

IN THE MATTER OF

IRVING COHN, TRADING AS IRVIN NOVELTY COMPANY

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

Docket 4464. Complaint, Feb. 11, 1941—Decision, July 10, 1941

Where an individual engaged in the competitive interstate sale and distribution of candy and novelty merchandise, including certain assortments so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers, typical assortments consisting of (1) 2 cedar chests filled with candy, together with a punchboard for use in sale thereof to consuming public, as explained thereon, under a plan by which the two customers securing the 2 winning numbers from the 200 concealed on the board, received said chests and candy, value of which was in excess of the 5 cents paid, and of (2) hair brush and push card, under a plan by which the purchaser of a chance at 10 cents, selecting from the feminine names displayed on the card that corresponded to the name concealed under the master seal received said brush—

Sold such assortments to dealers and retailers by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his products, involving sale of a chance to procure an article at much less than its 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 use said or any sales method involving chance or any other sales plan contrary to public policy, refrain therefrom;

With the result that many dealers in and ultimate consumers of said merchandise were attracted by said sales plans and the element of chance involved therein, and were thereby induced to buy his merchandise in preference to that of his said competitors, and with effect of unfairly diverting trade to him from them; to the substantial injury of competition in commerce:

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 acts and practices therein.

Mr. D. C. Daniel for the Commission.

Hutton, Clark & Hutton, of Danville, Ill., 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 Irving Cohn, individually and trading as Irvin Novelty Co., hereinafter referred to as respondent, has 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 interest of the public hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Irving Cohn is an individual trading as Irvin Novelty Co., with his principal place of business located at 125½ East Main Street, Danville, Ill. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of candy and novelty merchandise to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise when sold to be transported from his said place of business in the State of Illinois to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now and has been for more than 1 year 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 corporations and 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 his business, as described in paragraph 1 hereof, respondent sells and has sold to dealers various assortments of candy and other merchandise so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers thereof.

One of said assortments consists of two cedar chests filled with candy, together with a device commonly called a punchboard. Said cedar chests and candy are distributed to the consuming public by means of said punchboard in the following manner: The sales are 5 cents each and when a punch is made from the board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board (200) but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing prospective purchasers as to which numbers entitle the purchaser thereof to receive a cedar chest and candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the cedar chests and candy receives nothing for his money. The cedar chests and candy are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for said chest receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the number punched or separated from the board. The cedar chests and candy are thus distributed to the purchasing public wholly by lot or chance.

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Another of said assortments consists of a device commonly known as a push card together with a hair brush. The push card bears 15 feminine names, with ruled columns on the side for writing the name of the purchaser opposite the feminine name selected. Under each of the 15 feminine names said push card has a small perforated disk, on the face of which is printed the word "push." Each purchaser pays 10 cents for the privilege of selecting one of the names and pushing the corresponding disk. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The name under the master seal is effectively concealed from purchasers and prospective purchasers and is not revealed until the seal has been broken after all of the disks are pushed. The person selecting the feminine name corresponding with the one under the master seal receives the hair brush. The purchasers of the pushes under the other feminine names receive nothing. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid is thus determined wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various other assortments of candy and merchandise involving a lot or chance feature but the sales plan or methods by which said merchandise is distributed are similar to the ones hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said candy or other merchandise expose and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said sales plans or methods in the sale of his candy or other merchandise and the sale of said candy or other merchandise by and through the use thereof and by the aid of said sales plans or methods 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 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 and distribute merchandise in competition with respondent, as above alleged, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or the sale of a chance to win something by chance or any other sales

plans or methods that are contrary to public policy and such competitors refrain therefrom. Many dealers in and ultimate consumers of said merchandise are attracted by said sales plans or methods employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein and are thereby induced to buy respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plans or methods 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 equivalent sales plans or methods 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 February 11, 1941, issued and thereafter served its complaint in this proceeding upon respondent Irving Cohn, individually and trading as Irvin Novelty Co., charging him with the use of unfair methods of competition 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 the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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 Irving Cohn is an individual trading as Irvin Novelty Co., with his principal place of business located at 125½ East Main Street, Danville, Ill. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of candy and novelty merchandise to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise when sold to be transported from his said place of business in the State of Illinois to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now, and has been for more than 1 year 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 corporations and 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. The Commission finds that in the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to dealers various assortments of candy and other merchandise so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers thereof.

One of said assortments consists of two cedar chests filled with candy, together with a device commonly called a punchboard. Said cedar chests and candy are distributed to the consuming public by means of said punchboard in the following manner: The 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 (200) but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing prospective purchasers as to which numbers entitle the purchaser thereof to receive a cedar chest and candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the cedar chests and candy receives nothing for his money. The cedar chests and candy are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for said chest receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the number punched

or separated from the board. The cedar chests and candy are thus distributed to the purchasing public wholly by lot or chance.

Another of said assortments consists of a device commonly known as a push card together with a hair brush. The push card bears 15 feminine names, with ruled columns on the side for writing the name of the purchaser opposite the feminine name selected. Under each of the 15 feminine names said push card has a small perforated disk, on the face of which is printed the word "push." Each purchaser pays 10 cents for the privilege of selecting one of the names and pushing the corresponding disk. The push card also has a large master seal and concealed with the master seal is one of the feminine names appearing on the face of said card. The name under the master seal is effectively concealed from purchasers and prospective purchasers and is not revealed until the seal has been broken after all of the disks are pushed. The person selecting the feminine name corresponding with the one under the master seal receives the hair brush. The purchasers of the pushes under the other feminine names receive nothing. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid is thus determined wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various other assortments of candy and merchandise involving a lot or chance feature but the sales plan or methods by which said merchandise is distributed are similar to the ones hereinabove described, varying only in detail.

PAR. 3. The Commission finds that retail dealers who directly or indirectly purchase respondent's said candy or other merchandise expose and sell the same to the purchasing public in accordance with the aforesaid sales plan or methods. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his products in accordance with the sales plans or methods hereinabove described. The use by respondent of said sales plan or methods in the sale of his candy or other merchandise and the sale of said candy or other merchandise by and through the use thereof and by the aid of said sales plans or methods 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 criminal laws.

PAR. 4. The Commission finds that the sales of merchandise to the purchasing public in the manner above described 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 and distribute merchandise in competition with respondent, as above described, are unwilling to

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adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy and such competitors refrain therefrom. Many dealers in, and ultimate consumers of, said merchandise are attracted by said sales plans or methods employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein and are thereby induced to buy respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plans or methods 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 equivalent sales plans or methods 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 states that he waives all intervening procedure and further hearings 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 Irving Cohn, individually and trading as Irvin Novelty Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of candy and novelty merchandise, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing any merchandise so packed and assembled that sales of said merchandise to the 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 assortments of any merchandise, together with push or pull cards, punchboards or other devices, which said push or pull cards, punchboards or other devices are to be used or may be used in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. Supplying to or placing in the hands of others push or pull cards, punchboards or other devices, which said push or pull cards, punchboards, or other devices are to be used or may be used in the sale or distribution of said merchandise to the public at retail.

4. 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 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.

IN THE MATTER OF

**BEN GORDON (ALSO KNOWN AS BENJAMIN GORDON)
AND LOUIS GORDON, TRADING AS BENGOR PRODUCTS
COMPANY AND GOLF PRODUCTS COMPANY**

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

Docket 4479. Complaint, Mar. 29, 1941—Decision, July 10, 1941

Where two individuals engaged in interstate sale and distribution of various commodities including two medicinal preparations, one designated as "Dupree Pills" and as "Dr. Gordon's Single Strength Pills," and the other as "Dupree Pills Double Strength" and as "Dr. Gordon's Double Strength Pills"; by means of advertisements disseminated through the mails and by various other means—

- (a) Represented, falsely, directly or through implication, that their said preparations constituted competent and effective treatments for amenorrhea and dysmenorrhea; and
- (b) Failed to reveal facts material in the light of such representations, and that, due to presence in said preparations of certain drugs, use thereof under the conditions prescribed in aforesaid advertisements or under such conditions as are customary or usual, might result in gastro-intestinal disturbances, catharsis, nausea, and vomiting, with pelvic congestion and hemorrhage, and in cases of pregnancy might result in uterine infection, blood poisoning, and other serious conditions;

With tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that said representations were true, and, because of such mistaken belief thus engendered, to induce the public to purchase substantial quantities of their said preparations:

Held, That said acts and practices, as above set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. R. P. Bellinger for the Commission.

Mr. Samuel J. Ernstoff, 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 Ben Gordon (also known as Benjamin Gordon) and Louis Gordon, trading as Bengor Products Co. and as Golf Products 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. Respondents, Ben Gordon (also known as Benjamin Gordon) and Louis Gordon, are individuals trading as Bengor Prod-