

Complaint

IN THE MATTER OF

AMERICAN PLIERENCH CORPORATION

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

Docket 3853. Complaint, Nov. 22, 1939¹—Decision, Apr. 30, 1941

Where a corporation engaged in the manufacture of a patent combination plier and wrench designated by it as "The Eifel-Geared Plierench Kit," and in competitive interstate sale and distribution thereof; in advertisements of its said kits in periodicals, booklets, pamphlets, letters, and other printed matter—

Represented that earnings to be made in the resale of said products by purchasers ranged from \$35 to \$125 a week and that purchasers who devoted their entire time to such sale made as much as from \$1,500 to \$4,000 a year; facts being that earnings by purchasers of said kits did not under any circumstances approach such amounts;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that said representations were true and of inducing a substantial number thereof to purchase kits in question and thus unfairly divert trade to it from competitors who do not misrepresent earnings resulting from resale of their products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Wilbur N. Baughman and *Mr. James I. Rooney* for the Commission.

AMENDED 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 American Plierench Corporation, 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Plierench Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office

¹ Amended.

and place of business at 4611 Ravenswood Avenue, Chicago, Ill. It is now, and for more than 1 year last past has been, engaged in the manufacture of a combination plier and wrench kit, designated "The Eifel-Geared PlieRench Kit," and in the sale and distribution of said kits in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes said kits, when sold, to be transported from its place of business in Chicago, Ill., to the purchasers thereof, some located in the State of Illinois, and others located in various other States of the United States 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 said kits 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 now, and for more than 1 year last past has been, in substantial competition with other corporations and with persons, firms, and partnerships in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of similar articles or of other articles used for the same and similar purposes. There are among such competitors those who do not misrepresent the earning capacity of their salesmen or representatives or the terms and conditions upon which their respective products may be obtained.

PAR. 2. Respondent, in the course and conduct of its business in commerce, as herein described, distributes said kits through agents, representatives, or salesmen to whom said kits are distributed by the respondent for resale to the ultimate users thereof. To induce the purchase of said kits, respondent advertises said kits by means of booklets, pamphlets, letters, and other printed matter distributed among prospective representatives, and by means of advertisements placed in magazines and other periodicals circulated generally in the various States of the United States and in the District of Columbia. All of said advertisements contain many statements and representations with respect to the earnings made by representatives selling said kits and with respect to certain so-called "free" goods delivered to such representatives in connection with the sale and distribution of said kits. Among, and typical of, the statements and representations so made by the respondent are the following:

Be a PlieRench Man, They're making \$35 to \$85 Weekly!

It Takes 7 sq. FT. OF SPACE and 101 Pictures to show the astounding Working Power, Speed, and Efficiency, and the AMAZING MONEY-MAKING Power * * *

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\$35 to \$100 Weekly * * * of this Greatest Hand Tool Invention of ALL Time.

Be a PlieRench Man, They're making \$35 to \$125 Weekly.

Free kit offers.

The EIFEL-GEARED PlieRench KIT is A GUARANTEED SUPER-QUALITY Gripping Machine that Out-Works, Out-Speeds and Out-Wears ALL other Tools.

I predict that within Six Months the top Plierench Profits of Best former years * * * \$205 in one day, and \$379 in one week * * * will be beaten, because Plierench Men's Profits have been growing fast, with one of them making \$308 in one week lately * * *.

OFFER No. 1¼ (6 KITS in all) includes One Kit * * * ENTIRELY FREE * * *

Yes siree, \$308 in ONE WEEK!

* * * This same Plierench Man made \$685 on the KITS he got from us in that one month! HOW CAN IT BE DONE? O, there's "Magic" in it all right * * * the MAGIC of a Pair of Plierench KITS in ACTION * * * in the Hands of a Man who knows how to make the "Magic" Demonstration shown in the SALES MANUAL which you get with your First Selling Order. It takes but 6 Minutes, but Prospects SEEING * * * HOW * * * and * * * BUY * * * IN BUNCHES!

Realize that there are HUNDREDS OF MILLIONS of Pliers and Wrenches in USE in the United States alone, and TENS OF MILLIONS are bought yearly * * * Now, since the Plierench KIT is the SUPER-PLIER-WRENCH VISE, in the Bulk and Weight, and at the Cost of ONE Good Tool—it cannot help but Replace and Supersede these Millions of Inferior tools as fast as it can be produced . * * * as it is Actually doing.

Tell me * * * In What OTHER BUSINESS can you start yourself with \$5 to \$10 that offers any such possibilities? And, our new best men started in that small way, and, those DEMONSTRATING OUTFITS which they got FREE have been worth their weight in GOLD to many of them * * * some making as much as \$20,000 to \$40,000 Profit each, over a period of years! !

DO YOU KNOW What the average STORE DEALER makes on his Investment of from \$15,000 to \$30,000 * * * not to mention his lifetime of experience? Actual Records show that he is lucky to make from \$1,200 to \$2,500 per Year in Salary and Dividends Combined: Now, It's a Poor Plierench Man who can't make as much and more on an investment that runs between \$25 and \$100!

Get FREE—"7 Edge end-&-angle screwdriver."

Full-time men making \$1,500 to \$4,000 yearly * * * part-timers in proportion.

Through use of the aforesaid representations and others of similar import and effect, not herein set out in full, respondent represents that representatives engaged in the sale and distribution of said PlieRench kits earn profits of from \$35 per week up to \$125 per week and even up to as much as \$300 or more per week, and that representatives devoting full time to the sale of respondent's PlieRench kits earn profits of from \$1,500 to \$4,000 a year, and that respondent gives to such representatives or to anyone upon request one of the aforesaid PlieRench kits and a 7-edge end-&-angle screwdriver free without cost or without condition.

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PAR 3. The representations so made and used by the respondent, as aforesaid, as to the earnings of representatives are grossly exaggerated, false, and misleading. In truth and in fact representatives engaged in the sale and distribution of respondent's PlieRench kits do not earn profits of from \$35 to \$125 per week and do not earn profits of as much as \$300 a week or more. Fulltime representative do not earn profits of from \$1,500 to \$4,000 per year or any sums approaching such amounts. The various sums set out in the advertisements appearing in paragraph 2 hereof, which sums are represented by the respondent as representing the earnings that may be reasonably expected to be earned by respondent's representatives under normal conditions and circumstances, are in fact greatly in excess of the sums actually earned by such representatives in the ordinary and regular course of business. Respondent's representatives whether devoting full time or only part time in the sale of respondent's PlieRench kits do not under any circumstances or conditions earn sums reasonably approaching the sums representing the earnings set out in the aforesaid advertisements. Respondent does not furnish representatives or anyone else upon request with free kits, or "7-Edge end-&-angle screwdrivers" "Free," without cost or condition. In fact respondent requires the purchase of a designated number of said kits, before furnishing the so-called free items, which fact is not disclosed to the prospective representatives until after inquiry has been made and respondent has established contact with such persons. The so-called free PlieRench kits can be obtained only upon the purchase of a number of other PlieRench kits and the offer of such so-called PlieRench kits is nothing more than the offer of a quantity discount.

PAR 4. The use by the respondent of the aforesaid acts and practices in connection with the offering for sale, sale, and distribution of said kits in commerce among and between the various States of the United States and in the District of Columbia has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true, and that representatives can earn the sums indicated in said advertising matter in selling said kits, and that a wrench kit and a "7-Edge end-&-angle screwdriver" will be furnished such representatives or anyone else upon request entirely free and without cost or condition, and causes a substantial number of members of the purchasing public, because of said erroneous and mistaken belief, to purchase respondent's said kits, thereby unfairly diverting trade in said commerce to the respondent from its aforesaid competitors who do not misrepresent the earnings of their repre-

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sentatives or the terms and conditions under which goods may be obtained. In consequence thereof injury has been done, and is being done, 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 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 November 22, 1939, issued and thereafter served its amended complaint on the respondent American Plierench Corporation, charging it with the use of unfair methods of competition in commerce and with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said amended complaint and the filing of respondent's answer thereto, testimony, and other evidence in support of the allegations of said amended complaint were introduced by John M. Russell, attorney for the Commission, and in opposition to the allegations of the amended complaint by Joseph Eifel, President of the respondent corporation, before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, and 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 the said amended complaint, the answer thereto, testimony and other evidence, and upon brief in support of the complaint (the respondent not having filed brief or requested oral argument), 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, American Plierench Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its place of business at No. 4611 N. Ravenswood Avenue, Chicago, Ill. Said respondent corporation is

now, and since its incorporation in 1933 has been, engaged in the manufacture and in the sale of a patent tool which is a combination plier and wrench and which is designated as "The Eifel-Geared Plie-Rench Kit," in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes said kits when sold to be transported from its place of business in Chicago, Ill., to the purchasers thereof some of whom are located in the State of Illinois and others located in various other States of the United States 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 said kits 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 now and for more than 1 year last past has been in substantial competition with other corporations in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of similar articles used for the same and similar purposes. There are among such competitors those who do not misrepresent the earnings resulting from the resale of said products by the purchasers thereof.

PAR. 2. Respondent, American Plierench Corporation, in the course and conduct of its business as herein described, to induce the purchase of said kits advertises the same by means of booklets, pamphlets, letters, and other printed matter distributed among prospective purchasers and by means of advertisements inserted in magazines and other periodicals circulated generally throughout various States of the United States and in the District of Columbia. Said advertisements, in addition to statements concerning the merits of respondent's product, contain many statements and representations with respect to the earnings made in the resale of said kits by the purchasers thereof. Among and typical of the statements and representations so made by the respondent concerning the earnings made in the resale of said kits by the purchasers thereof, are the following:

Be a PlieRench Man, They're making \$35 to \$85 Weekly.

* * * * *
 * * * AMAZING MONEY-MAKING POWER * * * \$35 to \$100 Weekly. * * *

I predict that within Six Months the top Plierench Profits of Best Former Years * * * \$205 in one day, and \$379 in one week * * * will be beaten, because Plierench Man's Profits have been growing fast, with one of them making \$308 in one week lately * * *

Yes siree, \$308 in ONE WEEK!!

Full-time men making \$1,500 to \$4,000 yearly * * * part-timers in proportion.

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* * * this same Plierench Man made \$685 on the kits he got from us in that one month!

* * * some making as much as \$20,000 to \$40,000 Profit each, over a period of years!!

Through the use of the aforesaid representations and others of similar import, the respondent represents that the earnings resulting from the sale of said kits by the purchasers thereof range from \$35 per week up to \$125 per week and that such purchasers who devote their entire time to the sale of said kits make as much as from \$1,500 to \$4,000 a year.

PAR. 3. The representations made by the respondent as to the earnings resulting from the resale of said kits by the purchasers thereof are grossly exaggerated, false and misleading. The evidence shows conclusively that the earnings resulting from the resale of said kits by those who purchased the same, relying upon the statements made by the respondent as to the earnings that would result from the resale thereof, do not under any circumstances or conditions approach the earnings as represented by the respondent.

PAR. 4. The use by the respondent of the aforesaid statements and representations has the tendency and the capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true, and cause a substantial number of the members of the purchasing public because of said erroneous and mistaken belief to purchase respondent's kits, and trade is thereby diverted unfairly in said commerce to the respondent from its aforesaid competitors.

CONCLUSION

The acts and practices of the respondent, as herein found, are all to the prejudice of the public and the respondent's competitors and constitute unfair methods of competition 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 respondent, testimony and other evidence taken before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the complaint (respondent not having filed brief,

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and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, American Plierench 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 a combination plier and wrench, designated as The Eifel-Geared PlieRench Kit, whether sold under the same name or under any other name, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing any specified sum of money as possible earnings or profits of salespersons for any stated period which is not a true representation of the earnings or profits which have been made for such stated period of time by a substantial number of respondent's active salespersons in the ordinary course of business under normal conditions and circumstances.

2. Representing any specified sum of money as earnings or profits of any specified salesperson for any stated period of time unless such sum of money has in fact been earned net by such salesperson in said period of time in the ordinary course of business and under normal conditions.

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 OF

JACOB HOLTZ AND ABRAHAM L. HOLTZ, INDIVIDUALLY
AND AS COPARTNERS TRADING UNDER THE NAMES
OF JACOB HOLTZ AND JAY HOLTZ COMPANY

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

Docket 3979. Complaint, Dec. 22, 1939—Decision, Apr. 30, 1941

Where two individuals engaged in competitive interstate sale and distribution of electric goods, clocks, lamps, household goods, and about 700 items of merchandise to retailers, organizations, and operators of concessions in amusement parks, and in distributing circulars illustrating and explaining plans, methods and devices used by it in the sale of such merchandise, as below set forth—

Sold and supplied to their customers along with assortments of their merchandise, paraphernalia known as Bingo sets through which it was sold and distributed to the consuming public by means of a game of chance, gift enterprise, or lottery scheme, and thereby supplied means of conducting lotteries in the sale of their merchandise, contrary to established public policy of the United States Government and in violation of criminal laws of a number of the States;

With result that business was thereby unfairly diverted from competitors who are unwilling to and do not use any sales method involving game of chance, gift enterprise, or lottery scheme:

Held, That such acts and practices were all to the prejudice and injury of the public and of their competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. John W. Addison* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to 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 Jacob Holtz and Abraham L. Holtz, individually and as copartners trading under the names of Jacob Holtz and Jay Holtz Co., have violated the provisions of the said act and it appearing to the Commission that a proceeding by it