

IN THE MATTER OF
SAMUEL H. KOOLISH TRADING AS ARLINGTON SALES
COMPANY

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

Docket 4180. Complaint, July 11, 1940—Decision, Dec. 12, 1940

Where an individual engaged in interstate sale and distribution of radios, flash-lights, clocks, cameras, pen and pencil sets, and other articles of merchandise in competition with others engaged in sale and distribution of like or similar articles in commerce as aforesaid; in soliciting sale of and distributing his merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes when merchandise was sold and distributed to ultimate consumer thereof, and involved distribution to operators and purchasing public of certain literature and instructions including push cards, order blanks, illustrations of his said merchandise, and circulars explaining his plan of selling same and of allotting it as premiums or prizes to operators of such push cards and to purchasing and consuming public under various push-card schemes including (a) scheme through which, and in accordance with explanatory legend set forth on card, purchaser or customer succeeding in selecting by chance that 1 of 15 feminine names displayed thereon corresponding with name concealed under card's master seal secured candid camera and roll of film, or article of merchandise being thus disposed of, and customer securing certain specified number received pen and pencil combination, and amount paid for chance was determined by number secured by chance under disk pushed on card in accordance with name selected, and (b) other push-card schemes which involved sale and distribution of his said products by means of game of chance, gift enterprise, or lottery scheme similar to that hereinabove described and varying therefrom in detail only; and

Supplied thereby to and placed in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with such sales plan by persons to whom he furnished said push cards and who used same in purchasing, selling, and distributing his said products in accordance with such plan, under which fact as to whether purchaser received an article of merchandise or nothing, and amount of money and how much he was to pay, and which of said articles if any he was to receive, were determined wholly by lot or chance, and involving game of chance or sale of a chance to procure one of said articles 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 win something by chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by sales plan or method employed by him in sale and distribution of his said merchandise, and by element of

Complaint

chance involved therein, and were thereby induced to buy and sell his said products in preference to those offered for sale by his said competitors, who do not use same or equivalent method, and with effect, through use of said method and because of said game of chance, of unfairly diverting trade in commerce to him from his competitors aforesaid, who do not use such or equivalent method; 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.

Nash & Donnelly, 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 Samuel H. Koolish, individually and trading as Arlington 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 Samuel H. Koolish is an individual trading as Arlington Sales Co. with his principal office and place of business located at 210 West 8th Street, Kansas City, Mo.' The respondent is now, and for more than 8 months last past has been, engaged in the sale and distribution of radios, flashlights, clocks, cameras, pen and pencil sets, and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in the State of Missouri to purchasers thereof, at their respective points of location, in the various States of the United States other than Missouri and in the District of Columbia. There is now and has been for more than 8 months last past a course of trade by 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 his business, respondent is, and has been, in competition with other individuals, partnerships, and corporations engaged in the sale and distribution of like or similar articles of 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, in soliciting the sale of and in

Complaint

32 F. T. C.

selling and distributing his merchandise, furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes when said merchandise is sold and distributed to the ultimate consumer thereof. The method or sales plan adopted and used by respondent is substantially as follows:

Respondent distributes and has distributed to operators and the purchasing public certain literature and instructions, including among other things push cards, order blanks, illustrations of his said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears 15 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 15 partially perforated disks on the face of which is printed the word "push." Each of such disks is set over one of the aforesaid feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a camera. The person selecting a certain designated number set out in the legend at the top of said card also received a pen and pencil set. The push card bears a legend or instructions as follows:

NAME UNDER SEAL RECEIVES A
PICKWIK
CANDID CAMERA
WITH ROLL OF FILM

No. 19 Receives a Pen & Pencil Combination
No. 1 pays 1¢; No. 19 pays 19¢.
No. 27 pays 27¢; No. 29 pays 29¢;
All others pay 29¢; NONE HIGHER.

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above-described legend or instructions. The facts as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, are thus determined wholly by lot or chance.

Respondent furnishes and has furnished various other push cards accompanied by order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said other push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said push cards use the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. 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 sales plan or 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 sales plan or 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 other 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. 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 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 July 11, 1940, issued and thereafter served its complaint in this proceeding upon said respondent Samuel H. Koolish, individually and trading as Arlington 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. Respondent filed no answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for respondent and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondent's counsel also waived the filing of a trial examiner's report upon the evidence.

Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation, said stipulation having been approved, accepted, and filed; 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 Samuel H. Koolish is an individual trading as Arlington Sales Co. with his principal office and place of business located at 210 West 8th Street, Kansas City, Mo. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of radios, flashlights, clocks, cameras, pen and pencil sets, and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in the State of Missouri to purchasers thereof at their respective points of location, in the various

States of the United States other than Missouri and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by 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 his business, respondent is, and has been, in competition with other individuals, partnerships, and corporations engaged in the sale and distribution of like or similar articles of 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, in soliciting the sale of and in selling and distributing his merchandise, furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes when said merchandise is sold and distributed to the ultimate consumer thereof. The method or sales plan adopted and used by respondent is substantially as follows:

Respondent distributes and has distributed to operators and the purchasing public certain literature and instructions, including among other things push cards, order blanks, illustrations of his said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears 15 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 15 partially perforated disks on the face of which is printed the word "push." Each of such disks is set over one of the aforesaid feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a camera. The person selecting a certain designated number set out in the legend at the top of said card also receives a pen and pencil set. The push card bears a legend or instructions as follows:

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Findings

2 F. T. C.

No. 19 Receives a Pen & Pencil Combination.

No. 1 pays 1¢; No. 19 pays 19¢.

No. 27 pays 27¢; No. 29 pays 29¢.

All others pay 29¢. NONE HIGHER.

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above-described legend or instructions. The facts as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, how much money he is to pay, and which of said articles of merchandise the purchaser is to receive, if any, are thus determined wholly by lot or chance.

Respondent furnishes and has furnished various other push cards accompanied by order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said other push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said push cards, use, and have used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. 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 sales plan or 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 sales plan or 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 or 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 other 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. 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 (respondent having filed no answer thereto), and a stipulation as to the facts entered into between counsel for the respondent and W. T. Kelley, Chief Counsel for the Commission, which provides among other things that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, 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 Samuel H. Koolish, individually and trading as Arlington Sales Co. or trading under any other name or names, 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, flashlights, clocks, cameras, pen and pencil sets, or any other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, push or pull cards, punchboards, or other lottery devices which are to be used or may be used in the sale and distribution of any merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

Order

32 F. T. C.

2. Mailing, shipping, or transporting to agents or to distributors or to members of the public, push or pull cards, punchboards, or other devices so prepared or printed that said push or pull cards, punchboards, or other devices are to be used or may be used to sell or distribute any 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 the use of push or pull cards, punchboards, or other lottery device.

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.

Syllabus

IN THE MATTER OF
CRAZY WATER COMPANY ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4314. Complaint, Sept. 13, 1940—Decision, Dec. 12, 1940*

Where a corporation, and four individuals who were, as the case might be, chairman of its board and general officers thereof and controlled its policies and practices, engaged in interstate sale and distribution of certain mineral waters and derivatives thereof under trade designations "Crazy Mineral Water," "Crazy Water Crystals," and "Crazy Fiz"; in substantial competition in commerce with others engaged in sale and distribution of other products used and useful for same purposes for which they recommended their said mineral waters and derivatives, and acting in conjunction and cooperation with each other; in advertisements which they disseminated and caused to be disseminated through the mails and through newspapers, circulars, pamphlets, leaflets and periodicals having general circulation, and in other printed or written matter distributed in commerce among the various States, and through continuities broadcast from radio stations of extra-State audience, and by various other means, and including testimonials or purported testimonial letters, or quotations therefrom, and which advertisements were intended and likely to induce purchase of their mineral waters and derivatives—

Represented, directly and indirectly, that constipation and "faulty elimination" were the cause of and associated with a long list of diseases, ailments, afflictions, and conditions, which they enumerated, and which included, among numerous others thus set forth, diseases of alimentary tract, such as intestinal stasis, chronic constipation, nervous indigestion, urticaria, conditions involving urinary tract, kidneys and gall duct, cystitis, urethritis, cirrhosis of the liver, diabetes mellitus, gravel and calculous concretion in the bladder and gall duct, fevers, toxic conditions, typhoid, influenza, jaundice, Bright's disease, rheumatism, arthritis, neuritis, high blood pressure, acidosis and various others, and that their said mineral waters and derivatives possessed beneficial, therapeutic properties with respect to curing or remedying and competently and effectively treating constipation and "faulty elimination," and, therefore, the diseases, ailments, afflictions and conditions above set forth;

Facts being that said mineral waters and derivatives possessed no therapeutic properties in excess of those of a cathartic or laxative, plus tendency temporarily to neutralize excess gastric acidity, and served no other purpose than to assist in temporary evacuation of intestinal tract and to tend temporarily to neutralize excess gastric acidity, use of said mineral waters and derivatives thereof for certain of said diseases, including those of alimentary tract, such as intestinal stasis, chronic constipation, nervous indigestion, conditions involving urinary tract, kidneys and gall duct, cystitis, urethritis and gastrointestinal disturbances, and for biliousness, backaches, headaches, nervousness, run-down condition, insomnia, loss of appetite and lack of energy, was