

Syllabus

IN THE MATTER OF
C. H. STALLMAN & SON, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4096. Complaint, Apr. 23, 1940—Decision, Oct. 15, 1940*

Where a corporation engaged in sale and distribution of cigars, candy, and various other articles of merchandise, including certain assortments thereof which were so packed and assembled as to involve use of game of chance, gift enterprise, or lottery scheme when merchandise in question was sold and distributed to consumers, and included (1) number of cigars and punchboard, to be used in sale and distribution of said cigars under a plan and in accordance with said board's explanatory legend, by which purchaser or customer received for penny paid 1, 3, 5, or 10 cigars in accordance with success or failure in selecting by chance from board designated numbers, person selecting last number in each of sections into which board was divided received one cigar, and those not making such selection or securing one of said designated numbers received nothing, and (2) other assortments with punchboards and push cards for use in sale and distribution of merchandise involved to consuming public by means of sales plans or methods similar to that above described and varying therefrom in detail only;

Sold such assortments, as above set forth, to dealer or retailer purchasers, by whom they were exposed and sold to purchasing public in accordance with aforesaid sales plans or methods, and thereby supplied to and placed in hands of others means of conducting lottery in sale and distribution of their merchandise in accordance with such plans or methods, involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government, and in violation of criminal laws, and in competition with many who are unwilling to adopt and use said or any sales plans or methods involving a game of chance or sale of a chance to win something by chance, or any other sales plans or methods that are contrary to public policy, and refrain therefrom;

With held that many dealers in and ultimate purchasers of said or like or similar merchandise were attracted by such sales plans or methods employed by it in the sale and distribution of its merchandise and element of chance involved therein, and were thereby induced to buy such merchandise in preference to that offered and sold by its said competitors who do not use same or equivalent sales plans or methods, and with effect, through use of such plans or methods by it and because of said game of chance, of diverting unfairly trade to it from its competitors aforesaid who do not use same or equivalent sales plans or 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.

Complaint

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Before *Mr. Arthur F. Thomas*, trial examiner.
Mr. D. C. Daniel 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 C. H. Stallman & Son, Inc., 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, C. H. Stallman & Son, Inc., is a corporation organized and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 31 West Philadelphia Street, York, Pa. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of cigars, candy, and various other articles of merchandise to dealers. Respondent causes, and has caused, said merchandise, when sold, to be shipped or transported from its aforesaid principal place of business in the State of Pennsylvania 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 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 said 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 consumer thereof. One of said assortments consists of a number of cigars, together with a device commonly called a punchboard. Sales are 1 cent each. Said punchboard is divided into sections, and each section contains a number or small sealed tube in which a slip of paper with a number printed thereon is concealed. The board bears legends or statements informing purchasers and prospective purchasers that persons

selecting certain designated numbers each receive 10 of said cigars; that persons selecting certain other designated numbers each receive 5 cigars; that persons selecting certain other designated numbers each receive 3 cigars; that persons selecting certain other designated numbers each receive 1 cigar; and that the person selecting the last number in each of said sections receives 1 cigar. Persons not successful in selecting one of said designated numbers receive nothing for their money. The said numbers are effectively concealed from purchasers and prospective purchasers until said slips of paper have been punched or removed from said board. The said cigars are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes, and has sold and distributed, various assortments of said merchandise, together with punchboards and push cards, but all of said assortments of merchandise are sold and distributed to the consuming public by means of sales plans or methods similar to the one 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 a means of conducting lotteries in the sale and distribution of its merchandise in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said sales 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 criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondent, as above alleged, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or a sale of a chance to win something by chance, or any other sales plans or methods that are contrary to public policy, and such competitors refrain therefrom. Many dealers in, and ultimate purchasers of, said merchandise or like or similar merchandise, are attracted by said sales plans or methods employed by respondent in the sale and distribution of its merchandise and the element of chance involved therein and are thereby induced to buy respondent's merchandise in preference to merchandise

