

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.

Complaint

31 F. T. C.

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 Sam Guttman, an individual trading as Standard 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:

PARAGRAPH 1. Respondent Sam Guttman is an individual trading as Standard Sales Co., with his principal office and place of business located at 2363 Milwaukee Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of radios, clocks, watches, fishing tackle, cameras, pen and pencil sets, billfolds, wood statuettes, 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 States of the United States other than 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 said 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 his 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 12 billfolds, together with a device commonly called a punchboard. Said billfolds are sold and distributed to the purchasing and 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 board bears the statement or statements informing prospective purchasers

that certain specified numbers entitle the purchaser thereof to receive a billfold or money prize. Persons who do not qualify by obtaining one of the lucky numbers receive nothing for their money other than the privilege of punching a number from the board. The billfolds are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for 1 of the billfolds 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. The said billfolds 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 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 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

Findings

31 F. T. C.

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. 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 January 4, 1940, issued and on January 5, 1940, served its complaint in this proceeding upon respondent, Sam Guttman, an individual, trading as Standard 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 therefor an answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearings 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, Sam Guttman, is an individual trading as Standard Sales Co., with his principal office and place of business located at 2363 Milwaukee Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of radios, clocks, watches, fishing tackle, cameras, pen and pencil sets, billfolds, wood statuettes, 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 States of the United States other than 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 said 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 his 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 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 12 billfolds, together with a device commonly called a punchboard. Said billfolds are sold and distributed to the purchasing and 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 board bears the statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a billfold or money prize. Persons who do not qualify by obtaining 1 of the lucky numbers receive nothing for their money other than the privilege of punching a number from the board. The billfolds are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the billfolds 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. The said billfolds 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

Order

31 F. T. C.

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 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 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 and 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.

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, Sam Guttman, an individual, trading as Standard Sales Co., 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, clocks, watches, fishing tackle, cameras, pen and pencil sets, billfolds, wood statuettes, 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 and 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.

IN THE MATTER OF
AURINE COMPANY, INC.

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

Docket 3993. Complaint, Jan. 12, 1940—Decision, June 26, 1940

Where a corporation engaged in sale and distribution of its "Ourine" medicinal preparation, to purchasers in various other States and in the District of Columbia; in advertisements of its said product which it disseminated and caused to be disseminated through the mails, by insertions in newspapers and periodicals of general circulation, and in circulars and other printed or written matter, and by other means in commerce, and which were intended and likely to induce purchase of its said preparation—

(a) Represented, directly or by implication, that its said "Ourine" constituted a cure or remedy for deafness and had therapeutic value in treatment thereof and was a competent and effective treatment for deafness and for ringing and buzzing head noises due to hardened or conglobated wax in the ear, through such statements as "Deafened Man Hears Again. 'I heard the minister read scripture for the first time in years' * * *," and "Deafened Boy Hears Radio," etc., facts being said preparation was not a cure or remedy, or a competent or effective treatment for deafness, and had no therapeutic value in treatment thereof, and also was not such a treatment for deafness or partial deafness or ringing or buzzing head noises due to wax as aforesaid, and, while use thereof might soften accumulation of wax in ear without use of instrument or surgery, conditions which might result from such an accumulation, and including temporary deafness and ringing or buzzing head noises, would not be materially benefited or relieved; and

(b) Represented that it refunded purchase price for said preparation to its customers who were not satisfied with results obtained from use thereof, facts being it had not in all cases made refunds to such purchasers; With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and into purchase of substantial quantities of said preparation because of such belief:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Charles S. Cox for the Commission.

Mr. Frank E. Gettleman, of Chicago, Ill., for respondent.

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 Aurine Co., Inc., a corporation, hereinafter referred to as respondent, has violated