

Complaint

IN THE MATTER OF
B. T. CLIFTON TRADING AS ASSOCIATED SALES
AGENCY

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

Docket 4201. Complaint, July 26, 1940—Decision, June 13, 1941

Where an individual engaged in the competitive interstate sale and distribution of clocks, knives, fountain pens, pipes, watches, cigarette cases, cigarette lighters, and other articles of merchandise—

Furnished to purchasers various devices and plans which involved the operation of games of chance, gift enterprises, or lottery schemes in the sale and distribution of said merchandise to the ultimate consumer wholly by lot or chance, and included, as typical, assortment consisting of a number of aforesaid articles, together with a 300-cell, 12-section punchboard, for use in sale of said articles under a plan by which purchaser of a punch, at 5 cents, punching a designated number, and the purchaser punching the last remaining cell in each of the 12 sections, receive a specified article, value of which was in excess of 5 cents, others receiving nothing for their money other than the privilege of punching;

With result of thereby placing in the hands of others lottery devices for use in distributing said merchandise to the ultimate consumer wholly by lot or chance, contrary to the established public policy of the United States Government; and whereby trade was unfairly diverted to him from his competitors who did not, in the distribution of their merchandise, use such methods:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou*, for the Commission.

Mr. Robert Morel Montgomery, of Birmingham, Ala., 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 B. T. Clifton, individually, and trading as Associated Sales Agency, 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:

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PARAGRAPH 1. Respondent, B. T. Clifton, is an individual trading as Associated Sales Agency, with his office and principal place of business located at 108 North Seventeenth Street, Birmingham, Ala. Respondent is now, and for more than 10 years last past has been, engaged in the sale and distribution of clocks, knives, fountain pens, pipes, watches, tie sets, cigarette cases, cigarette lighters, and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in Birmingham, Ala., to purchasers thereof at their respective points of location in the various States of the United States other than Alabama and in the District of Columbia. There is now, and has been for more than 10 years 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 his 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 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 his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers, certain assortments of merchandise so packed or 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 consists of various articles of merchandise, together with a device commonly called a punchboard. Said articles of merchandise are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 5 cents each, and when a punch is made from the board a number is disclosed. The numbers begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a specified article of merchandise. A purchaser who does not qualify by obtaining one of the lucky numbers receives nothing for his money other than the privilege of punching a number from the board. The articles of merchandise are worth more than 5 cents each, and the purchaser who obtains one of the numbers calling for one of the articles of merchandise receives the same for the price of 5 cents. The numbers are effectively con-

cealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The said articles of merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of merchandise along with punchboards involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase, directly or indirectly, respondent's said merchandise 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 his 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 said merchandise by and through the use thereof, and by the aid of said 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 one of the said articles 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 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 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 in commerce between and among the various States of the United States and in the District of Columbia, to respondent from his said competitors who do not use the same or an equivalent method. 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 26th day of July A. D. 1940, issued and thereafter served its complaint in this proceeding upon the respondent, B. T. Clifton, individually and trading as Associated Sales Agency, charging him 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 respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by L. P. Allen, Jr., attorney for the Commission, before W. W. Sheppard, a duly appointed trial examiner of the Commission 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 examiner's 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. Respondent, B. T. Clifton, is an individual trading as Associated Sales Agency, and having his office and principal place of business in the city of Birmingham, in the State of Alabama.

PAR. 2. Respondent, for some time last past has been, and now is, engaged in the sale and distribution of clocks, knives, fountain pens, pipes, watches, cigarette cases, cigarette lighters, and other articles of merchandise, and causes said articles of merchandise, when sold, to be shipped from his principal place of business in the State of Alabama, to purchasers thereof located in various States of the United States.