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offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or 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 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 23, 1940, issued and thereafter served its complaint in this proceeding upon respondent C. H. Stallman & Son, Inc., 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 October 1, 1940, the respondent filed its answer in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, C. H. Stallman & Son, Inc., is a corporation organized and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 31 West Philadelphia Street, York, Pa. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of cigars, candy, and various other articles of merchandise to dealers. Respondent causes, and has caused, said merchandise, when sold, to be shipped or transported from its aforesaid principal place of business in the State of Pennsylvania 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 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 said 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 cigars, together with a device commonly called a punchboard. Sales are 1 cent each. Said punchboard is divided into sections, and each section contains a number of small sealed tubes in which a slip of paper with a number printed thereon is concealed. The board bears legends or statements informing purchasers and prospective purchasers that persons selecting certain designated numbers each receive 10 of said cigars; that persons selecting certain other designated numbers each receive 5 cigars; that persons selecting certain other designated numbers each receive 3 cigars; that persons selecting certain other designated numbers each receive 1 cigar; and that the person selecting the last number in each of said section receives 1 cigar. Persons not successful in selecting one of said designated numbers receive nothing for their money. The said numbers are effectively concealed from purchasers and prospective purchasers until said slips of paper have been punched or removed from said board. The said cigars are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes, and has sold and distributed, various assortments of said merchandise, together with punchboards and push cards, but all of said assortments of merchandise are sold and distributed to the consuming public by means of sales plans or methods similar to the one 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 a means of conducting lotteries in the sale and distribution of its merchandise in accordance with the sales plans or methods hereinabove set forth.

Order

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The use by respondent of said sales 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 criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondent, as above found, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or a sale of a chance to win something by chance, or any other sales plans or methods that are contrary to public policy, and such competitors refrain therefrom. Many dealers in, and ultimate purchasers of, said merchandise or like or similar merchandise, are attracted by said sales plans or methods employed by respondent in the sale and distribution of its merchandise and the element of chance involved therein and are thereby induced to buy respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or 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 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 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 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, C. H. Stallman & Son, Inc., 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 cigars, candy, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy, cigars, or any other merchandise so packed and assembled that sales thereof 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, cigars, 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 such candy, cigars, 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

LENARD GOTLIEB AND SARAH GOTLIEB, TRADING
AS REED'S CUT-RATE STORE AND FOUNTAIN CUT-
RATE STORESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4211. Complaint, July 31, 1940—Decision, Oct. 16, 1940*

Where two individuals engaged in sale and distribution of various medicinal preparations and products, including drug preparation advertised as "Prescription Female Capsules" and "Lady Lydia Female Capsules," and also by such designations, together with words "Double Strength" or "Triple Strength," as case might be; in advertisements which they disseminated and caused to be disseminated through the mails, in newspapers, and by circulars and other advertising literature, and by various other means in commerce and otherwise, and which were intended and likely to induce purchase of their said preparation—

- (a) Represented that their said product constituted competent and efficient treatment for delayed menstruation, and was safe and harmless, facts being it was not such treatment and was not safe or harmless, in that it contained drugs apiol green, ergotin, oil of savin, and aloin, in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual, use thereof might result in gastro-intestinal disturbances and other serious conditions, and, where used to interfere with normal course of pregnancy, might lead to blood poisoning and other serious conditions and irreparable injury; and
- (b) Failed to reveal in such advertisements facts material in the light of the above representations, and that use thereof under conditions prescribed therein, or under such conditions as are customary or usual, might result in injury to health;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such statements, representations, and advertisements were true, and that said preparation constituted a safe, competent, and effective treatment for aforesaid purpose, and to induce purchase by public thereof:

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.

Mr. William L. Taggart, for the Commission.

Mr. J. C. McManaway, of Clarksburg, W. Va., for respondents.

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 Lenard Gotlieb and