

Complaint

32 F. T. C.

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

and as an officer of Fredmorr, Inc., 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 Fredmorr, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 110 West Forty-second Street, New York, N. Y. Morris Weitz is also individually trading under the name of Morcco, with the office and place of business of this concern located at 107 West Forty-first Street, New York, N. Y. Morris Weitz is secretary and treasurer of the corporate respondent and formulates, directs, and controls the acts, practices, and policies of the corporate respondent. Respondents are now and for sometime last past have been engaged in the sale and distribution of electric dry shavers, fountain pens, pencils, radios, cameras, clocks, watches, and other articles of merchandise to purchasers thereof located in 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 said places of business in the State of New York to purchasers thereof, at their respective points of location, in the various other States of the United States and in the District of Columbia. There is now and has been for sometime last past a course of trade by 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 their business, respondents are and have been in competition with other corporations, partnerships, and individuals 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, in soliciting the sale of and in selling and distributing their merchandise, furnish and have 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 respondents was and is substantially as follows:

Respondents distribute and have distributed to agents, operators, and the purchasing public certain literature and instructions, including among other things, push cards, order blanks, illustrations of their

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said merchandise and circulars explaining respondents' 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 respondents' push cards bears 101 feminine names with ruled columns on an attached or accompanying folder for writing in the name of the customer opposite the feminine name selected. Said push card has 101 small partially perforated discs on the face of which is printed the word "push." Each of such discs is set under one of the aforesaid feminine names. Concealed within each disc is a number which is disclosed only when the disc 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 Packard electric dry shaver. Persons selecting certain designated numbers set out in the legend in the center of said card also receive a premium or prize. The push card bears a legend or instructions as follows:

PACKARD Lifetime

LEKTRO-SHAVER

FREE	7-8-11-12-13-15	FREE
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5 ADDITIONAL AWARDS 5

Numbers 30-40-50-60-70 Receive

PENCIL Made by PARKER PEN CO.

1¢ to 35¢—No Higher—

Nos. over 35 pay only 35¢

Sales of respondents' 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 fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid or an article of merchandise free, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondents furnish, and have furnished, various other push cards accompanied by order blanks, instructions, and other printed matter for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise or lottery scheme. The sales plan or

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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. Retail dealers or operators 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 sales plan or 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 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 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 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 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, and 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 the 29th day of December, A. D. 1939, issued and thereafter served its complaint in this proceeding upon the respondents, Fredmorr, Inc., a corporation, and Morris Weitz, individually, and trading as Morcco, and as an officer of Fredmorr, Inc., charging them with 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 thereto, testimony and other evidence in support of the allegations of the complaint were introduced before trial examiners of the Commission theretofore duly designated by it to serve in this proceeding. Said testimony and other evidence were duly recorded and filed in the office of the Commission. 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 exceptions thereto, and briefs in support of and in opposition to 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. The respondent Fredmorr, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business in the city and State of New York.

Respondent Morris Weitz is an individual with his principal place of business in the city and State of New York. He is secretary and treasurer of respondent corporation and directs and controls its policy. He also trades as Fredmorr, Inc., under the trade name of "Morcco."

PAR. 2. Respondents for some time last past have been and now are engaged in the sale and distribution of pencils, radios, watches, electric shavers, and other articles of merchandise, and cause their 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 business have been and now are in competition with other corporations, individuals, and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States.

PAR. 4. Respondents in the sale and distribution of their merchandise have furnished to purchasers thereof various plans and devices which involve the operation of games of chance, gift enterprises, or lottery schemes, by means of which said merchandise is sold and distributed to the ultimate consumer wholly by lot or chance. Typical of the methods used by respondents is the following:

One of respondents' "deals" consisted of two Packard-Lektro Shavers and five Parker Pencils and a push card. The push card bears a legend or instructions as follows:

PACKARD

Lifetime

LEKTRO—SHAVER

Free 7-8-11-12-13-15 Free

 5 Additional Awards 5

 Nos. 30-40-50-60-70 Receive

Pencils made by Parker Pen Co.

1¢ to 35¢—No Higher

Nos. over 35 pay only 35¢

The push card has 101 discs, each covering a perforation in the card. Those perforations are also covered on the reverse side by 101 discs. On each of the face discs is printed the word "Push" and a feminine name, and on the under side of these face discs, effectively concealed until the disc is pushed and removed from the card, is a number which indicates the amounts to be paid in cents for the right to push. There also appears a master seal containing the words "Name under seal receives the new." Concealed within the master seal appears one of the feminine names appearing over the word "Push" on the discs which is not disclosed until the seal is pushed. The person selecting the feminine name corresponding to the one under the master seal receives one of the Lektro-Shavers, and the persons pushing the discs upon which appear the numbers 30, 40, 50, 60, 70 receive a pencil made by Parker Pen Co. Those persons

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pushing discs containing numbers other than said numbers, or above which appears a feminine name other than the name appearing on the master seal, receive nothing for their money except the right to push one of the discs.

