

Complaint

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IN THE MATTER OF
CONTINENTAL PREMIUM MART

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

Docket 4462. Complaint, Feb. 11, 1941—Decision, Sept. 5, 1941

Where a corporation engaged in the competitive interstate sale and distribution of novelty jewelry, fountain pens, billfolds, knives, wearing apparel, carnival supplies, lamps, premium novelties and other merchandise, including three assortments of its merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumer, and which consisted of a large cardboard carton enclosing a pull card and a number of smaller cartons, each containing an article of merchandise, and bearing on the end a number, function of which was to determine the chance recipient of the particular article, dependent upon the securing of the corresponding number from the pull card so that which of such articles—many of greater retail value than the 10 cents paid for a chance—purchaser received was determined wholly by lot—

Sold such assortments, directly or indirectly, to dealers and retailers by whom they were exposed for sale and sold to the purchasing public in accordance with the aforesaid sales plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale and distribution of its merchandise, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to use any sales methods involving chance or contrary to public policy, and refrain therefrom;

With the result that many dealers in and ultimate consumers of said merchandise were attracted by its said sales plans, and were thereby induced to buy its said merchandise in preference to that of aforesaid competitors, with effect of unfairly diverting trade to it from them; 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. John W. Addison*, trial examiner.

Mr. D. C. Daniel for the Commission.

Mr. Joseph H. Bilansky, of Milwaukee, Wis., 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 Continental Premium Mart, a corporation, hereinafter referred to as respondent, has violated the provisions of said act and it appearing to the Com-

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mission 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, Continental Premium Mart, is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 822 North Third Street, Milwaukee, Wis. Respondent is now and for more than 3 years last past has been engaged in the sale and distribution of novelty jewelry, fountain pens, bill folds, knives, wearing apparel, carnival supplies, lamps, premium novelties, and other merchandise to dealers and other purchasers. Respondent causes and has caused said merchandise when sold to be transported from its aforesaid place of business in the State of Wisconsin to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now and for more than 3 years last past has been 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 its 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. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to dealers and other purchasers certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the purchaser or consumer thereof. One of the said assortments is and has been sold and distributed to the purchasing public in substantially the following manner.

This assortment consists of a large cardboard carton in which is contained a number of smaller cartons, each of which smaller cartons contains an article of merchandise and on the end of each of said smaller cartons there appears a number. One end of said large carton is so constructed as to constitute a device commonly known as a pull card. Said pull card contains a number of partially perforated pull tabs and on the reverse side of each of said tabs there appears a number which corresponds to the number appearing on the end of one of said smaller cartons. Sales are 10 cents each and each purchaser pulls one of said tabs from the pull card. The purchaser is entitled to and receives the smaller carton bearing the number which corresponds to the number appearing on the reverse side of the tab

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pulled by such purchaser. The numbers on the reverse sides of said tabs are effectively concealed from purchasers and the prospective purchasers until selections have been made and the tabs have been separated or removed from the said card. Many of the said articles of merchandise contained in this assortment have a normal retail value greater than 10 cents. The fact as to which of said articles of merchandise a purchaser is to receive and whether or not he receives an article of merchandise of greater retail value than the amount to be paid therefor are thus determined wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of its merchandise, together with devices for use in the sale or distribution of such merchandise, to the purchasing public by means of a game of chance, gift enterprise or lottery scheme but the sales plans or methods employed in connection with each of said assortments are substantially the same as the sales plans or methods hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of merchandise, either directly or indirectly, expose for sale and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale and distribution of his merchandise in accordance with the sales plans or methods hereinabove described. The use by respondent of said sales plans or methods in the sale of its merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, 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. 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 an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondent, as above alleged, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy, and such competitors refrain therefrom. Many dealers in and ultimate consumers of said merchandise are attracted by said sales plans or methods employed by respondent and the element of chance involved therein and are thereby induced to buy respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent

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sales plans or methods. The use of said sales plans or methods by respondent because of said game of chance has a tendency and capacity to and does unfairly divert trade to respondent from its said competitors who do not use the same or equivalent sales plans or methods and as a result thereof substantial injury is being and 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.

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 February 11, 1941, issued and on February 12, 1941, served its complaint in this proceeding upon the respondent, Continental Premium Mart, a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said act. On March 21, 1941, respondent filed its answer in this proceeding. A hearing was held in this matter on June 5, 1941, at which time a stipulation as to the facts, entered into by and between counsel for the Commission and counsel for the respondent, was read into the record and certain testimony was introduced by respondent. The filing of briefs and the presentation of oral argument in support of and in opposition to the allegations of said complaint were waived. Thereafter this proceeding came on for final hearing before the Commission on said complaint, answer, stipulation and testimony, and the Commission having duly considered the same 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, Continental Premium Mart, is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 822 North Third Street, Milwaukee, Wis. Respondent is now, and for more than 3 years last past has been, engaged in the sale and distribution of novelty jewelry, fountain pens, bill folds,

