

IN THE MATTER OF
THE HOUSE OF CRANE

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

Docket 4080. Complaint, Apr. 3, 1940—Decision, Oct. 4, 1940

Where a corporation engaged in sale and distribution of cigars, tobacco products, candy, and other articles of merchandise, including certain assortments which consisted of (1) number of pieces or boxes of candy, additional articles of merchandise and punchboard for distribution to consuming public under a plan, and in accordance with said board's explanatory legend, by which purchaser selecting from board by chance designated number was entitled to receive one of pieces of candy being thus disposed of, and person selecting another designated number was entitled to receive one of additional articles of merchandise, person selecting last number in each of 11 sections into which board was divided was likewise entitled to one of said boxes, and person selecting last number was entitled to such a box and to one of said other articles, and under which, further, person who did not qualify by obtaining one of numbers designated, received nothing for his money, and under which amount, if any, paid for chance varied from 1 to 4 cents depending upon particular numbers punched, and of (2) other assortments, together with push cards and punchboards, involving similar sales plans or methods to that above described, from which they varied in detail only—

Sold to dealers assortments as above set forth, by retailer-purchasers of which they were exposed and sold to purchasing public in accordance with such sales plans or methods involving game of chance or sale of a chance to procure articles of merchandise at prices much less than normal retail prices thereof and of a retail value exceeding that of costs incurred, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of its products in accordance with such sales plans or methods, 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 other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plans or methods employed in connection with sale and distribution of its merchandise, and by element of chance involved therein and were thereby induced to buy and sell its said products in preference to like or similar merchandise of competitors who do not use same or equivalent methods, and with effect, through use of such plans or methods and because of said game of chance, of unfairly diverting trade to it from its competitors aforesaid who do not use such or equivalent methods or plans; to the substantial injury of competition in commerce:

Held, That such acts and practices under the circumstances set forth, were all to the prejudice and injury of the public and 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. D. C. Daniel for the Commission.

Mr. Thomas D. Stevenson, of Indianapolis, Ind., 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 The House of Crane, a corporation, 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The House of Crane, is a corporation organized and doing business under the laws of the State of Indiana, with its principal office and place of business located at 124 South Meridian Street, Indianapolis, Ind. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of cigars, tobacco products, candy, and other articles of merchandise to dealers. Respondent causes and has caused its said merchandise, when sold, to be shipped or transported from its aforesaid place of business in the State of Indiana to purchasers thereof in the various other States of the United States and in the District of Columbia at their respective points of location. There is now and for more than 1 year last past has been a course of trade by said 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 its business respondent is and has been in competition with other corporations and with individuals and partnerships 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 its business as described in paragraph 1 hereof, respondent sells and has sold to dealers certain assortments of its merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the consumers thereof. One of said assortments consists of a number of pieces of candy and additional articles of merchandise, together with a device commonly known as a punchboard. Said boxes of candy and other articles of merchandise are distributed to the consuming public by means of said punchboard in the following manner:

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The punchboard is divided into sections and each section contains a number of small tubes in each of which has been placed a slip of paper with a number appearing thereon. The board bears statements or legends informing purchasers and prospective purchasers that persons punching numbers ending in 1, 2, 3, and 4 pay 1 cent, 2 cents, 3 cents, and 4 cents respectively. Purchasers punching numbers ending in 5, 6, 7, 8, and 9 pay 5 cents, and all numbers ending in 0 are free. Each of said numbers is effectively concealed from purchasers and prospective purchasers until said number has been punched and removed from the board. Each person selecting a designated number is entitled to and receives one of said boxes of candy. The person selecting another designated number is entitled to and receives, one of said additional articles of merchandise. Each person selecting the last number in each of the first 11 of said sections is entitled to and receives one of said boxes of candy. The person selecting the last number on said board is entitled to and receives one of said boxes of candy and one of said other articles of merchandise. A person who does not qualify by obtaining one of said designated numbers receives nothing for his money. The retail value of each of said boxes of candy and other articles of merchandise is greater than any of the amounts above designated. The facts as to which of said articles of merchandise a purchaser is to receive, if any, with the exception of the last sale in said first 11 sections and the last sale on the board, and the sum, if any, to be paid therefor are thus determined wholly by lot or chance.

The respondent sells and distributes various assortments of its merchandise together with push card and punchboard devices by the sales plans or methods used in connection with the sale and distribution of each of said assortments, similar to the ones hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of merchandise expose and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said plans or methods in the sale of its 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 in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public by the sales plans or methods as hereinabove alleged involves a game of

chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail prices thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondent as above alleged are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed in connection with the sale and distribution of respondent's merchandise and by the element of chance involved therein and are thereby induced to buy and sell respondent's merchandise in preference to like or similar merchandise of said competitors of respondent who do not use the same or equivalent methods. The use of said sales plans or methods by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors who do not use the same or equivalent sales plans or methods 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 April 3, 1940, issued and thereafter served its complaint in this proceeding upon said respondent, The House of Crane, a corporation, charging it 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. On May 15, 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation in lieu of testimony in support of certain of the allegations in the complaint was entered into by and between counsel for the Commission and counsel for the respondent before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it (respondent having offered no proof in opposition to the allegations of the complaint) and said stipulation was recorded in the record of this proceeding, which record was filed

