

Syllabus

IN THE MATTER

ORA R. YATES AND CHARLES W. MILLER, TRADING AS
MONARCH PRINTERS AND BINDERS

MONARCH PRINTERS & BINDERS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4339. Complaint, Oct. 9, 1940—Decision, Aug. 20, 1941*

Where two individuals engaged in competitive interstate sale and distribution of sales promotion cards so designed and arranged as to involve the use of games of chance, gift enterprises, or lottery schemes when used by dealers in promoting and increasing sales of their merchandise to consuming public, typical one involving plan, as explained on card, under which customer or dealer using such cards was entitled to a "Treasure Chest receipt" with each 25 cents spent, and had the option, upon the pasting of such receipts on the 100 spaces provided on the card, of receiving cash redemption value of 15 cents or of exchanging the card for articles of merchandise or cash awards varying from 50 cents to \$5 called for by legend under card's seal—

- (a) Sold such cards to wholesalers and jobbers and, directly and indirectly, to retailers, who distributed them to customers and honored awards as shown when seals were broken, in accordance with above plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of their merchandise, 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 offer or sell cards or devices so designed and arranged as to involve a game of chance, gift enterprise, or lottery scheme, refrain therefrom;

With the result that the consuming public was induced to purchase merchandise from dealers using their cards in preference to those using devices of their competitors, because of said game of chance, and dealers were consequently induced to purchase their said cards in preference to devices of their competitors, and with effect of unfairly diverting trade in commerce to them from their said competitors, to the injury of competition in commerce; and

- (b) Represented that they were printers and binders of their said merchandise, owning, operating, and controlling the plant in which it was printed and bound, through using words "Printers and Binders" in their trade name set forth on display cards, letterheads, said sales-promotion cards and other printed matter which they caused to be distributed;

When, in fact, they filled orders with merchandise which was printed and bound in a plant which they did not own, operate, or control, and were not printers and binders, preferentially dealt with by substantial portion of the consuming public and dealers as affording, in their belief, lower prices, elimination of middlemen's profits, superior products, and other advantages;

With tendency and capacity to mislead and deceive prospective purchasers into the belief that they were the printers and binders of their merchandise, and to cause them to buy their said articles because of such mistaken and erroneous belief:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and consti-

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tuted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. L. P. Allen, Jr., and *Mr. J. V. Mishou* for the Commission.

Reams, Bretherton & Neipp, of Toledo, Ohio, 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 Ora R. Yates and Charles W. Miller, individually and trading as Monarch Printers and Binders, 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, Ora R. Yates and Charles W. Miller, are individuals trading as Monarch Printers and Binders, with their principal office and place of business located at 812 Hunt Street, Adrian, Mich. Respondents are now and for more than 3 years last past have been engaged in the sale and distribution of sales-promotion cards and other articles of merchandise to wholesale dealers, jobbers, and retail dealers. Respondents cause and have caused said merchandise, when sold, to be transported from their aforesaid place of business in the State of Michigan to purchasers thereof, at their respective points of location, in the various States of the United States other than Michigan and in the District of Columbia. There is now and for more than 3 years last past has been a course of trade by respondents 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 their business, respondents are and have been in competition with other individuals and with partnerships and corporations 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 their business, as described in paragraph 1 hereof, respondents sell and have sold cards so designed and arranged as to involve the use of games of chance, gift enterprises, or lottery schemes when used by dealers in promoting and increasing sales of their merchandise to the consuming public. A sales-promotion card in one such group is herein described for the purpose of showing arrangement, design, and principle involved.

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The said card contains 100 ruled spaces for pasting thereon receipts which are given by the said dealers to customers with each 25-cent purchase. The card contains a legend or instructions as follows:

TREASURE CHEST

Plan and Governing Rules

You will be given one TREASURE CHEST receipt with each 25¢ spent with us. Be sure to paste receipts in this booklet. Under the seals of some TREASURE CHEST booklets are listed valuable Food products. Under the others is listed cash in amounts of 50¢, \$1, \$2, or \$5. THERE ARE NO BLANKS! When completely filled with 100 receipts, return this booklet to us with the Seal unbroken. This booklet will then have a cash redemption value of 15¢. We will then break the Seal on page 2 that you may see what is printed under it and, if you wish, you may exchange the cash redemption value for whatever the opening of the Seal discloses. NO DRAWINGS—NO JUDGINGS—NO DISAPPOINTMENTS!

