

Complaint

IN THE MATTER OF

PERCE P. GREEN AND HOWARD RAND, TRADING AS
GREEN SUPPLY COMPANY, NATIONAL MERCHANDIS-
ING COMPANY, AND NATIONAL SUPPLY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4480. Complaint, Apr. 3, 1941—Decision, May 5, 1942*

Where two individuals, engaged in competitive interstate sale and distribution of fishing tackle, silverware, rifles, garments, blankets, radios, and other merchandise; in soliciting sale and distribution of their products—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes in sale and distribution to ultimate consumers, a typical plan involving a scheme by which the person by chance pushing from a push card disk the girl's name corresponding with that concealed under card's master seal received a fishing tackle set or choice of items listed on back of card, as did also the operator, customers punching from the card three designated numbers and the last punch each received other articles, and amount paid by various customers was dependent upon the particular number punched out; and thereby—

Supplied to and placed in the hands of others a means of conducting games of chance, gift enterprises, or lotteries in the sale of their merchandise in accordance with aforesaid plan, under which fact as to whether the purchaser received an article of merchandise or nothing for his money, and also the amount he paid for a punch, were determined wholly by lot or chance, and there was involved a game of chance to procure an article at much less than its normal retail price; in competition with many who, unwilling to use any method involving chance or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell merchandise of said individuals in preference to that of their said competitors, and with tendency and capacity, by reason thereof, to unfairly divert substantial trade in commerce to such individuals from said competitors:

Held, That such acts and practices, under the circumstances set forth, were contrary to the established public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

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

Mr. J. W. Brookfield, Jr., for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Perce P. Green and Howard Rand, individuals, trading as Green Supply Co., National Merchan-

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dising Co. and National Supply Co., 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 its charges in that respect as follows:

PARAGRAPH 1. Respondents, Perce P. Green and Howard Rand, are individuals, trading and doing business under the names of Green Supply Co., National Merchandising Co., and National Supply Co., with their office and principal place of business now located at 282 Sexton Building, Minneapolis, Minn. Respondents are now, and have been for several years last past, engaged in the sale and distribution of fishing tackle, silverware, rifles, garments, blankets, radios, and other merchandise. During the past several years, respondents have had places of business located at Minneapolis, Minn., Detroit, Mich., Pittsburgh, Pa., and Philadelphia, Pa., and they have caused said merchandise, when sold, to be transported from their places of business in the above said locations in the States of Minnesota, Michigan, and Pennsylvania, to purchasers thereof at their respective points of location in the various States of the United States other than Minnesota, Michigan, and Pennsylvania, and in the District of Columbia. There is now, and has been for several years last past, a course of trade by respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents, in soliciting the sale of and in selling and distributing their merchandise, furnish and have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes when said merchandise is sold and distributed to the ultimate consumers thereof. The method or sales plan adopted and used by respondents is substantially as follows:

Respondents distribute and have distributed to operators and the purchasing public certain literature and instructions, including among other things, push cards, order blanks, illustrations of their said merchandise, and circulars explaining respondents' plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards, and to the purchasing and consuming

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public. One of respondents' push cards bears 54 feminine names with ruled columns on the face thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 54 partly perforated disks, on the face of each of which is printed the word "push." Each of said disks is set over one of the aforesaid feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives his choice of fishing tackle, silverware, a rifle, or a radio. The push card bears the following legend or instructions:

Seller and Party Selecting

Girl's Name Under Seal

[SEAL]

Each Receive a

FISHING TACKLE SET

Or Choice of Items Listed on Back of Card

EXTRA PRIZES—Numbers 20, 30, 40 and last number punched each receive a

PAIR (2) solid Copper "NIP CUPS."

(Depiction of Set)

ITEM NO. 1—BAIT CASTING SET

(Description of Set)

Numbers 1 to 29 Pay What You Draw.

Numbers Over 29 Pay Only 29¢.

TOTAL \$14.90"

Another of respondents' sales plans consists of circulars, letters, advertising statements, and a push card. This push card is similar to the one above described, except that it bears 47 feminine names and partly perforated disks. It bears the following legend or instructions:

2 JACKETS GIVEN

Seller And Winner Each Receive

[SEAL]

GENUINE LEATHER AND PURE WOOL OUTING JACKET

In Men's or Ladies' Styles

ILLUSTRATION AND DESCRIPTION ON BACK OF CARD

EXTRA WINNERS

Numbers 30 and 40 Each Receive

GENUINE LEATHER BILLFOLD

With Winner's Name in Gold Leaf

Numbers 11 to 29 Pay What You Draw.

Numbers over 29 Pay Only 29¢.

(TOTAL \$11.92)

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Sales of respondents' merchandise by means of said push cards are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above-described legends or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and the amount to be paid for any merchandise received, are thus determined wholly by lot or chance.

Respondents furnish and have furnished various other push cards accompanied by order blanks, instructions and other printed matter for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise or lottery scheme. The sales plan or method involved in the sale of all of said merchandise by means of said other push cards is the same as that hereinabove described, varying only in detail.

PAR. 3 The persons to whom respondents furnish, and have furnished, the said push cards use the same in purchasing, selling and distributing respondents' merchandise in accordance with the afore-said 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 sales plan or method in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States.

