

IN THE MATTER OF

HENRY M. SALISBURY AND FRANK R. JOHNSON, TRADING AS SMOKE CONDITIONER COMPANY

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

Docket 4166. Complaint, June 19, 1940—Decision, June 30, 1941

Where two individuals engaged in the interstate sale and distribution of their "Smoke Conditioner" cigarette holder; in advertising matter distributed by them, expressly and by implication—

Represented that their said product embodied entirely new and revolutionary principles in cigarette holders, never had a bad odor or taste, and prevented nicotine and irritating substances in the cigarette from reaching the smoker, and that use thereof promoted health by eliminating all deleterious substances from the smoke;

Facts being that said "Smoke Conditioner" was not new or revolutionary in its principle of operation; had, after use, both a bad odor and taste; would not prevent nicotine and other irritating substances from reaching the smoker, or promote health by the elimination of all deleterious substances from tobacco smoke; and use thereof eliminated only a small percent of nicotine and other aforesaid substances present in tobacco;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such misleading statements were true and into the purchase of their said product because of such mistaken belief:

Held, That such acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. R. A. McOuat for the Commission.

Mr. Crichton Clarke, 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 Henry M. Salisbury and Frank R. Johnson, trading as Smoke Conditioner Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondents Henry M. Salisbury and Frank R. Johnson are individuals trading as Smoke Conditioner Co. with their office and principal place of business at 254 West Thirty-first

Street in the city of New York, State of New York. Respondents for more than 1 year last past have been engaged in the sale and distribution in commerce between and among the various States of the United States of a certain cigarette holder designated as Smoke Conditioner. In the course and conduct of their business, respondents caused their said cigarette holders to be transported from their place of business in the State of New York to the purchasers thereof located in various other States of the United States.

PAR. 2. In the course and conduct of their aforesaid business, and in the furtherance of the sale of said product, respondents have made many misleading statements and representations relative to said cigarette holder by means of advertising matter circulated and distributed to purchasers and prospective purchasers located in various States of the United States. Among and typical of such misleading statements and representations contained in said advertising matter distributed as aforesaid, are the following:

Now "Smoke Conditioning," an entirely new and revolutionary principle in cigarette holders, is available with the Smoke Conditioner.

The Smoke Conditioner will remove—by condensation—substances from the cigarette smoke that are detrimental to your health—which ordinarily lodge in the cigarette, itself. This—its main objective—is only one of its outstanding advantages.

The Smoke Conditioner is made of a substance which never permits an objectionable or foul odor to arise, even after several packs of cigarettes have been smoked through it.

You owe it to yourself to get the utmost in pleasure—without any health hazards—from every cigarette you smoke. Buy a Smoke Conditioner today for your health's sake.

The scientific way to avoid excess nicotine cigarette "bite"—harsh irritants.

The Smoke Conditioner has two definite purposes—to cool cigarette smoke and to remove from it all irritating substances.

The Smoke Conditioner never has a bad odor or taste.

The aforesaid statements and representations together with similar statements appearing in respondents' advertising, but not herein set out, purport to be descriptive of respondents' cigarette holder, its functions and its effectiveness in use. In the manner and by the means aforesaid, respondents represent expressly and by implication that said "Smoke Conditioner" embodies entirely new and revolutionary principles in cigarette holders; that it never has a bad odor or taste; that it prevents nicotine and irritating substances in a cigarette from reaching the smoker; and that its use promotes health by eliminating all deleterious substances from the tobacco smoke.

PAR. 3. In truth and in fact, said "Smoke Conditioner" is not new or revolutionary in its principles of operation; it will, after use, have both a bad odor and taste; its use will not prevent nicotine and the

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irritating substances from reaching the smoker, nor will its use promote health by the elimination of all deleterious substances from tobacco smoke. The use of said holder eliminates only a small percentage of nicotine and other deleterious substances present in tobacco.

PAR. 4. The aforesaid acts and practices used by respondents in connection with the offering for sale and sale of their said cigarette holders have had, and now have, the capacity and tendency to and do mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and into the purchase of respondents' said cigarette holders because of said belief.

PAR. 5. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice of the public and constitute 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 19th day of June 1940, issued and thereafter served its complaint in this proceeding upon respondents Henry M. Salisbury and Frank R. Johnson, individuals trading as Smoke Conditioner Co., charging them with use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Subsequently respondents filed their answer dated May 12, 1941, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, and the Commission, having duly considered the matter, and now being 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 respondents Henry M. Salisbury and Frank R. Johnson are individuals trading as Smoke Conditioner Co. with their office and principal place of business at 254 West Thirty-first Street in the city of New York, State of New York. For more than 1 year last past respondents have been engaged in the sale and distribution in commerce between and among the various States of the United

States of a certain cigarette holder designated as Smoke Conditioner. In the course and conduct of their business, respondents have caused their cigarette holders to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States.

PAR. 2. In the course and conduct of their aforesaid business, and in the furtherance of the sale of said product, respondents have made many misleading statements and representations relative to said cigarette holder by means of advertising matter circulated and distributed to purchasers and prospective purchasers located in various States of the United States. Among and typical of such misleading statements and representations contained in said advertising matter distributed as aforesaid are the following:

Now "Smoke Conditioning," an entirely new and revolutionary principle in cigarette holders, is available with the Smoke Conditioner.

The Smoke Conditioner will remove—by condensation—substances from the cigarette smoke that are detrimental to your health—which ordinarily would lodge in the cigarette, itself. This—its main objective—is only one of its outstanding advantages.

The Smoke Conditioner is made of a substance which never permits an objectionable or foul odor to arise, even after several packs of cigarettes have been smoked through it.

You owe it to yourself to get the utmost in pleasure—without any health hazards—from every cigarette you smoke. Buy a Smoke Conditioner today for your health's sake.

The scientific way to avoid excess nicotine cigarette "bite"—harsh irritants.

The Smoke Conditioner has two definite purposes—to cool cigarette smoke and to remove from it all irritating substances.

The Smoke Conditioner never has a bad odor or taste.

The aforesaid statements and representations, together with similar statements appearing in respondents' advertising, but not herein set out, purport to be descriptive of respondents' cigarette holder, its functions and effectiveness in use. Through the use of said statements and representations, respondents have engaged in the practice of falsely representing, expressly and by implication, that said "Smoke Conditioner" embodies entirely new and revolutionary principles in cigarette holders; that said Smoke Conditioner never has a bad odor or taste; that said Smoke Conditioner prevents nicotine and irritating substances in the cigarette from reaching the smoker; and that the use of the Smoke Conditioner promotes health by eliminating all deleterious substances from the tobacco smoke.

PAR. 3. Said representations are exaggerated, false and misleading. The Smoke Conditioner is not new or revolutionary in its principle of operation. It will, after use, have both a bad odor and taste. The

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use of the Smoke Conditioner will not prevent nicotine and other irritating substances from reaching the smoker. The use of the Smoke Conditioner will not promote health by the elimination of all deleterious substances from tobacco smoke. The use of said cigarette holder eliminates only a small percentage of nicotine and other deleterious substances present in tobacco.

PAR. 4. The use by the respondents of the foregoing false and misleading statements and representations in their advertising literature with respect to their said product has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such misleading statements and representations are true and into the purchase of respondents' product because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive 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 the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that the said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Henry M. Salisbury and Frank R. Johnson, individually and trading as Smoke Conditioner Co. or under any other name or names and their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of cigarette holders now known as and sold under the name of "Smoke Conditioner," or any other similar product sold under the same name or any other name in commerce as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist from representing that:

1. Said product embodies any new or revolutionary principles of operation in cigarette holders.

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2. Said cigarette holder never has a bad odor or taste.
3. Said product prevents nicotine and irritating substances from reaching the smoker.
4. The use of said product promotes health.
5. Said product eliminates more than a small percentage of any deleterious substances present in tobacco.

It is further ordered, That respondents shall within 60 days after the service on 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
ACME PREMIUM SUPPLY CORPORATION

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

Docket 4198. Complaint, July 26, 1940—Decision, June 30, 1941

Where a corporation engaged in the competitive interstate sale and distribution of aluminum ware, enamel ware, smoker sets, cigarette cases, lamps, glass-ware, fishing tackle, and other articles of merchandise—

- (a) Supplied its customers with assortments of said merchandise together with Bingo sets, by means of which such merchandise was sold and distributed to the consuming public in a manner involving the operation of a game of chance, gift enterprise, or lottery scheme under a plan providing that a player securing, by chance, necessary numbers, as drawn by game's operator, to call "Bingo" became entitled to receive as prize one of said articles, value of which exceeded cost of participation to players; and thereby

Supplied to and placed in the hands of others means of conducting lotteries in the sale of its merchandise, in accordance with aforesaid sales plan or method, involving game of chance to procure article of merchandise at much less than normal price thereof, contrary to established public policy of the United States Government, 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 its said sales plan and the element of chance involved therein and were thereby induced to buy and sell its merchandise in preference to that of its said competitors, and trade in commerce was unfairly diverted to it from them; and

- (b) Sold and distributed devices commonly known as push cards and punchboards, separate and apart from any other merchandise, including (1) push cards and punchboards with the legends or instructions printed on the face thereof explaining the manner in which they were to be used in the sale of various specified articles of merchandise, and that purchasers punching disks in the cards and thereby revealing certain lucky numbers received articles of merchandise without additional cost, at prices much less than the normal retail price, and that others received nothing for their money other than the privilege of making a punch; and (2) similar devices bearing no instructions or legends thereon but having blank spaces provided therefor on which purchasers placed instructions of the same import as those printed on the aforesaid devices;

With result that—

- (1) Many who sold or distributed candy, cigars, and other articles of merchandise in commerce bought said push card and punchboard devices and packed and assembled assortments comprised of various articles of such merchandise, together with such cards and boards, and retail dealer buyers of such assortments, either as direct or indirect purchasers, and retailers who made up their own assortments, exposed same to purchasing public and sold and distributed such articles through use of said push cards or punchboards and in accordance with sales plans as above described;