrom in detail only; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with sales plan above set forth by retail dealers who, as direct or indirect purchasers thereof, exposed and sold his said products in accordance with such plan, involving game of chance or sale of a chance to procure one of said articles at price much less than normal retail price, and less than value thereof and five cents paid for chance to secure same, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance or any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by his said sales plan or method employed in sale and distribution of his merchandise and element of chance involved therein, and were thereby induced to buy and sell his said products in preference to those offered and sold by his said competitors who do not use such or equivalent method, and with effect, through use of such method and because of said game of chance, of diverting unfairly trade in commerce to himself from his competitors aforesaid who do not use such or equivalent method;

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- (b) Represented in advertising for agents to sell his merchandise in various magazines and periodicals circulated among the United States and in said District, that \$100 weekly was the usual and customary amount that would be earned by agents through sale of said merchandise, facts being his salesmen do not in ordinary and usual course of business earn such an amount or any other amount closely approximating it, and usual and customary earnings thereof in due course of normal business are substantially less than such amount;

With effect of causing members of public and prospective salesmen and distributors to have erroneous and mistaken belief that such false and misleading statement and representation was true, and causing prospective agents and distributors, because of such belief, to undertake sale of and sell his said products; and

- (c) Sold and distributed to dealers many kinds of push cards and punchboards which were so prepared and arranged as to involve game of chance, gift enterprises, or lottery schemes when used in making sales of their merchandise to consuming public, and involved same chance or lottery feature, varying in detail only, and plans or schemes under which and in accordance mostly with legends placed thereon by him or, in other cases, placed thereon by dealers in blank spaces provided therefor and in accordance with particular plan provided, prices of sales varied and certain specified numbers entitled purchasers to articles of merchandise at prices which were much less than normal retail price thereof, and under which those who did not receive one of lucky numbers received nothing for their money other than privilege of making push or punch from said card or board;

With result that—

(1) Many who sold or distributed candy, cigars, and other articles of merchandise in commerce as aforesaid bought said push card and punchboard devices and packed and assembled assortments comprised of various articles of such merchandise, together with such cards and boards, and retail dealer buyers of such assortments, either as direct or indirect purchasers, and retailers who made up their own assortments, exposed same to purchasing public and sold or distributed such articles of merchandise through use of said push cards or punchboards and in accordance with sales plan as above described, involving game of chance or sale of a chance to procure articles in question at prices 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

(2) Many dealers in and ultimate consumers of such products were induced to deal with or purchase same from dealers selling or distributing such merchandise by means of or together with said push cards and punchboards and because of lottery feature involved therein and inherent thereto, in competition with many who sold or distributed like or similar articles in commerce and who, faced with alternative of descending to use of said cards and boards or other similar devices which they were under a powerful moral compulsion not to use in connection with sale and distribution of their products, or suffering loss of substantial trade, did not sell and distribute their said merchandise by means of such cards, boards or similar devices, because of element of chance or lottery features therein involved and because practices in question were contrary to public policy of United States, and refrained from supplying to or placing in hands of others such cards,

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boards or any other similar devices for use in connection with the sale and distribution of the merchandise of such competitors to general public by lot or chance, and with consequence that substantial trade was unfairly diverted to him and to those using his said push card and punchboard devices from others engaged in commerce and who did not sell or use such or any other lottery devices; and

(3) He supplied thereby to and placed in the hands of others through such sale or distribution of said push cards and punchboards (1) means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their merchandise with its teaching and encouragement of gambling among members of public, through the conducting by retailers of such lotteries, games of chance, or gift enterprises, all to the injury of the public, as aforesaid, and therein and thereby (2) means of and instrumentalities for engaging in unfair methods of competition and unfair acts and practices:

Held, (1) That such acts and practices in selling and distributing assortments of merchandise, together with push cards and punchboard devices, and in advertising falsely as to earning capacity of salesmen of said individual, as above set forth, were all to the prejudice and injury of public, and competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein; and

(2) That acts and practices of said individual in selling and distributing said push card and punchboard devices, separate and apart from any other merchandise, to dealers for use in sale and distribution of their products, under circumstances set forth, were all to the prejudice and injury of public and constituted unfair acts and practices in commerce.

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 Morton Cohen, an individual, trading as Lee-Moore & Co., and Adwell Sales Co., 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:

Count 1

PARAGRAPH 1. Respondent Morton Cohen is an individual trading as Lee-Moore & Co. and Adwell Sales Co., with his principal office and place of business located at 180 West Adams Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of radios, knives, cigar lighters, fountain pens, cameras, pipes, watches, candy, blankets, rings, fishing tackles, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia.

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Respondent causes, and has caused, said merchandise, when sold, to be transported from his aforesaid place of business in Chicago, Ill., to purchasers thereof, at their respective points of location, in the various other States of the United States and in the District of Columbia. There is now and has been for some time last past a course of trade 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 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 sells and has sold to wholesale dealers, jobbers and retail dealers, certain assortments of merchandise so packed or assembled, as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of two pen and pencil sets, three knives, two pipes, two cigar lighters, and a watch, together with the device commonly called a punchboard. Said merchandise is sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 5 cents each and when a punch is made from the board, a number is disclosed. The numbers begin with one and continue to the number of punches there are on the board but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a fountain pen set, a knife, a cigar lighter, a pipe, a package of cigarettes, and that the last sale receives the watch. A purchaser who does not qualify by obtaining one of the lucky numbers, or by punching the last number on the board, receives nothing for his money other than the privilege of punching a number from the board. The articles of merchandise above mentioned are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the articles of merchandise, or the last punch on the board, receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. These said articles of merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of merchandise along with punchboards involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. 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 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 method, is a practice of the 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 one of the said articles 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 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. 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. In the course and conduct of his business, respondent advertises in various magazines and periodicals having a circulation between and among the various States of the United States and in the District of Columbia, for agents to sell his merchandise and represents to such prospective salesmen that \$100 weekly is the usual and

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customary commission that will be earned by them through the sale of respondent's merchandise. Said advertising is as follows:

PUNCHBOARDS, ASSORTMENTS, VENDING MACHINES. Make over hundred dollars weekly. Beautiful catalogue free. Adwell Sales, 180 Adams, Chicago, Illinois.

In fact respondent's salesmen do not in the ordinary and usual course of business, earn \$100 weekly or earn any other amount of money closely approximating \$100 weekly. The usual and customary earnings of such salesmen in due course of normal business are substantially less than \$100 weekly.

PAR. 6. The use by respondent of the aforesaid false and misleading statement and representation has the capacity and tendency to, and does cause members of the public and prospective salesmen and distributors to have the erroneous and mistaken belief that the aforesaid false and misleading statement and representation is true and causes prospective agents and distributors to undertake the sale of and to sell said merchandise because of said erroneous and mistaken belief.

PAR. 7. 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.

Count 2

PARAGRAPH 1. Respondent Morton Cohen is an individual trading as Lee-Moore & Co. and Adwell Sales Co., with his principal office and place of business located at 180 West Adams Street, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of devices commonly known as push cards and punchboards to dealers in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices, when sold, to be transported from his aforesaid place of business in Chicago, Ill., to purchasers thereof, at their respective points of location, in various States of the United States, other than the State of Illinois, and in the District of Columbia. There is now and has been for some time last past a course of trade by said respondent in such push cards and punchboard devices 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 sells and distributes, and has sold and distributed, to dealers push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery

schemes when used in making sales of their merchandise to the consuming public. Respondent sells and distributes, and has sold and distributed, many kinds of said push cards and punchboards but all of said push cards and punchboards involve the same chance or lottery features, when used in connection with the sale or distribution of merchandise and vary only in detail. The majority of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the device, for the amount of money paid, and when a push or punch is made a disc or printed slip is separated and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price of said articles of merchandise. Persons not obtaining one of the lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Dealers purchasing punchboards or push cards without said printed instructions or legends thereon place printed instructions or legends on the faces of said push cards or punchboards on the blank space provided therefor. The legends or instructions placed on the faces of said devices by said dealers and used in conjunction therewith involve the same chance or lottery features as those legends or instructions placed or printed on the faces of push card or punchboard devices by respondent, as hereinabove described.

PAR. 3. Many persons, firms, and corporations who sell and distribute candy, cigarettes, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia have purchased respondent's said push cards and punchboard devices and have packed and assembled assortments comprised of various articles of said merchandise, together with said push cards and punchboard devices. Retail dealers who have purchased such assortments, either directly or indirectly, or retail dealers who have purchased said devices direct from respondent and made up their own assortments, have exposed the same to the purchasing public and have sold or distributed said articles of mer-

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chandise by means of said push cards or punchboards in accordance with the sales plan as described in paragraph 2 hereof. Many dealers in, and ultimate consumers of, said merchandise have been induced to deal with or purchase said merchandise from dealers selling or distributing the same by means of or together with respondent's said push cards and punchboards because of the lottery feature involved therein and inherent thereto. Said persons, firms, and corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punchboard devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise or to suffer the loss of substantial trade. Said competitors do not sell and distribute their said merchandise by means of push card or punchboard devices or similar devices because of the element of chance or lottery feature involved therein and because such practices are contrary to public policy of the Government of the United States and such competitors refrain from supplying to or placing in the hands of others such push card or punchboard devices or any other similar devices to be used in connection with the sale and distribution of the merchandise of such competitors to the general public by lot or chance. As a result thereof substantial trade has been unfairly diverted to said persons, firms, and corporations from said competitors in said commerce, who do not sell or use such devices.

