

IN THE MATTER OF
HAMILTON, HARRIS & CO.

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

Docket 4253. Complaint, Aug. 21, 1940—Decision, Aug. 26, 1941

Where a corporation engaged in competitive interstate sale and distribution of fishing tackle, pipes, robes, cameras, and other articles, and of certain assortments of said merchandise 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 including a number of pipes with a punchboard for use in their sale and distribution to the consuming public under a plan, as thereon explained, by which selection of certain lucky numbers entitled purchasers to receive one of said pipes, value of which was in excess of the 5 cents paid, and purchasers failing thus to qualify received nothing for their money other than the privilege of making a punch—

Sold such assortments to dealers and jobbers and, directly or indirectly, to retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, involving chance to procure an article at much less than its normal price, 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 violation of the criminal laws, and in competition with many who are unwilling to use a method of sale involving a game of chance and refrain therefrom;

With the result, because of such game of chance, of unfairly diverting trade in commerce to it from its said 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.

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

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

Matson, Ross, McCord & Ice, of Indianapolis, Ind., 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 Hamilton, Harris & Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the

interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Hamilton, Harris & Co., is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business located at 302 West South Street, Indianapolis, Ind. The respondent has branch offices and places of business located at Terre Haute, Kokomo, South Bend, and Richmond, Ind. Respondent is now and for more than 2 years last past has been engaged in the sale and distribution of fishing tackle, pipes, robes, cameras, and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from its places of business as aforesaid to purchasers thereof, at their respective points of location, in the various States of the United States other than the State of Indiana and in the District of Columbia. There is now and has been for more than 2 years last past a course of trade by said 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 said business respondent is and has been in competition with other corporations and with individuals and with partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers and retail dealers, certain assortments of merchandise so packed or 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 consists of a number of pipes, together with a device commonly called a punchboard. Said pipes are sold and distributed to the consuming public by means of said punchboard in the following manner: 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, but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a pipe. A purchaser who does not qualify by obtaining one of the lucky numbers receives nothing for his money other than the privilege of punching a number from the

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board. The pipes are worth more than 5 cents each, and the purchaser who obtains one of the numbers calling for one of the pipes 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 particular punch separated from the board. The said pipes are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of merchandise along with punchboards involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said merchandise, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said method, 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 the 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 one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent, who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia, to respondent from its said competitors who do not use the same or an equivalent method. As a result thereof, substantial injury is being and has been done by respondent to competition in

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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 August 21, 1940, issued and subsequently served its complaint in this proceeding upon respondent Hamilton, Harris & Co., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony, and other evidence in support of the allegations of said complaint were introduced by attorneys for the Commission and in opposition to the allegations of the complaint by attorney for the respondent before an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiner, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been 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. Respondent, Hamilton, Harris & Co., is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business located at 302 West South Street, Indianapolis, Ind. The respondent has branch offices and places of business located at Terre Haute, Kokomo, South Bend, and Richmond, Ind.

PAR. 2. Respondent is now, and for several years last past has been engaged in the sale and distribution of fishing tackle, pipes, robes,

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cameras, and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from its places of business as aforesaid to purchasers thereof at their respective points of location in the various States of the United States other than the State of Indiana and in the District of Columbia. There is now, and has been for several years last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its said business the respondent has sold to wholesale dealers, jobbers, and retail dealers certain assortments of merchandise so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes, when sold and distributed to the consumers thereof. Illustrative of the method used by the respondent is the sale of an assortment consisting of a number of pipes and a device commonly called a punchboard. Such pipes were sold and distributed to the consuming public by means of said punchboard device in the following manner: Sales were 5 cents each and when a punch was made from the board a number was disclosed. The numbers began with 1 and continued to the number of punches there were on the board, but the numbers were not arranged in numerical sequence. The board carried the statement or statements that certain specified numbers entitled the purchaser thereof to receive a pipe. A purchaser who did not qualify by obtaining one of the lucky numbers received nothing for his money other than the privilege of punching a number from the board. The pipes were worth more than 5 cents each and the purchaser who obtained one of the numbers calling for one of the pipes received the same for the price of 5 cents. The numbers were effectively concealed from purchasers and prospective purchasers until a punch or selection was made and the particular punch separated from the board. The said pipes were thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sold and distributed various assortments of merchandise, together with punchboards, involving a lot or chance feature similar to the one above described and varying therefrom only in detail, to purchasers in States other than the State of Indiana and in the District of Columbia prior to July 10, 1939. Subsequent to the

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said date respondent has sold and distributed, and sells and distributes, various assortments of merchandise with punchboard to purchasers within the State of Indiana.

PAR. 5. Retail dealers outside the State of Indiana who directly or indirectly purchased respondents said merchandise prior to July 10, 1939, and dealers within the State of Indiana who purchased respondent's merchandise subsequent to said date exposed and sold the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan above set forth. The use by respondent of said method of sale, and the sale of said merchandise by and through the use thereof and by the aid of said method, is a practice which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 6. The sale of merchandise to the purchasing public by the aforesaid method 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. Others who sell or distribute merchandise in competition with the respondent are unwilling to adopt and use a method of sale involving a game of chance and refrain therefrom. The use of said method by respondent, because of the same game of chance, has the 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 respondent from its said competitors who do not use the same or an equivalent method. As a result thereof substantial injury 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 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 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, the answer of respondent, testimony and other evidence in support of the allegations of

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said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Hamilton, Harris & Co., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of fishing tackle, pipes, robes, cameras, or any other merchandise, do forthwith cease and desist from:

1. Selling or distributing any merchandise so packed or assembled that sale 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 respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

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IN THE MATTER OF

SANFORD MILLS, AND L. C. CHASE & CO., INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4084. Complaint, Apr. 5, 1940—Decision, Aug. 27, 1941

Where a corporation and its wholly owned sales subsidiary, engaged in manufacture and interstate sale and distribution of its "Velmo" mohair upholstery fabric; in advertising in trade journals and in copies thereof which they supplied to their customers, furniture manufacturers, and upholstery supply companies, and on labels and tags which they also furnished to such customers to be attached to the furniture delivered to consumers—
Represented that their said upholstery fabrics were "mothproof" and would not be attacked or destroyed by moths, through use of such terms as "guaranteed moth-proofed," "MOTH-PROOF GUARANTEE * * * PERMANENTLY," "A TROUBLE-PROOF LABEL * * * PERMANENTLY!", "Swatting the moth question BEFORE IT HATCHES," facts being the mohair fabric concerned had not been rendered immune from all moth damage by the processes to which said manufacturer had subjected it, and said corporations had received claims for damage to fabrics in question, certain of which it found to be legitimate and satisfied under its guarantee to make good any claim for legitimate damage;

With tendency and capacity to mislead and deceive a substantial number of retail dealers and the purchasing public into the erroneous belief that their said product was permanently free from damage by moths, and to induce the purchase of substantial quantities of their fabrics because of such belief, and with result that trade in commerce was diverted unfairly to them from competitors in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

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

Mr. D. E. Hoopingarner for the Commission.

Kent, Hazzard & Jaeger, of White Plains, N. Y., 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 Sanford Mills, a corporation and L. C. Chase & Co., Inc., a corporation, 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Sanford Mills, is a corporation organized, existing, and doing business under and by virtue of the