Respondents sold other items of merchandise by means of like or similar plans and devices.

PAR. 5. Dealers or operators who purchased respondents said merchandise directly or indirectly exposed and sold the same to the purchasing public in accordance with the sales plan aforesaid.

PAR. 6. Respondents in soliciting the sale of their merchandise have placed advertisements in magazines illustrating and explaining their plans, methods, and devices for the sale of their merchandise.

PAR. 7. Respondents, by their sales methods hereinbefore described, have placed in the hands of others various devices which involve games of chance, gift enterprises, or lottery schemes to be used in the distribution of their merchandise, and by the use of said devices said merchandise is distributed to the ultimate consumer wholly by lot or chance.

PAR. 8. During all the time herein mentioned respondents have been in competition with other corporations, partnerships and individuals 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 respondents' said methods, trade has been unfairly diverted from such competitors to the respondent.

CONCLUSION

The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and of respondents' competitors, are contrary to the established public policy of the Government of the United States, 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, the answer of respondents, testimony, and other evidence in support of the complaint taken before trial examiners of the Commission theretofore duly

designated by it, the report of the trial examiners upon the facts and the exceptions thereto, briefs filed on behalf of the Commission and the respondents, 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 respondent Fredmorr, Inc., its officers, directors, representatives, agents, and employees, and the respondent Morris Weitz, individually, and trading as Morreo, and as an officer of Fredmorr, Inc., his representatives, agents, and employees, directly or indirectly, or through any corporate or other device, in connection with the offering for sale, sale, and distribution of pencils, radios, watches, electric shavers, or other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing pencils, radios, watches, electric shavers, or any other merchandise, so packed or assembled that sales of any such merchandise to the public are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others push or pull cards, punch-boards or other lottery devices either with assortments of pencils, radios, watches, electric shavers, or other merchandise, or separately, which said push or pull cards, punch-boards, or other lottery devices are to be used or may be used in selling or distributing any of 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

AMERICAN MEDICINAL PRODUCTS, INC., AND ERNEST G. RURUP, AN INDIVIDUAL TRADING AS SCIENTIFIC LABORATORIES OF AMERICA AND AS CALIFORNIA SUNSHINE PRODUCTS, INC., AND AS OFFICER OF AMERICAN MEDICINAL PRODUCTS, INC.

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

Docket 4159. Complaint, June 8, 1940—Decision, Apr. 30, 1941

Where a corporation and an individual who was its president and directing manager, and a second concern, likewise controlled by said individual prior to its suspension by operation of law; engaged in interstate sale and distribution of their "Re-Duce-Oids" medicinal preparation for obesity, use of which in accordance with directions would result in the ingestion of 1½ grains of desiccated thyroid daily; by means of advertisements disseminated through the mails, newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, including purported testimonial quotations—

- (a) Represented directly and indirectly that their said Re-Duce-Oids constituted a cure or remedy and safe, competent, and effective treatment for obesity; facts being that it did not constitute such a cure or remedy or safe, effective treatment, due to the potentialities of thyroid extract for injury to health; only a small percentage of cases of obesity is due to lack of sufficient thyroid secretion, far more being due to excess food intake, and treatment aimed at stimulation of the glands and increasing the metabolism rate abnormally is not proper in all cases; it is impossible for the layman to determine whether he is suffering from hypothyroidism, or the dosage of thyroid extract which his particular condition might require; said preparation might seriously aggravate tuberculosis, diabetes, or goiter, while the continued taking thereof over a long period by a normal individual could result in impairment of health and cardiac damage; and
- (b) Failed sufficiently to apprise the purchaser through certain cautioning advertisements and statements on label and circulars accompanying package, of the danger involved in use of said preparation; that it should only be taken under competent medical supervision; that unsupervised use thereof by persons not skilled in the diagnosis and treatment of thyroid conditions might result in serious and irreparable injury to health; that it was definitely harmful if used by those having diabetes, goiter, tuberculosis, arteriosclerosis, or coronary disease; or that use thereof over a long period of time might cause injurious effects or possible irreparable injury to health, even in case of a normal individual;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and inducing it, by reason thereof, to purchase their said medicinal preparation: