

IN THE MATTER OF  
LEONA JOHNSON AND AUBREY M. GRAFF, TRADING AS  
RADIO DISTRIBUTORS

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

*Docket 4157. Complaint, June 7, 1940—Decision, Sept. 22, 1941*

Where an individual engaged in the competitive interstate sale and distribution of radios and other articles; in soliciting sale of and in selling and distributing her said products—

Furnished various devices and plans which involved the operation of games of chance, gift enterprises, or lottery schemes in sales of her merchandise to the ultimate consumer, including among other things, push cards and circulars explaining her plan of selling her said merchandise and allotting it as premiums or prizes to operators of said cards and to the purchasing public, a typical plan involving the use of a push card displaying 58 feminine names and adjacent disks and under which the customer selecting the name corresponding to that under card's master seal received a radio, those punching disks concealing certain numbers received a combination pen and pencil, and the amount paid for a chance was dependent upon the number punched; and thereby

Supplied to and placed in the hands of others means of conducting lotteries in the sale of her merchandise, in which the fact as to whether a purchaser received an article and which, if any, was determined wholly by lot and there was involved a game of chance to procure an article at much below its normal price, 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 any method involving chance, or contrary to public policy, and refrain therefrom;

With the result that many persons were attracted by her said sales plan and the element of chance involved therein, and were thereby induced to buy and sell her merchandise in preference to that of said competitors, and trade in commerce was unfairly diverted to her 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 and deceptive acts and practices therein.

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

*Mr. L. P. Allen, Jr.* and *Mr. D. C. Daniel* for the Commission.

*Mr. A. H. Schwab* of Nash & Donnelly, of Chicago, Ill., 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

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## Complaint

Trade Commission having reason to believe that Leona Johnson and Aubrey M. Graff, individually and trading as Radio Distributors, 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, Leona Johnson and Aubrey M. Graff, are individuals trading as Radio Distributors with their principal office and place of business located at 30 North Dearborn Street, Chicago, Ill. Respondents are now and for more than 8 months last past have been engaged in the sale and distribution of radios and other articles of merchandise to purchasers thereof located in 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 place of business in the State of Illinois to 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 8 months 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 articles of 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 in soliciting the sale of and in selling and distributing their merchandise, furnish and have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, when said merchandise is sold and distributed to the ultimate consumer thereof. The method or sales plan adopted and used by respondents was and is substantially as follows:

Respondents distribute and have distributed to the purchasing public certain literature and instructions, including among other things, push cards, order blanks, illustrations of their said merchandise and circulars explaining respondents' plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondents' push cards bears 58 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 58 small

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partially perforated discs on the face of which is printed the word "push." Each of such discs is set under one of the aforesaid feminine names. Concealed within each disc is a number which is disclosed only when the disc is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a radio. Persons selecting certain designated numbers set out in the legend in the center of said card also receive a premium or prize. The push card bears a legend or instructions as follows:

Name Under Seal Receives A

Licensed AC DC

R. C. A.

RADIO

No ground Required

R. C. A. Licensed Tubes

Do not remove seal until entire card is sold

Nos. 1-39 pay what you draw.

All others 39¢. None higher

4 EXTRA WINNERS 4

Nos. 1-9-19 and 29 Each Receive a Combination Pen and Pencil.

Sales of respondents' merchandise by means of said push card are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above-described legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondents furnish, and have furnished, various other push cards accompanied by order blanks, instructions, and other printed matter for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said other push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondents furnish and have furnished the said push cards use and have used the same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan or method. Respondents thus supply to, and place in the hands of others, the means of conducting lotteries

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in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States 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 an article 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 other 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, and as a result thereof substantial injury is being, and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 7, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Leona Johnson and Aubrey M. Graff, individually and trading as Radio Distributors, 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

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the issuance of said complaint, testimony, and other evidence in support of the allegations of said complaint were introduced by L. P. Allen and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by A. H. Schwab, attorney for the respondents, before W. W. Sheppard, a trial 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 said complaint, testimony, and other evidence, report of the trial examiner upon the evidence, and briefs in support of the complaint and in opposition thereto (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 Leona Johnson is an individual trading as Radio Distributors, with her principal office and place of business located at 30 North Dearborn Street, Chicago, Ill.

Respondent Aubrey M. Graff is an individual who, during the times mentioned herein, was employed by the respondent Leona Johnson, trading as Radio Distributors.

PAR. 2. For more than 1 year last past the respondent Leona Johnson, trading as Radio Distributors, has been engaged in the sale and distribution of radios and other articles of merchandise to purchasers thereof located in the various States of the United States and in the District of Columbia. The respondent causes her said merchandise, when sold, to be transported from her aforesaid place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in said merchandise in commerce among and between the various States of the United States.

