

Complaint

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IN THE MATTER OF

BENJAMIN GORDON AND LOUIS GORDON, TRADING AS
BENGOR PRODUCTS COMPANY AND MAGNET MER-
CHANDISE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4474. Complaint, Mar. 24, 1941—Decision, July 31, 1941*

Where two individuals engaged in competitive interstate sale and distribution of drug sundries, notions, household specialties, and other novelty merchandise, and in selling certain assortments thereof so packed and assembled as to involve the use of a lottery scheme or game of chance when sold and distributed to the purchasers, typical assortment including a cigarette lighter and a push card for use in its sale, under a plan, as there explained, by which the purchaser selecting by chance that 1 of 35 feminine names displayed thereon corresponding to that concealed under card's master seal, received the lighter, and the amount paid by a customer for a push was decided by the number disclosed in disk beneath the particular feminine name selected—

Sold and distributed such assortments, directly or indirectly, to retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, under which the fact as to whether a purchaser received the lighter or nothing except the right to push, and the amount of money paid for a push were determined wholly by lot or chance, and thereby supplied to and placed in the hands of others means of conducting a lottery in the sale of their products, involving possibility of procuring merchandise at much less than normal retail price thereof; contrary to an established public policy of the United States Government, and in competition with many who refrain from using any method involving a game of chance or any other method contrary to public policy;

With the result that many persons were attracted by said sales plans and the element of chance involved therein, and were thereby, induced to buy and sell their products in preference to those of said competitors, and with tendency and capacity unfairly to divert trade in commerce to themselves therefrom:

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.

Before *Mr. A. B. Duvall*, trial examiner.

Mr. J. W. Brookfield, Jr., 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 Benjamin Gordon and Louis Gordon, individually, and trading as Bengor Products Co., and Magnet Merchandise Co., 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. Respondents, Benjamin Gordon and Louis Gordon, are individuals trading and doing business as Bengor Products Co., and Magnet Merchandise Co., with their office and principal place of business located at 878 Broadway, New York, N. Y. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of drug sundries, notions, household specialties, and other novelty merchandise to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise, when sold, to be transported from their said place of business in the State of New York to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia.

In the course and conduct of their business respondents are and have been in competition with other individuals, firms and corporations engaged in the sale 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 sell and have sold to retail dealers and others certain assortments of merchandise so packed and assembled as to involve the use of a lottery scheme or game of chance when sold and distributed to the purchasers thereof. One of said assortments consists of a cigarette lighter and a device commonly known as a push card. The push card bears on its face 35 feminine names with ruled columns for writing in the name of the purchaser opposite the name selected. Said push card has 35 small partially perforated disks on the face of which is printed the word "Push." 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 face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a Dunhill

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cigarette lighter. The push card bears the legend or instruction as follows:

NAME UNDER SEAL RECEIVES A
DUNHILL SILENT FLAME LIGHTER

1¢ to 15¢—NO HIGHER

Nos. 1 to 15 Pay What You Draw

Nos. Over 15 Pay ONLY 15¢

TOTAL \$4.86.

Sales of respondents' lighters by means of the said push card are made in accordance with the above described legend or instruction. The fact as to whether a purchaser receives a lighter or nothing for the amount of money paid for a push is thus determined wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various other assortments of merchandise involving a lot or chance feature but the sales plans or methods by which said merchandise is distributed are similar to the one above described, varying only in detail.

PAR. 3. Retail dealers and others who purchase respondents' merchandise directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondents thus supply to and place in the hands of others a means of conducting a lottery in the sale of their product 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.

PAR. 4. The sale of merchandise to the purchasing public by the method or sales plan hereinabove set forth involves a game of chance or the sale of a chance to procure merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute products in competition with 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 which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their products and by the element of chance involved therein, and are thereby induced to buy and sell respondents' products in preference to products of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents because of said game of chance has a tendency and capacity to unfairly divert trade in commerce between

and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent methods.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' 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 March 24, 1941, issued and on March 25, 1941, served its complaint in this proceeding upon respondents, Benjamin Gordon and Louis Gordon, individually and trading as Bengor Products Co. and Magnet Merchandise Co., charging them 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. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' 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 the 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. Respondents, Benjamin Gordon and Louis Gordon, are individuals trading and doing business as Bengor Products Co. and Magnet Merchandise Co., with their office and principal place of business located at 878 Broadway, New York, N. Y. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of drug sundries, notions, household specialties and other novelty merchandise to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise, when sold, to be transported from their said place of business in the State of New York

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to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia.

In the course and conduct of their business respondents are and have been in competition with other individuals, firms, and corporations engaged in the sale 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 sell and have sold to retail dealers and others certain assortments of merchandise so packed and assembled as to involve the use of a lottery scheme or game of chance when sold and distributed to the purchasers thereof. One of said assortments consists of a cigarette lighter and a device commonly known as a push card. The push card bears on its face 35 feminine names with ruled columns for writing in the name of the purchaser opposite the name selected. Said push card has 35 small partially perforated disks on the face of which is printed the word "Push." Concealed within each disk is a number which is not disclosed until 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 face of said card which name is not disclosed until the seal is removed. The person selecting the feminine name corresponding to the one under the master seal received a Dunhill cigarette lighter. The purchasers of all the other pushes receive nothing for their money except the right to push. The push card bears the legend or instruction as follows:

NAME UNDER SEAL RECEIVED A
DUNHILL SILENT FLAME LIGHTER

1¢ to 15¢—NO HIGHER
Nos. 1 to 15 Pay What You Draw
Nos. Over 15 Pay ONLY 15¢
TOTAL \$4.86

Sales of respondents' lighters by means of the said push card are made in accordance with the above described legend or instruction. The fact as to whether a purchaser receives a lighter or nothing except the right to push for the amount of money paid for a push is thus determined wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various other assortments of merchandise involving a lot or chance feature and the sales plans or methods by which said merchandise is distributed are similar to the one above described, varying only in detail.

PAR. 3. Retail dealers and others who purchase respondents' merchandise directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondents thus supply to and place in the hands of others a means of conducting a lottery in the sale of their product 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.

PAR. 4. The sale of merchandise to the purchasing public by the method or sales plan hereinabove set forth involves a game of chance or the sale of a chance to procure merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute products in competition with respondents, 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 chance, or any other method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their products and by the element of chance involved therein, and are thereby induced to buy and sell respondents' products in preference to products of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents because of said game of chance has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent methods.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found are all to the prejudice and injury of the public and of respondents' 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all

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intervening procedure and further hearing as to the said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Benjamin Gordon and Louis Gordon, individually and trading as Bengor Products Co. and Magnet Merchandise Co., or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their cigar and cigarette lighters 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 cigar or cigarette lighters or any other merchandise so packed and assembled that sales of such cigar or cigarette lighters or other merchandise to the general 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, punchboards, push or pull cards, pull tabs or other lottery devices either with assortments of merchandise or separately, which said punchboards, push or pull cards, pull tabs or other lottery devices are to be used or may be used, in selling or distributing said cigar and cigarette lighters or other merchandise to the public.

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 respondents shall within 60 days after service upon 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.

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IN THE MATTER OF
LEE BOYER'S CANDYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4265. Complaint, Aug. 24, 1940—Decision, Aug. 6, 1941*

Where a corporation engaged in the manufacture of candy and in the competitive interstate sale and distribution thereof, including certain assortments which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers; a typical assortment consisting of a number of bars or rolls of candy, together with a punchboard for use in their sale and distribution under a plan, as explained thereon, by which the person selecting, by chance, for nickel paid, one of certain numbers, received a quarter-pound nut-roll, persons selecting certain other numbers each received a half-pound roll, purchaser of the last number in each of two sections into which board was divided received 1-pound nut roll, and others received nothing for their money—

Sold such assortments to dealers, including, as direct or indirect purchasers, retailers by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, involving sale of a chance to procure a bar or roll of candy at much less than normal retail price thereof, and thereby supplied to and placed in the hands of others a means of conducting lotteries in the sale of its merchandise, contrary to an established public policy of the United States Government, and in competition with many who refrain from using any methods involving chance, or contrary to public policy;

With the result that many persons were attracted by its said methods and the element of chance involved therein, and were thereby induced to buy and sell its candy in preference to that offered and sold by aforesaid competitors, and with tendency and capacity to unfairly divert trade to it from such competitors; 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.

Gilley, Humphreys & Sercombe, of Portland, Ore., 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 Lee Boyer's Candy, 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,