

IN THE MATTER OF

H & D SALES COMPANY, AND NATHAN J. HUBBARD AND
ARTHUR EASTON DAVISCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3956. Complaint, Nov. 22, 1939—Decision, Feb. 5, 1941*

Where a corporation and two individuals, who were general officers, stockholders, and directors thereof and formed, controlled, and directed its practices and policies, engaged in competitive, interstate sale and distribution of knives, fountain pens, pen and pencil sets, cigarette lighters, flashlights, watches, and other articles of merchandise, and, as aforesaid engaged, in selling certain assortments of merchandise which were so packed or assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, and including (1) as illustrative, various articles, together with punchboard, for use in sale or distribution of such articles, value of each of which was in excess of 2 cents, to consuming public under a plan in accordance with which, and said board's explanatory legend, customer or purchaser received, for 2 cents paid, and depending on success or failure in selecting certain lucky numbers, one of said articles, and purchaser who did not qualify by obtaining one of lucky numbers, received nothing for his money other than privilege of punching number from board, and (2) various other assortments, along with punchboards, involving lot or chance feature similar to that above described and varying therefrom in detail only; acting together and in cooperation with each other—

Sold said assortments, together with such punchboards, to wholesalers, to jobbers, and to retailers by whom, as direct or indirect purchasers thereof, said assortments were exposed and sold to purchasing public in accordance with sales plan aforesaid, involving game of chance or sale of a chance to procure one of said articles of merchandise at price much less than normal retail price thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of their merchandise in accordance with such sales plan, 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 method contrary to public policy and refrain therefrom;

With the result that many persons were attracted by said sales plan or method employed by them and by element of chance involved therein, and were thereby induced to buy and sell their said merchandise in preference to that offered and sold by their competitors, who do not use same or equivalent method, and with result, through use of said method and because of said game of chance, of unfairly diverting trade in commerce to them from their said competitors who do not use such method:

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

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unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. W. W. Sheppard*, trial examiner.

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

Mr. William C. Burton, of Knoxville, Tenn., 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 H & D Sales Co., a corporation, and Nathan J. Hubbard and Arthur Easton Davis, individuals and officers and directors of H & D Sales Co., hereinafter referred to as respondents, have 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, H & D Sales Co., is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 320 North Gay Street, Knoxville, Tenn. Respondent, Nathan J. Hubbard, an individual, is a stockholder, president, and director of the corporate respondent. Respondent, Arthur Easton Davis, an individual, is a stockholder, secretary and treasurer, and director of the corporate respondent. Respondents, Nathan J. Hubbard and Arthur Easton Davis, formulate, control, and direct the practices and policies of the corporate respondent. Both of the individual respondents have their offices at the same address as corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged.

Respondents are now and for some time last past have been engaged in the sale and distribution of knives, fountain pens, pen and pencil sets, cigarette lighters, flashlights, watches, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise, when sold, to be transported from their place of business aforesaid to purchasers thereof, at their respective points of location, in the various States of the United States other than the State of Tennessee, and in the District of Columbia. There is now and has been for some time last past a course of trade by said respondents 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 said business respondents are

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and have been in competition with other corporations and individuals and with partnerships 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers, jobbers, and retail dealers certain assortments of merchandise so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondents, and is as follows:

This assortment consists of various articles of merchandise, together with a device commonly called a punchboard. Said articles of merchandise are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 2 cents each, and when a punch is made from the board a number is disclosed. The numbers begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a specified article of merchandise. A purchaser who does not qualify by obtaining one of the lucky numbers receives nothing for his money other than the privilege of punching a number from the board. The articles of merchandise are worth more than 2 cents each, and the purchaser who obtains one of the numbers calling for one of the articles of merchandise receives the same for the price of 2 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The said articles of merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondents sell and distribute, and have sold and distributed, various assortments of merchandise along with punchboards involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with

the sales plan hereinabove set forth. The use by respondents of said method in the sale of their merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said 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 respondents, 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 method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents, who do not use the same or an equivalent method. The use of said method by respondents, 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 respondents from their 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 respondents 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 respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' 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 November 22, 1939, issued, and on November 23, 1939, served, its complaint in this proceeding upon the respondents, H & D Sales Co., a corporation, and Nathan J.

