

Syllabus

IN THE MATTER OF
JOSEPH HAGN COMPANY

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

Docket 3997. Complaint, Jan. 23, 1940—Decision, Nov. 12, 1940

Where a corporation engaged in sale and distribution of clocks, pocket knives, jewelry, wearing apparel, and various other articles of merchandise, including certain assortments thereof which were so packed and assembled as to involve the use of a game of chance, gift enterprise or lottery scheme when sold and distributed to the consumers thereof, and which included, as illustrative,—

(1) Clock, together with punchboard for use in sale and distribution of said clock under a plan, and in accordance with board's explanatory legend, by which particular purchaser securing, for 5 cents paid, certain one of various numbers concealed within such board, became entitled to and received said article of merchandise, and those who did not qualify by obtaining such particular number received nothing for their money;

(2) Number of pocket knives, together with a push card for use in sale and distribution of said articles under a plan, in accordance with which particular number secured under disc pertaining to name selected from list of girls' names set forth on card, determined amount paid by purchaser for one of said knives, retail value of each of which was greater than some of the amounts thus to be paid therefor, and which, as aforesaid indicated, were determined wholly by lot or chance; and

(3) Articles of merchandise, separately containered, and enclosed within a large cardboard carton so constructed that one end thereof constituted a pull card for use in sale and distribution of said articles of merchandise thus containered, under a plan by which purchaser received, for 10 cents paid, particular item of merchandise, as determined by correspondence of particular number secured by chance from pull card with number displayed on each of individual cartons of aforesaid articles of merchandise, many of which were worth more than amounts thus to be paid, and distribution of which to purchasing public was thus determined wholly by lot or chance;

Sold and distributed its said assortments, together with punchboards, push or pull cards and other devices furnished by it, to dealers by whom same were used in selling and distributing such merchandise in accordance with aforesaid sales plans or methods involving game of chance or sale of a chance to procure an article of merchandise at price much less than the normal retail price thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of its merchandise in accordance with sales plans or methods above set forth, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are

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unwilling to adopt and use said or any methods 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 result that many were attracted by its said methods and by element of chance involved therein, and were thereby induced to buy and sell its said merchandise in preference to that of competitors who do not use same or equivalent method, and with result, because of said game of chance, of unfairly diverting trade to it from its said competitors 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 constitute 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.

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 Joseph Hagn 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, Joseph Hagn Co., is a corporation organized and doing business under the laws of the State of Illinois with its principal place of business located at 217 West Madison Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of jewelry, clocks, wearing apparel, knives, and various other articles of merchandise, to dealers located in the various States of the United States and in the District of Columbia. It causes and has caused said products when sold to be shipped or transported from its aforesaid place of business in the State of Illinois to purchasers thereof in the various States of the United States and in the District of Columbia, at their respective points of location. There is now and for some time 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 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 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 is sold and distributed to the purchasing public in the following manner: This assortment consists of a clock and a device commonly called a punchboard. Said board contains a number of small sealed tubes, each of which tube contains a small slip of paper with a number thereon. Sales are 5 cents each. The board bears statements or legends informing purchasers and prospective purchasers that the purchaser punching the number 100 is entitled to and receives the clock. A purchaser who does not qualify by obtaining the number calling for the clock receives nothing for his money. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the number punched separated or removed from said board. The said clock is thus distributed to the purchasing public wholly by lot or chance.

Another of respondent's assortments is sold and distributed to the purchasing public as follows: This assortment consists of a number of pocket knives, together with a device commonly called a push card. The push card contains a number of partially perforated discs and immediately above each of said discs there appears a feminine name. Sales are from 1 cent to 39 cents, inclusive. On the reverse side of each of said discs there appears a number. Each purchaser is entitled to one of said knives and the amount to be paid therefor is determined by the number appearing on the reverse side of the disc pushed by the purchaser. The purchaser pays in cents the amount of the number pushed. The numbers are effectively concealed from purchasers and prospective purchasers until a disc has been selected by the purchaser and such disc separated or removed from the card. Each of said knives has a retail value greater than some of the amounts to be paid therefor. The amount which a purchaser pays for one of said knives is thus determined wholly by lot or chance.

