

Syllabus

IN THE MATTER OF
DAVID KRITZIK, TRADING AS GENERAL MERCHANDISE
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3780. Complaint, May 2, 1939—Decision, Apr. 3, 1941

Where an individual engaged in conducting a premium and novelty business, and in competitive interstate sale and distribution of blankets, radios, cigarettes, candies, and other articles of merchandise;

Furnished to purchasers various devices and plans of merchandising which involved operation of games of chance, gift enterprise, or lottery schemes for sale and distribution of articles concerned to ultimate consumers by lottery and chance, including, as illustrative and typical, assortments consisting of (1) two blankets and a punchboard for use in selling and distributing said products under a plan by which purchasers securing from the 100 numbers secreted in the board, the two numbers corresponding to those in holes designated as grand prize became entitled to and received said blankets, others received nothing other than privilege of a punch, and cost of punch was determined by figures contained on slip of paper secured from hole selected; (2) twelve key holders equipped with dry cell and bulb, embedded in the upper portion of punchboard, secured by those selecting from the 400 covered holes, for the five cents paid, numbers corresponding to those displayed in connection with each of said twelve key holders, others receiving nothing for their money; and (3) a miniature radio, with a 110-hole punchboard, with ten punches free and prices of remaining 100 varying from 1 cent to 22 cents, as determined by slip secured, person punching out a certain number receiving said radio and others receiving nothing; and thereby

Placed in the hands of others various devices for the distribution of his merchandise by means of a game of chance, gift enterprise, or a lottery, contrary to the established public policy of the United States Government and in competition with others who are unwilling to and do not use in the distribution of their product any method involving chance;

With result, as consequence of its said methods, that trade was unfairly diverted to him from such competitors:

Held, That such acts and practices 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. Miles J. Furnas*, trial examiner.

Mr. L. P. Allen, Jr., *Mr. D. C. Daniel* and *Mr. J. W. Brookfield, Jr.*, for the Commission.

Weinstein & Kline, of Milwaukee, Wis., for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that David Kritzik, individually and trading as General Merchandise 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 David Kritzik is an individual trading as General Merchandise Co., with his principal office and place of business located at 843 North Third Street, Milwaukee, Wis. Respondent is now, and for some time last past has been, engaged in the sale and distribution of blankets, radios, cigarettes, candy, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be transported from his aforesaid place of business in Wisconsin 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 has been for some time 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 said business, respondent is, and has been, in competition with other individuals and with 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 sale and distribution of his said merchandise, as described in paragraph 1 hereof, respondent furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. One of respondent's assortments substantially illustrates the sales plan or method used in the sale or distribution of his merchandise to the purchasing public, and is as follows:

This assortment consists of two blankets, together with a device commonly called a punchboard. The punchboard contains 100 holes into which have been inserted slips of paper and on one side of said slips of paper is printed the amount the purchaser is to pay for the

privilege of making the punch. These amounts range from 1 cent to 22 cents. On the other side of said slips of paper is printed a number which entitles the holder thereof to one of the blankets if it corresponds with either of the numbers punched from the two holes designated as "Grand Prize." The slips of paper inserted into the holes designated "Grand Prize" are not punched out until all the 100 chances on said board are sold. Purchasers punching numbers from the board that do not correspond with the numbers on the slips of paper in the holes designated "Grand Prize" receive nothing for their money other than the privilege of making a punch. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The said merchandise is thus distributed to the purchasers of said punches from said board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of his said merchandise and furnishes, and has furnished, various devices for the distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plans or methods vary in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The dealers or purchasers to whom respondent furnishes said punchboards use the same in selling and distributing respondent's said 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 its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method 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 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 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 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

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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 to respondent from his said competitors who do not use the same or an equivalent method, and 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 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 2d day of May, A. D. 1939, issued and thereafter served its complaint in this proceeding upon the respondent, David Kritzik, 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. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by L. P. Allen, Jr., D. C. Daniel, and J. W. Brookfield, Jr., attorneys for the Commission, and in opposition to the allegations of the complaint by Maurice Weinstein, attorney for respondent, before Miles J. Furnas, a duly appointed trial examiner of the Commission. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, the testimony and other evidence, and briefs in support of the complaint and in opposition 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, David Kritzick, is an individual trading as General Merchandise Co. and having his principal place of business at 843 North Third Street, Milwaukee, Wis.

PAR. 2. Respondent, for more than 1 year prior to the issuance of the complaint herein was, and now is, engaged in conducting a premium and novelty business, and in the sale and distribution of blankets, radios, cigarettes, candies, and other articles of merchandise in commerce between and among various States of the United States and in the District of Columbia. Respondent causes said products, when sold, to be transported from his said place of business to purchasers thereof in various States of the United States at their respective points of location.

