

Complaint

IN THE MATTER OF

J. M. TAYLOR CO., INC., AND SAMUEL NITKE, CHARLES MYERS, AND ISADORE STEIN

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

Docket 3567. Complaint, Aug. 31, 1938—Decision, June 30, 1941

Where an individual, acting through a corporate instrumentality engaged in the competitive interstate sale and distribution of electric razors, clocks, electric mixers, traveling bags, pen and pencil sets, Glolite lighters, high-ball glasses, and other articles of merchandise—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise was sold or distributed to the ultimate consumer wholly by lot or chance, and distribution by mail and other means of certain literature and instructions including, among other things, push cards, for use, as typical, under a sales plan providing that a purchaser paid from 1 cent to 25 cents depending on the number disclosed by disk chosen, and that the person who, by chance, selected that 1 of 30 feminine names on card corresponding to name concealed under card's large master seal received a set of "6 Strip Tease Highball Glasses, valued at \$7.50," as did the operator; and thus

Supplied to and placed in the hands of others means of conducting lotteries in the sale of his merchandise, in accordance with aforesaid sales plan, involving game of chance to procure an article at much less than usual price thereof, contrary to established public policy of the United States Government, and in violation of criminal laws, and in competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

With result that many persons were attracted by his said sales plan and the element of chance involved therein and were thereby induced to buy and sell his merchandise in preference to that of his said competitors, and trade was unfairly diverted to it from them;

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.

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

Mr. D. C. Daniel and *Mr. L. P. Allen, Jr.* for the Commission.

Nash & Donnelly, of Washington, D. C., 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 J. M. Taylor Co.,

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Inc., a corporation, and Samuel Nitke, Charles Myers, and Isadore Stein, individuals, 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, J. M. Taylor Co., Inc., is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business located at 358 Fifth Avenue, New York, N. Y. Respondent, Samuel Nitke, an individual, is sole owner of J. M. Taylor Co., Inc. Respondent, Charles Myers, is an individual, and an employee of the corporate respondent. Respondent, Isadore Stein, is an individual, and is in charge of the actual operation of the business of the corporate respondent as an employee of said corporation. Respondents, Samuel Nitke and Charles Myers, formulate, control, and direct the practices and policies of J. M. Taylor Co., Inc. All of individual respondents have their offices at the same address as corporate respondent. Said respondents act together with and in cooperation with each other in doing the acts and things hereinabove alleged. Respondents are now, and for some time last past have been, engaged in the sale and distribution of electric razors, clocks, electric mixers, traveling bags, pen and pencil sets, Glolite lighters, highball glasses, and 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 products, when sold, to be transported from their place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia at their respective points of location. There is now and has been for some time last past a course of trade by said 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 said business, respondents are and have been in competition with other corporations and individuals, and with partnerships 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 in commerce, furnish and have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate con-

sumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondents was and is substantially as follows:

Respondents distribute and have distributed to the purchasing public in commerce certain literature and instructions including, among other things, push cards, order blanks, illustrations of their said products, and circulars explaining respondents plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondents' push cards bear 30 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 30 small, partially perforated disks on the face of which is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disk is a number which is disclosed when the disk 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 reverse side of said card. The push card bears legends or instructions as follows:

Name Under Seal Receives

6 STRIP TEASE
HIGHBALL GLASSES

EACH GLASS
DIFFERENT

\$7.50
Value

(Cut)

This is what you see on
the outside of the glass.

This is what happens
when you turn the glass
around or take a peep in-
side.

(Cut)

BE FIRST IN YOUR CROWD
A Floor Show In Every Drink

Numbers Under 25 Pay What You Draw
Numbers Over 25 Pay Only 25¢—No Higher

Respondents furnish said representatives with additional instructions to be used in connection with said push cards, some of which are as follows:

HOW TO OBTAIN YOUR
STRIP TEASE GLASSES

This card consists of girls' names—beneath each name is a concealed number which shows the amount the person selecting that particular name is to pay for participating in this opportunity.

These concealed numbers range from 1 to 25. All numbers over 25 pay 25¢ only. For instance, if you punch number 1 you pay 1¢. If you punch number 10 you pay 10¢. If you punch number 25 you pay only 25¢. Remember, you pay nothing higher than 25¢—25¢ is the maximum cost (total \$6.45).

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When all names have been punched, you then remove the large seal and disclose the winner—the person who punched the corresponding name is awarded One (1) set of 6 Strip Tease Highball Glasses, valued at \$7.50.