Another of said assortments is sold and distributed to the purchasing public in the following manner: This assortment consists of a large cardboard carton in which are contained a number of smaller cartons, each of which smaller cartons contains an article of merchandise and on the end of each of said smaller cartons there appears a number. One end of said large carton is so constructed as to constitute a device commonly known as a pull card. Such pull card contains a number of partially perforated pull tabs and on the reverse side of each of

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said tabs there appears a number which corresponds to the number appearing on the end of one of said smaller cartons. Sales are 10 cents each, and each purchaser pulls one of said tabs from the pull card. The purchaser is entitled to and receives the smaller carton bearing the number which corresponded to the number appearing on the reverse side of the tab pulled by such purchaser. The numbers on the reverse sides of said tabs are effectively concealed from purchasers and prospective purchasers until a selection has been made and the tab has been separated or removed from the said card. Many of the said articles of merchandise contained in this assortment are worth more than the amounts to be paid therefor. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various assortments of its merchandise and sells and furnishes various push and pull card, punchboards and other devices for use in the distribution of such merchandise to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods employed in connection with each of said assortments are substantially the same as the sales plans or methods hereinabove described and vary only in detail.

PAR. 3. The dealers to whom respondent sells or furnishes said punchboard, push and pull cards and other devices, use the same in selling and distributing respondent's merchandise 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 merchandise in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said methods in the sale of its merchandise and the sale of such merchandise 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 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 the respondent, as above alleged, are unwilling to adopt and use said methods or any methods involving the use of a game of chance or the sale of a chance to win something by chance, or any other method that 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 in the sale of said merchandise, in the manner above alleged, and are thereby induced to buy and sell respondent's merchandise in preference to the 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 the respondent because of said game of chance has the 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 its said competitors who do not use the same or equivalent sales plans or methods. 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 the 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 the 23d day of January 1940, issued and thereafter served its complaint in this proceeding upon said respondent, Joseph Hagn Co., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said act. On February 15, 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into by and between respondent and counsel for the Commission whereby it was stipulated and agreed that a statement of facts stipulated on the record were the facts in this case. Respondent by letters waived the filing of briefs by counsel for the Commission and respondent and also waived oral argument before the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Joseph Hagn Co., is a corporation organized and doing business under the laws of the State of Illinois with its principal place of business located at 217 West Madison Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of jewelry, clocks,

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wearing apparel, knives, and various other articles of merchandise, to dealers located in the various States of the United States and in the District of Columbia. It causes and has caused said products when sold to be shipped or transported from its aforesaid place of business in the State of Illinois to purchasers thereof in the various States of the United States and in the District of Columbia, at their respective points of location. There is now and for some time 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 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 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 is sold and distributed to the purchasing public in the following manner: This assortment consists of a clock and a device commonly called a punch board. Said board contains a number of small sealed tubes, each of which tubes contains a small slip of paper with a number thereon. Sales are 5 cents each. The board bears statements or legends informing purchasers and prospective purchasers that the purchaser punching the number 100 is entitled to and receives the clock. A purchaser who does not qualify by obtaining the number calling for the clock receives nothing for his money. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the number punched separated or removed from said board. The said clock is thus distributed to the purchasing public wholly by lot or chance.

Another of respondent's assortments is sold and distributed to the purchasing public as follows: This assortment consists of a number of pocket knives, together with a device commonly called a push card. The push card contains a number of partially perforated discs and immediately above each of said discs there appears a feminine name. Sales are from 1 cent to 39 cents, inclusive. On the reverse side of each of said discs there appears a number. Each purchaser is entitled to one of said knives and the amount to be paid therefor is determined by the number appearing on the reverse

side of the disc pushed by the purchaser. The purchaser pays in cents the amount of the number pushed. The numbers are effectively concealed from purchasers and prospective purchasers until a disc has been selected by the purchaser and such disc separated or removed from the card. Each of said knives has a retail value greater than some of the amounts to be paid therefor. The amount which a purchaser pays for one of said knives is thus determined wholly by lot or chance.

Another of said assortments is sold and distributed to the purchasing public in the following manner: This assortment consists of a large cardboard carton in which are contained a number of smaller cartons, each of which smaller cartons contains an article of merchandise and on the end of each of said smaller cartons there appears a number. One end of said large carton is so constructed as to constitute a device commonly known as a pull card. Such pull card contains a number of partially perforated pull tabs and on the reverse side of each of said tabs there appears a number which corresponds to the number appearing on the end of one of said smaller cartons. Sales are 10 cents each, and each purchaser pulls one of said tabs from the pull card. The purchaser is entitled to and receives the smaller carton bearing the number which corresponded to the number appearing on the reverse side of the tab pulled by such purchaser. The numbers on the reverse sides of said tabs are effectively concealed from purchasers and prospective purchasers until a selection has been made and the tab has been separated or removed from the said card. Many of the said articles of merchandise contained in this assortment are worth more than the amounts to be paid therefor. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various assortments of its merchandise and sells and furnishes various push and pull cards, punchboards and other devices for use in the distribution of such merchandise to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods employed in connection with each of said assortments are substantially the same as the sales plans or methods hereinabove described varying only in detail.

PAR. 3. The dealers to whom respondent sells or furnishes said punchboards, push and pull cards and other devices, use the same in selling and distributing respondent's merchandise 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 and distribution of its merchandise in accordance with

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the sales plans or methods hereinabove set forth. The use by respondent of said methods in the sale of its merchandise and the sale of such merchandise 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 merchandise to the purchasing public in the manner above described 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 the respondent, as above found, are unwilling to adopt and use said methods or any methods involving the use of a game of chance or the sale of a chance to win something by chance, or any other method that 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 in the sale of said merchandise, in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to the 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 the respondent because of said game of chance has the 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 its said competitors who do not use the same or equivalent sales plans or methods. 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 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 and a stipulation as to the facts entered into by and between respondent and counsel for the Commission, and the Com-

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mission 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, Joseph Hagn 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 jewelry, clocks, wearing apparel, knives, or any other 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 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 assortments of any merchandise, together with push or pull cards, punchboards, or other lottery devices or separately, which said push or pull cards, punchboards, or other lottery device are to be used or may be used in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. 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 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.

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IN THE MATTER

ROBERT J. THOMPSON COMPANY

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

Docket 4027. Complaint, Feb. 8, 1940—Decision, Nov. 12, 1940

Where a corporation engaged, from its principal place of business in Philadelphia, in sale and distribution of suits, overcoats and other articles of merchandise, to members of purchasing public in State of New Jersey, in competition with others engaged in sale and distribution of like or similar merchandise in commerce among the various States and in the District of Columbia—

Sold and distributed its said products to members of purchasing and consuming public by means of a sales plan or method which involved operation of game of chance, gift enterprise, or lottery scheme, and under which it solicited members of purchasing public in said State to purchase, by contract, men's clothing, thereafter to be made by it at its said place of business and shipped therefrom, and under which some of such members thus contacted, and as selected wholly by lot or chance, did not pay full contract price for such clothing thus contracted for, but paid less than contract price; and

Made use thereby, in so selling and distributing its said merchandise in accordance with aforesaid sales plan involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, of lottery scheme or plan as above set forth, 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 merchandise and do not use said or any method involving use of a game of chance or sale of a chance to win something by chance, and refrain therefrom;

With result that trade was thereby diverted unfairly in commerce to it from its competitors aforesaid, who did not use same or equivalent methods:

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. John W. Addison*, trial examiner.

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

Mr. Maurice S. Levy and *Mr. David S. Malis*, of Philadelphia, Pa., 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 Robert J. Thompson Co., a corporation, hereinafter referred to as respondent, has