

Complaint

IN THE MATTER OF

PLOMB TOOL COMPANY

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

Docket 4384. Complaint, Nov. 23, 1940—Decision, June 30, 1941

Where a corporation engaged in competitive interstate sale and distribution of tools and other articles of merchandise to wholesalers, jobbers, and retailers, and in advertising same and its sales plan or method for resale thereof to purchasing public by means of printed cards, circulars, samples, and personal solicitation—

Furnished, together with its said products, various club plans which involved resale thereof to purchasing public by use of game of chance, gift enterprise, or lottery, and under which, as illustrative, through plan of fixed weekly payments for specified number of weeks, and weekly drawings, certain members received \$25 worth of its tools for \$1, \$2, \$3, etc., in accordance with chance drawing of particular member's name at first, second, and succeeding weekly drawings, all others paying full amount, and which included, at the end of the period, drawing for a grand prize, to which all members of the club were eligible; and thereby

Supplied to and placed in the hands of retailers means of conducting lotteries in the sale of its merchandise through their exposure and sale of same to purchasing public in accordance with such plans, under which the amount the ultimate purchaser paid for products, and fact as to which club member received final award, was determined wholly by lot or chance, and which involved game of chance to procure articles of merchandise at much less than normal retail price; contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who, unwilling to adopt and use such or any method contrary to public policy, refrain therefrom;

With result that many persons were attracted by its said sales plan and element of chance involved therein, and were thereby induced to buy and sell its merchandise in preference to that offered and sold by its competitors who did not use the same or an equivalent method, and with effect of unfairly diverting trade in commerce to it from its said competitors, to the injury of competition in commerce:

Held, That said acts and practices, as above 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. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.

Mr. William Hawes Smith, of Los Angeles, Calif., 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

Complaint

33 F. T. C.

Trade Commission, having reason to believe that Plomb Tool Co., 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, Plomb Tool Co., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 2209 Santa Fe Avenue, Los Angeles, Calif. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of tools and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from its aforesaid place of business in the State of California to purchasers thereof at their respective points of location in the various States of the United States other than the State of California and in the District of Columbia. There is now, and for more than 2 years last past has been, a course of trade by said respondent in said 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 its business, respondent is and has been in competition with other corporations and with 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 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 its said merchandise to wholesale dealers, jobbers, and retail dealers, along with a sales plan or method by which the said merchandise is to be, and is, resold to the purchasing public. Said plan or method involves the use of a game of chance, gift enterprise, or lottery scheme in the sale and distribution of said merchandise to the ultimate purchasers thereof. Respondent has advertised its said merchandise and its said sales plan or method by means of printed cards, circulars, samples of said merchandise, and by personal solicitation. The sales plan or method as suggested and advertised by respondent is substantially as follows:

The sales plan or method is described as the "Tool Club." Each club has a fixed number of members, usually 100. Each member of a club pays a fixed amount each week, usually \$1, for a period not to exceed a given number of weeks, usually 25 weeks. At the end of the first week a drawing is held and the member whose name or number is drawn receives from the retail dealer his choice of \$25 worth of

respondent's tools, for the payment of 1 week's dues, and such winner or member then is dropped from the club. Each succeeding week the same procedure is followed and thus one member receives tools as aforesaid for the payment of 1 week's dues, another for 2 weeks' dues, another for 3 weeks' dues, and so on to the end of the fixed period. At that time all remaining members receive \$25 worth of tools, but such members have paid the full contract price therefor. Also, at the end of the fixed period a drawing is held for a grand prize to which all the members of the club are eligible. Thus, the amount which an ultimate purchaser pays for the tools and the fact as to which club member receives the final award is determined wholly by lot or chance.

Respondent furnishes and has furnished various "Club Plans" for use in the sale and distribution of its 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 "Club Plans" is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said merchandise expose for sale and sell the same to the purchasing public in accordance with the aforesaid sales plan or method. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of 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 articles of merchandise at a price which is much less than the normal retail price thereof. Many persons, firms, and corporations who sell and 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 a 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 its 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

Findings

33 F. T. C.

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 the respondent from its said competitors who do not use the same or an equivalent method. As a result thereof injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and the District of Columbia.

