

Complaint

IN THE MATTER OF
SNAP-ON TOOLS CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914*Docket 4429. Complaint, Dec. 20, 1940—Decision, Oct. 20, 1941*

Where a corporation engaged in the manufacture of tools and in the competitive interstate sale and distribution thereof—

Sold its said products to members of the public in accordance with sales plans outlined to its branch office managers in sales posters and circular letters, which involved games of chance, gift enterprises, or lottery schemes, a typical method suggested and advocated by contemplating a "Tool Club" of at least 100 members each of whom was to pay \$1.00 weekly for not to exceed 10 weeks, under a program pursuant to which, and in accordance with weekly drawings, the first lucky member received his set for \$1.00, the second for \$2.00, etc., each member, at the end of the 10 weeks, being entitled to a \$10.00 set and eligible to participate in a drawing for grand prizes, and under which, or other similar plans, the amount paid and the fact as to which members received the final prizes were determined wholly by lot or chance, and there was involved a game of chance to procure articles at much less than their normal retail prices, 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 adopt and use said or any methods involving chance, or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by its said sales plans and the element of chance involved therein, and were thereby induced to buy its merchandise in preference to that of competitors who do not use such methods, and substantial trade in commerce was unfairly diverted 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.

Mr. D. C. Daniel for the Commission.

Mr. Harry C. Alberts, 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 the Snap-On Tools Corporation, 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, Snap-On Tools Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business and a manufacturing plant located at Eightieth Street and Twenty-eighth Avenue, Kenosha, Wis. Respondent maintains a second manufacturing plant at Mount Carmel, Ill., and branch offices in various States of the United States. Respondent is now, and for more than 3 years last past has been, engaged in the manufacture of tools and in the sale and distribution thereof to the public. Respondent causes, and has caused, said merchandise when sold to be transported from its aforesaid places of business to purchasers thereof at their respective points of location in the various States of the United States other than the States in which said places of business are located 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 said 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, its merchandise to members of the public in accordance with a sales plan which involves a game of chance, gift enterprise, or lottery scheme. Respondent has supplied the managers of its said branch offices with sales posters and circular letters outlining the sales plans or methods by means of which said merchandise was to be, and has been, sold and distributed to members of the purchasing public. The sales plan or method as suggested and advocated by respondent is substantially as follows:

The sales plan or method is described as a "Tool Club." Each club has a minimum of 100 members. Each member of the club pays \$1 each week for a period not to exceed 10 weeks. At the end of the first week a drawing is held and the member whose name or number is drawn receives a \$10 set of tools for the \$1 paid. Each succeeding week the same procedure is followed, and the member whose name is drawn receives a set of tools for the amount paid up until the time of such drawing. Thus one member receives a set of said tools

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for \$1, another for \$2, another for \$3, and so on to the end of the fixed period. At the end of such period each member of the club is entitled to and receives a \$10 set of said tools. Also at the end of the 10 weeks a drawing is held for grand prizes in which drawing all of the members of the club are eligible to participate. Thus the amount which an ultimate purchaser pays for a set of said tools and the fact as to which club members receive the final prizes are determined wholly by a lot or chance.

Respondent uses, and has used, various club plans or methods in the sale and distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme, but all of said plans or methods are similar to the one hereinabove described, varying only in detail.

PAR. 3. Respondent's merchandise is being and has been sold and distributed to the purchasing public in accordance with the aforesaid sales plans or methods. Respondent thus conducts lotteries in the sale of its merchandise in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its merchandise and the sale of such merchandise by and through the use thereof and by the aid of said methods is a practice of the 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 articles of merchandise at prices much less than the normal retail prices 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 methods or any methods involving a game of chance or the sale of a chance to win something by chance, or any other methods that are contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of its merchandise 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 methods. The use of said methods by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial trade, in commerce between and among the various States of the United States and in the District of Columbia to the respondent, from its said competitors who do not use the same or equivalent methods. 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 the 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 December 20, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Snap-On Tools Corporation, 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, the Commission by order entered herein granted respondent's request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and substitute answer, 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, Snap-On Tools Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business and a manufacturing plant located at Eightieth Street and Twenty-eighth Avenue, Kenosha, Wis. Respondent maintains a second manufacturing plant at Mount Carmel, Ill., and branch offices in various States of the United States. Respondent is now, and for more than 3 years last past has been, engaged in the manufacture of tools and in the sale and distribution thereof to the public. Respondent causes, and has caused, said merchandise when sold to be transported from its afore-

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said places of business to purchasers thereof at their respective points of location in the various States of the United States other than the States in which said places of business are located 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 said 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 individual 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, its merchandise to members of the public in accordance with a sales plan which involves a game of chance, gift enterprise or lottery scheme. Respondent has supplied the managers of its said branch offices with sales posters and circular letters outlining the sales plans or methods by means of which said merchandise was to be, and has been, sold and distributed to members of the purchasing public. The sales plan or method as suggested and advocated by respondent is substantially as follows:

The sales plan or method is described as a "Tool Club." Each club has a minimum of 100 members. Each member of the club pays \$1 each week for a period not to exceed 10 weeks. At the end of the first week a drawing is held and the member whose name or number is drawn receives a \$10 set of tools for the \$1 paid. Each succeeding week the same procedure is followed, and the member whose name is drawn receives a set of tools for the amount paid up until the time of such drawing. Thus one member receives a set of said tools for \$1, another for \$2, another for \$3, and so on to the end of the fixed period. At the end of such period each member of the club is entitled to and receives a \$10 set of said tools. Also at the end of the 10 weeks a drawing is held for grand prizes in which drawing all of the members of the club are eligible to participate. Thus the amount which an ultimate purchaser pays for a set of said tools and the fact as to which club members receive the final prizes are determined wholly by lot or chance.

Respondent uses, and has used, various club plans or methods in the sale and distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme, but all of said plans or methods are similar to the one hereinabove described, varying only in detail.

PAR. 3. Respondent's merchandise is being and has been sold and distributed to the purchasing public in accordance with the aforesaid sales plan or methods. Respondent thus conducts lotteries in the sale of its merchandise in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its merchandise and the sale of such merchandise by and through the use thereof and by the aid of said methods is a practice of the 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 described involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail prices thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondent as above found are unwilling to adopt and use said methods or any methods involving a game of chance or the sale of a chance to win something by chance, or any other methods that are contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of its merchandise 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 methods. The use of said methods by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial trade in said commerce to the respondent, from its said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury is being, and has been, done by respondent to competition in said commerce.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found, 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 and the substitute answer of the respondent in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said

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facts, 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, Snap-On Tools Corporation, 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 tools 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 tools or any other merchandise by the use of any sales plan, by means of which said tools or other merchandise are sold or distributed to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others any sales plan together with assortments of tools or other merchandise, which said sales plan is to be used or may be used in selling or distributing said tools or other 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 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.

IN THE MATTER OF

LUX-VISEL, INC., TRADING AS THE LUX COMPANY
AND SUPERLUXCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4577. Complaint, Aug. 25, 1941—Decision, Oct. 20, 1941*

Where a corporation engaged in the manufacture of an electric water heater for use in the home, shop, or office, consisting essentially of a small aluminum disc together with a wire heating element, designated variously by it as the "Magic Disc," "Super-Lux Heater," and the "Lux," and in interstate sale and distribution of its said product through agents employed on a commission basis, and also through salesmen to whom it sold large number outright for resale;

In advertisements in newspapers and periodicals soliciting inquiries as to its product and its plans of employment and sale, and in letters, circulars, and other follow-up literature sent in response to such advertisements, and in which were included purported quotations from testimonials—

- (a) Represented and implied to agents and salesmen and to the purchasing public that its said electric water heater operated on a new principle, heated water instantly, and was capable of heating substantial quantities of water, such as required for bathing, cooking, the family laundry, and for every home use, in a shorter time than would be required by gas, coal, or oil, and at only a fraction of the cost, and that use thereof was capable of saving up to 75 percent of gas bills;

Facts being said heater operated on the principle used for many years by other manufacturers of similar electric water heaters, was incapable of heating water in the quantities claimed in a shorter time than that required by gas, coal, or oil, and at a fraction of their cost, and was incapable of effecting any substantial reduction in gas bills; and

- (b) Represented that said heater was safe and that it had been tested and approved by the American Public Service Testing System, which said corporation implied to be a duly qualified testing laboratory having facilities and competent employees to make such tests;

Facts being said heater was not entirely safe when used under recommended conditions, since hazards of electric shock and fire were present, and the American Public Service Testing System was not in existence at the time and had never had laboratory facilities or competent employees necessary to make efficient tests of such devices;

With effect of misleading and deceiving purchasers and prospective purchasers into the erroneous belief that such representations were true, and of causing a substantial portion of the purchasing public, because of such belief, to purchase substantial quantities of its said product:

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

Mr. Merle P. Lyon for the Commission.