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in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation (the respondent having waived all intervening procedure), and the Commission having duly considered the same 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, The House of Crane, is a corporation organized and doing business under the laws of the State of Indiana, with its principal office and place of business located at 124 South Meridian Street, Indianapolis, Ind. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of cigars, tobacco products, candy, and other articles of merchandise to dealers. Respondent causes and has caused its said merchandise, when sold, to be shipped or transported from its aforesaid place of business in the State of Indiana to purchasers thereof in the various other States of the United States and in the District of Columbia at their respective points of location. There is now and for more than 1 year last past has been a course of trade by said 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 its business respondent is and has been in competition with other corporations and with individuals and partnerships 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 its business as described in paragraph 1 hereof, respondent sells and has sold to dealers certain assortments of its merchandise and devices commonly known as push cards and punchboards which were and are to be used in the sale and distribution of said merchandise to the purchasing public. One of said assortments consists of a number of pieces of candy and additional articles of merchandise, together with a punchboard. Said boxes of candy and other articles of merchandise are distributed to the consuming public by means of said punchboard in the following manner:

The punchboard is divided into sections and each section contains a number of small tubes in each of which has been placed a slip of paper with a number appearing thereon. The board bears statements or legends informing purchasers and prospective purchasers

that persons punching numbers ending in 1, 2, 3, and 4 pay 1 cent, 2 cents, 3 cents, and 4 cents respectively. Purchasers punching numbers ending in 5, 6, 7, 8, and 9 pay 5 cents, and all numbers ending in 0 are free. Each of said numbers is effectively concealed from purchasers and prospective purchasers until said number has been punched and removed from the board. Each person selecting a designated number is entitled to and receives one of said boxes of candy. The person selecting another designated number is entitled to and receives one of said additional articles of merchandise. Each person selecting the last number in each of the first 11 of said sections is entitled to and receives one of said boxes of candy. The person selecting the last number on said board is entitled to and receives one of said boxes of candy and one of said other articles of merchandise. A person who does not qualify by obtaining one of said designated number receives nothing for his money. The retail value of each of said boxes of candy and other articles of merchandise is greater than any of the amounts above designated. The facts as to which of said articles of merchandise a purchaser is to receive, if any, with the exception of the last sale in said first 11 sections and the last sale on the board, and the sum, if any, to be paid therefor are thus determined wholly by lot or chance.

The respondent sells and distributes various assortments of its merchandise together with push card and punchboard devices, but the sales plans or methods used in connection with the sale and distribution of each of said assortments are similar to the ones hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of merchandise expose and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of its products in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said plans or methods in the sale of its 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 in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public by the sales plans or methods as hereinabove described involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail prices thereof. Many persons, firms, and corporations who sell and distribute merchandise in

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competition with respondent as above described are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed in connection with the sale and distribution of respondent's merchandise and by the element of chance involved therein and are thereby induced to buy and sell respondent's merchandise in preference to like or similar merchandise of said competitors of respondent who do not use the same or equivalent methods. The use of said sales plans or methods by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors who do not use the same or equivalent sales plans or methods 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.

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, the answer of respondent, and a stipulation in lieu of testimony in support of certain allegations in the complaint entered into by and between counsel for the Commission and counsel for respondent before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it (respondent having offered no proof in opposition to said complaint and all intervening procedure having been waived) 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, The House of Crane, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Selling or distributing candy or any other merchandise so packed and assembled that sales of said candy, or any other merchandise, are to be made, or may be made by means of a lottery, gaming device, or gift enterprise.

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

3. Selling, or otherwise distributing 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 it of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
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INTERWOVEN STOCKING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 4179. Complaint, July 11, 1940—Decision, Oct. 4, 1940

Where a corporation engaged in manufacture of men's hosiery of various designs and patterns, and in sale and distribution thereof from its factories in Maryland, Pennsylvania, Tennessee, and West Virginia, to purchasers in various other States and in the District of Columbia, and including department stores and retailers by whom said product was in turn resold to purchasing public—

Caused certain of its said hosiery to be marked, stamped, branded, or labeled "Made on Machinery Imported From England Genuine 6×3 Ribbed" and "Made on Machinery Imported From England Entirely Hand Embroidered," with words "Imported From England" stamped in large conspicuous type inside oval in such manner that words "Imported From" appeared immediately above, and were read in conjunction with, word "England," and with words "Made on Machinery" appearing inside top rim of such oval, so as to be capable of indicating merely that product in question was made by machinery, or thus made and "Imported from England," and, in some instances, superimposed above such oval, the figure or simulation of the English crown, with words "Trade Mark" thereunder, and words, under oval, "Genuine 6×3 Ribbed," and in other instances placed underneath oval words "Entirely Hand Embroidered," notwithstanding fact hosiery thus marked, labeled and branded was not imported from England, but was domestically made on machinery which was imported therefrom;

With effect of creating false and erroneous impression on part of purchasing public that products thus branded or labeled were machine-made and imported from said country, in which, only, originally, 6×3 hose were manufactured, and of misleading and deceiving purchasers and prospective purchasers of its said product into erroneous and mistaken belief that such false, misleading, and deceptive representations and implications were true, and that said men's hosiery was made or manufactured in England, for which, especially, along with other hosiery made in foreign countries, there has long been marked preference by substantial part of consuming public in United States, and of causing substantial number of purchasing public, because of such mistaken and erroneous belief thus engendered, to purchase substantial number of its said product:

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

Mr. Charles S. Cox for the Commission.

Mr. J. E. Hutchinson, Jr., of Washington, D. C., and *Mr. Louis Prevost Whitaker*, of New York City, for respondent.