And, for your efforts, you also receive one set of 6 Strip Tease Highball Glasses, valued at \$7.50.

Upon receipt of your order (see other side) with the \$6.45, remittance (or we will ship C. O. D., F. O. B., New York), we will immediately ship you TWO (2) sets of 6 glasses in each (total 12 glasses), One (1) set of 6 glasses of which may be given the holder of the name under the large seal—the other set of 6 may be retained by you.

* * * * *

Sales of respondents' products by means of said push cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The said articles of merchandise are thus distributed to the purchasing public wholly by lottery or chance.

Respondents furnish and have furnished various push cards, accompanied by said 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 method involved in connection with the sale of all of said merchandise by means of said push cards is the same as the one hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondents furnish the said push cards use the same in purchasing, selling, and distributing respondents' merchandise, in accordance with the aforesaid sales plan. 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 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 of the public and of respondents' competitors and constitute unfair methods of competition 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 August 31, A. D. 1938, issued and subsequently served its complaint upon the respondents, J. M. Taylor Co., Inc., a corporation, and Samuel Nitke, Charles Myers, and Isadore Stein, individuals, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by D. C. Daniel and L. P. Allen, Jr., attorneys for the Commission, and in opposition to the allegations of the complaint by H. J. Donnelly, Jr., attorney for the respondents J. M. Taylor Co., Inc., and Samuel Nitke, before trial examiners 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, this proceeding regularly came on for final hearing before the Commission on said complaint, answers thereto, testimony and other evidence, report of the trial examiners upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto and oral argument before the Commission, 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 Samuel Nitke is an individual having a place of business at 345 West Eighty-sixth Street, New York City, N. Y. On or about December 15, 1937, said respondent caused a corporation to be organized under the laws of the State of New Jersey known as J. M. Taylor Co., Inc., with its principal place of business at 358 Fifth Avenue, New York, N. Y., all the capital stock of which corporation being owned and controlled by said respondent Samuel Nitke. No meetings of stockholders were ever held or officers or directors elected for said corporation. Subsequent thereto, on October 7, 1938, said corporation was formally dissolved.

During the period of December 15, 1937, to October 7, 1938, said respondent, acting by and through said corporation J. M. Taylor Co., Inc., was engaged in the sale and distribution of electric razors, clocks, electric mixers, traveling bags, pen and pencil sets, Glolite lighters, highball glasses, and other articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia. Said respondent caused said products, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in various other States of the United States. During the times mentioned herein, respondent has maintained a course of trade in said articles of merchandise in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his said business respondent has been in competition with other individuals and corporations and with partnerships engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of his said business in soliciting the sale of and selling and distributing said merchandise in commerce, respondent furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise was sold or distributed to the ultimate consumer thereof wholly by lot or chance. The method or sales plan adopted and used by said respondent was and is substantially as follows:

During the times mentioned herein said respondent distributed by United States mails and by other means in commerce, certain literature and instructions, including, among other things, push cards, order blanks, illustrations of his said products, and circulars explaining respondent's plan of selling merchandise and allotting it as premiums or prizes to the operators of said push cards. One of respondent's

push cards contained 30 feminine names, with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card had 30 small partially perforated disks, on the face of which was printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disk was a number, which was disclosed when the disk was pushed or separated from the card. The push card also had a large master seal, and concealed within the master seal was one of the feminine names appearing on the reverse side of said card. The push card bore legends or instructions as follows:

Name Under Seal Receives

6 STRIP TEASE
HIGHBALL GLASSES

EACH GLASS

DIFFERENT

\$7.50

Value

(Cut)

This is what you see on the
outside of the glass.

This is what happens when
you turn the glass around
or take a peep inside.

(Cut)

BE FIRST IN YOUR CROWD
A Floor Show In Every Drink

Numbers Under 25 Pay What you Draw
Numbers Over 25 Pay Only 25¢—No Higher

Respondent furnished said representatives with additional instructions to be used in connection with said push cards, some of which were as follows:

HOW TO OBTAIN YOUR
STRIP TEASE GLASSES

This card consists of girls' names—beneath each name is a concealed number which shows the amount the person selecting that particular name is to pay for participating in this opportunity.

These concealed numbers range from 1 to 25. All numbers over 25 pay 25¢ only. For instance, if you punch number 1 you pay 1¢. If you punch number 10 you pay 10¢. If you punch number 25 you pay only 25¢. Remember, you pay nothing higher than 25¢—25¢ is the maximum cost (total \$6.45).