PAR. 3. Respondent, in the conduct of his business as set forth in paragraph 2 hereof, has been, and now is, in competition with various other individuals, partnerships and corporations engaged in the sale

and distribution of similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 4. Respondent, in the sale and distribution of his said merchandise, has furnished and furnishes to the purchasers thereof various devices and plans for merchandising same which involve the operation of games of chance, gift enterprises, and 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 the respondent is the following:

(a) One of respondent's assortments consist of a number of the articles herein listed, together with a device commonly called a punchboard, which has 300 tubes or cells, divided into 12 sections of 25 cells each; a slip of paper is contained in each cell, bearing a number which is not disclosed until the cover of the cell has been punched. The punches are sold at 5 cents each, and the purchaser punching a designated number, and the purchaser punching the last remaining cell in each of the 12 sections, receives a specified article of merchandise; the purchaser of a right to punch who does not punch one of the winning numbers or the last remaining cell in each section, receives nothing for his money other than the privilege of punching. The articles of merchandise thus distributed are worth more than 5 cents each, but the persons punching the winning numbers or the last punch in each section, are not required to pay anything in addition to the price of the punch.

Other items of merchandise were and are sold by the respondent by like or similar methods, and such punchboards, push cards and similar devices differ only in detail.

PAR. 5. Respondent, by his sales methods hereinbefore described, places in the hands of others various devices to be used in the distribution of his merchandise by means of games of chance, gift enterprises, or lottery schemes, and by the use of such devices, such merchandise is distributed to the ultimate consumer wholly by lot or chance; respondent's said sales methods are contrary to the established public policy of the Government of the United States.

PAR. 6. During all of the times herein mentioned, respondent has been in competition with other individuals, partnerships, and corporations who sell and distribute merchandise similar to that sold and distributed by respondent, and are engaged in commerce between and among various States of the United States, and 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.

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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 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, the testimony and other evidence taken before W. W. Sheppard, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, the report of the trial examiner thereon, and brief filed by attorney for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent, B. T. Clifton, individually and trading as Associated Sales Agency, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, B. T. Clifton, individually and trading as Associated Sales Agency, or by any other trade name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of clocks, knives, fountain pens, watches, cigarette cases, cigarette lighters or, any other article of merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

(a) Selling or distributing any merchandise so packed or assembled that sales of 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.

(b) Supplying to, or placing in the hands of others, push or pull cards, punchboards, or other lottery device, either with assortments of merchandise or separately, which said push or pull cards, punchboards or other lottery device, are to be used or may be used in selling or distributing such merchandise to the public.

(c) Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise or other lottery device or 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.

Complaint

IN THE MATTER OF

GEORGE C. BOUNDS AND WILLIAM H. PHILLIPS, DOING
BUSINESS AS GEORGE A. BOUNDS & COMPANY

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

Docket 4303. Complaint, Sept. 5, 1940—Decision, June 13, 1941

Where two partners engaged in packing, processing, and canning tomatoes and sweetpotatoes, and in interstate sale and distribution thereof (1) through brokers to whom they usually granted brokerage amounting to 4 percent from their invoice or prevailing market price, and (2) directly to purchasers for resale—

- (a) Granted to purchasers, the sales to whom were effected by brokers who did not accept brokerage from said partners on such sales, discounts, and allowances in lieu of brokerage, by selling and invoicing said commodities at a net price which was lower than their prevailing market price by an amount approximately equal to the customary brokerage usually granted and allowed by them and accepted by their brokers on similar sales to purchasers;
- (b) Granted to purchasers, sales to whom were effected by brokers controlled by such purchasers, discounts and allowances in lieu of brokerage, by selling said commodities to them at a net price which was lower than their prevailing market price by an amount equal to the customary brokerage usually granted and allowed by them to such brokers on similar sales to other purchasers; and
- (c) Granted to brokers on sales for such brokers' own account, discounts and allowances in lieu of brokerage, by selling to such brokers at a net price which was lower than their prevailing market price by an amount equal to the customary brokerage usually granted and allowed by them to such brokers on similar sales to other purchasers:

Held, That in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers in connection with their respective purchases, as above set forth, said partners violated subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John T. Haslett for the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19,