PAR. 4. The sale of said merchandise to the purchasing public through the use of, or by means of, said devices in the manner above alleged, involves a game of chance or the sale of a chance to procure said articles of merchandise at prices much less than the normal retail price thereof. The use of said sales plan or method in the sale of merchandise and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair methods of competition and unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

The sale or distribution of said push cards and punchboards by respondent, as hereinabove alleged, supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale and distribution of their merchandise. The conducting of said lotteries, games of chance, or gift enterprises by

retail dealers teaches and encourages gambling among members of the public, all to the injury of the public. The respondent thus supplies to said persons, firms and corporations the means of, and instrumentalities for, engaging in unfair methods of competition and unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents, as hereinabove alleged, are all to the prejudice and injury of the public and constitute unfair 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 November 2, 1939, issued, and on November 3, 1939, served, its complaint in this proceeding upon respondent, Morton Cohen, individually and trading as Lee-Moore and Co. and Adwell Sales Co., 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. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and to substitute in lieu thereof an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer 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, Morton Cohen, is an individual trading as Lee-Moore & Co. and Adwell Sales Co., with his principal office and place of business located at 180 West Adams Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of radios, knives, cigar lighters, fountain pens, cameras, pipes, watches, candy, blankets, rings, fishing tackle, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said merchandise, when sold, to be transported from his aforesaid place of business in Chicago, Ill.,

to purchasers thereof, at their respective points of location, in the various other States of the United States and in the District of Columbia. There is now and has been for some time last past a course of trade 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 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 sells and has sold to wholesale dealers, jobbers, and retail dealers, certain assortments of merchandise so packed or assembled, as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of two pen and pencil sets, three knives, two pipes, two cigar lighters, and a watch, together with the device commonly called a punchboard. Said merchandise is sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 5 cents each and when a punch is made from the board, a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a fountain pen set, a knife, a cigar lighter, a pipe, a package of cigarettes, and that the last sale receives the watch. A purchaser who does not qualify by obtaining one of the lucky numbers, or by punching the last number on the board, receives nothing for his money other than the privilege of punching a number from the board. The articles of merchandise above mentioned are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the articles of merchandise, or the last punch on the board, receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. These said articles of merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of merchandise along with punchboards involving a

lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. 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 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 method, is a practice of the 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 one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any 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.

PAR. 5. In the course and conduct of his business, respondent advertises in various magazines and periodicals having a circulation between and among the various States of the United States and in the District of Columbia, for agents to sell his merchandise and represents to such prospective salesmen that \$100 weekly is the usual and customary commission that will be earned by them through the sale of respondent's merchandise. Said advertising is as follows:

PUNCHBOARDS, ASSORTMENTS, VENDING MACHINES. Make over hundred dollars weekly. Beautiful catalogue free. Adwell Sales, 180 Adams, Chicago, Illinois.

In fact respondent's salesmen do not in the ordinary and usual course of business earn \$100 weekly or earn any other amount of money closely approximating \$100 weekly. The usual and customary earnings of such salesmen in due course of normal business are substantially less than \$100 weekly.

PAR. 6. The use by respondent of the aforesaid false and misleading statement and representation has the capacity and tendency to, and does cause members of the public and prospective salesmen and distributors to have the erroneous and mistaken belief that the aforesaid false and misleading statement and representation is true and causes prospective agents and distributors to undertake the sale of and to sell said merchandise because of said erroneous and mistaken belief.

PAR. 7. In the course of his business, respondent is now, and for some time last past has been, engaged in the sale and distribution of devices commonly known as push cards and punchboards to dealers in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices, when sold, to be transported from his aforesaid place of business in Chicago, Ill., to purchasers thereof, at their respective points of location, in various States of the United States, other than the State of Illinois, and in the District of Columbia. There is now and has been for some time last past a course of trade by said respondent in such push card and punchboard devices in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. In the course and conduct of his business, as described in paragraph 7 hereof, respondent sells and distributes, and has sold and distributed, to dealers push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of their merchandise to the consuming public. Respondent sells and distributes, and has sold and distributed, many kinds of said push cards and punchboards but all of said push cards and punchboards involve the same chance or lottery features, when used in connection with the sale or distribution of merchandise and vary only in detail. The majority of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the device, for the amount of money paid, and when a push or

punch is made a disc or printed slip is separated and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price of said articles of merchandise. Persons not obtaining one of the lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Dealers purchasing punchboards or push cards without said printed instructions or legends thereon place printed instructions or legends on the faces of said push cards or punchboards on the blank space provided therefor. The legends or instructions placed on the faces of said devices by said dealers and used in conjunction therewith involve the same chance or lottery features as those legends or instructions placed or printed on the faces of push card or punchboard devices by respondent, as hereinabove described.