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knives, wearing apparel, carnival supplies, lamps, premium novelties, and other merchandise to dealers and other purchasers. Respondent causes and has caused said merchandise when sold to be transported from its aforesaid place of business in the State of Wisconsin to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now, and for more than 3 years last past has been, 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 its 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. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to dealers and other purchasers three assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the purchaser or consumer thereof. Such assortments were and are known as "Captain Kidd's Bazaar," "Trading Post" and "Play Ball" and are and have been sold and distributed to the purchasing public in substantially the following manner:

Each of said assortments consists of a large cardboard carton in which is contained a number of smaller cartons, each of which smaller cartons contains an article of merchandise and on the end of each of said smaller cartons there appears a number. One end of said large carton is so constructed as to constitute a device commonly known as a pull card. Said pull card contains a number of partially perforated pull tabs and on the reverse side of each of said tabs there appears a number which corresponds to the number appearing on the end of one of said smaller cartons. Sales are 10 cents each and each purchaser pulls one of said tabs from the pull card. The purchaser is entitled to and receives the smaller carton bearing the number which corresponds to the number appearing on the reverse side of the tab pulled by such purchaser. The numbers on the reverse sides of said tabs are effectively concealed from purchasers and the prospective purchasers until selections have been made and the tabs have been separated or removed from the said card. Many of the said articles of merchandise contained in this assortment have a normal retail value greater than 10 cents. The facts as to which of said articles of merchandise a purchaser is to receive and whether or not he receives an article of merchandise of greater retail value

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than the amount he paid therefor are thus determined wholly by lot or chance. The said assortments, when purchased by respondent, were packed and assembled as above described.

PAR. 3. The Commission finds that retail dealers who purchase respondent's said assortments of merchandise, either directly or indirectly, expose for sale and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale and distribution of its merchandise in accordance with the sales plans or methods hereinabove described. The use by respondent of said sales plans or methods in the sale of its merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, 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. The Commission finds that the sale of merchandise to the purchasing public in the manner above described 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. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondent, as above described, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy, and such competitors refrain therefrom. Many dealers in, and ultimate consumers of, said merchandise are attracted by said sales plans or methods employed by respondent and the element of chance involved therein and are thereby induced to buy respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plans or methods by respondent because of said game of chance has a tendency and capacity to and does unfairly divert trade to respondent from its said competitors who do not use the same or equivalent sales plans or methods and, as a result thereof, substantial injury is being and 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 found, are all to the prejudice and injury of the public and of respondent's com-

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petitors 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, a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent and certain testimony introduced by respondent, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Continental Premium Mart, a corporation, its officers, representatives, agents, and employees directly or through any corporate or other device in connection with the offering for sale, sale and distribution of novelty jewelry, fountain pens, bill folds, knives, wearing apparel, carnival supplies, lamps, premium novelties 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 and assembled that sales thereof are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of others, assortments of any merchandise, together with push or pull cards or any other device, which said push or pull cards or other device 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. Supplying to or placing in the hands of others push or pull cards or other devices either with assortments of merchandise or separately which said push or pull cards or other devices are to be used or may be used in selling or distributing such 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 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.

Syllabus

IN THE MATTER OF

W. HILLYER RAGSDALE, ANNIE M. RAGSDALE, MARSHALL D. RAGSDALE, AND IDA J. RAGSDALE, DOING BUSINESS AS W. HILLYER RAGSDALE, W. HILLYER RAGSDALE, INC., AND RAGSDALE CANDIES

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

Docket 4472. Complaint, Mar. 19, 1941—Decision, Sept. 5, 1941

Where four individuals engaged in interstate sale and distribution of outfits, courses of instruction, supplies, and material represented to give men and women an opportunity to establish themselves in the business of making and selling home-made candy; in letters and circulars, and in advertisements in periodicals—

- (a) Represented and implied that their outfits and instruction afforded an opportunity to all, regardless of prior training and experience or amount of their capital, to enter the business of making and selling home-made candies, and that, upon the purchase of such outfits and instruction, all such men and women, would thereby and by reason of their help, be enabled to set themselves up in a profitable business, which could be operated from or in the home;
- (b) Represented and implied that through the use of such method and instruction and the assistance which they gave by mail, and the equipment and supplies which they furnished, all such men and women were assured by them of success in the candy business and of a steady income and profits from the start, whether they took up such occupation as a part-time or full-time business;
- (c) Represented and implied that the equipment and supplies which they furnished were the same as, and included, all the professional confectioners' tools, equipment, supplies, and materials, used in the most modern home-made candy kitchens, and required in making home-made candy and preparing it for sale, except certain inexpensive materials; and
- (d) Represented and implied that a purchaser of their outfits and instruction would have nothing else to buy at the start, except "sugar, flavoring, etc."—represented by them to be only inexpensive minor items—inasmuch as they furnished sufficient tools, supplies and raw materials, except such "inexpensive items," to make over \$40 worth of candy, which they represented to be enough to give the purchaser a good start;

Facts being the instruction and equipment which they furnished were not sufficient to assure the acquisition of the necessary skill in the manufacturing and merchandising of candy, or to permit a person having such skill to put into operation and operate an establishment in which enough candy could be made to meet the requirements of such business, or to supply candy that could be sold for enough money to assure a successful business or the earning of a steady income; the tools and equipment furnished by them did not include all those necessary to make home-made candy and prepare it for sale, but much additional expensive equipment would be necessary; the