

Complaint

IN THE MATTER OF
IMPERIAL KNIFE COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4573. Complaint, Aug. 21, 1941—Decision, Oct. 29, 1941*

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of assortments of knives so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing public, a typical assortment including a card with 12 knives and a push card, for use, as thereon explained, under a plan by which the amount paid for a knife, each of which was of the same value, varied from 1 cent to 39 cents in accordance with the number secured by chance from card;

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 such sales plan, under which the prices of said knives were determined wholly by lot or chance, and involving a game of chance and to procure said articles at much less than their normal retail price; and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products, contrary to an established public policy of the United States Government, and in competition with many who, unwilling to use any method involving chance or otherwise contrary to public policy, refrain therefrom;

With the result that many persons were attracted by such sales plan and the element of chance involved therein, and were thereby induced to buy and sell its knives in preference to those of its competitors who do not use the same or equivalent methods, whereby trade was unfairly diverted to it from its said competitors; to the substantial injury of competition in commerce:

Held, That such acts and practices, as above set forth, were all to the prejudice and injury of the public, and its competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Francis J. Fazzano, of Providence, R. I., 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 Imperial Knife Co., Inc., 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

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

PARAGRAPH. 1. Respondent, Imperial Knife Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 14 Blount Street, Providence, R. I. Respondent is now and for more than 1 year last past has been engaged in the manufacture and in the sale and distribution of knives to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said knives, when sold, to be transported from its place of business in the city of Providence, R. I., to purchasers thereof at their respective points of location in various States of the United States other than Rhode Island, and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by respondent in such knives 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 firms and individuals engaged in the sale and distribution of knives 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 knives so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing public. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment includes a card containing 12 pocket knives and a push card. Appearing on the face of the push card is the following legend:

EVERY PUNCH WINS

1¢ TO 89¢

PAY WHAT YOU PUNCH

FROM 1¢ TO 89¢

NO HIGHER

EVERY PLAYER WINS

Said knives are distributed to the purchasing public in accordance with the foregoing legend and in the following manner:

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The push card bears 12 partially perforated disks on the face of which is printed the word "Push." Concealed within each disk is a number ranging from 1 cent to 39 cents. When the disks are pushed or separated from the card one of these numbers is disclosed. Purchasers punching numbers 1, 26, 39, etc., pay respectively 1 cent, 26 cents, 39 cents. The purchaser of each punch receives a knife, all of the knives being of the same retail value. The numbers are effectively concealed from the purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said knives are thus determined wholly by lot or chance.

The respondent furnishes and has furnished various push cards for use in the sale and distribution of its knives by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in the sale of all of said merchandise by means of push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's knives directly or indirectly 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 products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its knives and the sales of said knives 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.

PAR. 4. The sale of knives to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure knives at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute knives in competition with 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 other method 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 knives and in the element of chance involved therein, and are thereby induced to buy and sell respondent's knives in preference to knives of said competitors of respondent who do not use the same or equivalent methods. 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 equivalent methods, and as a result thereof substantial injury is being and

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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 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, 1941, issued, and thereafter served, its complaint in this proceeding upon respondent Imperial Knife Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce, and unfair 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 motion 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 said 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 Imperial Knife Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 14 Blount Street, Providence, R. I. Respondent is now and for more than 1 year last past has been engaged in the manufacture and in the sale and distribution of knives to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said knives, when sold, to be transported from its place of business in the city of Providence, R. I., to purchasers thereof at their respective points of location in various States of the United States other than Rhode Island, and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by respondent in such knives in commerce between

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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 firms and individuals engaged in the sale and distribution of knives 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 knives so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing public. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

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The respondent furnishes and has furnished various push cards for use in the sale and distribution of its knives by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in the sale of all of said merchandise by means of push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's knives directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies

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to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its knives and the sales of said knives 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.

PAR. 4. The sale of knives to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure knives at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute knives in competition with respondent, 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 other method 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 knives and in the element of chance involved therein, and are thereby induced to buy and sell respondent's knives in preference to knives of said competitors of respondent who do not use the same or equivalent methods. 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 equivalent 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 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 answer of 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, Imperial Knife Co., Inc., 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 pocket knives 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 knives, or any other merchandise, so packed or assembled that sales of such knives or other 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 push or pull cards, punchboards, or other lottery devices, either with assortments of knives or other merchandise or separately, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling or distributing said knives or other merchandise to the public.

3. Selling or otherwise disposing of any knives or other 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.