When all names have been punched, you then remove the large seal and disclose the winner—the person who punched the corresponding name is awarded One (1) set of 6 Strip Tease Highball Glasses, valued at \$7.50.

And, for your efforts, you also receive one set of 6 Strip Tease Highball Glasses, valued at \$7.50.

Upon receipt of your order (see other side) with the \$6.45, remittance (or we will ship C. O. D., F. O. B., New York), we will immediately ship you

Findings

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TWO (2) sets of 6 glasses in each (total 12 glasses), One (1) set of 6 glasses of which may be given the holder of the name under the large seal—the other set of 6 may be retained by you.

* * * * *

Sales of respondent's products by means of said push cards were made in accordance with the above described legends and instructions. Said prizes or premiums were allotted to the customers or purchasers in accordance with the above legends and instructions. The said articles of merchandise were thus distributed to the purchasing public wholly by lottery or chance.

Respondent furnished various push cards, accompanied by said order blanks, instructions and other printed matter, for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards was the same as the one hereinabove described, varying only in detail.

PAR. 4. The persons to whom respondent furnished the said push cards used the same in purchasing, selling, and distributing respondent's merchandise, in accordance with the aforesaid sales plan. Respondent thus supplied to and placed 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 sales plan or 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 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. 5. 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 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 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 to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 6. The Commission further finds that there is no evidence that the respondents Charles Myers and Isadora Stein actively participated in the acts and practices charged in the complaint.

CONCLUSION

The aforesaid acts and practices of the 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 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 the respondent, testimony and other evidence before trial examiners of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, report of the trial examiners upon the evidence and exceptions filed thereto, briefs filed herein and oral arguments of counsel, 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 Samuel Nitke, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of electric razors, clocks, electric mixers, traveling bags, pen and pencil sets, Glolite lighters, highball glasses, and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, push cards or other devices which are to be used, or may be used, in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Shipping, mailing, or transporting to members of the purchasing public push cards or other devices which are to be used, or may be used, in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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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 complaint be dismissed as to the respondents J. M. Taylor Co., Inc., a corporation, and Charles Myers and Isadore Stein, individuals.

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.

Syllabus

IN THE MATTER OF
PINE HILL LIME & STONE COMPANY, ET AL., AND
HAL S. COVERT

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

Docket 3591, Complaint, July 29, 1939¹—Decision, June 30, 1941

Where some 19 corporations and an individual, which produced a majority of the lime of all kinds and grades produced in the southeastern part of the United States, and somewhat less than a majority of the lime there sold, and, to the extent that they acted collusively, dominated the market for lime in the section in question; acting in concert with one another and through their paid secretary, who had represented them and others as district secretary under the National Recovery Administration, and, following the invalidation of the National Industrial Recovery Act, sought to carry on for them the system of non-competitive prices embodied in the Code for the industry;

Engaged in an unlawful combination and conspiracy among themselves with intent and effect of substantially suppressing and frustrating competition as to price and otherwise in the sale of lime in commerce among the various States in which they did business, and in furtherance of said end—

- (1) Continued in effect among themselves aforesaid system of non-competitive delivered prices which was designed to, and in many instances did, prevent differences in the cost of freight delivery between various producers' plants and the respective places of delivery from creating any advantage to purchasers in delivered cost, irrespective of the producer involved, and which system was predicated upon the use of a number of basing points whereby all delivered prices were calculated as though shipments were made by rail from a single basing point, or points having the same freight rate, to respective destinations;
- (2) Employed and operated a cooperative system of filing and exchanging, through said secretary, the base prices applicable to the respective basing points, it being understood and agreed among them that quotations and sales would be made only on a delivered price basis by adding to such common mill base price the rail freight on lime so shipped from the applicable basing point to destination, and thereby in effect carried over and continued in operation practices which had been carried on under the said N. R. A. Code, said secretary undertaking to carry out, so far as he was able, the services which he had rendered as district secretary under the N. R. A., and said various producers agreeing to send to his office their published quotations f. o. b. their respective plants, which he distributed along with other information to the other subscribers to such service or association;
- (3) Employed and operated a cooperative system of calculating and circulating among themselves through said individual a compilation of freight rates from the respective basing points to various destinations in order to insure that differences in actual freight and in interpretation and application thereof

¹ Second amended.