PAR. 9. Many persons, firms, and corporations who sell and distribute candy, cigarettes, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia have purchased respondent's said push cards and punchboard devices and have packed and assembled assortments comprised of various articles of said merchandise, together with said push card and punchboard devices. Retail dealers who have purchased such assortments, either directly, or indirectly, and retail dealers who have purchased said devices direct from respondent and made up their own assortments, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards or punchboards in accordance with the sales plan as described in paragraph 8 hereof. Many dealers in, and ultimate consumers of, said merchandise have been induced to deal with or purchase said merchandise from dealers selling or distributing the same by means of or together with respondent's said push cards and punchboards because of the lottery feature involved therein and inherent thereto. Said persons, firms, and corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punchboard devices or

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other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise or to suffer the loss of substantial trade. Said competitors do not sell and distribute their said merchandise by means of push card or punchboard devices or similar devices because of the element of chance or lottery features involved therein and because such practices are contrary to public policy of the Government of the United States and such competitors refrain from supplying to or placing in the hands of others such push cards or punchboard devices or any other similar devices to be used in connection with the sale and distribution of the merchandise of such competitors to the general public by lot or chance. As a result thereof substantial trade has been unfairly diverted to the respondent and to persons, firms, and corporations using respondent's push card and punchboard device from other persons, firms and corporations engaged in commerce among and between the various States of the United States who do not sell or use such lottery devices or any other lottery device.

PAR. 10. The sale of said merchandise to the purchasing public through the use of, and by means of, said devices in the manner above found, involves a game of chance or the sale of a chance to procure said articles of merchandise at prices much less than the normal retail price thereof. The use of said sales plan or method in the sale of merchandise and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

The sale or distribution of said push cards and punchboards by respondent, as hereinabove found, supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale and distribution of their merchandise. The conducting of said lotteries, games of chance, or gift enterprises by retail dealers teaches and encourages gambling among members of the public, all to the injury of the public. The respondent thus supplies to said persons, firms, and corporations the means of, and instrumentalities for, engaging in unfair methods of competition and unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The aforesaid acts and practices of respondent in selling and distributing his said assortments of merchandise, together with push

card and punchboard devices, and in falsely advertising as to the earning capacity of his salesmen, as hereinabove 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, and the aforesaid acts and practices of respondent in selling and distributing said push card and punch board devices separate and apart from any other merchandise to dealers for use in the sale and distribution of said dealers' merchandise, as hereinabove found, are all to the prejudice and injury of the public and constitute unfair 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, Morton Cohen, individually and trading as Lee-Moore and Co. and as Adwell Sales Co., or under any other trade name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of radios, knives, cigar lighters, fountain pens, cameras, pipes, watches, candy, blankets, rings, fishing tackle, 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.
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.

Order

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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.

5. Representing any specified sum of money as possible earnings or profits of salesmen or agents for any stated period which is not a true representation of the net earnings or profits which have been made for such stated period of time by a substantial number of respondent's active salesmen or agents in the ordinary course of business under normal conditions and circumstances.

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.

Syllabus

IN THE MATTER OF
SAM GUTTMAN, TRADING AS STANDARD SALES CO.

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

Docket 3990. Complaint, Jan. 4, 1940—Decision, June 26, 1940

Where an individual engaged in sale and distribution of radios, clocks, fishing tackle, pen and pencil sets, billfolds, and other articles of merchandise to wholesale, jobber, and retailer purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of like or similar merchandise in commerce as aforesaid—

Sold certain assortments of merchandise which were so packed or assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof, and included (1), as illustrative, 12 billfolds, together with punchboards for use in sale and distribution of said products to purchasing and consuming public under a plan and in accordance with said board's explanatory legend, by which purchasers or customers secured, for 5 cents paid and in accordance with success or failure in selecting by chance lucky numbers, 1 of said folds, value of which was worth more than 5 cents, and failing to make such selection, secured nothing other than privilege of punching number, and included (2) various other assortments of merchandise, along with punchboards involving lot or chance feature similar to that above described and varying therefrom in detail only; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in sale of his merchandise in accordance with sales plan above set forth by retailers who, as direct or indirect purchasers of his said merchandise, exposed and sold same to purchasing public in accordance with said sales plan involving distribution of said billfolds to purchasers of punches from the board wholly by lot or chance, and game of chance or sale of a chance in the sale of said products to purchasing public 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 said or any method involving game of chance or sale of a chance to secure something by chance or any 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 products in preference to those offered for sale and sold by his competitors aforesaid who do not use same or equivalent method, and with effect, through use of such method and because of said game of chance, of diverting unfairly trade in commerce to him from his said competitors who do not use such 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.

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