

Complaint

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

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in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Jacob Holtz and Abraham L. Holtz are individuals doing business as copartners under the names of Jacob Holtz and Jay Holtz Co. with their principal office and place of business located at 889 Broadway, New York, N. Y. Respondents are now and for some time last past have been engaged in the sale and distribution of toilet sets, pillow cases, blankets, smoking stands, military sets, zipper bags, electric appliances, and various 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 aforesaid place of business in New York to purchasers thereof at their respective points of location in the various States of the United States other than the State of New York, and in the District of Columbia. There is now and for some time last past has been a course of trade by respondents in said 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 individuals and partnerships and with 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 said business, as described in paragraph 1 hereof, the respondents in selling and distributing their said merchandise have supplied their customers with assortments of said merchandise, together with certain paraphernalia known as Bingo sets, by means of which said Bingo sets said merchandise is sold and distributed to the consuming public in a manner which involves the operation of a game of chance, gift enterprise, or lottery scheme. One of said Bingo sets consists of a master board containing 75 numbers; a number of Bingo cards on each of which cards appear 25 numbers arranged in a square, which numbers correspond to the numbers on the master card; a number of small wooden balls on each of which appears a number; and a number of small cardboard squares called "markers." Each of said Bingo cards has a different group of numbers thereon and one of said cards appears substantially as follows:

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BINGO				
Nos. 1 to 15	Nos. 16 to 30	Nos. 31 to 45	Nos. 46 to 60	Nos. 61 to 75
12	22	42	54	71
10	29	38	57	64
7	19	FREE O FREE	58	69
8	18	44	55	61
6	30	43	46	62
Nos. 1 to 15	Nos. 16 to 30	Nos. 31 to 45	Nos. 46 to 60	Nos. 61 to 75
START WITH LETTER O IN CENTER, FREE Oak Leaf FIVE NUMBERS ACROSS ANY LINE WINS; HORIZONTALLY Series 3100 VERTICALLY OR DIAGONALLY 12 DIFFERENT WAYS TO BINGO 61				

Made in sets up to 3000 cards

Printed in U. S. A.

By means of said Bingo set, said merchandise is distributed to the purchasing public in substantially the following manner: Respondents' customer or someone designated by such customer acts as an operator in the sale or distribution of said merchandise. The operator of the Bingo set places in the hands of each participant one of the said Bingo cards and each participant pays the operator a designated sum of money for the privilege of participating in the distribution of each of said articles of merchandise. The operator then places the said wooden balls in a container and so mixes them that the numbers thereon are concealed until one of said wooden balls is withdrawn from the container by the operator. In the center of the participant's Bingo card is a square marked "FREE" and each participant places a marker thereon before the aforesaid drawing of said numbers is begun. The operator then proceeds with the drawing of numbers from the aforesaid mixing container and calls out the number appearing on each ball as said ball is withdrawn from said container and the person on whose card such number appears places one of said markers over such number. This same procedure is followed until one of the participants has succeeded in marking five

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numbers on said card, which numbers form a straight line across the card either horizontally, vertically, or diagonally. The sequence or distribution of the numbers which control the placing of the markers is determined wholly by chance. Upon marking the last of said five numbers the participant calls out the word "Bingo." The marked numbers are called out by the operator who checks the same with the numbers on said master board and if such numbers have been correctly marked the participant is entitled to and receives one of said articles of merchandise as a prize. The other participants receive nothing for their money. This same procedure is repeated until all of said articles of merchandise or prizes have been distributed. The articles of merchandise vary in value but each of said articles of merchandise is of greater value than the amount paid by each participant for participation in the distribution of said merchandise as above described. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondents have sold and distributed various Bingo sets and other devices for use in the sale and distribution of their merchandise to the consuming public by lot or chance but the principle of operation in connection with each of said Bingo sets or devices is similar to the one hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondents have sold and distributed their said assortments of merchandise together with said Bingo sets have used said Bingo sets in selling and distributing respondents' merchandise in accordance with the aforesaid sales plan or method. 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 or method hereinabove described. The use by the respondents of said sales plan or method in the sale and distribution of their merchandise and the sale of the 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 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 respondents, as above alleged, are unwilling to adopt and use said sales plan or method, or any sales plan or method involving a game of chance or the sale of a chance to win something by chance, or any other sales plan or 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 by the element of chance involved therein and have been and are 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 equivalent sales plan or method. The use of said sales plan or method by respondents, because of said game of chance, has the capacity and tendency to and does unfairly divert substantial trade to respondents from their said competitors who do not use the same or equivalent sales plan or method.

