

Complaint

IN THE MATTER OF

GEORGE G. BLAISDELL, WALTER G. BLAISDELL, AND
HOMER G. BARCROFT, TRADING AS ZIPPO MANUFACTURING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1906.

Docket 4497. Complaint, May 8, 1911—Decision, Aug 6, 1911

Where three individuals engaged in the manufacture, and in the competitive interstate sale and distribution of assortments of cigar and cigarette lighters so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold to consumers, a typical assortment including eight lighters and a punchboard for use in sale thereof under a plan, explained thereon, by which chance selection of certain numbers entitled purchaser, for 2 cents paid, to one lighter, certain other numbers entitled purchaser to a package of cigarettes, purchaser making last punch in each of the first nine sections completely sold was similarly entitled to receive such a package, and person making last punch on board received a lighter, value of which and of the packages of cigarettes was in excess of 2 cents, other customers receiving nothing for their money—

Sold such assortments to wholesalers, jobbers, and retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, involving a chance to procure lighters at much less than the normal retail price, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of their products, contrary to an established public policy of the United States Government, and in competition with many unwilling to use any method involving chance, or contrary to public policy, and who refrain therefrom;

With result that many persons were attracted by their said sales plan or method and the element of chance involved therein, and were thereby induced to buy and sell their lighters in preference to those of aforesaid competitors, and with tendency and capacity, because of said game of chance, unfairly to divert trade in commerce to them 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 their competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. J. W. Brookfield, Jr. for the Commission.

Wilson & Fitzgibbon, of Bradford, Pa., 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 George G. Blaisdell,

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Walter G. Blaisdell, and Homer G. Barcroft, individuals trading as Zippo Manufacturing 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, George G. Blaisdell, Walter G. Blaisdell, and Homer G. Barcroft, are individuals trading and doing business under the name of Zippo Manufacturing Co., with their office and principal place of business located at Bradford, Pa. Respondents are now and for more than six months last past have been engaged in the manufacture and in the sale and distribution of cigar and cigarette lighters to wholesale dealers, jobbers, and retail dealers located at points in 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 principal place of business in the city of Bradford, Pa., to purchasers thereof at their respective points of location in various States of the United States other than Pennsylvania and in the District of Columbia. There is now and has been for more than 6 months last past a course of trade by respondents in such cigar and cigarette lighters in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their said business, respondents are and have been in competition with other individuals, firms, and corporations engaged in the sale and distribution of cigar and cigarette lighters 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 wholesale dealers, jobbers, and retail dealers certain assortments of cigar and cigarette lighters so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment includes eight Zippo cigar and cigarette lighters and a punchboard. Appearing on the face of the punchboard is the following inscription:

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ZIPPO WIND PROOF LIGHTER ASSORTMENT

2¢ Per Sale (Depiction of Lighter)

Numbers 200-400-600-800-1000-1200

Each Receive a Zippo Lighter

Numbers 25-50-125-150-225-250-325-350-425-450-525-550-625-650-725-750-825-
850-925-950 Each Receive One Package of (20) Cigarettes

Last Sale in Each Section Receives One Package (20) Cigarettes

Last Sale on Board Receives a Zippo Lighter

Said lighters are distributed to the purchasing public by means of said punchboard in the following manner:

Sales are 2 cents each, and when a punch is made a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence, and said numbers are arranged in 10 sections. The board bears a statement informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a lighter and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes; and the last punch in each of the first 9 sections completely sold entitles the purchaser to receive a package of cigarettes, and the last punch on the board entitles the purchaser to receive a lighter. A customer who does not qualify by obtaining one of the specified numbers or the last punch on the board or in a section receives nothing for his money. The lighters are worth more than 2 cents each, and the cigarettes are worth more than 2 cents per package, and the purchaser who obtains a number calling for a lighter or a package of cigarettes receives the same for 2 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The cigar and cigarette lighters are thus distributed to the purchasers of punches from the board wholly by chance.

The respondents furnish and have furnished various punchboards and lighter assortments for use in the sale and distribution of their lighters by means of a game of chance, gift enterprise, or lottery scheme. Such punchboards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' cigar and cigarette lighters, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with

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the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their lighters and the sale of said lighters 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 cigar and cigarette lighters to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure lighters at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute lighters 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 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 lighters and in the element of chance involved therein and are thereby induced to buy and sell respondents' lighters in preference to lighters of said competitors of respondents who do not use the same or equivalent methods. The use of said method 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 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 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 May 8, 1941, issued and subsequently served its complaint in this proceeding upon respondents George G. Blaisdell, Walter G. Blaisdell, and Homer G. Barcroft, individuals trading as Zippo Manufacturing 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. In due course the respondents filed their answer, 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 the said complaint and the 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. Respondents, George K. Blaisdell, Walter G. Blaisdell, and Homer G. Barcroft, are individuals trading and doing business under the name of Zippo Manufacturing Co., with their office and principal place of business located at Bradford, Pa. Respondents are now and for more than 6 months last past have been engaged in the manufacture and in the sale and distribution of cigar and cigarette lighters to wholesale dealers, jobbers, and retail dealers located at points in 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 principal place of business in the city of Bradford, Pa., to purchasers thereof at their respective points of location in various States of the United States other than Pennsylvania and in the District of Columbia. There is now and has been for more than 6 months last past a course of trade by respondents in such cigar and cigarette lighters in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their said business, respondents are and have been in competition with other individuals, firms, and corporations engaged in the sale and distribution of cigar and cigarette lighters 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 wholesale dealers, jobbers, and retail dealers certain assortments of cigar and cigarette lighters so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment includes eight Zippo cigar and cigarette lighters and a punchboard. Appearing on the face of the punchboard is the following inscription:

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Last Sale in Each Section Receives One Package (20) Cigarettes

Last Sale on Board Receives a Zippo Lighter

Said lighters are distributed to the purchasing public by means of said punchboard in the following manner:

Sales are 2 cents each, and when a punch is made a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence, and said numbers are arranged in 10 sections. The board bears a statement informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a lighter and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes; and the last punch in each of the first 9 sections completely sold entitles the purchaser to receive a package of cigarettes, and the last punch on the board entitles the purchaser to receive a lighter. A customer who does not qualify by obtaining one of the specified numbers or the last punch on the board or in a section receives nothing for his money. The lighters are worth more than 2 cents each, and the cigarettes are worth more than 2 cents per package, and the purchaser who obtains a number calling for a lighter or a package of cigarettes receives the same for 2 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The cigar and cigarette lighters are thus distributed to the purchasers of punches from the board wholly by chance.

The respondents furnish and have furnished various punchboards and lighter assortments for use in the sale and distribution of their lighters by means of a game of chance, gift enterprise, or lottery scheme. Such punchboards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' cigar and cigarette lighters, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The use by respond-

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ents of said sales plan or method in the sale of their lighters and the sale of said lighters 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 cigar and cigarette lighters to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure lighters at prices much less than the normal retail price thereof. Many persons, firms, and corporations, who sell and distribute lighters 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 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 lighters and in the element of chance involved therein and are thereby induced to buy and sell respondents' lighters in preference to lighters 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 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.

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 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 from the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admitted all the material allegations of fact set forth in said complaint and stated that they waived all intervening procedure and further hearing as to

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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 George G. Blaisdell, Walter G. Blaisdell, and Homer G. Barcroft, individuals, trading as Zippo Manufacturing Co., or under any other name, either jointly or severally, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of 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 any merchandise so packed or assembled that sales of such 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, 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 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.

Syllabus

IN THE MATTER OF
F. W. JOHNSON, TRADING AS KEMICO

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

Docket 4505. Complaint, May 17, 1941—Decision, Aug. 6, 1941

Where an individual engaged in interstate sale and distribution of formulas for various medicinal and cosmetic preparations; in describing the therapeutic properties and value of the preparations or products compounded from such formulas; by means of circulars, leaflets, and other advertising literature, directly or by implication—

- (a) Falsely represented that the "Greaseless Massage Cream" and "Lemon Greaseless Cream" products of such formulas, respectively (1) constituted a cure or remedy and a competent and effective treatment for sallowness and roughness of the skin, and for pimples and other skin imperfections, and (2) was of substantial therapeutic value as a skin treatment, and helped to promote a clear, healthy skin;
- (b) Falsely represented that the "Catarrhal Cream," "Vapor Inhalant," and "Nasal Jelly" products of such formulas, respectively, constituted competent and effective treatments for (1) nasal catarrh, dry catarrh, catarrhal headaches, head colds, hay fever, sore throat, bronchitis, and throat troubles generally, and for burns, cuts, and sores, (2) croup, head colds, headaches and catarrh, and (3) head colds, catarrh, and similar conditions;
- (c) Represented that the "Hair-Lay Cream" product promoted the growth of hair, relieved itching scalp and helped to prevent dandruff and falling hair, that "Dandruff Remedy" for dandruff and the "Beauty Balm" was of substantial therapeutic value in improving the complexion, helped to eliminate wrinkles, and had a tonic effect upon the skin, and his "Debest Skin Treatment" constituted a competent and effective treatment for eczema and for redness, roughness, and scaling of the skin;

Facts being said "Hair-Lay" formula contained no active therapeutic agent; use of word "Remedy" for said dandruff formula was false and misleading, it having no therapeutic value in excess of affording temporary relief from itching symptom associated with said condition and of assisting in temporary removal of dandruff scales; and said formulas or preparations made therefrom would not accomplish the results, and did not possess the properties, claimed therefor;

- (d) Represented that "Teeth Whitener Formula A" and "Teeth Whitener Formula B" products would remove tartar, stains, and other discolorations from the teeth, and were entirely safe for use;

Facts being products from said formulas would not accomplish such results, and preparation made from the former was not entirely safe for use, in that it contained precipitated chalk which might severely scratch the enamel of the teeth;

- (e) Falsely represented that the "Pine Oil Nasal Spray" and "Menthol and Camphor Nasal Spray" products were competent and effective treatments for head colds, catarrh, and similar conditions; and that they were entirely safe for continued use, notwithstanding they contained sufficient light