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Hubbard and Arthur Easton Davis, individually and as officers of H & D Sales Co., charging them 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. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and substitute 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, H & D Sales Co., is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 320 North Gay Street, Knoxville, Tenn. Respondent, Nathan J. Hubbard, an individual, is a stockholder, president, and director of the corporate respondent. Respondent, Arthur Easton Davis, an individual, is a stockholder, secretary and treasurer, and director of the corporate respondent. Respondents, Nathan J. Hubbard and Arthur Easton Davis, formulate, control, and direct the practices and policies of the corporate respondent. Both of the individual respondents have their offices at the same address as corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter set forth.

Respondents are now and for some time last past have been engaged in the sale and distribution of knives, fountain pens, pen and pencil sets, cigarette lighters, flashlights, watches, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise, when sold, to be transported from their place of business aforesaid to purchasers thereof, at their respective points of location, in the various States of the United States other than the State of Tennessee, and in the District of Columbia. There is now and has been for some time last past a

course of trade by said respondents 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 said business respondents are and have been in competition with other corporations and individuals and with partnerships 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers, jobbers, and retail dealers certain assortments of merchandise so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondents, and is as follows:

This assortment consists of various articles of merchandise, together with a device commonly called a punchboard. Said articles of merchandise are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 2 cents each, and when a punch is made from the board a number is disclosed. The numbers begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a specified article of merchandise. A purchaser who does not qualify by obtaining one of the lucky numbers receives nothing for his money other than the privilege of punching a number from the board. The articles of merchandise are worth more than 2 cents each, and the purchaser who obtains one of the numbers calling for one of the articles of merchandise receives the same for the price of 2 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The said articles of merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondents sell and distribute, and have sold and distributed, various assortments of merchandise along with punchboards involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

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PAR. 3. Retail dealers who purchase respondents' said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said 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 respondents, 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 method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents, who do not use the same or an equivalent method. The use of said method by respondents, 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 respondents from their said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents' 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

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respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, H & D Sales Co., a corporation, its officers, and Nathan J. Hubbard and Arthur Easton Davis, individually and as officers of said H & D Sales Co., respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of knives, fountain pens, pen and pencil sets, cigarette lighters, flashlights, watches, and 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 any merchandise together with punchboards, push or pull cards, or other lottery devices, which said punchboards, push or pull cards, or other lottery devices are to be used, or may be used, in selling or distributing such merchandise to the public.

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

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 respondents shall within 60 days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
IMPERIAL KNIFE COMPANY, INC.

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

Docket 4115. Complaint, Apr. 26, 1940—Decision, Feb. 5, 1941

Where a corporation engaged in manufacture of various articles of cutlery, including knife of certain general design and appearance, and in offer and interstate sale thereof—

Designated and marked as "Scout" knife its aforesaid product, notwithstanding fact knife in question was not one of those long made or distributed under supervision of the Boy Scouts of America, nor approved, indorsed, or sponsored by that organization, and uniformly referred to as "Scout Knife" and marked in some form or manner with words "Scout" or "Boy Scout," with or without other marks and insignia identifying it as a part of the standard equipment of the Boy Scouts of America, and as such, uniformly referred to by use of such words as "Boy Scout," "Scout," and "Scouting," long understood as thus identifying and referring to such equipment and activities of organization in question;

With capacity and tendency to mislead and deceive purchasing public into belief that its said knife had been approved, indorsed, or sponsored by said organization and was a part of the standard equipment thereof, for the purchase of which, as products sponsored or approved by such organization, there is a marked preference on the part of substantial portion of purchasing public over products which are not so sponsored or approved, and with effect of causing substantial part of public to purchase its said knife because of such belief:

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. Joseph C. Fehr for the Commission.

Mr. Francis J. Fazzano, of Providence, R. I., 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 Imperial Knife Co., 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, Imperial Knife Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the