

Complaint

IN THE MATTER OF

CONCORD DISTRIBUTING 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 4508. Complaint, May 27, 1941—Decision, Nov. 18, 1941

Where a corporation engaged in the competitive interstate sale and distribution of cameras, souvenir thermometers, clocks, tableware sets, dressing table sets, electric lamps, and other articles of merchandise—

Furnished various devices and plans by which such merchandise was sold and distributed to the ultimate consumer wholly by lot or chance, distributing to the purchasing public pushcards, circulars explaining its plan of selling said merchandise, and allotting it as premiums or prizes to operators of pushcards and to the purchasing public; a typical scheme involving a plan, pursuant to which a person selecting the one of 32 feminine names corresponding with that under the card's master seal received a camera, the person selecting the name concealing a designated number received a souvenir thermometer, and the amount paid by a customer for chance was dependent upon the particular number secured; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with such sales plan, under which the fact as to whether a purchaser received an article or nothing for the amount of money paid, and which article, if any, was determined wholly by lot or chance, and involving sale of a chance to procure an article at much less than its normal retail price; contrary to an 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 the effect of unfairly diverting trade in commerce to it from its said competitors, to the substantial injury of competition in commerce:

Held, That such acts and practices as above set forth constituted unfair methods of competition in commerce and unfair acts and practices therein.

Mr. J. V. Mishou for the Commission.

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 Concord Distributing Co., Inc., a corporation, 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:

PARAGRAPH 1. Respondent, Concord Distributing Co., Inc., is a corporation organized and existing under the laws of the State of New

York, with its principal office and place of business located at 603 Sixth Avenue, New York, N. Y. Respondent is now, and for more than 1 year last past, has been engaged in the sale and distribution of cameras, souvenir thermometers, clocks, tableware sets, dressing table sets, electric lamps, 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 products, when sold, to be transported from its aforesaid place of business in the State of New York to purchasers thereof, at their respective points of location, in various States of the United States other than the State of New York, and in the District of Columbia. There is now, and for more than 1 year last past has been a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said 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 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 its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing its merchandise, furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by 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 its 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 public. One of respondent's push cards bears 32 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 32 small partially perforated disks on the face of which is printed the word "Push." Concealed within each disk is a number which is disclosed 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 name under the master seal

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receives a camera. The person selecting a certain designated number set out in the legend at the top of said card also receives a souvenir thermometer. The push card bears a legend or instructions as follows:

Name Under Seal Receives a
MASTER PHOTO FLASH

CANDID CAMERA

Or Any Other Premium Shown on Circular

Do not
remove seal
until entire
card is sold

No. 10 receives a souvenir of
NEW YORK WORLD'S FAIR -- --
KEY WITH THERMOMETER

1¢ to 15¢—NO HIGHER
Nos. 1 to 15 pay what you draw
Nos. over 15 pay only 15¢
TOTAL—\$3.95

Sales of respondent's 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 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.

Respondent furnishes and has furnished various other push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of its 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 push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push-cards use the same in purchasing, selling and distributing respondent's merchandise, in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its merchandise and the sale of said

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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.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell and distribute merchandise in competition with the 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 that is contrary to public policy and such competitors refrain therefrom. 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.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 27, 1941, issued and thereafter served its complaint in this proceeding upon respondent, Concord Distributing Co., Inc., 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. Respondent in its answer admits all the material allegations of fact contained in the complaint and waives all intervening procedure and further hearing as to the facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on complaint and answer, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Concord Distributing Co., Inc., is a corporation organized, and existing under the laws of the State of New York with its principal office and place of business located at 603 Sixth Avenue, New York, N. Y. Respondent is now and for more than 1 year last past, has been engaged in the sale and distribution of cameras, souvenir thermometers, clocks, tableware sets, dressing table sets, electric lamps, 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 products, when sold, to be transported from its aforesaid place of business in the State of New York to purchasers thereof, at their respective points of location, in various States of the United States and in the District of Columbia. There is now, and for more than 1 year last past has been a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar 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 its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing its merchandise, furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by 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 its 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 public. One of respondent's push cards bears 32 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 32 small partially perforated discs on the face of which is printed the word "Push." Concealed within each disc is a number which is not disclosed until the disc

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is pushed or separated from the card. The push card also has a large master seal, concealed within which is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the name under the master seal receives a camera. The person selecting a certain designated number set out in the legend at the top of said card also receives a souvenir thermometer. The push card bears a legend or instructions as follows:

Name Under Seal Receives a
MASTER PHOTO FLASH

CANDID CAMERA
or Any Other Premium Shown on Circular

Do not
remove seal
until entire
card is sold

receives a souvenir of
No. 10 NEW YORK WORLD'S FAIR
KEY WITH THERMOMETER

1¢ to 15¢—NO HIGHER

1¢ to 15¢—No HIGHER

Nos. 1 to 15 pay what you draw

Nos. over 15 pay only 15¢

TOTAL—\$3.95

Sales of respondent's 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 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 determined wholly by lot or chance.

Respondent furnishes and has furnished various other push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of its 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 push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in selling and distributing respondent's merchandise, in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conduct-

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ing lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the government of the United States of America.

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 corporations, individuals and partnerships, who sell and distribute merchandise in competition with the 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 that is contrary to public policy and such competitors refrain therefrom. 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 set forth 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 respondent's answer admitting all the material allegations of fact contained in the complaint and waiving all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Concord Distributing Co., Inc., a corporation, its officers, directors, representatives, agents and employees, directly or through any corporate or other device, in connec-

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tion with the offering for sale, sale and distribution of cameras, souvenir thermometers, clocks, tableware sets, dressing table sets, electric lamps or any other articles of merchandise in commerce, as "commerce" is defined by 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 push or pull cards, punch boards or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, punch boards or other lottery devices are to be used, or may be used, in selling or distributing said merchandise to the public;

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.

Syllabus

IN THE MATTER OF
THE WHOLESALE DRY GOODS INSTITUTE, INC., ITS
OFFICERS, DIRECTORS AND MEMBERS

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

Docket 3751. Complaint, Mar. 31, 1939—Decision, Nov. 24, 1941

Where a corporate association of dry goods wholesalers representing 80 to 85 percent of the total volume of said business in the United States; most important activity of which had to do with the sales policies and practices of manufacturers as they affected the competitive position of its members, and "differential committee" of which, in its 1930 report referring to the "universal dissatisfaction of wholesalers with prevalent mill selling practices," recommended the adoption by any manufacturer of a selling policy which would not discriminate in favor of one type of retail outlet, to the detriment of another, and that where some of a manufacturer's retail outlets were supplied direct from his own warehouse and others were supplied indirectly through wholesalers, a system of wholesaler's price differentials be established so as to enable recognized distributors to sell the manufacturer's product on a parity with the price charged by him when dealing with retailers direct, and that each wholesaler, before placing an order, ascertain the selling policy of the manufacturer;

Emphasizing the advantage of acting together and the need for full support by every wholesaler and as a means of bringing about the desired changes in the sales policies of manufacturers—

- (a) Compiled and issued to its members its "Mill Selling Policy Reports," which rated each manufacturer upon the basis of his sales policy as it affected wholesalers, classifying as "A" a concern selling only through wholesalers as defined by it, as "A—" a concern selling regular products and/or patterns through wholesalers only, though making contract goods under buyers' specifications and labels for national chains and mail order houses, and so on down through "K,"—"X," and "No"; and, as a practice, advised each manufacturer of his assigned rating and that it would be assumed to be correct unless the Institute was advised to the contrary; and

Where, following the suspension of said selling policy reports during the life of the wholesale dry goods trade code under the National Industrial Recovery Act, and resumption thereof following abolishment of such code, said Institute and its members—

- (b) Supplemented said selling policy reports by the preparation and distribution to its members and to rated manufacturers of a directory entitled "Wholesalers of Dry Goods and Kindred Lines," in which it excluded from its definition of a wholesaler buying offices or syndicates representing retailers, their stock-carrying affiliates, chain store central offices or warehouses, drop shippers, brokers, commission merchants, selling agents, job lot dealers, and second-hand dealers;
- (c) Advised the reader in the introductory matter that "A" rating indicated that the manufacturer confined his distribution exclusively to wholesalers