

Syllabus

IN THE MATTER OF

LILLIAN M. GRANGER, L. H. MURRAY, CLARA FEITLER,
AND ADOLF FEITLER, TRADING AS G. & F. SALES
COMPANY

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

Docket 4155. Complaint, June 4, 1940—Decision, Aug. 27, 1941

Where four individuals, engaged during different periods, in competitive interstate sale and distribution of radios, watches, clocks, knives, pen and pencil sets, and other articles, and of assortments of their merchandise 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, a typical assortment consisting of a number of tins of peanuts and a radio, together with a punchboard for use in their sale to the consuming public, as explained thereon, under a plan by which a purchaser secured one of said tins—value of which was in excess of the 5 cents paid—in accordance with success in selecting certain numbers, and received the radio by selecting the number corresponding to that under the board's seal, and those failing to qualify by obtaining one of the lucky numbers received nothing for their money, other than the privilege of punching a number—

Sold such assortments to wholesalers 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 sale of a chance to procure one of said articles at much less than its normal price, 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 the criminal laws, and in competition with many who are unwilling to use method involving chance or contrary to public policy, and refrain therefrom;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell said individual's merchandise in preference to that offered and sold by said competitors, and with tendency and capacity, because of said game of chance, unfairly to divert trade in commerce to them from said competitors; to the substantial injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

Mr. L. P. Allen, Jr., and *Mr. J. V. Mishou* for the Commission,
West & Eckhart, of Chicago, Ill., for Lillian M. Granger and L. H. Murray.

Mr. Samuel G. Clawson, of Chicago, Ill., for Clara Feitler and Adolph Feitler.

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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 Lillian M. Granger, L. H. Murray, Clara Feitler, and Adolf Feitler, individually and trading as G. & F. Sales 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, Lillian M. Granger, L. H. Murray, Clara Feitler, and Adolf Feitler, are individuals trading as G. & F. Sales Co. with their principal office and place of business formerly located at 2300 South Canal Street, Chicago, Ill. The present office and place of business of the respondents is located at 35 South Franklin Street, Chicago, Ill. Respondents are now, and for more than 4 years last past have been, engaged in the sale and distribution of radios, watches, clocks, knives, pen and pencil sets, and other articles of merchandise in commerce between and among 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 aforesaid places of business in Chicago, Ill., to the purchasers thereof, at their respective points of location, in the various States of the United States other than Illinois and in the District of Columbia. There is now, and has been for more than 4 years last past, 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 said 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 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 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 respondents and is as follows:

This assortment consists of a number of tins of peanuts and a radio, together with a device commonly called a punchboard. Said articles of merchandise 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 number of punches there are on the board but the numbers are not arranged in numerical sequence. The board bears a legend or statements informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive one of the tins of peanuts. The said 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. There is also a seal on the board which conceals a number. When all of the punches on the board have been made the seal is removed disclosing the number thereunder. The person punching the number from the board corresponding to the number under the seal receives the said radio. 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 board. The articles of merchandise are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the articles of merchandise receives the same for the price of 5 cents. The said articles of merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondents sell and distribute and have 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 purchase respondents' said merchandise, 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 merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said 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 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 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 method that is 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 merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents, who do not use the same or an equivalent method. The use of said method by respondents, 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 an equivalent method. 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 June 4, 1940, issued and thereafter served its complaint in this proceeding upon respondents, Lillian M. Granger, L. H. Murray, Clara Feitler, and Adolf Feitler, individually and trading as G. & F. Sales 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. The respondent, Clara Feitler, filed an answer, in which answer she admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts and in which answer she further stated that the respondent Adolf Feitler, died on March 9, 1941, and that the respondents, Lillian M. Granger and L. H. Murray, have not been interested in any way in the business operated under the name G. & F. Sales Co. since August 1, 1939. The respondents,

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Findings

Lillian M. Granger and L. H. Murray, filed a separate answer in which they generally denied the allegations of the complaint but admitted that they were copartners in the business operated under the name G. & F. Sales Co. prior to August 1, 1939. Subsequently a stipulation as to the facts with respect to the extent of the participation of the respondents, Lillian M. Granger and L. H. Murray, in the business operated under the name G. & F. Sales Co. was read into the record at a hearing duly held in Chicago, Ill., on June 12, 1941. In such stipulation respondents, Lillian M. Granger and L. H. Murray, stipulated the facts alleged in the Commission's complaint are true with the exception that such respondents disposed of all interest in the business operated under the name of G. & F. Sales Co. on August 1, 1939, and have not participated in the operation of such business since that date. Respondents, Lillian M. Granger and L. H. Murray, further specifically waived the filing of a trial examiner's report upon the evidence, the filing of briefs and oral argument. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, answers thereto and the said stipulation as to the facts, 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. Prior to August 1, 1939, respondents, Lillian M. Granger, L. H. Murray, Clara Feitler, and Adolph Feitler, were individuals trading as G. & F. Sales Co., having their principal office and place of business located at 2300 South Canal Street, Chicago, Ill., and subsequently at 35 South Franklin Street, Chicago, Ill. On August 1, 1939, respondents, Lillian M. Granger and L. H. Murray, sold, transferred, and assigned to respondents Clara Feitler and Adolf Feitler all their right, title, and interest in and to the aforesaid G. & F. Sales Co. and since that date have had no interest in nor any relation with the said company. On March 9, 1941, respondent, Adolf Feitler, died and since that date the surviving partner, respondent, Clara Feitler, has been conducting the affairs of the said G. & F. Sales Co. Respondent, Clara Feitler is now, and for more than 4 years last past has been, engaged in the sale and distribution of radios, watches, clocks, knives, pen and pencil sets, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents, Lillian M. Granger and L. H.