In the course and conduct of her said business the respondent Leona Johnson, trading as Radio Distributors, is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce among and between the various States of the United States.

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PAR. 3. In the course and conduct of her aforesaid business, the respondent Leona Johnson, trading as Radio Distributors, in soliciting the sale of, and in selling and distributing, her merchandise, furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes when said merchandise was sold and distributed to the ultimate consumer thereof. The method or sales plan adopted and used by said respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions, including, among other things, push cards, order blanks, illustrations of her said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public.

One of respondent's push cards bears 58 feminine names with ruled columns on the reverse side thereof for writing in the name of the customers opposite the feminine name selected. Said push card has 58 small partially perforated disks, on the face of which is printed the word "push." Each of such disks is set above one of the aforesaid feminine names. Concealed within each disk is a number, which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a radio. Persons selecting certain designated numbers set out in the legend in the center of said card also receive a premium or prize. The push card bears the following legends or instructions, in addition to a pictorial representation of a portable radio and the seals and disks above described:

Name under seal receives a RCA radio.

Numbers 1 to 39 pay what you draw. All others 39¢. None higher.

Numbers 1-9-19 and 29 each receive a combination pen and pencil.

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above-described legends or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid and which of said articles of merchandise the purchaser is to receive, if any, is determined wholly by lot or chance.

Respondent furnishes and has furnished various other push cards, accompanied by order blanks, instructions, and other printed matter for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said other push cards is the same as that hereinabove described, varying only in detail.

PAR. 4. During the period of 16 months prior to February 6, 1941, the respondent Leona Johnson, trading as Radio Distributors, mailed out approximately a million and a half sets of literature containing push cards similar to the one above described. This mailing netted a return of approximately 10,000 orders for merchandise. The persons who placed such orders for merchandise used the said push cards in purchasing, selling, and distributing respondent's merchandise in accordance with the above-described sales plan or method. Said respondent thus supplies to and places in the hands of others, the means of conducting lotteries in the sale of her merchandise, and the sale of said merchandise by and through the use thereof and by aid of said sales plan or method, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 5. 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 or distribute merchandise in competition with the respondent Leona Johnson, trading as Radio Distributors, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by the respondent Leona Johnson in the sale and distribution of her merchandise and the element of chance involved therein, and are thereby induced to buy and sell said 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 said respondent, because of said 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 to said respondent from her said competitors who do not use the same or an equivalent method, and, as a result thereof, substantial injury is being and has been done by

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said respondent to competition in commerce between and among the various States of the United States.

## CONCLUSION

The aforesaid acts and practices of the respondent Leona Johnson, individually and trading as Radio Distributors, as herein found are all to the prejudice and injury of the public and of said 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.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, 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 briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondent Leona Johnson, individually and trading as Radio Distributors, has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent Leona Johnson, individually and trading as Radio Distributors, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of radios and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying or placing in the hands of others, push cards or other devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Shipping, mailing, or transporting to members of the purchasing public push cards or other devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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 complaint be dismissed as to the respondent Aubrey M. Graff.

*It is further ordered*, That the respondent shall, within 60 days after service upon her of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which she has complied with this order.

IN THE MATTER OF  
AMERICAN BANDAGE CORPORATION

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

*Docket 4354. Complaint, Oct. 22, 1940—Decision, Sept. 22, 1941*

Where a corporation engaged in the manufacture of so-called "Self-adhering Medicated Bandages," and in the interstate sale and distribution thereof under the trade name "A B C Gauzband"; by means of advertisements disseminated through the mails, in newspapers and periodicals, and in circulars, leaflets, pamphlets, and other advertising literature, directly and indirectly—

Represented that its product had antiseptic and germicidal properties sufficient to inhibit the growth of, and to destroy, all types of bacteria, and was self-sterilizing and remained surgically sterile after removal from the package, through such statements as "medicated with antiseptic and germicidal material which renders it self-sterilizing \* \* \*," "\* \* \* will remain sterile even after it is removed from the package," and "is safe to apply directly to the wound";

Facts being the properties of the mercuric iodine medication in its said product, while antiseptic and germicidal, were insufficient to inhibit the growth of and to destroy all types of bacteria, or render such product self-sterilizing, or keep it sterile after it had been removed from the package;

With tendency and capacity to induce a substantial portion of the purchasing public to believe that such statements were true, and because of such belief, to purchase a substantial amount of its said product:

*Held*, That such acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. W. W. Sheppard* and *Mr. Andrew B. Duval*, trial examiners.

*Mr. Maurice C. Pearce* for the Commission.

*Mr. Albert I. Kegan*, of Chicago, Ill., 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 American Bandage Corporation, a corporation, hereinafter referred to as the 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 public interest, hereby issues its complaint stating its charges in that respect as follows: