

Syllabus

IN THE MATTER OF

D. J. BORTZ AND EDITH BORTZ, TRADING AS CHAMPION
BATTERY COMPANY AND THE BALL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4134. Complaint, May 16, 1940—Decision, Dec. 18, 1941*

Where two individuals, engaged under the names, "The Ball Co." and "Champion Battery Co.," in the competitive interstate sale and distribution to retailers of so-called sales promotional plans, involving (1) in its dealing under former name, units for which the dealer paid 5 cents to their representative and undertook to pay balance of 15 cents, upon delivery, without prior opportunity for inspection, and which consisted of gift certificate, "ivory ware" cup, saucer and cereal dish, and printed handbills and pen-nants or posters for the merchant's use, the scheme purportedly contemplating that \$5.00 in purchases, when stamped out on his certificate, entitled a customer to receive said dishes from the dealer with the further provision that the dealer sending in such punched-out certificate, together with name and address of customer and 39 cents for an additional unit of such "ivory ware", was entitled to 23 cents refund; and involving, (2) when trading under latter name, a purported selling plan, varying from the former, in that when the punched-out certificate was sent to them with name of the customer, it was to be accompanied by a varying remittance for a so-called trial order of dry batteries, depending on the particular novelty desired by the customer, and the 20 cents paid by the dealer for certificate was to be refunded—

- (a) Made use, as aforesaid, of trade name "The Ball Co." in offer and sale of their first-described promotional sales plan and dinner ware, and in their contract forms and on letterheads displayed the heading "The Ball Co., Dinnerware Department"; and represented, through their sales representatives, that such concern was a department of, or connected with, or a representative of, the well known Ball Brothers Company, manufacturers of mason jars, and that said plan was an effort on the part of the latter to recoup lost sales volume attributed to increased use of tin and other food containers, and was to introduce the new dinnerware made by said Ball Bros. Co., and, further, that the retail dealer might become the representative of said company and receive substantial profits on future sales of such dinnerware;
- (b) Concealed, in some instances, the fact that the dealer would not receive a refund unless additional purchases were made by his customer, and displayed to dealers, as samples of the ware, merchandise of substantially better grade and more attractively colored and decorated than that actually furnished;
- (c) Made use, as aforesaid, of name "The Champion Battery Co." in offer and sale of their said promotional sales plan involving batteries, and represented, through their sales representatives, that they were agents of, or

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that their said concern was connected with, the well-known Champion Spark Plug Co., of Toledo, Ohio; that latter was commencing the manufacture of batteries, and that the sales plan offered was to advertise the new line; and that great profits could be made from future resale of batteries which would be promoted by extensive advertising by the concern above referred to; and displayed, offered and sold, in such connection, batteries marked and designated as "Champion";

- (d) Concealed the fact that the dealer's customers would have to purchase batteries in order to secure the novelties included in the plan, by misrepresentations or by failure to exhibit a true copy of the so-called "advertising gift check," and represented the number of samples of such novelties to be furnished to the dealer as greater than the number actually furnished; and,
- (e) Represented, through the advertising handbills furnished to contracting dealers for the sales promotion plan offered under the name of "Champion Battery Co." that the various novelties were available to customers of the purchasing dealer "free," when in fact the cost of such articles was included in the price of the batteries which had to be purchased to obtain them; Notwithstanding the fact they were in no way connected with the Ball Bros. Co. of Muncie, Ind., long time manufacturer of glass fruit jars, or with the Champion Spark Plug Co. of Toledo, Ohio, products of both of which were well and favorably known to the purchasing public, nor were their dinnerware, or their so-called "Champion" batteries, respectively, products of said companies;

With intent and effect of misleading and deceiving many members of the public who had confidence in the aforesaid companies and their products into the purchase of their so-called promotional sales plans and accompanying merchandise, in the false belief that they were dealing with or securing the products of said Ball Bros. Co. or Champion Spark Plug Co., and of misleading and deceiving their customers into the belief that they were connected with said widely-known companies and dealt in their products; and