Murray, for more than 3 years prior to August 1, 1939, and respondent, Adolf Feitler, for more than 4 years prior to March 9, 1941, were likewise engaged. Respondent, Clara Feitler, causes and has caused, and respondents, Lillian M. Granger, L. H. Murray, and Adolf Feitler, have caused said merchandise, when sold, to be transported from their aforesaid places of business in Chicago, Ill., to the purchasers thereof, at their respective points of location, in the various States of the United States other than Illinois and in the District of Columbia. There is now a course of trade by respondent, Clara Feitler, and in the past there has been a course of trade by all of the respondents herein named 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, Clara Feitler, is and all respondents herein named 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, respondent, Clara Feitler, sells and all of the respondents herein named have 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 respondents and is as follows:

This assortment consists of a number of tins of peanuts and a radio, together with a device commonly called a punchboard. Said articles of merchandise 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 a legend or statements informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive one of the tins of peanuts. The said 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. There is also a seal on the board which conceals a number. When all of the punches on the board have been made, the seal is

removed, disclosing the number thereunder. The person punching the number from the board corresponding to the number under the seal receives the said radio. 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 board. The articles of merchandise are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the articles of merchandise receives the same for the price of 5 cents. The said articles of merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent, Clara Feitler, sells and distributes and all of the respondents herein named have sold and distributed various assortments of merchandise along with punchboards involving a lot or chance feature; such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' said merchandise directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent, Clara Feitler, thus supplies to and places, and all the respondents herein named thus supplied to and placed in the hands of others the means of 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 the sale of their merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said method, is 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 found, 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 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 method that is 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 merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents, who do not use the same or an equivalent method. The use of said

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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 an equivalent method. 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 set forth 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, Clara Feitler, in which answer such respondent admits all the material allegations of fact set forth in said complaint and states that she waives all intervening procedure and further hearing as to said facts, and upon the joint answer of respondents, Lillian M. Granger and L. H. Murray, and a stipulation as to the facts agreed upon between counsel for the Commission and counsel for said respondents, Lillian M. Granger and L. H. Murray, which stipulation was read into the record herein, 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 Clara Feitler, Lillian M. Granger, and L. H. Murray, individually and trading as G. & F. Sales Co., or trading under any other name, their agents, representatives, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of radios, watches, clocks, knives, pen and pencil sets, or other articles of merchandise in commerce as commerce is defined by the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing radios, watches, clocks, knives, pen and pencil sets, or any other merchandise so packed and assembled that sales thereof are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

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2. Supplying to or placing in the hands of others assortments of radios, watches, clocks, knives, pen and pencil sets, or any other merchandise together with push or pull cards, punchboards, or other devices, which said push or pull cards, punchboards, or other devices are to be used or may be used in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. Selling to or placing in the hands of others, push or pull cards, punchboards, or other devices either with assortments of radios, watches, clocks, knives, pen and pencil sets, or other merchandise or separately, which said push or pull cards, punchboards or other devices are to be used or may be used in selling or distributing said radios, watches, clocks, knives, pen and pencil sets, or other merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

4. Selling or otherwise distributing any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to respondent, Adolf Feitler, due to his death on March 9, 1941.

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

R. C. WILLIAMS & COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4279. Complaint, Aug. 28, 1940—Decision, Aug. 27, 1941

Where a corporation engaged in importing and exporting food products, purchasing a substantial proportion of its requirements from sellers in other States—

Received and accepted allowances and discounts in lieu of brokerage in substantial amounts through purchasing commodities at prices lower than those at which such commodities were sold to other purchasers by an amount which reflected all or a portion of the brokerage currently being paid by the sellers to their respective brokers for effecting sales of such commodities to such other purchasers:

Held, That in so receiving and accepting allowances and discounts in lieu of brokerage, from sellers upon purchases, as above set forth, it violated section 2 (c) of the Clayton Act, as amended.

Mr. John T. Haslett for the Commission.

Mr. Jules Jacobs, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, R. C. Williams & Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 265 Tenth Avenue, New York, N. Y. Respondent is engaged in the business of importing and exporting food products.

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchases commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. Since June 19, 1936, in connection with the purchase of its requirements in interstate commerce, as aforesaid, respondent has