

IN THE MATTER OF

THE BRIARWOOD CORPORATION

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

Docket 4401. Complaint, Dec. 5, 1940—Decision, June 12, 1941

Where a corporation engaged in the manufacture and the competitive interstate sale and distribution of pipes—

Sold to wholesalers, jobbers, and retailers certain assortments of smoking pipes which were so packed and assembled as to involve the use of game of chance, gift enterprise, or lottery schemes when sold and distributed to consumers, and included, as typical, three "Bryson" pipes and a punchboard for use, as there explained, in sale of said articles under a plan by which certain specified numbers entitled purchaser to one of said pipes or a package of cigarettes, the last sale in each of the first nine sections completely sold entitled him to a package of cigarettes, and the last punch on the board entitled him to receive a \$3.50 "Bryson" pipe, other customers receiving nothing for their money other than the privilege of a punch; and thus

Supplied to and placed in the hands of retail purchasers, who exposed and sold its pipes in accordance with said plan, involving game of chance to procure pipes at prices much less than usual, means of conducting lotteries in the sale of its pipes, contrary to established public policy of the United States Government, and in competition with many who are unwilling to sell their products by such or any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan and the element of chance involved therein and were thereby induced to buy and sell its pipes in preference to those of its said competitors, and with effect of thus unfairly diverting trade in commerce to it from them; to the substantial injury of competition:

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

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. William H. Rosenfeld, of Cleveland, Ohio, 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 The Briarwood 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Briarwood Corporation, is a corporation organized and doing business under the laws of the State of Ohio with its office and principal place of business located at 2810 Superior Avenue, Cleveland, Ohio. Respondent is now, and for more than 6 months last past has been, engaged in the manufacture and in the sale and distribution of smoking pipes to wholesale dealers, jobbers, and retail dealers located at points in 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 its principal place of business in the city of Cleveland, Ohio, to purchasers thereof at their respective points of location in various States of the United States other than Ohio and in the District of Columbia. There is now, and has been for more than 6 months last past, a course of trade by respondent in such smoking pipes 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 corporations and with partnerships and individuals engaged in the sale and distribution of smoking pipes 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 its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of smoking pipes so packed and 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 respondent, and is as follows:

This assortment includes three "Bryson" pipes and a punchboard. Appearing on the face of the punchboard is the following inscription:

THE *Bryson* PIPE

(illustration of pipe)

WITH DURALUMINUM "COOLING ZONE"

NUMBERS 100-200

AND LAST SALE ON BOARD RECEIVES

\$3.50 BRYSON PIPE ENSEMBLE

\$3.50 with EXTRA BOWL

NUMBERS 10-20-110-120-210-220-310-320-330-340

Each receive 1 Pkg. (20) Cigarettes

LAST SALE IN EACH OF 1st 9 sections completed

REC. 1 PKG. (20) CIGARETTES

5¢ PER SALE

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Said pipes are distributed to the purchasing public by means of said punchboard in the following manner:

Sales are 5 cents each, and when a punch is made a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence, and said numbers are arranged in 10 sections. The board bears a statement informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a "Bryson" pipe, and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes, and the last sale in each of the first 9 sections completely sold entitles the purchaser to receive a package of cigarettes, and the last punch on the board entitles the purchaser to receive a \$3.50 "Bryson" pipe. A customer who does not qualify by obtaining 1 of the specified numbers or the last punch on the board or in a section receives nothing for his money other than the privilege of punching a number from the board. The pipes are worth more than 5 cents each, and the cigarettes are worth more than 5 cents per package, and the purchaser who obtains a number calling for a pipe or pack of cigarettes receives the same for 5 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 smoking pipes are thus distributed to the purchasers of punches from the board wholly by chance.

The respondent furnishes, and has furnished, various punchboards and pipe assortment for use in the sale and distribution of its smoking pipes by means of a game of chance, gift enterprise, or lottery scheme; such punchboards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's smoking pipes, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its smoking pipes and the sale of said smoking pipes 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 smoking pipes to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure smoking pipes at prices much less than the

normal retail price thereof. Many persons, firms, and corporations who sell and distribute smoking pipes in competition with 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 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 its smoking pipes and in the element of chance involved therein and are thereby induced to buy and sell respondent's smoking pipes in preference to smoking pipes of said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent 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 respondent from its said competitors who do not use the same or 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 December, 5, 1940, issued and on December 6, 1940, served its complaint in this proceeding upon the respondent, The Briarwood Corporation, a corporation, charging it 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, the respondent, on December 26, 1940, filed its answer which answer admitted all the material allegations of fact set forth in said complaint and respondent's attorney later waived the right to file brief or argue the matter orally before the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer 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, The Briarwood Corporation, is a corporation organized and doing business under the laws of the State of Ohio with its office and principal place of business located at 2810 Superior Avenue, Cleveland, Ohio. Respondent is now, and for more than 6 months last past has been, engaged in the manufacture and in the sale and distribution of smoking pipes to wholesale dealers, jobbers, and retail dealers located at points in 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 its principal place of business in the city of Cleveland, Ohio, to purchasers thereof at their respective points of location in various States of the United States other than Ohio and in the District of Columbia. There is now, and has been for more than 6 months last past, a course of trade by respondent in such smoking pipes 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 corporations and with partnerships and individuals engaged in the sale and distribution of smoking pipes 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 its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of smoking pipes so packed and 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 respondent, and is as follows:

This assortment includes three "Bryson" pipes and a punchboard. Appearing on the face of the punchboard is the following inscription:

THE *Bryson* PIPE
(illustration of pipe)

WITH DURALUMINUM 'COOLING ZONE'

NUMBERS 100—200
AND LAST SALE ON BOARD RECEIVES
\$3.50 BRYSON PIPE ENSEMBLE

\$3.50 with EXTRA BOWL

NUMBERS 10—20—110—120—210—220—310—320—330—340
Each Receive 1 PKG. (20) Cigarettes

LAST SALE IN EACH OF 1st 9 sections completed
REC. 1 PKG. (20) CIGARETTES

5¢ PER SALE

Said pipes are distributed to the purchasing public by means of said punchboard in the following manner:

Sales are 5 cents each, and when a punch is made a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence, and said numbers are arranged in 10 sections. The board bears a statement informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a "Bryson" pipe, and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes, and the last sale in each of the first 9 sections completely sold entitles the purchaser to receive a package of cigarettes, and the last punch on the board entitles the purchaser to receive a \$3.50 "Bryson" pipe. A customer who does not qualify by obtaining 1 of the specified numbers or the last punch on the board or in a section receives nothing for his money other than the privilege of punching a number from the board. The pipes are worth more than 5 cents each, and the cigarettes are worth more than 5 cents per package, and the purchaser who obtains a number calling for a pipe or pack of cigarettes receives the same for 5 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 smoking pipes are thus distributed to the purchasers of punches from the board wholly by chance.

The respondent furnishes, and has furnished, various punchboards and pipe assortment for use in the sale and distribution of its smoking pipes by means of a game of chance, gift enterprise, or lottery scheme; such punchboards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's smoking pipes, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its smoking pipes and the sale of said smoking pipes 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.

PAR. 4. The sale of smoking pipes to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure smoking pipes at prices much less than the normal retail price thereof. Many persons, firms, and corpora-

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tions who sell and distribute smoking pipes in competition with respondent, 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 other method 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 its smoking pipes and in the element of chance involved therein and are thereby induced to buy and sell respondent's smoking pipes in preference to smoking pipes of said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent 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 respondent from its said competitors who do not use the same or 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.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, 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 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and respondent having waived filing of brief and oral argument and agreed to the submission of the case to the Commission on the complaint and answer and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission.

It is ordered, That the respondent, The Briarwood Corporation, a corporation, its respective officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of smoking pipes or any other merchandise in commerce as commerce is defined

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in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing pipes or any other merchandise so packed and assembled that sales of such pipes or other merchandise to the general 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 punchboards, push or pull cards, pull tabs, or other lottery devices either with assortments of merchandise or separately, which said punchboards, push or pull cards, pull tabs, or other lottery devices are to be used, or may be used, in selling or distributing said pipes or other 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 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.

IN THE MATTER OF

J. C. HELMS, INDIVIDUALLY AND TRADING AS H. & L.
CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4455. Complaint, Jan. 30, 1941—Decision, June 12, 1941*

Where an individual engaged in manufacture of candy, and in interstate sale and distribution of various assortments thereof, which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers, a typical assortment including a number of candy bars, together with a push card for use in sale and distribution thereof under a plan by which purchaser, depending upon the particular number secured by chance in accordance with disk pushed, paid nothing or 1, 2 or 3 cents, for a bar, retail value of each of which was greater than 1 cent—

Sold such assortments to dealers and retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plans or methods, involving game of chance or sale of a chance to procure bars of candy without cost or at prices much less than normal retail prices thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of his product, contrary to an established public policy of the United States Government, and in violation of the criminal laws, and in competition with many who, unwilling to offer or sell their products so packed and assembled as to involve a game of chance or any other method contrary to public policy, refrain therefrom; .

With tendency and capacity to induce purchasers to buy his said product in preference to that of his competitors, and with result that many dealers in and ultimate consumers were attracted by said manner of packing candy and by the element of chance involved in sale thereof, and were thereby induced to purchase his said candy in preference to that of his said competitors who do not use such methods; and with tendency and capacity to divert unfairly to him trade from his competitors aforesaid and exclude them from candy trade; lessen competition therein; create monopoly thereof in him and such other distributors as do use such methods; deprive the purchasing public of benefit of competition; and eliminate from said trade all actual, and exclude therefrom all potential, competitors, who do not adopt and use such methods:

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

Mr. J. W. Brookfield, Jr., for the Commission.

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