PAR. 5. The aforesaid acts and practices of respondents as hereinabove 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 the 22d day of December, A. D., 1939, issued and thereafter served its complaint in this proceeding upon the respondents Jacob Holtz and Abraham L. Holtz, individually and as copartners trading under the names of Jacob Holtz and Jay Holtz Company, charging them with unfair methods of competition in commerce and unfair and deceptive acts in practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent Abraham L. Holtz's answer thereto (no answer was filed by respondent Jacob Holtz), testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission before duly designated trial examiners of the Commission. Said testimony and other evidence were duly recorded and filed in the office of the Commission. (No testimony or other evidence was introduced by the respondents.)

Thereafter the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, the trial examiners' report thereon and brief in support of the complaint, 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. Respondents Jacob Holtz and Abraham L. Holtz are copartners having their principal place of business in the city and State of New York and conduct their business under the trade names of "Jacob Holtz" and "Jay Holtz Company."

PAR. 2. Respondents for 3 years last past have been and now are engaged in the sale and distribution to retailers, organizations, and to persons operating concessions in amusement parks of electric goods, clocks, lamps, household goods, and about 700 items of merchandise, and causes said products, when sold, to be shipped from their principal place of business to purchasers thereof located in various States of the United States.

PAR. 3. Respondents in the conduct of their said business have been and now are in competition with other partnerships, individuals, and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among various States of the United States.

PAR. 4. Respondents in the course and conduct of their said business have sold and supplied their customers with assortments of said merchandise, together with certain paraphernalia known as Bingo sets by means of which said Bingo sets, said merchandise is sold and distributed to the consuming public in a manner which involves the operation of a game of chance, gift enterprise, or lottery scheme.

One of said Bingo sets consists of a master board containing 75 numbers; a number of Bingo cards, on each of which appears 25 numbers arranged in a square, which numbers correspond to the numbers on the master card; 75 small wooden balls, on each of which appears a number ranging from 1 to 75; a cage which holds the 75 balls; and a number of small card board squares called "markers."

By means of said Bingo set said merchandise is distributed to the purchasing public in substantially the following manner. The operator of the Bingo set places in the hands of each participant one of said Bingo cards and each participant pays the operator a designated sum of money for the privilege of participating in the distribution of each of said articles of merchandise. The operator then places the said wooden balls in the said cage and so mixes them that the numbers thereon are concealed until one of said balls is withdrawn from the container by the operator. In the center of the Bingo card is a square marked "Free," and each participant places a marker thereon before the aforesaid drawing of said numbers is begun. The operator then proceeds to the drawing of numbers from the aforesaid cage, calls out

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the number appearing on each ball, and as said ball is withdrawn from said cage the person on whose card such number appears places one of said markers over that number. This same procedure is followed until one of the participants has succeeded in marking five numbers on said card, which numbers form a straight line across the card, either horizontally, vertically, or diagonally. The person who succeeds in so marking his card is entitled to and receives one of said articles of merchandise as a prize. The other participants receive nothing for their money. This same procedure is repeated until all of said articles of merchandise or prizes have been distributed. The said articles of merchandise vary in value, but each of said articles is of greater value than the amount paid by each participant for the right to participate in the distribution of said merchandise. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondents have sold and distributed, and now sell and distribute various Bingo sets for use in the sale and distribution of their merchandise to the consuming public, and each of said sets is similar to the one hereinbefore described, varying only in detail.

PAR. 5. The persons to whom respondents have sold and distributed their said assortments of merchandise, together with said Bingo sets, have used said Bingo sets in selling and distributing respondents merchandise in accordance with the aforesaid sales plan or method. 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 or method hereinbefore described. The use by respondents of said sales plan or method in the sale and distribution of their merchandise and the sale of said sets by and through the use 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 United States and in violation of the criminal laws of a number of the States.

PAR. 6. Respondents in soliciting the sale of its merchandise has distributed and now distributes to customers and prospective customers circulars illustrating and explaining its plans, methods and devices in the sale of its merchandise as set forth in paragraph 4.

PAR. 7. During all the time herein mentioned respondents have been in competition with other partnerships, individuals, and corporations engaged in the sale and distribution in commerce between and among various States of the United States of merchandise similar to that sold by the respondents and who are unwilling to use and do not use in the sale and distribution of their merchandise any method involving a game of chance, gift enterprise, or lottery scheme, and as a result of

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respondents' said methods of trade, business has been unfairly diverted from such competitors to the respondents.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondents' competitors and are contrary to the established public policy of the Government of the United States of America and constitute unfair methods of competition in commerce and unfair 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, answer of respondent Abraham L. Holtz, testimony and other evidence taken before trial examiners duly designated by the Commission in support of the allegations of said complaint and the report of the trial examiners thereon, and brief filed on behalf of the Commission 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 Jacob Holtz and Abraham L. Holtz, individually and as copartners trading under the names of Jacob Holtz & Jay Holtz Co., their representatives, agents, and employees, jointly and severally, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of electric goods, clocks, lamps, household goods, or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing electric goods, clocks, lamps, household goods, or any other merchandise accompanied by a bingo set or any similar device to be used or which may be used by the purchaser of said merchandise or others as a means of disposing of said merchandise by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others bingo sets or similar devices, either with assortments of electric goods, clocks, lamps, household goods, or any other merchandise, or separately, which said bingo sets or similar devices are to be used or may be used in selling or distributing said electric goods, clocks, lamps, household goods, or other merchandise to the public.

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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.

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IN THE MATTER OF

FREDMORR, INC., AND MORRIS WEITZ, INDIVIDUALLY,
AND TRADING AS MORRICO, AND AS AN OFFICER OF
FREDMORR, INC.

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

Docket 3982. Complaint, Dec. 29, 1939—Decision, Apr. 30, 1941

Where a corporation and an individual, who was its secretary and treasurer and directed and controlled its policy, engaged in competitive interstate sale and distribution of pencils, radios, watches, electric shavers, and other articles of merchandise, and in illustrating and explaining their plans, methods, and devices for sale of their merchandise, as below set forth, through advertisements in magazines—

Furnished to purchasers various plans and devices which involved the operation of games of chance, gift enterprises, or lottery schemes for sale and distribution of their merchandise to the ultimate consumer wholly by lot or chance, a typical "deal" including two Packard-Lektro Shavers and five Parker Pencils and a push card for use in sale and distribution of said products by dealer or operator purchasers, under a plan, explained on card, by which persons received one of such shavers or pencils or nothing for their money except right to push disc, and paid varying amounts dependent, as case might be, upon chance selection, from list displayed, of feminine name and concealed accompanying number;

With results that they thereby placed in the hands of others various devices which involved games or schemes of chance for distribution of their said products to the ultimate consumer wholly by lot or chance, and whereby trade was unfairly diverted to themselves from competitors who did not use any such sales method:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors, contrary to established public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. Randolph Preston*, *Mr. Miles J. Furnas*, and *Mr. Arthur F. Thomas*, trial examiners.

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

Mr. Harry R. Wilson, of New York City, 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 Fredmorr, Inc., a corporation, and Morris Weitz, individually and trading as Morrico