

IN THE MATTER OF

MAX A. WASSERMAN, TRADING AS EXCEL
MERCHANDISE AND NOVELTY CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4029. Complaint, Feb. 9, 1940—Decision, Nov. 4, 1941*

Where a corporation engaged in the competitive interstate sale and distribution of sauce pans, dripolators, coffee percolators, pillows, smoking stands, electric table lamps, fountain pens, ash trays and other articles of merchandise in commerce—

- (a) Supplied its customers with assortments of said merchandise together with Bingo sets, by means of which such merchandise was sold and distributed to the consuming public in a manner involving the operation of a game of chance, gift enterprise or lottery scheme under a plan providing that a player securing, by chance, necessary numbers, as drawn by game's operator, to call "Bingo" became entitled to receive as prize one of said articles, value of which exceeded cost of participation to players; and thereby

Supplied to and placed in the hands of others means of conducting lotteries in the sale of its merchandise, in accordance with aforesaid sales plan or method, involving game of chance to procure article of merchandise at much less than normal price thereof, contrary to established public policy of the United States Government, and in competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

With result that many persons were attracted by its said sales plan and the element of chance involved therein and were thereby induced to buy and sell its merchandise in preference to that of its said competitors, and trade in commerce was unfairly diverted to it from them; and

- (b) Sold and distributed devices commonly known as push cards and punchboards separate and apart from any other merchandise in interstate commerce including (1) push cards and punchboards with the legends or instructions printed on the face thereof explaining the manner in which they were to be used in the sale of various specified articles of merchandise, and that purchasers punching disks in the cards and thereby revealing certain lucky numbers received articles of merchandise without additional cost at prices much less than the normal retail price, and that others received nothing for their money other than the privilege of making a punch; and (2) similar devices for similar purposes bearing no instructions or legends thereon but having blank spaces provided therefor on which purchasers placed instructions of the same import as those printed on the aforesaid devices; and intended to be, and used only by ultimate purchasers thereof for distribution of other merchandise by lot or chance as above set forth;

With result that—

- (1) Many who sold or distributed candy, cigars, and other articles of merchandise in commerce bought said push card and punchboard devices and

packed and assembled assortments comprised of various articles of such merchandise, together with such cards and boards, and retail dealer buyers of such assortments, either as direct or indirect purchasers, and retailers who made up their own assortments, exposed same to purchasing public and sold or distributed such articles through use of said push cards or punchboards and in accordance with sales plans as above described; involving game of chance or sale of a chance to procure articles in question at prices much less than normal retail price thereof, and teaching and encouraging gambling among members of public, all to the injury thereof, and contrary to an established public policy of the United States Government, and in violation of criminal laws;

(2) Many members of purchasing public, because of element of chance involved in sale and distribution of said merchandise by means of said push cards and punchboards, and many retailers, were thereby induced to deal or trade with manufacturers, wholesalers, and jobbers selling and distributing their merchandise, together with said devices, in competition with many who, faced with alternative of descending to use of said cards and boards or other similar devices which they were under a powerful moral compulsion not to use, or suffer loss of substantial trade, did not thus sell and distribute their products, because of element of chance or lottery features therein involved, and because practices thus involved were contrary to public policy of United States; and refrained from supplying to or placing in hands of others such cards, boards or any other similar devices for such use; whereby substantial trade was unfairly diverted from said competitors to those purchasing and using its said devices; and

(3) It supplied thereby to and placed in the hands of others, through such sale or distribution of said push cards and punchboards, means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of merchandise to members of public, and means and instrumentalities for engaging in unfair methods of competition and unfair acts and practices:

Held, (1) That such acts and practices in selling and distributing assortments of merchandise, together with said "Bingo" sets, as above 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; and (2) That its acts and practices in selling and distributing said push card and punchboard devices, separate and apart from any other merchandise, to dealers for use in sale and distribution of their products, under circumstances set forth, were all to the prejudice and injury of public and constituted unfair acts and practices in commerce.

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.
Levin & Marshall, of Omaha, Nebr., 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 Max A. Wasserman

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individually and trading as Excel Merchandise & Novelty Co., hereinafter referred to as respondent, has violated the provisions of the 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:

Count 1

PARAGRAPH 1. Respondent, Max A. Wasserman, is an individual trading as Excel Merchandise & Novelty Co., with his principal office and place of business located at 1316 Farnam Street, Omaha, Nebr. Respondent is now and for some time last past has been engaged in the sale and distribution of sauce pans, dripolators, coffee percolators, pillows, smoking stands, electric table lamps, fountain pens, ash trays, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise when sold to be transported from his aforesaid place of business in Omaha, Nebr., to purchasers thereof, at their respective points of location, in the various States of the United States other than the State of Nebraska and in the District of Columbia. There is now and for some time last past has been a course of trade by 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 said business respondent 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 between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, as described in paragraph 1 hereof, the respondent in selling and distributing his said merchandise has supplied his customers with assortments of said merchandise together with certain paraphernalia known as Bingo sets, by means of which said merchandise is sold and distributed to the consuming public in a manner which involves the operation of a game of chance, gift enterprise, or lottery scheme. One of said Bingo sets consists of a tally sheet, containing 75 numbers; a number of Bingo cards on each of which appear 25 numbers arranged in a square, which numbers correspond to the numbers on the tally sheet; and a number of small wooden squares on each of which appears a

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number. Each of said Bingo cards has a different group of numbers thereon, and 1 of said cards appears substantially as follows:

Nos. 1 to 15 Nos. 16 to 30 Nos. 31 to 45 Nos. 46 to 60 Nos. 61 to 75

BINGO				
1	16	33	46	66
6	27	35	55	61
5	23	Free 0 Free	58	68
13	21	37	53	67
2	20	43	56	63
START WITH LETTER O IN CENTER, FREE 5 NUMBERS ACROSS ANY LINE WINS 2 12 DIFFERENT WAYS TO BINGO				
One Star Series. Total Sets 1,365 Cards. Printed in U. S. A.				

By means of said Bingo set, said merchandise is distributed to the purchasing public in substantially the following manner: Respondent's customer, or someone designated by such customer, acts as an operator in the sale or distribution of said merchandise. The operator of the Bingo set places in the hands of each participant one of the said Bingo cards, and each participant pays the operator a designated sum of money for the privilege of participating in the distribution of each of said articles of merchandise. The operator

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then places the said wooden squares in a container and so mixes them that the numbers thereon are concealed until one of said wooden squares is withdrawn from the container by the operator. In the center of the participant's Bingo card is a square marked "Free" and each participant places a marker thereon before the aforesaid drawing of said numbers is begun. The operator then proceeds with the drawing of numbers from the aforesaid mixing container and calls out the number appearing on each wooden square as said square is withdrawn from said container and the person on whose card such number appears places one of said markers over such number. This same procedure is followed until one of the participants has succeeded in marking five numbers on said card, which numbers form a straight line across the card, either horizontally, vertically or diagonally. The sequence or distribution of the numbers which control the placing of the markers is determined wholly by chance. Upon marking the last of said five numbers the participant calls out the word "Bingo." The marked numbers are called out by the operator who checks the same with the numbers on said tally sheet, and if such numbers have been correctly marked the participant is entitled to and receives one of said articles of merchandise as a prize. The other participants receive nothing for their money. This same procedure is repeated until all of said articles of merchandise or prizes have been distributed. The articles of merchandise therein vary but each of said articles of merchandise is of greater value than the amount paid by each participant for participation in the distribution of said merchandise as above described. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent has sold and distributed various Bingo sets and other devices for use in the sale and distribution of his merchandise to the consuming public by lot or chance, but the principle of operation in connection with each of said Bingo sets or devices is similar to the one hereinabove described, varying only in detail.

PAR. 3. The persons who have purchased respondent's said assortments of merchandise, together with said Bingo sets, either directly or indirectly, have used said Bingo sets in selling and distributing respondent's merchandise in accordance with the aforesaid sales plan or method. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan or method hereinabove described. The use by respondent of said sales plan or method in the sale and distribution of his 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 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 respondent, as above alleged, are unwilling to adopt and use said sales plan or method or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other sales plan or method that is 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 his merchandise, and by the element of chance involved therein, and have been and are induced to buy and sell 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 plan or method by 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 and in the District of Columbia to respondent from his said competitors who do not use the same or equivalent sales plans or methods.

PAR. 5. The aforesaid acts and practices of respondent, as hereinabove 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.

Count 2

PARAGRAPH 1. Respondent, Max A. Wasserman, is an individual trading as Excel Merchandise & Novelty Co., with his principal office and place of business located at 1316 Farnam Street, Omaha, Nebr. Respondent is now, and for some time last past has been, engaged in the sale and distribution of devices commonly known as push cards and punchboards to dealers in various other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices, when sold, to be transported from his afore-said place of business in Omaha, Nebr., to purchasers thereof, at their respective points of location, in various

States of the United States other than the State of Nebraska and in the District of Columbia. There is now and has been for some time last past a course of trade by said respondent in such push cards and punchboards, 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 his business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, to dealers push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes and has sold and distributed, many kinds of said push cards and punchboards, but all of said push cards and punchboards involve the same chance or lottery features, when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the device, for the amount of money paid, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons not obtaining one of the lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used by the ultimate purchasers thereof, is in

combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondent's said push card and punchboard devices and pack and assemble, and have packed an assembled, assortments comprised of various articles of merchandise, together with said push card and punchboard devices. Retail dealers who have purchased said assortments, either directly or indirectly, or retail dealers who have purchased said devices direct from respondent and made up their own assortments, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plans as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise, together with said devices. Said persons, firms and corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punchboard devices, or other similar devices, which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of push cards and punchboard devices, or similar devices, because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and in violation of criminal laws, and such competitors refrain from supplying to, or placing in the hands of, others push card and punchboard devices, or any other similar devices, which are to be used, or which may be used in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery, game of chance or gift enter-

prise. As a result thereof, substantial trade in commerce between and among the various States of the United States and in the District of Columbia has been unfairly diverted to said persons, firms and corporations from said competitors, who do not sell or use said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices 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 price thereof, and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plans or methods in the sale of merchandise, and the sale of 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, and constitutes 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.

The sale or distribution of said push card and punchboard devices by the respondent, as hereinabove alleged, supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of merchandise. The respondent thus supplies to and places in the hands of said persons, firms and corporations the means of, and the instrumentalities for, engaging in 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.

PAR. 5. The aforesaid acts and practices of respondent, as hereinabove alleged, are all to the prejudice and injury of the public, and constitute 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 9, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Max A. Wasserman, individually and trading as Excel Merchandise & Novelty Co., charging him 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. Subsequently, the respondent filed an answer to the Commission's complaint admitting all the material allegations of fact set forth in said complaint and waiving all intervening

procedure and further hearings as to the said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, 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, Max A. Wasserman, is an individual trading as Excel Merchandise & Novelty Co., with his principal office and place of business located at 1316 Farnam Street, Omaha, Nebr. Respondent is now and for some time last past has been engaged in the sale and distribution of sauce pans, dripolators, coffee percolators, pillows, smoking stands, electric table lamps, fountain pens, ashtrays, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise when sold to be transported from his aforesaid place of business in Omaha, Nebr., to purchasers thereof, at their respective points of location, in the various States of the United States other than the State of Nebraska and in the District of Columbia. There is now and for some time last past has been a course of trade by 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 said business respondent 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 between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, as described in paragraph 1 hereof, the respondent in selling and distributing his said merchandise has supplied his customers with assortments of said merchandise together with certain paraphernalia known as Bingo sets, by means of which said merchandise is sold and distributed to the consuming public in a manner which involves the operation of a game of chance, gift enterprise, or lottery scheme. One of said Bingo sets consists of a tally sheet, containing 75 numbers; a number of Bingo cards on each of which appear 25 numbers arranged in a square, which numbers correspond to the numbers on the tally sheet; and a number of small wooden squares on each of which appears a number. Each

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of said Bingo cards has a different group of numbers thereon, and one of said cards appears substantially as follows:

Nos. 1 to 15 Nos. 16 to 30 Nos. 31 to 45 Nos. 46 to 60 Nos. 61 to 75

BINGO				
1	16	33	46	66
6	27	35	55	61
5	23	Free 0 Free	58	68
13	21	37	53	67
2	20	43	56	63
START WITH LETTER O IN CENTER, FREE 5 NUMBERS ACROSS ANY LINE WINS 2 12 DIFFERENT WAYS TO BINGO				
One Star Series. Total Sets 1,365 Cards. Printed in U. S. A.				

By means of said Bingo set, said merchandise is distributed to the purchasing public in substantially the following manner: Respondent's customer, or someone designated by such customer, acts as an operator in the sale or distribution of said merchandise. The operator of the Bingo set places in the hands of each participant one of the said Bingo cards, and each participant pays the operator a designated sum of money for the privilege of participating in the distribution of each of said articles of merchandise. The operator then places the said wooden squares in a container and so mixes them that the numbers thereon are concealed until one of said wooden squares is withdrawn from the container by the operator. In the

center of the participant's Bingo card is a square marked "Free" and each participant places a marker thereon before the aforesaid drawing of said numbers is begun. The operator then proceeds with the drawing of numbers from the aforesaid mixing container and calls out the number appearing on each wooden square as said square is withdrawn from said container, and the person on whose card such number appears places one of said markers over such number. This same procedure is followed until one of the participants has succeeded in marking five numbers on said card, which numbers form a straight line across the card, either horizontally, vertically, or diagonally. The sequence or distribution of the numbers which control the placing of the markers is determined wholly by chance. Upon marking the last of said five numbers the participant calls out the word "Bingo." The marked numbers are called out by the operator who checks the same with the numbers on said tally sheet, and if such numbers have been correctly marked the participant is entitled to and receives one of said articles of merchandise as a prize. The other participants receive nothing for their money. This same procedure is repeated until all of said articles of merchandise or prizes have been distributed. The articles of merchandise therein vary but each of said articles of merchandise is of greater value than the amount paid by each participant for participation in the distribution of said merchandise as above described. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent has sold and distributed various Bingo sets and other devices for use in the sale and distribution of his merchandise to the consuming public by lot or chance, but the principle of operation in connection with each of said Bingo sets or devices is similar to the one hereinabove described, varying only in detail.

PAR. 3. The persons who have purchased respondent's said assortments of merchandise, together with said Bingo sets, either directly or indirectly, have used said Bingo sets in selling and distributing respondent's merchandise in accordance with the aforesaid sales plan or method. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan or method hereinabove described. The use by respondent of said sales plan or method in the sale and distribution of his 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 criminal laws.

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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 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, as above found, are unwilling to adopt and use said sales plan or method or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other sales plan or method that is 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 his merchandise, and by the element of chance involved therein, and have been and are induced to buy and sell 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 plan or method by 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 and in the District of Columbia to respondent from his said competitors who do not use the same or equivalent sales plans or methods.

PAR. 5. In the course and conduct of his business, the respondent is now, and for some time last past has been, engaged in the sale and distribution of devices commonly known as push cards and punchboards separate and apart from any other merchandise in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices, when sold, to be transported from his aforesaid place of business in Omaha, Nebr., to purchasers thereof, at their respective points of location, in various States of the United States other than the State of Nebraska and in the District of Columbia. There is now and has been for some time last past a course of trade by said respondent in such push cards and punchboards, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. In the course and conduct of his business, as described in paragraph 5 hereof, respondent sells and distributes, and has sold and distributed, to dealers push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes and has sold and distributed, many kinds of said push cards and punchboards, but all of said push cards and punchboards involve the same chance or lottery features,

when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the device, for the amount of money paid, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons not obtaining one of the lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondent on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove found.

PAR. 7. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondent's said push card and punchboard devices and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise, together with said push card and punchboard devices. Retail dealers who have purchased said assortments, either directly or indirectly, or retail dealers who have purchased said devices direct from respondent and made up their own assortments, have exposed the same to the purchas-

ing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plans as described in paragraph 6 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise, together with said devices. Said persons, firms and corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punchboard devices, or other similar devices, which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of push cards and punchboard devices, or similar devices, because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and in violation of criminal laws, and such competitors refrain from supplying to, or placing in the hands of, others push card and punchboard devices, or any other similar devices, which are to be used, or which may be used, in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery, game of chance, or gift enterprise. As a result thereof, substantial trade in commerce between and among the various States of the United States and in the District of Columbia has been unfairly diverted from said competitors who do not sell or use said devices to persons, firms, and corporations who purchase and use said devices of the respondent.

PAR. 8. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above found, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof, and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plans or methods in the sale of merchandise, and the sale of 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

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public policy of the Government of the United States, and in violation of criminal laws, and constitutes unfair methods of competition in commerce, and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The sale or distribution of said push card and punchboard devices by the respondent, as hereinabove found, supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of merchandise. The respondent thus supplies to and places in the hands of said persons, firms, and corporations the means of, and the instrumentalities for, engaging in unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The aforesaid acts and practices of the respondent in selling and distributing his said assortments of merchandise, together with Bingo sets, as hereinabove 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, and the aforesaid acts and practices of respondent in selling and distributing said push card and punchboard devices separate and apart from any other merchandise to dealers for use in the sale and distribution of said dealers' merchandise, as hereinabove found, are all to the prejudice and injury of the public and constitute 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 he waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Max A. Wasserman, individually and trading as Excel Merchandise & Novelty Co., or trading under any other name or names, his representatives, agents, or employees, directly

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or through any corporate or other device, in connection with the offering for sale, sale, and distribution of sauce pans, dripolators, coffee percolators, pillows, smoking stands, electric table lamps, fountain pens, ashtrays, or any other articles of 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 or assembled that sales of such 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 any merchandise, together with Bingo sets, punchboards, push or pull cards, or other devices, which said Bingo sets, punchboards, push or pull cards 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. Supplying to or placing in the hands of others Bingo sets, punchboards, push or pull cards or other devices, either with assortments of merchandise or separately, by which said Bingo sets, punchboards, push or pull cards 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.

4. Supplying to or placing in the hands of others punchboards, push or pull cards or other devices which are to be used or may be used in selling or distributing any merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

5. 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 him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF
BERLAND SUPPLY COMPANY, INC., ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3861. Order, November 10, 1941

Modified order in proceeding in question, in which findings and cease and desist order were made as of July 9, 1941, 33 F. T. C. 547, requiring respondents, including respondent Hotel, Restaurant and Tavern Equipment Association, and its members, in connection with the offer, etc., in commerce of glassware to cease and desist from—

Continuing, entering into, or assisting each other in carrying out any conspiracy, etc., among themselves, between any two or more of them, or between the officers, etc., of any two or more of them, to—

- (a) Refuse to sell glassware to any person, partnership, or corporation;
- (b) Cut off the source or sources of supply of any person, etc., or hinder, etc., any person, etc., in the effort to obtain supplies of glassware for sale or resale in trade and commerce or otherwise deprive any person, etc., of opportunity to compete in the sale or resale thereof;
- (c) Determine or designate who shall be a wholesaler of said products, and who not, in Milwaukee and the surrounding trade area, or in any other trade area in the United States;
- (d) Coerce or persuade any wholesaler, retailer, or dealer of glassware to refrain from engaging in price competition in the sale and distribution thereof in commerce; and
- (e) Limit the number of persons, partnerships, or corporations who may participate in trade and commerce in glassware or limit or proscribe or seek to limit or proscribe the right of any person, etc., to conduct trade or commerce according to its own free will thereof.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Lynn C. Paulson for the Commission.

Mr. Jack A. Berland, of Milwaukee, Wis., for Berland Supply Co., Inc., *I. Shapiro*, Inc., *Louis M. Mintz*, and *W. A. Reinemann*.

Lecher, Michael, Whyte & Spohn, of Milwaukee, Wis., for *S. J. Casper Co., Inc.*, and *Roseware, Inc.*

Mr. Alfred Mueller, of Milwaukee, Wis., for *National Beverage Distributing Co.*

Mr. Hugh C. Laughlin, of Lancaster, Ohio, for *Anchor-Hocking Glass Corporation* and *W. H. Peterson*.

Mr. Herbert M. Blair, of Weston, W. Va., for *West Virginia Glass Specialty Co., Inc.*

Bonham & Emshwiller, of Hartford City, Ind., for *Indiana Glass Co.*