- (f) Frequently misrepresented, through their sales representatives, the quantities of handbills and advertising pennants or posters which would be furnished to the purchasing dealer, and displayed purported samples of such advertising material far superior to that actually furnished;
- (g) Represented, as aforesaid, that they were introducing a new line of merchandise, and that the sales plan offered was for the purpose of bringing it to the attention of the public, and made numerous other false representations to induce purchases; and
- (h) Made use of a form of contract or agreement which provided that the purchasing dealer had read its terms, that the order was not subject to change or cancellation, and that "No terms or representations except as printed herein will be recognized by this company," notwithstanding which they accepted the benefits of orders which contained written alterations of the printed terms, and, while collecting the full amount due thereunder, complied only in part with the altered terms;

With effect of misleading and deceiving retail dealers into purchase of their so-called sales promotional plans and accompanying merchandise, in reliance upon such misrepresentations, of placing in the hands of dealers a means and instrumentality whereby the latter might mislead and deceive

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the consuming public, and of unfairly diverting trade in commerce to them from their competitors; to the injury of such competitors and the public: *Held*, That such methods, acts and practices were all to the prejudice of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Maurice C. Pearce for the Commission.

Mr. William K. Campbell, of Detroit, Mich., 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 D. J. Bortz and Edith Bortz, individually, and trading as Champion Battery Co., and the Ball Co., respectively, hereinafter referred to as respondents, have violated the provisions of 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 it charges in that respect as follows:

PARAGRAPH 1. Respondents, D. J. Bortz and Edith Bortz, are individuals doing business under the trade names of Champion Battery Co., and the Ball Co., with their principal office and place of business located in Room 403, Morgan Building, Detroit, Mich. Respondents are now, and since the early part of the year 1939 have been, engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of certain so-called sales promotional plans, including, in connection therewith, the sale and distribution of "advertising gift checks," "gift certificates," and various articles of merchandise, novelty gifts, and premiums. Respondents cause such advertising gift checks, gift certificates and articles of merchandise, including novelty gifts, and premiums used in connection with the operation of their so-called sales promotional plans, when sold, to be transported from their place of business in the State of Michigan to purchasers thereof located in the various States of the United States other than the State of Michigan and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in the sale and distribution of said so-called sales promotional plans and articles of merchandise, including novelty gifts and premiums used in connection with the operation of the same, in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 2. Respondents, in the course and conduct of the business conducted by them under the respective trade names Champion Battery Co. and the Ball Co., are now and at all times herein mentioned have been in substantial competition with other individuals and with corporations, partnerships, and firms likewise engaged in the sale and distribution in commerce of so-called sales promotional plans which include or employ in their operation "advertising gift checks," "gift certificates," and other articles of merchandise, including novelty gifts, and premiums.

PAR. 3. Respondents, through their agents and salesmen, solicit and sell their so-called sales promotional plants to retail dealers located in various States of the United States. Said "advertising gift checks" consist of cards describing novelty gifts and premiums and containing figures on the margin thereof aggregating \$5. Through the operation of said plans, as represented by agents of respondents, the dealer distributes such checks among his customers and prospective customers, and as purchases are made by such customers, the dealer punches the figure on the margin of the check corresponding to the amount purchased. When the entire amount has been punched out on the check, the customer or the dealer, in the case of the Champion Battery Co., may forward the gift check to respondents with a purchase order of batteries and bulbs and receive in return, in addition to batteries and bulbs ordered, one of the novelty gifts described in said check, as selected by the customer. In the case of the so-called sales-promotional plan operated in the name of the Ball Co., the customer, on surrendering the gift check, is to be supplied with pieces or combination sets of dinnerware.

Said "advertising gift checks" and "gift certificates" are sold to dealers in minimum orders of 100 and 200, respectively, for which the dealer pays 20 cents per check or certificate, or \$20 for an order of 100 and \$40 for an order of 200. The amount paid by the dealer for each check, in the case of the Champion Battery Co., is to be refunded to him when the full amount on a gift check has been punched out and the check forwarded to respondents for redemption by either the dealer or the customer, together with 20 cents for a purchase order of batteries. In the case of the Ball Co., the amount paid by the dealer is to be refunded to him when the full amount of the gift certificate has been punched out and the certificate, with the name and address of the customer appearing thereon, is forwarded to the respondents for redemption by the dealer.

Respondents furnish the dealer with various advertising handbills, which are headed with the word "Free" in large letters and

describe the premiums offered, to be used by said dealer in putting the aforesaid plan into operation and effect.

PAR. 4. Respondents, doing business under the respective trade names Champion Battery Co., and the Ball Co., as aforesaid, through their salesmen and agents, make many false and misleading statements, and representations with respect to their so-called sales promotional plans. In soliciting dealers and with a view to making sales contracts and increasing their business, respondents represent that Champion Battery Co. is a representative of, or connected with, and is putting on an advertising campaign for, the Champion Spark Plug Co., which has earned a valuable good will and reputation through the manufacture and sale of "Champion Spark Plugs," and which is located at 900 Upton Avenue, Toledo, Ohio. Respondents represent further that the dealers' customers, upon forwarding the advertising gift checks to respondents for redemption, will receive various articles of merchandise "Free" in the way of premiums or prizes, and that so-called sales promotional plan will be without cost to the dealer in that the amount paid for such advertising gift checks by the dealer will be refunded by respondents upon redemption of the said checks. Respondents further represent that the dealer will be furnished a certain designated number of advertising handbills of attractive design and superior quality, the same being exhibited to the dealer, and attractive samples of substantial novelty gifts to be displayed by the dealer in putting the plan into operation and effect; that the plan has been designed to facilitate the advertising of a new line of batteries; that the novelty premiums are to be delivered to customers on a deposit of 20¢ for a purchase order of batteries with the gift check completely punched; and that the batteries sold by respondents are manufactured by the Champion Spark Plug Co.

Similarly, respondents represent that the Ball Co. is connected with, or a representative of, Ball Brothers Co., of Muncie, Ind., which has earned a favorable reputation and valuable good will through the manufacture and sale of glass fruit preserving jars; that because of the decline in the fruit preserving jar business during recent years due to increasing use of tin products, the Ball Co. has decided to introduce a new line of colored chinaware with a view to recouping lost sales volume. Respondents further represent that the dinnerware supplied in connection with the operation of the so-called sales promotional plan is of a high grade, of celebrated type known as "Fiesta," and attractive samples of such ware, in red and blue, green and yellow, are exhibited to prospective dealer-customers by respond-

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ents' sales representatives. Prospective dealer-customers are assured by respondents' sales agents that the amount paid for gift certificates by the dealer will be refunded by respondents upon redemption of the said certificates. Respondents likewise represent that the dealer will be furnished a certain designated number of advertising handbills of attractive design and quality and three-piece units of colored Fiesta dinnerware for each gift certificate, to be used by the dealer in supplying the customers who surrender their certificates for redemption. Respondents' salesmen impress customers with the idea that the so-called sales promotional plan is to facilitate the advertising of a new line of dinnerware, to stimulate the sale of the same through retail store channels, and that the dinnerware sold by respondents is manufactured by the well-known Ball Brothers Co.

PAR. 5. Respondents' representations as herein set forth are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondents doing business under the trade name Champion Battery Co. are not representatives of, or connected with, or putting on an advertising campaign for, the Champion Spark Plug Co. Dealers are not reimbursed for the sums paid by them to respondents in advance for sales checks or certificates. The "free" premium or prize that is sent to customers of dealers is not free to said customers but they are, on the contrary, required in each instance to pay a larger sum of money for the purchase of a designated number of flash light batteries and bulbs than had been represented to them or was understood by them, which sum of money is substantial and represents full payment for said flash light batteries, bulbs, and premiums or prizes received. Dealers are not furnished the designated number of advertising handbills promised and those furnished are cheap and unattractive and far inferior to sample advertising matter shown by agents. Novelty gifts shipped are short of the number promised and inferior to samples shown. Gift samples are likewise short of the number promised and of inferior quality. Respondents' plan is not designed to facilitate the advertising of a new line of batteries. Premiums are not delivered to customers as represented on a deposit of 20 cents for a purchase order of batteries and bulbs when the gift check is completely punched. The batteries sold by respondents are not manufactured by Champion Spark Plug Co.

The various representations made by and on behalf of respondents doing business under the trade name the Ball Co. are likewise false, misleading, grossly exaggerated and untrue. Respondents are not a department of, or connected with, nor do they in any way represent, Ball Brothers Co. of Muncie, Ind., nor has said Ball Brothers Co. added any line of dinnerware to their glass jar manufacturing busi-

ness. Respondents' so-called sales promotional plan is not without cost to the dealers who purchase and use the same in their business and the amount paid for such gift certificates by the dealers is not refunded by respondents on redemption of said certificates. Customers of dealers do not receive "free" sets of dinnerware, but on the contrary are required to remit the sum of 39 cents with each certificate returned to respondents, which sum of money represents and covers not only the value of the said dinnerware but a substantial profit on the same. The dealer is not furnished the promised number of advertising handbills, nor are handbills of the quality or design shown by agents. The dinnerware shipped to customers by respondents is not genuine Fiesta ware as represented nor in colors as represented, but on the contrary consists only of the cheapest milk-white glassware found in 5 and 10 cent stores, and samples as well as premium lots of dinnerware are short of the numbers promised. Respondents' plan is not designed to facilitate the advertising of a new line of dinnerware nor to stimulate the sale of dinnerware through additional retail store channels, and the dinnerware sold by respondents is not manufactured by Ball Brothers Co.

PAR. 6. Respondents in the further course and conduct of their business under the respective trade names Champion Battery Co. and the Ball Co., for the purpose of appropriating the business established by the reputation and good will of the Champion Spark Plug Co. and Ball Brothers Co., respectively, and also for the purpose of misleading and deceiving purchasers and prospective purchasers, place and have placed the word "Champion" upon the labels of their batteries sold by them trading as Champion Battery Co., and employ the word "Ball" in connection with sales made when trading as the Ball Co., respectively, thus representing or implying that such articles are manufactured by, or are the products of, the Champion Spark Plug Co., or Ball Brothers Co., respectively. The Champion Spark Plug Co. is a corporation organized and doing business under and by virtue of the laws of the State of Ohio, with its factory and principal place of business located at 900 Upton Avenue, City of Toledo, in the State of Ohio. The Ball Brothers Co. is a corporation organized and doing business under and by virtue of the laws of the State of Indiana with its factory and principal place of business located in Muncie, Ind.

The Champion Spark Plug Co. is now, and for many years last past has been, engaged in the manufacture of spark plugs to be used in automobiles and other mechanical apparatus and in the sale and distribution of said products in commerce between and among the various States of the United States and in the District of Columbia, causing said products, when sold, to be shipped from their place of business

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in the State of Ohio to the purchasers thereof located in States of the United States other than the State of Ohio. Said products are sold under and are designated by the trade name "Champion."

The Ball Brothers Co. is now, and for many years last past has been, engaged in the manufacture of glass fruit preserving jars to be used in canning vegetables and fruits, and in the sale and distribution of said products in commerce between and among the various States of the United States and in the District of Columbia, causing said products, when sold to be shipped from its place of business in the State of Indiana to the purchasers thereof located in the States of the United States other than the State of Indiana. Said glass fruit preserving jars are sold under and are designated by the trade name "Ball."

Said companies have built up and enjoy a valuable good will in the words "Champion" and "Ball" as applied to their respective products, particularly spark plugs used in automobiles and other mechanical apparatus, and fruit jars which are used in canning vegetables and fruits. Members of the purchasing public have through long usage and over a long period of time identified electrical and other mechanical apparatus and accessories which bear the name "Champion" as the product of the well and favorably known Champion Spark Plug Co. and have manifested a preference for such "Champion" products.

Likewise, members of the purchasing public have, through long usage and over a long period of time, identified fruit jars and other products which bear the name "Ball" as the products of the well and favorably known Ball Brothers Co. and have manifested a preference for such "Ball" products.

PAR. 7. The use by respondents of the names "Champion" and "Ball" as a part of their respective trade names herein, without any accompanying words indicating that said trade names do not indicate the products of and business conducted by the said Champion Spark Plug Co. and the said Ball Brothers Co., respectively, constitutes in itself false and misleading representations by respondents that their products are the products of the Champion Spark Plug Co. and of the Ball Brothers Co. In truth and in fact, respondents' articles of merchandise are not the products of or made by Champion Spark Plug Co. or the Ball Brothers Co., but are obtained by respondents from other sources to the injury and damage to the good will which said companies have built up and have enjoyed for many years in the manufacture, sale, and distribution of their respective products among the purchasing public of the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts, practices and methods used by the respondents place in the hands of retailers a means and instrumentality whereby the consuming and purchasing public is misled and deceived.

PAR. 9. The use by the respondents of the methods, acts and practices hereinabove alleged has had, and now has, the tendency and capacity to mislead and deceive retailers and to cause them erroneously to believe that all of said statements, claims and representations are true, and that said batteries and said dinnerware products are manufactured by Champion Spark Plug Co. and Ball Brothers Co., respectively, and to purchase said so-called sales promotional plan, advertising gift checks, gift certificates, and other articles of merchandise used in putting said plan into operation and effect, thereby unfairly diverting trade in said commerce to the respondents from their competitors to their injury and to the injury of the public.

PAR. 10. The aforesaid methods, acts, and practices of respondents are all to the prejudice of the public and of the respondents' competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 16, 1940, issued and subsequently served its complaint in this proceeding upon respondents, D. J. Bortz, and Edith Bortz, individually, and trading as Champion Battery Co., and as the Ball Co., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by attorneys for the Commission and in opposition to the allegations of the complaint by an attorney for respondents before an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission having duly considered the matter

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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, Donald J. Bortz (the individual referred to in the complaint as D. J. Bortz), and Edith Bortz, are individuals doing business as the Champion Battery Co. and, until recently, as the Ball Co. Respondents have their principal office and place of business at Room 403, Morgan Building, Detroit, Mich. The trade names used by respondents are registered in the name of Edith Bortz as owner and the business of respondents is carried on under the management and control of her husband, Donald J. Bortz. Respondents are now, and for more than 2 years last past have been, engaged in the sale and distribution of so-called sales promotional plans and, in connection therewith, the sale and distribution of certain certificates, advertising material, and various articles of merchandise.

PAR. 2. In the course and conduct of the aforesaid business respondents have caused the said certificates, advertising material, and articles of merchandise, when sold, to be transported from their place of business in the State of Michigan to purchasers in other States of the United States. Respondents maintain, and have maintained, a course of trade in the sale and distribution of the said articles used in connection with the operation of the so-called sales promotion plans in commerce among and between the various States of the United States and in the District of Columbia.

In the conduct of the aforesaid business under the trade names of Champion Battery Co. and the Ball Co. respondents are now, and have been, in substantial competition with other individuals and with corporations, partnerships, and firms likewise engaged in the sale and distribution in commerce of so-called sales promotional plans which, in principle, are substantially the same as those used by respondents.

PAR. 3. Respondents, through their agents and salesmen, solicit and sell their so-called sales promotional plans to retail dealers located in various States of the United States.

The purported plan of operation under the name of the Ball Co. is to sell said sales promotional plan to retail dealers in the guise of a means of increasing the business of the purchasing dealer. It is provided that the plan will be sold in units of 200, the dealer agreeing to pay 20 cents for each unit purchased, 5 cents of which is paid to

the respondents' representative at the time of sale and the remainder upon delivery of the material purchased and prior to any opportunity for inspection thereof. Each unit consists of a so-called gift certificate; a cup, saucer, and cereal dish designated as "ivory ware"; and certain printed handbills and pennants or posters. The gift certificates are intended for distribution by the retail dealer to his customers. Each such certificate has numbers printed on its margin to the aggregate of 500, which numbers are to be punched out by the dealer in accordance with purchases made from him by the holder of the certificate; and when a total of \$5 worth of merchandise has been purchased by the holder of the gift certificate he is to receive from the dealer upon surrender of such certificate a cup, saucer, and cereal dish made of said ivory ware. The handbills and pennants or posters are intended for the use of the retail merchant in advertising the plan to his customers. It is provided that when the dealer sends the punched-out certificate to respondents, together with the name and address of the customer and 39 cents for an additional unit of ivory ware, respondents will refund to the dealer 23 cents for each certificate so redeemed.

The purported selling plan followed by the respondents when trading under the name of Champion Battery Co. is similar in substance to that used by them in trading under the name of the Ball Co. The details of the plan vary, however, in that when purchases to the requisite amount have been made from the retail dealer and the certificate or "advertising gift check" is sent to respondents, together with the name of the customer and a remittance for a so-called trial order of dry batteries, a novelty such as a pencil which illuminates a small space around its point or an illuminated mirror is sent to the customer and the 20 cents paid by the dealer for the certificate is refunded to him. The amount of the remittance to be sent to the respondents with the certificate varies with the novelty item selected, as indicated on the reverse of such certificate. For example, the purchase of 6 batteries at 10 cents each is required in case a pencil light is wanted, or 10 batteries at 10 cents each in case the "mirror lite" is wanted.

PAR. 4. In the actual operation of respondents' business in the sale to retail merchants of the aforesaid sales promotional plans, respondents' sales representatives have made many false and misleading representations to purchasers. Among such representations were statements that the Ball Co. was a department of, or connected with, or a representative of, the well-known Ball Brothers Co., manufacturers of mason jars; that the plan being offered was an

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effort on the part of the Ball Brothers Co. to recoup lost sales volume attributed to increased use of tins and other containers for packing food products; that the plan was to introduce the new dinnerware made by the Ball Brothers Co. and it was anticipated that further business would result from the distribution of samples of the new merchandise; and that the retail dealer might become the representative of Ball Brothers Co. in making future sales and receive substantial profits on such business. In some instances the fact that the dealer would not receive a refund unless additional purchases were made by his customers was concealed from the purchasing dealer. The merchandise displayed to dealers as being samples of the ware to be furnished by respondents was materially different from that actually furnished and was of substantially better grade and more attractively colored and decorated than that actually furnished.

In the course of the business done by the respondents under the name of the Champion Battery Co. their sales representatives have represented themselves to be agents of, or that the Champion Battery Co. was connected with, the well-known Champion Spark Plug Co. of Toledo, Ohio; that the Champion Spark Plug Co. was commencing the manufacture of batteries and the sales plan offered was to facilitate the advertising of the new line; and that great profits could be made from future resales of batteries which would be promoted by extensive advertising by the Champion Spark Plug Co. The fact that the dealers' customers would have to make purchases of batteries in order to secure the novelties included in the plan was concealed from dealers by misrepresentations or by failure to exhibit a true copy of the so-called advertising gift check, and the number of samples of the novelty merchandise to be furnished to the dealer for exhibition to his customers in connection with the operation of the plan was represented to be greater than the number actually furnished.

The batteries displayed as samples by respondents' representatives and those distributed by respondents were marked and designated as "Champion" batteries.

The advertising handbills furnished by respondents to dealers who contracted for the sales promotion plan offered under the name of Champion Battery Co. represented that various items of novelty merchandise were available to customers of the purchasing dealer "free." Actually the cost of such articles is included in the price of the batteries which must be purchased to obtain the so-called free article of merchandise.

Respondents' sales representatives, operating under the name of the Ball Co. and of the Champion Battery Co., frequently misrepresented the quantities of handbills and advertising pennants or posters which would be furnished to the purchasing dealer and displayed purported samples of such advertising material far superior in quality and appearance to that actually furnished by respondents. Such sales representatives have represented that they are introducing a new line of merchandise and that the sales plan offered is for the purpose of aiding in bringing the new product to the attention and knowledge of the public, and have made numerous other false representations in order to induce the purchase of respondents' so-called sales promotional plans and accompanying merchandise. Respondent's contract forms, as well as their letterheads used in connection with business transacted as the Ball Co., carry the heading "The Ball Company, Dinnerware Department."

Respondents are not in any way connected with Ball Brothers Co. of Muncie, Indiana, or with the Champion Spark Plug Co. of Toledo, Ohio. The dinnerware offered for sale, and sold by them is not made by Ball Bros. Co.; nor are the batteries offered for sale, and sold by them made by the Champion Spark Plug Co.

The form of contract or agreement used by respondents in their sales to dealers, which form is to be signed by respondents' representative and by the purchasing dealer, provides that dealers have read its terms, that the order is not subject to change or cancellation, and that "No terms or representations except as printed herein will be recognized by this company." Respondents, however, have accepted the benefits of orders which by handwritten changes appearing thereon contain alterations of the printed terms, and such acceptance could not be without knowledge of the changes in the terms. They have in such instances, while collecting the full amount due under such orders, complied only in part with the altered terms thereof.

PAR. 5. The Ball Brothers Co. of Muncie, Ind., for many years has been engaged in the manufacture of glass fruit jars to be used in canning vegetables, fruits, and other products, and in the sale and distribution of such jars throughout the United States. The Champion Spark Plug Co. for many years has been engaged in the manufacture of spark plugs for use in automobile motors and other internal combustion motors and has sold and distributed such products throughout the United States. Both of these companies have spent large sums of money in advertising their products and obtaining a wide consumer acceptance therefor and in otherwise establishing pub-

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lie good will for their products. Their products are well and favorably known to the purchasing public and are known to be, and accepted as, excellent products of their respective kinds. Many members of the purchasing public, having knowledge of and confidence in the aforesaid companies and their products and in reliance upon the representations made to them concerning the identity with or connection of the Ball Co. and the Champion Battery Co. with such companies, have been misled and deceived into the purchase of respondents' so-called promotional plans and accompanying merchandise under the false and erroneous belief that they were dealing with or securing the products of Ball Bros. Co. or Champion Spark Plug Co.

The Commission concludes that the purpose of respondents in using the word "Ball" as a part of their trade name, the Ball Co., in connection with the sale of glass and other dinnerware and in using the word "Champion" as a part of their trade name, Champion Battery Co., in connection with the sale of electric batteries has been, and is, to mislead, confuse, and deceive their customers and the public into the belief that respondents are connected with Ball Bros. Co., widely known manufacturer of glass jars, and with Champion Spark Plug Co., widely known manufacturers of spark plugs, and into the belief that the products offered for sale, and sold, by respondents are those of such widely known manufacturers; and, further, that these acts and practices have the capacity and tendency to create such erroneous beliefs in the minds of members of the purchasing public.

PAR. 6. The use by the respondents of the foregoing methods, acts, and practices has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, retail dealers and has caused them, in reliance upon such false and misleading representations, to purchase respondents' so-called sales promotional plan and accompanying merchandise, and has placed in the hands of dealers a means and instrumentality whereby the consuming public may be misled and deceived, and unfairly diverts trade in commerce to respondents from their competitors to their injury and to the injury of the public.

CONCLUSION

The aforesaid methods, acts, and practices of respondents 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 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 answer of respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, and brief filed in support of the complaint (no brief having been filed in opposition and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Donald J. Bortz, and Edith Bortz, individually and trading as Champion Battery Co., or as the Ball Co., or under any other name, jointly or severally, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of any sales promotion plan, glassware, china, batteries, or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or by implication:

1. Representing that respondents' business is in any way connected with, or that respondents represent, Ball Brothers Co., the Champion Spark Plug Co., or any other business with which respondents have no such connection or which respondents have no authority to represent.

2. Representing that merchandise offered for sale, or sold, in connection with, or separately from, a sales promotion plan is the product of, or manufactured by, any concern other than the actual producer or manufacturer.

3. Representing in any manner that respondents will furnish to purchasers of any sales promotion plan quantities of merchandise greater than the quantities actually furnished.

4. Representing by the use of purported samples, or otherwise, that the merchandise offered for sale, or sold, by respondents is of a quality or value different from the actual quality or value thereof.

5. Representing that respondents are conducting any advertising or other campaign to introduce or sell any article or articles of merchandise for or on behalf of any manufacturer or other concern when such campaign is not in fact being conducted at the instance of and on behalf of such manufacturer or other concern.

Order

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6. Representing, or supplying to others the means of representing, that articles of merchandise, the cost of which is included in the purchase price of other merchandise in combination with which such articles are offered, are "free," either by the use of the term stated or any other term or terms of similar import or meaning.

7. Representing that respondents will redeem gift certificates without further cost or obligation to the purchasing dealer or his customers, or upon any other terms, or conditions different from the actual terms and conditions upon which such certificates will be redeemed.

8. Using the word "Ball," the word "Champion," or any simulations thereof, as a part of any trade, or other name or names without clearly and unequivocally disclosing that respondents are not in any way connected with Ball Bros., Co., of Muncie, Ind., or the Champion Spark Plug Co., of Toledo, Ohio, respectively.

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

Complaint

IN THE MATTER OF

G. J. TRITICO, DOING BUSINESS AS KAS-MO REMEDY CO.

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

Docket 3536. Complaint, Aug. 15, 1938—Decision, Dec. 23, 1941

Where an individual engaged in the manufacture of his "Kas-Mo Salve," and in the competitive interstate sale and distribution thereof; through radio broadcasts and circulars and pamphlets distributed among prospective purchasers in various States—

Represented that his said product had antiseptic qualities and was an antiseptic, and a cure or remedy for pimples, boils, carbuncles, skin risings, skin eruptions, cuts, chronic sores, irritations caused by bad blood, bites of insects, and rectal irritations, and constituted a competent and effective treatment for such conditions, and that use thereof would prevent the spread of infection, assist nature in rapid healing of all skin troubles, and give relief from pain;

Facts being that preparation in question, which was a mild astringent and counterirritant ointment possessing negligible antiseptic or healing qualities, was not a cure or remedy, and did not constitute a competent or effective treatment, for any of the conditions named, and in treatment of rectal irritations its therapeutic value was limited to furnishing temporary relief only;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that all of such representations were true, and with result that a number of the consuming public purchased a substantial volume of his said preparation, and trade was thus unfairly diverted to him from his competitors who did not misrepresent the quality, character, or effectiveness of their products:

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

Before *Mr. Arthur F. Thomas*, *Mr. John J. Keenan*, and *Mr. Miles J. Furnas*, trial examiners.

Mr. John R. Phillips, Jr., for the Commission.

Mr. Quentin Keith, of Port Arthur, Tex., 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 G. J. Tritico, doing business under the trade name of "Kas-Mo Remedy 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