PAR. 3. Respondent, in the sale and distribution of his merchandise as described in paragraph 2 hereof, furnishes and has furnished to the purchasers thereof various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, by means of which said articles of merchandise are sold and distributed to the ultimate consumers thereof wholly by lot or chance. Typical of the methods so used by the respondent are the following:

(a) One of respondent's assortments consists of two blankets, together with a device commonly called a "punchboard." This punchboard has two small covered holes, each of which is designated "Grand Prize," and effectively concealed within which is a slip of paper on which a number is printed; below these are ranged one hundred small covered holes for which punches are to be sold, each containing a slip of paper, on one side of which is printed a number and on the other side the amount in cents to be paid for the punch, which ranges from 1 cent to 22 cents; if the number on the slip corresponds to that in one of the holes designated as "Grand Prize," it entitles the holder to one of the blankets. With the exception of the two thus acquiring the award, the purchasers of the right to punch receive nothing for their expenditure but the privilege of punching. The number and cost of the punch appearing on each of the slips are effectively concealed until the punch has been made and the slip removed, and the numbers printed on the slips within the holes marked "Grand Prize" are not disclosed until all of the 100 holes have been punched.

(b) Another of respondent's assortments consists of 12 keyholders termed "keyglos," each of which is equipped with a dry cell and a

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bulb which lights up when contact is made. These keyholders are imbedded in the upper portion of the punchboard, and under each appears a number. In the lower portion of the board are 400 covered holes, each containing a number which is revealed when the hole is punched, a charge of 5 cents each being made for the right to punch. The persons punching a hole containing a number corresponding to a keyglo number receives the keyholder as a prize. The purchasers punching holes which do not contain a number corresponding to a keyglo number, receive nothing for their money.

(c) Another of respondent's assortments consists of a miniature radio, together with a punchboard. This punchboard has 110 covered holes, 10 of which are free; the price of the remaining 100 punches varies from 1 cent to 22 cents each, according to the price indicated. There is but one prize—the radio, and only the purchaser who punches out the number which calls for this award receives anything for the money expended.

Various other schemes of like character for merchandising his products are advertised in respondent's catalogue.

PAR. 4. Respondent, by his sales methods hereinbefore described, places in the hands of others various devices for the distribution of his merchandise by means of a game of chance, gift enterprise, or lottery; and respondent's said sales methods are contrary to the established public policy of the Government of the United States.

PAR. 5. During all of the time herein mentioned respondent has been in competition with other dealers in merchandise of a like or similar character who are engaged in commerce between and among various States of the United States and who are unwilling to use, and do not use, in the distribution of their merchandise any method involving a game of chance, gift enterprise, or lottery scheme; and as a result of respondent's said methods, trade has been unfairly diverted from such competitors to the respondent.

CONCLUSION

The aforesaid acts and practices of the respondent 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, the answer of re-

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spondent, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, oral argument not having been requested, and the Commission having made its findings as to the facts and the conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, David Kritzik, individually and trading as General Merchandise 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 blankets, radios, keyholders 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 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 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.

IN THE MATTER OF
THE HUBINGER COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket \$801. Complaint, June 1, 1939—Decision, Apr. 3, 1941

Where a corporation engaged in manufacture and competitive interstate sale and distribution of glucose or corn syrup unmixed, and gluten feed, by-product thereof—

In selling its said syrup, of like grade and quality, to, mostly, candy manufacturers competitively engaged in sale to various customers, including chain stores, wholesalers, and retailers of candy, in most kinds of which such syrup is used, with cost thereof to candy manufacturer purchasers constituting (1) a substantial part of cost of raw materials used in particular candies having high syrup content and of the total cost of manufacturing an extensive line of candies having a wide range of syrup content, and (2) a significant and possibly determinative factor in competitive sales to customers, especially chain store and other large quantity purchasers, of many candies containing substantial quantity of such syrup ingredient, priced a few cents a pound only, and bearing no differentiating name or brand, and in sale of which candy sellers attract customers by selling at only fraction of a cent per pound lower than competitor, so that unfavored purchaser's higher raw material costs are difficult, if not impossible, to recover by increasing selling price of candy manufactured if such purchaser hopes to maintain his sales volume—

- (a) Sold and delivered its said syrup in several types and sizes of containers, including barrels, half-barrels and 10- and 5-gallon kegs, at prices per hundredweight which increased over tank car prices per hundredweight according to size and type of container, with differentials ranging from 13 cents for such drums, where there was no return freight thereon, to \$1.08 for said 5-gallon kegs;
- (b) Sold its said product, between June 19, 1936, and July 25, 1937, at higher delivered prices per hundredweight to purchasers located in certain cities other than Chicago and Zion, Ill., than those at which it sold said syrup in containers of like size and type to purchasers located in such cities, and thereafter sold its said product to purchasers in certain cities other than Chicago at higher prices per hundredweight than those at which it sold its said syrup in containers of like size and type to purchasers located in city aforesaid, and at prices which were not uniformly higher, but varied with geographic location;
- (c) Sold its said syrup to a certain Chicago concern at delivered prices which were 10 cents per hundredweight less than those which it charged other purchasers in said city, through granting and allowing it, for portion of period involved, such discount from its regular list prices for delivery in city in question, and thereafter through contract entered into by it with concern in question, under which discount was granted and allowed in consideration