PAR. 5. The aforesaid acts and practices of the 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 November 23, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Plomb Tool Co., 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. On December 18, 1940, the respondent filed its original answer in this proceeding. Subsequently, on May 12, 1941, the respondent filed a motion to withdraw its original answer and file in lieu thereof a substitute answer dated May 12, 1941, in which it 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 the said complaint and 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, Plomb Tool Co., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 2209 Santa Fe Avenue, Los Angeles, Calif. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of

tools and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from its aforesaid place of business in the State of California to purchasers thereof at their respective points of location in the various States of the United States other than the State of California and in the District of Columbia. There is now, and for more than 2 years last past has been, a course of trade by said respondent in said 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 its business, respondent is and has been in competition with other corporations and with 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 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 its said merchandise to wholesale dealers, jobbers, and retail dealers, along with a sales plan or method by which the said merchandise is to be, and is, resold to the purchasing public. Said plan or method involves the use of a game of chance, gift enterprise, or lottery scheme in the sale and distribution of said merchandise to the ultimate purchasers thereof. Respondent has advertised its said merchandise and its said sales plan or method by means of printed cards, circulars, samples of said merchandise, and by personal solicitation. The sales plan or method as suggested and advertised by respondent is substantially as follows:

The sales plan or method is described as the "Tool Club." Each club has a fixed number of members, usually 100. Each member of a club pays a fixed amount each week, usually \$1, for a period not to exceed a given number of weeks, usually 25 weeks. At the end of the first week a drawing is held and the member whose name or number is drawn receives from the retail dealer his choice of \$25 worth of respondent's tools, for the payment of 1 week's dues, and such winner or member then is dropped from the club. Each succeeding week the same procedure is followed and thus one member receives tools as aforesaid for the payment of 1 week's dues, another for 2 weeks' dues, another for 3 weeks' dues, and so on to the end of the fixed period. At that time all remaining members receive \$25 worth of tools, but such members have paid the full contract price therefor. Also at the end of the fixed period a drawing is held for a grand prize to which all the members of the club are eligible. Thus, the amount which an ultimate purchaser pays for

the tools and the fact as to which club member receives the final award is determined wholly by lot or chance.

Respondent furnishes and has furnished various "Club Plans" for use in the sale and distribution of its 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 "Club Plans" is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said merchandise expose for sale and sell the same to the purchasing public in accordance with the aforesaid sales plan or method. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States, and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance, or the sale of a chance, to procure articles of merchandise at a price which is much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with the 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 a 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 its 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 the respondent from its said competitors who do not use the same or an equivalent method. As a result thereof, 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 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, 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 Act.

It is ordered, That the respondent, Plomb Tool Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of tools or any other 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 tools or any other merchandise, together with a sales plan or method involving the use of a game of chance, gift enterprise, or lottery scheme by which said merchandise is to be, or may be, sold to the purchasing public.

2. Selling or otherwise disposing of any merchandise by the use 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.

Complaint

33 F. T. C.

IN THE MATTER OF
HY-PHEN CORPORATION

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

Docket 4418. Complaint, Dec. 14, 1940—Decision, June 30, 1941

Where a corporation engaged in the interstate sale and distribution of its "Hy-Phen" medicinal preparation; in advertisements in newspapers, by radio continuities, and other advertising media, directly or by implication;

Represented that its said preparation would prevent colds and was a cure or remedy therefor; and was a competent and effective treatment for various ailments and conditions including toothache, earache, neuralgia, twitching nerves, after-extraction pains, aching muscles, rheumatic pains, and women's periodic pains, which would relieve the pain attendant upon such conditions more quickly and for a longer period of time than any other preparation; and that it was unqualifiedly safe for use;

Facts being that the therapeutic properties of its said preparation were limited to those of an analgesic, affording only temporary relief from painful symptoms and having no curative action upon the underlying factors causing pain; ingredients in said preparation were similar to those found in many other like preparations, and it had no special properties which would permit it to relieve pain more quickly or for a longer time than many other such preparations; its effectiveness in the treatment of the conditions listed was limited to furnishing temporary relief from their painful symptoms, it had no therapeutic value in treatment of such conditions as migraine headaches, headaches due to infection, pain caused by abscessed tooth, and others, and use thereof was not entirely free from danger, due to its drug content;

With result of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and into the purchase of substantial quantities of its said product:

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.

Mr. John M. Russell 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 Trade Commission, having reason to believe that Hy-Phen Corporation, a corporation (successor to Bradley's Laboratory, Inc., 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 public interest, hereby issues its complaint stating its charges in that respect as follows: