

Syllabus

IN THE MATTER OF
JORDAN STEVENS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4269. Complaint, Aug. 27, 1940—Decision, Oct. 7, 1940*

Where a corporation engaged in sale and distribution of coffee, including certain assortments thereof which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to the consumers thereof, and which included (1) 100 1-pound packages of said product and 25-piece set of dishes, together with advertising poster or card for use in sale and distribution of product and dishes under a plan in accordance with which that purchaser of pound of coffee whose name was placed on card opposite number corresponding to number concealed under card's seal received, without additional cost, such 25-piece set of dishes, and others not successful in so doing secured only coffee purchased by them; and (2) various other assortments of coffee involving lot or chance feature and sales plans or methods which were similar to that above described and from which they varied in detail only—

Sold said assortments to dealer or retailer purchasers, by whom, as direct or indirect buyers thereof, same were exposed and sold to purchasing public in accordance with such sales plans, involving game of chance or sale of a chance to procure set of dishes without cost, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of its said merchandise in accordance with such sales plans or methods, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who sell and distribute coffee and are unwilling to adopt and use said or any method involving use of a 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 the result that many persons were attracted by its said methods and by element of chance involved in sale of coffee as above described, and were thereby induced to buy and sell its product in preference to that offered and sold by said competitors who do not use same or equivalent method, and with effect, through use of such 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; 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.

Mr. D. C. Daniel for the Commission.

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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 Jordan Stevens Co., 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, Jordan Stevens Co., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 200 Third Avenue, North, Minneapolis, Minn. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of coffee to dealers located in various States of the United States. It causes and has caused said coffee, when sold, to be shipped or transported from its aforesaid place of business in the State of Minnesota to purchasers thereof in various other States of the United States at their respective points of location. There is now, and for more than 2 years last past has been, a course of trade by said respondent in such coffee in commerce between and among the various States of the United States. In the course and conduct of said 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.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold certain assortments of said coffee, so packed and assembled as to involve the use of a lottery scheme when said coffee is sold and distributed to the consumers thereof. One of said assortments was, and is, sold and distributed to the purchasing public in the following manner: This assortment consists of 100 1-pound packages of coffee and a 25-piece set of dishes, together with an advertising poster or card. Said card has space provided for the recording of 100 names, and the name of the purchaser of each pound of said coffee is recorded on the said card. The card contains a seal and concealed under said seal is a number corresponding to one of said numbers appearing elsewhere on said card. When the 100 pounds of coffee have been sold, the seal is removed and the number thereunder is disclosed. The person whose name is recorded opposite the number corresponding to the number under the seal is entitled to and receives, without additional cost, the

said 25-piece set of dishes. The number under said seal is concealed from purchasers and prospective purchasers until the 100 pounds of coffee have been sold and all of the names recorded on said card. Persons who are not successful in securing the set of dishes secure only the coffee purchased by them. The said set of dishes is thus distributed wholly by lot or chance. Respondent sells and distributes, and has sold and distributed, various assortments of coffee involving a lot or chance feature, but the sales plans or methods employed in connection with each of said assortments are similar to the one hereinabove described, varying only in detail.

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

PAR. 4. The sale of coffee to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a set of dishes without cost. Many persons, firms, and corporations who sell and distribute coffee in competition with the respondent, as above alleged, are unwilling to adopt and use said methods or any method involving the use of a game of chance or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale of coffee in the manner above alleged and are thereby induced to buy and sell respondent's coffee in preference to coffee offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from its competitors who do not use the same or equivalent methods in commerce between and among the various States of the United States. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among various States of the United States.

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of re-

spondent'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 August 27, 1940, issued and on August 29, 1940, served its complaint in this proceeding upon respondent, Jordan Stevens Co., 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. Subsequently, the respondent filed its answer in which it admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and 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, Jordan Stevens Co., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 200 Third Avenue, North, Minneapolis, Minn. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of coffee to dealers located in various States of the United States. It causes and has caused said coffee, when sold, to be shipped or transported from its aforesaid place of business in the State of Minnesota to purchasers thereof in various other States of the United States at their respective points of location. There is now, and for more than 2 years last past has been, a course of trade by said respondent in such coffee in commerce between and among the various States of the United States. In the course and conduct of said 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.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells, and has sold, certain assortments of said coffee so packed and assembled as to involve the use of

a lottery scheme when said coffee is sold and distributed to the consumers thereof. One of said assortments was, and is, sold and distributed to the purchasing public in the following manner: This assortment consists of 100 1-pound packages of coffee and a 25-piece set of dishes, together with an advertising poster or card. Said card has space provided for the recording of 100 names, and the name of the purchaser of each pound of said coffee is recorded on the said card. The card contains a seal and concealed under said seal is a number corresponding to one of said numbers appearing elsewhere on said card. When the 100 pounds of coffee have been sold, the seal is removed and the number thereunder is disclosed. The person whose name is recorded opposite the number corresponding to the number under the seal is entitled to and receives, without additional cost, the said 25-piece set of dishes. The number under said seal is concealed from purchasers and prospective purchasers until the 100 pounds of coffee have been sold and all of the names recorded on said card. Persons who are not successful in securing the set of dishes secure only the coffee purchased by them. The said set of dishes is thus distributed wholly by lot or chance. Respondent sells and distributes, and has sold and distributed, various assortments of coffee involving a lot or chance feature, but the sales plans or methods employed in connection with each of said assortments are similar to the one hereinabove described, varying only in detail.

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

PAR. 4. The sale of coffee to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure a set of dishes without cost. Many persons, firms, and corporations who sell and distribute coffee in competition with the respondent, as above alleged, are unwilling to adopt and use said methods or any method involving the use of a game of chance or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said methods

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and by the element of chance involved in the sale of coffee in the manner above described and are thereby induced to buy and sell respondent's coffee in preference to coffee offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from its competitors who do not use the same or equivalent methods in commerce between and among the various States of the United States. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce 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 it waives all intervening procedure and further hearing as to the 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, Jordan Stevens Co., 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 coffee or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing coffee or any other merchandise so packed and assembled that sales of said coffee or 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 coffee or other merchandise, or separately, which said push or pull cards,

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punchboards, or other lottery devices are to be used or may be used in selling or distributing said coffee 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
RALPH CORN UNDERWEAR, INC.

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

Docket 4017. Complaint, Feb. 5, 1940—Decision, Oct. 8, 1940

Where a corporation engaged in sale and distribution of women's wearing apparel, including slips, gowns, and pajamas, to retailer purchasers in the various States and in the District of Columbia; in making various representations concerning character and quality of its said garments, including fiber and material of which made, and as to character of business conducted by it, through descriptive circulars distributed through the mails and otherwise, and by labels attached to such garments, and by use of letterheads used in correspondence with purchasers and prospective purchasers of its products—

- (a) Made use, as typical of such representations as to material or fiber, of words "satin" and "crepe," and also of word "silk," through such statements in its circulars, distributed as above set forth, as " * * * Satin and Pigment Crepe Slips, Gowns and Man-Tailored Pajamas," "Pigment Back Silk Satin Slip," "Pigment Crepe Heavy Quality Satin Striped Gown," and "Multifilament Crepe Gowns," notwithstanding fact none of said garments sold by it were made entirely of silk, product of cocoon of silkworm, as long associated in minds of public with words "satin" and "crepe," unqualified, and used in connection with descriptions or designations of women's clothing, with materials made of product of silkworm, and as descriptive of fabrics of products thereof, long held in great public esteem and confidence for their preeminent qualities, and by reason thereof decidedly preferred on part of purchasing public, but were made of rayon, or other material and rayon, which, when so manufactured as to simulate silk has appearance and feel thereof, and is by purchasing public practically indistinguishable therefrom, and is, therefore, readily believed to be and accepted by purchasing public as being silk as aforesaid; and
- (b) Represented itself, as aforesaid, as manufacturer of garments sold and distributed by it, through use in its advertising material and on its letterheads of words "Manufacturers of Silk Undergarments," facts being garments in question were designed, patterned, and cut by its employees on its own premises from piece goods, trimmings, and other necessary materials purchased by it on open market, with such materials then sewed by independent sewing concerns under contract with it, and finished garments returned to it for distribution to trade, and it was not manufacturer and did not own, operate, or control any manufacturing plant;

With capacity and tendency to mislead and deceive substantial portion of members of purchasing public into erroneous belief that items of wearing apparel advertised by it as above set forth were made entirely of silk, and into purchase of substantial volume thereof on account of such belief, and with result, through designation of itself as manufacturer of silk garments, of influencing purchasers to deal with its as manufacturer, for dealing with whom directly there has long been preference on part of substantial portion