

IN THE MATTER OF

**RALPH KALNER, REA DRATH, FREDA ROSTEN, AND
ALVIN B. WOLF, TRADING AS DELUXE PRODUCTS
COMPANY AND DELCO NOVELTY COMPANY**

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

Docket 3634. Complaint, Oct. 22, 1938—Decision, Dec. 9, 1941

Where four individuals engaged at different times as partners in the interstate sale and distribution of bed spreads, pillows, wrist watches, china ware, and a general line of novelty goods in competition with others who were unwilling to and did not use any sales plan involving chance or a lottery in periodicals—

- (a) Sold and distributed their said merchandise by means of a game of chance, gift enterprise, or lottery scheme, through sending to those replying to their advertisements offering "free" handkerchiefs and beautifying kits, catalogs and circulars describing their various articles and explaining plan under which the particular item of twenty listed, and the price paid therefor, were determined by the legend under the tab of the pull card selected by customer, and the card operator or distributor was compensated for the sale of chances by the premium selected by him, or, at his option, by the right to retain part of the amount he collected from said sales;

Whereby purchasers were induced to pull the tabs in the hope of receiving articles of merchandise, some of which ordinarily sold at higher prices and were of greater value than the price designated to be paid therefor, determined wholly by lot or chance, as was fact as to which of the twenty articles purchaser might receive;

With effect of placing in the hands of others devices by use of which their merchandise was distributed to the ultimate consumer wholly by lot or chance, contrary to the established public policy of the United States; and notwithstanding "Notice to Purchasers" in small print above the pull tab, purporting to advise the reader of his privilege of buying any article at the price shown therefor on the back of each slip, which was inconsistent with the working of the scheme as planned;

- (b) Represented that the price charged for their merchandise was less than the usual retail price through statements in their catalog purporting to offer "BONUS COUPON—worth 40¢, 50¢ value—Kurl-Kwik Curler for only 10¢" and "BONUS COUPON—worth 65¢, \$1.00 value—Knife, fork and pie server set for only 35¢";

The facts being said curlers ordinarily sold at retail for 10 cents and the sets for 45 cents, their fair values; and

- (c) Described in their catalog one of their premiums or awards given to their salesmen as "Rogers 26 Piece Silver Set," whereby distributors and prospective purchasers were caused to believe that such merchandise was of solid silver when in fact it was only plated ware;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, as a

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result whereof substantial quantities of their said products were purchased by the public and a number of persons were induced to act as distributors of its products and trade was unfairly diverted from competitors who do not thus misrepresent their said products:

Held, That such acts and practices were all to the injury and prejudice of the public, and competitors, and contrary to the established public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Miles J. Furnas, Mr. Randolph Preston, Mr. W. W. Sheppard, Mr. William C. Reeves and Mr. John W. Addison*, trial examiners.

Mr. D. C. Daniel for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Ralph Kalner, Rea Drath, Freda Rosten, and Alvin B. Wolf, individually and trading as DeLuxe Products Co. and Delco Novelty Co., hereinafter referred to as respondents, have 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Ralph Kalner, Rea Drath, Freda Rosten, and Alvin B. Wolf, are individuals trading under the names of DeLuxe Products Co. and Delco Novelty Co., with their principal office and place of business located at 637 West Roosevelt Road, Chicago, Ill. Respondents are now, and for some time last past have been, engaged in the sale and distribution of watches, rifles, enamelware, bedspreads, blankets, dinner sets, overnight cases, suede jackets, clocks, salt and pepper sets, pen and pencil sets, hot water bottles, tableware, kitchenware, razor blades, cosmetics, leather wallets, dolls, handkerchiefs, curlers, and other articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia. Respondents cause, and have caused, said products, when sold, to be shipped or transported from their aforesaid place of business in Illinois to purchasers thereof in the various other States of the United States, and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States, and in the District of Columbia. In

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the course and conduct of said business, respondents are in competition with other individuals and partnerships, and with corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and distribute said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondents distribute or cause to be distributed to dealers and prospective dealers certain advertising literature, including a sales circular. Respondents' merchandise is distributed to the purchasers thereof in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or dealer operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondents, the said respondents

thereupon ship to said dealer the merchandise designated on said card, together with a premium for the dealer as compensation for operating the pull card and selling the said merchandise. Said dealer delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondents sell and distribute and have sold and distributed various assortments of said merchandise and furnish and have furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above described plan or method is illustrative of the principle involved.

PAR. 3. The dealers to whom respondents furnish the said pull cards use the same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method 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 an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondents, as above alleged, are unwilling to adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance, or any method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale of such merchandise in the manner above described, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has the capacity and tendency to, and does, unfairly divert trade and custom to respondents from their said competitors who do not use the same or an equivalent method and as a result thereof substantial injury is being done, and

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has been done, by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their business, as hereinabove related, respondents cause, and have caused, various false, deceptive, and misleading statements or representations to appear in their advertising matter as aforesaid, of which the following are examples but are not all inclusive:

3 initial handkerchiefs FREE TO YOU. Send name, address with 6¢ in stamps to help pay postage, packing.

FREE TO YOU. 4-piece beautifying kit sent free to get acquainted. Send name, address with 10¢ to help pay postage, packing.

Another of said statements or representations appearing in respondents' said advertising matter is as follows:

Rogers 26-piece silver set.

In truth and in fact the said handkerchiefs and beautifying kit are not given away "free" but the purchasers of said articles are required to pay for said handkerchiefs and beautifying kit 6¢ and 10¢ respectively, as postage and packing charges, when in fact said amounts are greatly in excess of the actual cost of said postage and packing.

When the word "silver" is used to describe a product, the public understands it to mean that the product is made of solid silver. The use of the word "silver" by respondents in describing their tableware causes, and has caused, the public to believe that said tableware is made of solid silver. Respondents' said silver tableware is not made of solid silver but, on the contrary, said tableware is made of an inferior base metal lightly plated with silver.

PAR. 6. In the course and conduct of the respondents' business, as hereinabove set out, the respondents cause, and have caused, coupons to be issued with each purchase of their merchandise made by means of the "pull tab." A number of the said items or articles of merchandise described on the aforesaid coupons have values attached to them greatly in excess of their true and actual values.

Representative of such statements and representations made by the respondents on the coupons regarding the selling price and value of the commodities they thus offer are the following:

BONUS COUPON. WORTH 40¢ 50¢ value—Kurl Kwick Curler—for only 10¢.

BONUS COUPON. WORTH 65¢. \$1 value—Knife, fork and pie service set—for only 35¢.

BONUS COUPON. WORTH 65¢ \$1 value—6 fine initial handkerchiefs—for only 35¢.

In truth and in fact the curler is not a 50¢ value but is purchased by the respondents for 5¢ each and is sold to the retail trade for 10¢ each. The knife, fork and pie server set does not in fact have a dollar retail value. The initialed handkerchiefs do not have a dollar retail value but, on the contrary, cost the respondents from 30¢ to 70¢ per dozen. Said coupons are not worth the amounts indicated thereon.

The prices so represented as aforesaid upon respondents' coupons are greatly in excess of the actual selling prices of said items or articles of merchandise by the retailer to the consuming public and are in excess of their true and actual values. The retail prices so represented as aforesaid are false and fictitious and in no sense represent either the true retail value or the true retail selling price of the articles so represented.

PAR. 7. The use by respondents of the false, deceptive, and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are among the competitors of respondents as mentioned in paragraph 1 hereof manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondents from such competitors, and, as a result thereof, substantial injury is being done, and has been done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 22, 1938, issued and thereafter served its complaint in this proceeding upon the respondents, Ralph Kalner, Rea Drath, Freda Rosten, and Alvin B. Wolf, indi-

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viduals trading as DeLuxe Products Co. and Delco Novelty Co., charging them with 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 the complaint testimony and evidence in support of the allegations of the complaint were introduced by attorneys for the Commission, and testimony in opposition to the complaint was introduced by attorneys for respondents, before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, and the testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceedings regularly came on for final hearing before the Commission on the complaint, the testimony and other evidence, the report of the trial examiners and exceptions thereto, and briefs filed on behalf of the Commission and of the respondents. 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. Respondents, Ralph Kalner, Rea Drath, Freda Rosten, and Alvin B. Wolf, from the summer of 1936 to about August 1937, were copartners trading as DeLuxe Products Co. and Delco Novelty Co., with their principal place of business located at 843 Northwestern Avenue, Chicago, Ill., until May 1937, when it was removed to 637 West Roosevelt Road, in said city. About August 1937 respondent Alvin B. Wolf and one Max Schwartz purchased the interests of respondents Kalner, Drath, and Rosten in said business, and since that date respondent Wolf and said Schwartz have, as copartners, operated said business at the last named address under the aforesaid trade names and also under the trade name "National Business Builders."

PAR. 2. All the respondents, during the existence of the partnership, were engaged, and respondent Wolf and Schwartz have since been and now are engaged, in the sale and distribution of bed spreads, pillows, wrist watches, chinaware, rifles, overnight cases, dolls, kitchen ware, blankets, suede jackets, clocks, tableware, hot water bottles, fountain pen and pencil sets, salt and pepper sets and a general line of novelty goods, and during said periods have caused their merchandise, when sold, to be shipped from their principal place of business to purchasers thereof located in the various States of the United States at their respective points of location.

PAR. 3. Respondents in the course and conduct of their business were, and respondent Wolf and Schwartz now are, in competition with other partnerships and with individuals and corporations likewise engaged in selling and distributing similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 4. Respondents, in order to secure distributors for their merchandise, placed advertisements in magazines of general circulation, of which the following are typical:

THREE INITIAL HANDKERCHIEFS FREE TO YOU. Send name and address with 6¢ in stamps to help pay postage, packing.

FREE TO YOU, 4-piece Beautifying Kit free to get acquainted. Send name and address with 10¢ to help pay postage, packing.

After securing the names and addresses of the persons answering these advertisements, respondents mailed such persons catalogues and circulars describing the articles of merchandise sold by them and the plan or method to be used in their sale. The catalogues contained pictorial representations and descriptive matter with reference to merchandise offered as premiums, rewards, or compensation to the distributor for his services in selling 20 articles of merchandise, 5 of which are also illustrated in the catalogue, beneath which illustrations is a list of the 20 articles of merchandise to be offered for sale, with the price of each article, and a blank space opposite each item for insertion of the name of the purchaser. At the right of this list is pasted a device commonly known as a "pull card," containing 20 tabs, on the under side of each of which is concealed the name of 1 of the 20 articles of merchandise and the price thereof, neither of which is revealed until after the tab is separated or removed from the pull-card device.

After the purchaser has detached one of the tabs and has ascertained the article of merchandise he is to purchase, and has paid the price indicated on the tab, his name is written by the distributor in the blank space opposite the name and price of the article listed. When the distributor has by this means sold all of the 20 articles and collected the price thereof, he remits to the respondent the amount collected and receives from them the merchandise which is delivered by him to the purchasers. Respondents also ship to the distributor the premium or reward selected by him as compensation for his services in the sale of respondents' merchandise; or, if he so elects, the distributor may retain, in lieu of such premium, a specified sum from the amount he has collected from such sales.

PAR. 5. Respondents during the existence of the copartnership sold and distributed, and respondent Wolf since August 1937 has sold and

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distributed and now sells and distributes, merchandise by means of a game of chance, gift enterprise, or lottery scheme, as described in paragraph 4 hereof.

PAR. 6. Immediately above the pull-tab device the following appears in small print:

NOTICE TO PURCHASERS: On the back of each slip is printed the price of an article. If after deliberation you decide that you want to buy the article, pay the holder of this book the price shown on the slip. If you do not want the article you need not buy it.

Distributors of respondents' merchandise sometimes call the attention of prospective purchasers to this "notice" and at other times do not.

The Commission finds that, regardless of said "notice," the respondents have sold and distributed, and respondent Wolf now sells and distributes, merchandise by means of said pull-tab device, in accordance with the sales plan or method hereinbefore described.

The successful operation of said sales plan or method is dependent upon the ability of the distributor to sell all of the 20 articles listed, so as to provide for remittance of the required amount to respondents in order to obtain the merchandise purchased. The operation of the plan or method strictly in accordance with the above "notice" would not net the distributor a return sufficient to warrant completion of the plan or method and would thereby render it inoperative. No instructions are contained in any of the catalogues, circulars, or other literature distributed by the respondent as to what should be done in the event all the articles are not sold, or if a person pulling a tab fails or refuses to complete the purchase; nor is any provision made as to the compensation to be received by the distributor in such cases. On the contrary, as shown by all of respondents' literature, it is contemplated that all of the listed merchandise must be sold. The order blank states:

I have sold my order. Please ship at once all charges prepaid, the 20 articles of merchandise I sold amounting to \$5.98, and one of the valuable premiums.

It is stated in the catalogue:

When articles are sold you will have collected \$5.98. Then fill out the enclosed order blank and mail to us together with your remittance. We will send you big reward premium, extra surprise gift and the 20 articles as soon as we receive your order.

It is stated in one of respondent's circulars:

Simply sell the order as outlined and send us the money within 15 days after receipt of this order and you will get the big reward premium you select * * *.

The "Notice" is a subterfuge, intended to avoid the consequences incident to the operation of a game of chance, gift enterprise, or lottery scheme.

PAR. 7. In the catalogue described in paragraph 4 hereof, it is stated that a "bonus coupon" is given free to each purchaser. The following are examples of these coupons:

* * *	
Bonus Coupon, worth-----	40¢
50¢ value—Kurl-Kwik Curler for only-----	10¢
Additional Kurl-Kwik Curlers without coupon-----	50¢
Bonus Coupon, worth-----	65¢
\$1.00 value—Knife, fork, and pie server set for only-----	35¢
* * *	
Additional sets without bonus coupons-----	\$1.00
* * *	

The values of the curler and the knife, fork, and pie-server set stated in respondents' "bonus coupons" are greatly in excess of the actual retail selling price of said items and in excess of their true and actual values. The curler is ordinarily sold at retail for 10¢, and the knife, fork, and pie server set for 45¢, and these prices represent the fair values of the articles. These two items have not been sold by respondents since 1938.

Respondents, prior to 1938, described in their catalogue one of the premiums or rewards given to their distributors as compensation for services in disposing of respondents' merchandise as "Rogers 26-piece Silver Set." This description caused respondents' distributors and prospective distributors to believe that this merchandise was of solid silver, when in fact it was only plated ware. Respondent Wolf has discontinued the use of the word "silver" in describing such ware.

PAR. 8. Respondents, by such false, deceptive, and misleading statements and representations concerning the value and character of its merchandise have misled and deceived a substantial portion of the public into the erroneous belief that such statements and representations are true, and as a result, substantial quantities of their merchandise have been purchased by the public, and a number of persons have been induced to act as distributors of respondents' merchandise. Among the competitors of respondents mentioned in paragraph 3 hereof are those who do not make such false, deceptive, and misleading statements and representations concerning their merchandise.

Said statements and representations have caused trade to be unfairly diverted from said competitors to the respondents and substantial injury has thereby been done by respondents, and is now being done by

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

PAR. 9. Some of the merchandise sold by respondents have greater value and ordinarily sell at higher retail prices than the prices listed by respondents, but are sold and distributed to the consumer at the prices designated on the tabs, and because of this, purchasers are induced to pull the tabs in the hope that they will receive articles of merchandise of greater value than the designated prices to be paid for same. Whether a purchaser receives one of these articles, or which of the 20 articles of merchandise he may receive and the price to be paid therefor, are determined wholly by lot or chance. Many partnerships, persons, and corporations who sell and distribute merchandise in competition with the respondents are unwilling to adopt and use, and do not use in the sale of their merchandise, the sales plan or method used by respondents, or any method involving a game of chance, gift enterprise, or lottery, or any method which is contrary to public policy.

PAR. 10. Respondents, by their sales method hereinbefore described, have placed, and respondent Wolf now places, in the hands of others, devices to be used in the sale and distribution of their merchandise by means of which a game of chance, gift enterprise, or lottery scheme may be used, and by the use of such devices said merchandise was and is sold and distributed to the ultimate consumer wholly by lot or chance. Respondents' said sales method is contrary to the established public policy of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and of respondents' competitors, and are contrary to the established public policy of the Government of the United States of America, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and other evidence introduced before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, the report of the trial examiners thereon and exceptions thereto, and briefs filed in support of the complaint and in opposition to the complaint, and the Commission having made its findings as to the facts and its conclusion that the respondents, Ralph Kalner, Rea Drath, Freda Rosten,

and Alvin B. Wolk have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents Ralph Kalner, Rea Drath, Freda Rosten, and Alvin B. Wolf, individuals trading as DeLuxe Products Co. and Delco Novelty Co., or under any other trade name or designation, jointly or severally, and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of bed spreads, pillows, wrist watches, chinaware, rifles, overnight cases, dolls, kitchen ware, blankets, suede jackets, clocks, tableware, hot water bottles, fountain pen and pencil sets, salt and pepper sets, and any other articles of merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

4. Using the unqualified term "silver" to designate or describe tableware or other articles of merchandise which are not made entirely of silver.

5. Representing that the price charged for merchandise is less than the usual retail price of such merchandise when such is not the fact.

It is further ordered, That respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth the manner and form in which they have complied with this order.

IN THE MATTER OF
PIONEER MERCHANDISE 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 4012. Complaint, Feb. 2, 1940—Decision, Dec. 9, 1941

Where a corporation engaged in interstate sale and distribution, among other products, of cigarette holders composed of cellulose acetate which were similar in appearance to holders composed of amber, nonburning bakelite and other suitable materials—

- (a) Represented and implied to the purchasing public that its said products were made from amber, nonburning bakelite or other suitable material, and were of superior quality and would give satisfactory service, through mounting them on dealers' display cards containing such statements as "Cigarette Holders for a cool and agreeable smoke" and "Extra Fine Cigarette Holders";

Facts being its said cigarette holders would not give the public the service it was led to expect through such representations and similarity of such holders to those made of amber, nonburning bakelite, etc., but were made from material which disintegrated readily when exposed to heat, conveying an unpleasant taste to smoke coming in contact with the holder, so that user thereof would not obtain an agreeable smoke; and

- (b) Represented and implied that it made the cigarette holders and other domestic-made merchandise sold by it, and owned, operated and controlled a factory in which its holders were made, through such statements in circulars bearing its name and word "Manufacturers" as "When Buying from Us You Buy from the Manufacturer," and through representations on letterheads and invoices to the effect that it was a manufacturer;

Notwithstanding fact it neither owned nor controlled any manufacturing plant in which its products were made, and was not a manufacturer, long preferentially dealt with by a substantial proportion of jobbers, dealers and consumers as, in their belief, eliminating the profits of middlemen and enabling them to obtain lower prices and other advantages;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and with result that said public purchased a substantial quantity of its cigarette holders and other merchandise:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. S. Brogdyne Teu, II for the Commission.

Mr. J. Jerome Katz and *Mr. George Goodritz*, of Philadelphia, Pa., for respondent.