This booklet accepted subject to above conditions

The prizes or premiums are allotted to the said customers or purchasers in accordance with the above legend or instructions.

Under the seal is the following legend:

1 lb.
Pomco
Vac. Can
Coffee
2 cans
Pomco
Tall Milk

The articles of merchandise called for under the said seals vary with the individual card and the cash awards vary from 50 cents to \$5. The legend under the seal is effectively concealed until the seal has been opened and the amount which the holder of said card will receive in merchandise or cash is thus determined wholly by lot or chance.

The respondents sell and distribute and have sold and distributed various sales-promotion cards which involve the use of games of chance, gift enterprises, or lottery schemes when used by dealers to promote the sale of their merchandise to the consuming public. Such cards are similar to the one hereinabove described and vary only in detail.

Respondents furnish their customers with various display posters and advertisements to be used by retail merchants in distributing and using said cards.

PAR. 3. Sales of assortments of said sales-promotion cards are and have been made to wholesale dealers, jobbers, and retail dealers. The

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retail dealers who directly or indirectly purchase respondents' said cards distribute the same to their customers and prospective customers and honor the awards as shown when the seals are broken open in accordance with the plan hereinabove set forth. The respondents thus supply to, and place in the hands of, others the means of and instrumentalities for conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in designing and arranging their said cards and distributing the same for redistribution to the public 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. There are in competition with respondents various manufacturers and distributors of sales-promotion cards, premium cards, price concession cards, coupons, and trading stamps, which when used by dealers do not involve a lottery scheme, game of chance, or a gift enterprise. Many persons, firms, and corporations who sell and distribute various cards or devices for promoting or increasing the sales of dealers are unwilling to offer for sale or sell cards or devices so designed and arranged as above alleged, or otherwise designed and arranged as to involve a game of chance, gift enterprise, or lottery scheme, and such competitors refrain therefrom.

The consuming public is induced to deal with or purchase merchandise from dealers using respondents' cards in preference to purchasing merchandise from dealers using the devices of respondents' competitors because of the games of chance, gift enterprise, or lottery scheme connected with respondents' said cards. By reason thereof dealers are induced to purchase respondents' said cards in preference to devices of competitors of the respondents. The use by respondents of said method in designing and arranging their said cards and distributing them as aforesaid 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 respondents from their said competitors who do not use the same or equivalent methods, and as a result thereof 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. In the course and conduct of their business as aforesaid, respondents in soliciting the sale of and in selling their merchandise, as above described, have caused display cards, letterheads, the aforesaid sales-promotion cards, and other printed matter to be distributed

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through the United States mail and by other means to customers and prospective customers located in States other than the State of Michigan and in the District of Columbia. The aforesaid printed matter contains thereon the firm name of the respondent, Monarch Printers and Binders. The use of the words "Printers and Binders" in respondents' firm name serves as a representation that respondents are the printers and binders of their aforesaid merchandise and that respondents own and operate or control the plant wherein such merchandise is printed and bound.

PAR. 6. In truth and in fact, respondents do not own, operate or control a plant for the printing and binding of sales-promotion cards and other merchandise which they sell and distribute, as hereinabove alleged, but respondents have filled and now fill orders for such articles of merchandise with merchandise which is printed and bound in a plant which they neither own, operate, nor control.

PAR. 7. There has long been a preference on the part of a substantial portion of the purchasing and consuming public and of dealers for dealing directly with a printer and binder, such preference being due in part to a belief that lower prices, elimination of middlemen's profits, superior products, and other advantages can thereby be obtained.

PAR. 8. The use by the respondents of the words "Printers and Binders" in their firm name, as hereinabove alleged, has had and now has the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them mistakenly and erroneously to believe that the respondents are the printers and binders of such merchandise and own and operate or control the plant wherein such merchandise is printed and bound, and to purchase respondents' articles on account of such mistaken and erroneous belief.

PAR. 9. The aforesaid acts and practices of the 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 October 9, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Ora R. Yates and Charles W. Miller, individually and trading as Monarch Printers and Binders, 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by L. P. Allen, attorney for the Commission, and in opposition to the allegations of the complaint by Frazier Reams, attorney for the respondents, before W. W. Shepard, a trial examiner of the Commission theretofore duly designated by it (which testimony and other evidence consisted of a stipulation of facts upon the record supplementing the answer filed by the respondents), and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by the respondents or oral argument requested), 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, Ora R. Yates and Charles W. Miller, are individuals trading as Monarch Printers and Binders, with their principal office and place of business located at 812 Hunt Street, Adrian, Mich. Respondents are now, and for more than 3 years last past have been, engaged in the sale and distribution of sales-promotion cards and other articles of merchandise to wholesale dealers, jobbers, and retail dealers. Respondents cause and have caused said merchandise, when sold, to be transported from their aforesaid place of business in the State of Michigan to purchasers thereof, at their respective points of location, in the various States of the United States other than Michigan and in the District of Columbia. There is now, and for more than 3 years last past has been, a course of trade by respondents 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 their business, respondents are and have been in competition with other individuals and with partnerships and corporations 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.

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PAR. 2. In the course and conduct of their business, respondents sold cards so designed and arranged as to involve the use of games of chance, gift enterprises, or lottery schemes when used by dealers in promoting and increasing sales of their merchandise to the consuming public. A sales-promotion card in one such group is herein described for the purpose of showing arrangement, design, and principle involved. The said card contained 100 ruled spaces for pasting thereon receipts which were given by the said dealers to customers with each 25-cent purchase. The card contained a legend or instructions as follows:

TREASURE CHEST

Plan and Governing Rules

You will be given one TREASURE CHEST receipt with each 25¢ spent with us. Be sure to paste receipts in this booklet. Under the seals of some TREASURE CHEST booklets are listed valuable Food products. Under the others is listed cash in amounts of 50¢, \$1, \$2, or \$5. THERE ARE NO BLANKS! When completely filled with 100 receipts, return this booklet to us with the Seal unbroken. This booklet will then have a cash redemption value of 15¢. We will then break the Seal on page 2 that you may see what is printed under it and, if you wish, you may exchange the cash redemption value for whatever the opening Seal discloses. NO DRAWINGS—NO JUDGINGS—NO DISAPPOINTMENTS!

This booklet accepted subject to above conditions.

The prizes or premiums were allotted to the said customers or purchasers in accordance with the above legend or instructions.

Under the seal was the following legend:

1 lb.
Pomco
Vac. Can
Coffee
2 cans
Pomco
Tall Milk

The articles of merchandise called for under the said seals varied with the individual card and the cash awards varied from 50 cents to \$5. The legend under the seal was effectively concealed until the seal had been opened and the amount which the holder of said card received in merchandise or cash was thus determined wholly by lot or chance.

The respondents sold and distributed various sales-promotion cards which involved the use of games of chance, gift enterprises, or lottery schemes when used by dealers to promote the sale of their merchandise to the consuming public. Such cards were similar to the one hereinabove described and varied only in detail.

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Respondents furnished their customers with various display posters and advertisements to be used by retail merchants in distributing and using said cards.

PAR. 3. Sales of assortments of said sales-promotion cards were made to wholesale dealers, jobbers, and retail dealers. The retail dealers who directly or indirectly purchased respondents' said cards distributed the same to their customers and prospective customers and honored the awards as shown when the seals were broken open in accordance with the plan hereinabove set forth. The respondents thus supplied to, and placed in the hands of, others the means of and instrumentalities for conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in designing and arranging their said cards and distributing the same for redistribution to the public 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. There are in competition with respondents various manufacturers and distributors of sales-promotion cards, premium cards, price concession cards, coupons, and trading stamps, which when used by dealers do not involve a lottery scheme, game of chance, or a gift enterprise. Many persons, firms, and corporations who sell and distribute various cards or devices for promoting or increasing the sales of dealers are unwilling to offer for sale or sell cards or devices so designed and arranged as to involve a game of chance, gift enterprise, or lottery scheme, and such competitors refrain therefrom.

The consuming public is induced to deal with or purchase merchandise from dealers using respondents' cards in preference to purchasing merchandise from dealers using the devices of respondents' competitors because of the games of chance, gift enterprise, or lottery scheme connected with respondents' said cards. By reason thereof dealers are induced to purchase respondents' said cards in preference to devices of competitors of the respondents. The use by respondents of said method in designing and arranging their said cards and distributing them as aforesaid 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 respondents from their said competitors who do not use the same or equivalent methods, and as a result thereof 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.

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PAR. 5. In the course and conduct of their business as aforesaid, respondents in soliciting the sale of and in selling their merchandise, as above described, caused display cards, letterheads, the aforesaid sales-promotion cards and other printed matter to be distributed through the United States mail and by other means to customers and prospective customers located in States other than the State of Michigan and in the District of Columbia. The aforesaid printed matter contained thereon the firm name of the respondent Monarch Printers and Binders. The use of the words "Printers and Binders" in respondents' firm name serves as a representation that respondents are the printers and binders of their aforesaid merchandise and that respondents own and operate or control the plant wherein such merchandise is printed and bound.

PAR. 6. In truth and in fact, respondents do not own, operate, or control a plant for the printing and binding of sales-promotion cards and other merchandise which they sell and distribute, but instead respondents have filled and now fill orders for such articles of merchandise with merchandise which is printed and bound in a plant which they neither own, operate, nor control.

PAR. 7. There has long been a preference on the part of a substantial portion of the purchasing and consuming public and of dealers for dealing directly with a printer and binder, such preference being due in part to a belief that lower prices, elimination of middlemen's profits, superior products, and other advantages can thereby be obtained.

PAR. 8. The use by the respondents of the words "Printers and Binders" in their firm name, has had and now has the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them mistakenly and erroneously to believe that the respondents are the printers and binders of such merchandise and own and operate or control the plant wherein such merchandise is printed and bound, and to purchase respondents' articles on account of such mistaken and erroneous belief.

CONCLUSION

The aforesaid acts and practices of the 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 by the Federal Trade Commission on the complaint of the Commission, answer of the respondents, testimony, and other evidence before W. W. Sheppard, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence and brief filed in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Ora R. Yates and Charles W. Miller, individuals trading as Monarch Printers and Binders or under any other trade name, and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of sales-promotion cards and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing sales-promotion cards or any other articles of merchandise so designed that their use by retail merchants constitutes, or may constitute, the operation of a game of chance, gift enterprise, or lottery scheme.

2. Supplying or placing in the hands of others, sales-promotion cards or sales-promotion plans or schemes, or any other articles of merchandise which are used, or which may be used, without alteration or rearrangement, to conduct a lottery, game of chance, or gift enterprise when distributed to the consuming public.

3. Using the words "Printers" or "Binders" or any other words of similar import or meaning in respondents' trade name or representing through any other means or device, or in any manner, that the respondents are printers and binders unless and until the respondents actually own and operate or directly and absolutely control a plant for the printing and binding of sales-promotion cards and other merchandise sold and distributed by them.

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.

Complaint

IN THE MATTER OF

ARTHUR G. SPANGLER, ERNEST D. SPANGLER, AND MRS.
FAIE SPANGLER, TRADING AS SPANGLER CANDY
COMPANY

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

Docket 4540. Complaint, July 16, 1941—Decision, Aug. 20, 1941

Where three partners engaged in the manufacture of candy, and in the competitive interstate sale and distribution of certain assortments thereof packed and assembled so as to involve use of games of chance, gift enterprizes, or lottery schemes when sold and distributed to consumers, a typical assortment including a number of small pieces of uniform size and shape, together with a push card for use in their sale under a plan by which purchaser received for 1 cent paid, from 1 to 20 pieces, in accordance with the concealed legend punched from the disk selected, such as "Touch-down," "Drop Kick," "Safety," etc., person making the last purchase in each of the card's first 3 sections received 5 pieces, and the person making the last on the card received 15—

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

With the result that many persons, attracted by said sales plan or method and by the element of chance involved therein, were thereby induced to buy and sell their candy in preference to that of their said competitors, and with tendency and capacity to unfairly divert trade in commerce to them from said competitors:

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.

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 Arthur G. Spangler, Ernest D. Spangler, and Mrs. Faie Spangler, individually and as copartners trading under the name of Spangler Candy Co., herein-