

Complaint

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IN THE MATTER OF
THE POWERINE COMPANY

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

Docket 4423. Complaint, Dec. 18, 1940—Decision, Jan. 13, 1942

Where a corporation engaged in competitive interstate sale and distribution of petroleum products to retailers and jobbers—

Furnished and distributed to its dealers its so-called "Right in the Palm of Your Hand" sales promotion plan for use in the sale and distribution of its said products to the consuming public in a manner involving operation of a game of chance, gift enterprise, or lottery scheme, under which customer of dealer, by pasting into the booklet provided 180 10-cent sales receipts, became entitled, according to the award designated and concealed within each booklet's gold seal, to "three quarts of corporation's motor oil, a grease job, or five, ten, or twenty gallons of gasoline, or to \$1, \$2 or \$20 in cash"; said corporation refunding such awards to retailers upon the return of the booklets; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries or games of chance in the sale of its products in accordance with said plan under which retailer dealer purchased from it and sold and distributed its said products in accordance therewith, and involving the sale of a chance to procure merchandise or sums of money of much greater value than the amounts to be paid therefor; contrary to the established public policy of the United States Government, and in violation of criminal laws, and in competition with many who are not willing to use any method involving chance or contrary to public policy and refrain therefrom;

With result that many dealers in and ultimate purchasers of such products were attracted by its said sales plan and element of chance involved therein and were thereby induced to purchase said products from it in preference to those of aforesaid competitors, and with capacity and tendency thereby to unfairly divert trade to it from them:

Held, That such acts and practices, under the circumstances as set forth, were all to the prejudice and injury 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. Carrel F. Rhodes and *Mr. J. W. Brookfield, Jr.*, for the Commission.

Mr. Frank C. Myers, of Denver, Colo., 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 the Powerine Co., a corporation, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, the Powerine Co., is a corporation organized and doing business under and by virtue of the laws of the State of Colorado with its offices and principal place of business located at Denver, Colo. Respondent is now and for more than a year last past has been engaged in the sale and distribution of petroleum products to retail dealers and jobbers. Respondent causes and has caused its products, when sold, to be shipped and transported from its aforesaid place of business in the State of Colorado to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now and has been for more than one year last past a course of trade by said respondent in such petroleum products 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 products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and distributes and has sold and distributed petroleum products labeled "Powerine" and "Powerlube" to retail dealers and jobbers. In connection with the sale of said petroleum products, respondent distributes and has distributed to said dealers a so-called "Right in the Palm of Your Hand" device for use in the sale and distribution of said petroleum products to the consuming public in a manner involving the operation of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods employed in selling and distributing said petroleum products to the consuming public by means of said device are substantially as follows:

Respondent's "Right in the Palm of Your Hand" device consists of a booklet, together with a number of sales receipts or coupons. In the booklet are blank spaces provided for the pasting of 180 sales receipts or coupons. On the outside of the booklet is a gold colored seal under which are listed the prizes to be awarded when the spaces for the sales receipts or coupons are completely filled. The booklets which are distributed to the dealers and by them to

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the consuming public contain the following legend: On the outside of said booklet appears—

RIGHT IN THE PALM OF YOUR HAND

(Gold colored seal here)

Read every word carefully in this book—it is of interest to you

Warning—Patent Pending

On the inside of the front page—

OUR APPRECIATION SALES PLAN

For each 10¢ you spend for any product at our Stations listed on the back of this book, you will be given a receipt. When you have filled this book with receipts, do not break the seal or it will become VOID. Present it to our Station Manager intact.

You will receive no less than: Three Quarts of Powerlube Motor Oil, a Grease Job, 5 Gallons of Gasoline, 10 Gallons of Gasoline, 20 Gallons of Gasoline, or you may receive \$1.00 in Cash, \$2.00 in Cash, or \$20.00 in Cash.

NO BLANKS

Buy All Your Needs From

POWER-LUBE

DEALERS AND DISTRIBUTORS

(Six pages for Sales Receipts Coupons follow)

The petroleum products, services or cash awards so designated and described under said seal vary in value in accordance with each individual booklet, and such designations or descriptions of said awards or prizes are effectively concealed from purchasers and prospective purchasers until the said receipts have been pasted on the six pages of each of the said booklets, and the gold colored seals thereon are then broken and removed therefrom. The said prizes or awards are thus distributed to the purchasing public wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's said petroleum products and devices expose the same to the purchasing public and sell and distribute such products in accordance with the above-described sales plans or methods. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries, gift enterprises, or games of chance in the sale of said products in ac-

cordance with the sales plans or methods hereinabove described. Such sales plans or methods have the tendency and capacity to, and do, induce the consuming or purchasing public to purchase respondent's said products in preference to like or similar products offered for sale and sold by its competitors.

PAR. 4. The sale of such products to the consuming public in the manner above described involves a game of chance or the sale of a chance to procure articles of said products or sums of money of much greater values than the amounts to be paid therefor. The use by respondent of said methods in the sale of its products and the sale of such products by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to the established public policy of the Government of the United States and in violation of criminal law. The use by respondent of said sales plans or methods has the tendency to unfairly hinder competition. Many persons, firms, and corporations who sell and distribute products in competition with the respondent as above described are unwilling to adopt and use said methods 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.

PAR. 5. Many dealers in, and ultimate purchasers of, products similar to those distributed by respondent are attracted by respondent's said sales plans or methods and by the element of chance involved in the sale of said products in the manner above described and are hereby induced to purchase said products from respondent in preference to similar products offered for sale and sold by said competitors of respondent who do not use the same or similar methods. The use of said methods by respondent has the capacity and tendency, because of said game of chance, gift enterprise or lottery scheme, to unfairly divert trade to respondent from its competitors who do not use the same or equivalent or similar methods.

PAR. 6. The aforesaid acts and practices of the 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 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 December 18 A. D. 1940, issued and subsequently served its complaint on the respondent, the Powerine

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Co., 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. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of said complaint were introduced by Carrel F. Rhodes, attorney for the Commission, and in opposition to the allegations of the complaint by Frank C. Myers, attorney for the respondent, before William C. Reeves, a trial 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, this proceeding, regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by the respondent or oral argument requested); and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, the Powerine Co., is a corporation organized and doing business under and by virtue of the laws of the State of Colorado, with its offices and principal place of business located at Denver, Colo. Respondent is now, and for more than two years past has been engaged in the sale and distribution of petroleum products to retail dealers and jobbers, which products are sold under the trade names of "Powerine" and "Powerlube." Respondent causes said products when sold, to be shipped and transported from its place of business in the State of Colorado to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said petroleum products in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale of petroleum products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business and in connection with the sale and distribution of said petroleum products, respondent distributes to its said dealers a sales promotion plan designated "Right in the Palm of Your Hand" for use in the sale and distribu-

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tion of said petroleum products to the consuming public in a manner involving the operation of a game of chance, gift enterprise, or lottery scheme. The sales promotion plan employed in selling and distributing said petroleum products to the consuming public is substantially as follows:

Respondent's sales promotion plan designated "Right in the Palm of Your Hand" consists of a booklet, together with a number of sales receipts or coupons. In the booklet are blank spaces provided for the pasting of 180 sales receipts or coupons. On the outside of the booklet is a gold colored seal under which is listed the prize to be awarded when the spaces for the sales receipts or coupons are completely filled. The booklets which are distributed to the dealers, and by them to the consuming public, contain the following legend: On the outside of said booklet appears—

RIGHT IN THE PALM OF YOUR HAND

(Gold colored seal here)

Read every word carefully in this book—it is of interest to you

Warning—Patent Pending.

On the inside of the front page—

OUR APPRECIATION SALES PLAN

For each 10¢ you spend for any product at our Stations listed on the back of this book, you will be given a receipt. When you have filled this book with receipts, do not break the seal or it will become void. Present it to our Station Manager intact.

You will receive no less than: Three quarts of Power-lube Motor Oil, a Grease Job, 5 Gallons of Gasoline, 10 Gallons of Gasoline, 20 Gallons of Gasoline, or you may receive \$1.00 in Cash, \$2.00 in Cash, or \$20.00 in Cash.

NO BLANKS

Buy All Your Needs From

POWER-LUBE

DEALERS AND DISTRIBUTORS

(Six pages for Sales Receipts Coupons follow)

The petroleum products or cash awards so designated and described under said seal vary in value in accordance with each individual booklet, and such designations or descriptions of said awards or prizes are effectively concealed from purchasers and prospective purchasers until

the said receipts have been pasted on the six pages of each of the said booklets, and the gold colored seals thereon are then broken and removed therefrom. The said prizes or awards are thus distributed to the purchasing public wholly by lot or chance.

PAR. 4. Retail dealers who purchase respondent's products, expose the same to the purchasing public, and sell and distribute such products in accordance with the above-described sales plans or methods and issue to purchasers a stamp or receipt covering cash purchases, in denominations of 10 cents each, and when the spaces of the booklet are filled with stamps or receipts in the equivalent of 10 cents each, the seal is removed from the outside of the first page of the booklet and the purchaser receives the award designated under such seal. When the award is paid to the purchaser in cash or merchandise, as therein provided, the booklet is returned by the retail dealer to the respondent, and the award so given is refunded to the retail dealer by the respondent. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries, gift enterprises, or games of chance in the sale of said products in accordance with the sales plans or methods hereinabove described. Such sales plans or methods have the tendency and capacity to, and do, induce the consuming or purchasing public to purchase respondent's said products in preference to like or similar products offered for sale and sold by its competitors.

PAR. 5. The sale of such products to the consuming public in the manner above described involves a game of chance or the sale of a chance to procure merchandise or sums of money of much greater values than the amounts to be paid therefor. The use by the respondent of said methods in the sale of its products, and the sale of such products by and through the use thereof and by the aid of said methods, is a practice of the sort which is contrary to the established public policy of the Government of the United States and in violation of criminal law. The use by respondent of said sales plans or methods has a tendency and capacity to unfairly hinder competition. Many persons, firms, and corporations who sell and distribute products in competition with the respondent, are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and such competitors refrain therefrom.

PAR. 6. Many dealers in, and ultimate purchasers of, products similar to those distributed by respondent are attracted by respondent's said sales plans or methods and by the element of chance involved in the sale of said products in the manner above described, and are thereby induced to purchase said products from the respondent in preference to similar products offered for sale and sold by said competitors of

respondent who do not use the same or similar methods. The use of said methods by the respondent has the capacity and tendency, because of said game of chance, gift enterprise, or lottery scheme, to unfairly divert trade to respondent from its competitors who do not use the same or equivalent or similar methods.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceedings having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before William C. Reeves, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence, and brief filed in support of the complaint; and the Commission having made its findings as to the facts and its conclusion that said respondent, the Powerine Co., a corporation, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, the Powerine Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of petroleum products, or any other 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, retail dealers or others, sales promotion booklets and stamps, or any other sales plans or devices which are to be used, or may be used, in the sale or distribution of petroleum products, or any other merchandise, to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. 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.

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IN THE MATTER OF
BOULEVARD CANDY COMPANY

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

Docket 3396. Complaint, Apr. 30, 1938—Decision, Jan. 15, 1942

Where a corporation engaged in manufacture and in competitive interstate sale and distribution of candy, including certain assortments packed and assembled so as to involve the use of a lottery scheme when sold and distributed to consumers, a typical assortment consisting of a number of 1-pound boxes of candy, an additional article of merchandise, and a punchcard for use in sale and distribution thereof under a plan by which the chance selection of certain numbers entitled a purchaser to one of said boxes and purchaser of the last punch received the article of merchandise, the amount paid by a customer for his chances or his receipt of a free chance was dependent upon the particular number secured, and those failing to qualify as aforesaid for box of candy, retail value of which was greater than the cost of any punch, received nothing other than privilege of a punch;

Sold to wholesalers and jobbers aforesaid assortments, retailer purchasers of which exposed and sold same to the purchasing public in accordance with the aforesaid sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products, contrary to the established public policy of the common law and criminal statutes and the United States Government, and in competition with those who do not use such methods;

With the result that many dealers and ultimate purchasers were attracted by said method of packing candy and the element of chance involved in sale thereof, and were thereby induced to deal in such candy in preference to its competitors who do not use such methods, whereby trade was unfairly diverted to it from them:

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. Charles F. Diggs, Mr. Miles J. Furnas, Mr. Robert S. Hall, Mr. Lewis C. Russell, and Mr. John J. Keenan*, trial examiners.

Mr. D. C. Daniel for the Commission.

Pennish & Rashbaum, of Chicago, Ill., 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 Boulevard Candy Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a