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 one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms and corporations who sell or distribute merchandise in competition with the 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 other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and thereby are 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 a tendency and capacity to unfairly divert substantial trade in commerce between and among the various

States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury 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 April 3, 1941, issued, and thereafter served, its complaint in this proceeding upon the respondents, Perce P. Green and Howard Rand, individuals, trading as Green Supply Co., National Merchandising Co., and National Supply 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 and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission, and testimony and other evidence in opposition to the allegations of the complaint were introduced by the respondents, before John W. Addison, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding. 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 upon the complaint, the answers thereto, the testimony and other evidence, the report of the trial examiner and briefs in support of the complaint and in opposition thereto. And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Perce P. Green and Howard Rand, are individuals, trading and doing business under the names Green Supply Co., National Merchandising Co., and National Supply Co. Their office and principal place of business is now located at 282 Sexton Building in Minneapolis, Minn.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale and distribution of fishing tackle, silverware,

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rifles, garments, blankets, radios, and other merchandise. During the several years last past respondents had places of business located at Minneapolis, Minn.; Detroit, Mich., and Pittsburgh and Philadelphia, Pa., and have caused their said merchandise, when sold, to be transported from their said places of business to purchasers thereof located in various States of the United States other than the State of origin of the shipment.

Respondents, in the course and conduct of their business, have been in substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among various States of the United States.

PAR. 3. Respondents, in soliciting the sale of and selling and distributing their merchandise, furnish and have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, when such merchandise is sold and distributed to the ultimate consumer thereof. The method or sales plan adopted and used by respondents is substantially as follows:

Respondents distribute and have distributed to their operators and the purchasing public certain literature and instructions, including among other things push cards, order blanks, illustrations of their merchandise, and circulars explaining their plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of the push cards so distributed bears the following legend or instructions:

[SEAL]

Seller and Party Selecting
Girl's Name Under Seal
Each Receive a
FISHING TACKLE SET
Or Choice of Items Listed
on Back of Card.
EXTRA PRIZES—Numbers 20, 30, 40 and
Last Number Punched Each Receives a
PAIR (2) Solid Copper NIP CUPS.
(Depiction of Set)
ITEM No. 1—BAIT CASTING SET.
(Description of Set)
Numbers 1 to 29 Pay What You Draw
Numbers Over 29 Pay Only 29¢
TOTAL \$14.90

This push card has 54 disks so cut or stamped as to be readily pushed out; on the face of each disk is printed the word "Push," and below each disk is a feminine name, with a space in connection with the disk

so indicated for the insertion of the name of the person pushing the disk. When pushed out, the disk is revealed as two layers of cardboard which separate and disclose a number which indicates the amount to be paid in cents for the chance to obtain the article or articles offered as a prize, except that if the number disclosed is over 29, the amount to be paid is limited to 29 cents. The numbers of the disk do not appear on the card consecutively, from 1 to 54, but are diversified and distributed throughout the group of disks. When all the punches have been sold, this seal is removed and one of the feminine names appearing under the disks is revealed. The person who punched the disk designated by this name receives the fishing tackle, or choice of the items listed on the back of the card, and the operator of the push card also receives a similar prize or award. The other prizes mentioned are awarded in accordance with the statement in the legend.

Sales of respondents' merchandise by means of said push cards are made in accordance with the above-described legend or instructions. The said prizes or premiums are allotted to the customers or purchasers of punches in accordance with the above-described legend or instructions. Whether the purchaser receives an article of merchandise or receives nothing for the amount of money paid by him, and also the amount to be paid for the punch, are thus determined wholly by lot or chance.

Respondents furnish and have furnished various other push cards, accompanied by order blanks, instructions, and other printed matter, for use in the sale and distribution of their merchandise by means of games of chance, gift enterprises or lottery schemes. The sales plan or method involved in the sale of all of said merchandise by means of said other push cards is the same as that hereinabove described, varying only in detail.

PAR. 4. The persons to whom respondents furnish and have furnished the said push 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 games of chance, gift enterprises, or lotteries in the sale of respondents' merchandise, in accordance with their sales plan.

PAR. 5. The sale of merchandise to the purchasing public by the herein-described method involves a game of chance, or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondents are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such com-

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petitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, 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 tendency and capacity to unfairly divert substantial trade in commerce between and among the various States of the United States to respondents from their said competitors who do not use the same or an equivalent method.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, the testimony, and other evidence taken before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, the report of the trial examiner and briefs filed in support of the complaint and in opposition thereto, and the Commission having made its findings as to the facts and its conclusion that the respondents, Perce P. Green and Howard Rand, individuals trading as Green Supply Co., National Merchandising Co. and National Supply Co., have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Perce P. Green and Howard Rand, trading as Green Supply Co., National Merchandising Co. and National Supply Co., or trading under any other name or designation, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fishing tackle, silverware, rifles, garments, blankets, radios, or any other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Selling or distributing any merchandise so packed or assembled that sales of such merchandise to the public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme.

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2. Supplying to or placing in the hands of others, push or pull cards, pull tabs, punchboards, or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, pull tabs, punchboards, or lottery devices are to be used, or may be used, in selling or distributing said merchandise to the public.

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

It is further ordered, That the 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.

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IN THE MATTER OF
CODRIN CORPORATION

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

Docket 4598. Complaint, Sept. 29, 1941—Decision, May 5, 1942

Where a corporation, engaged in interstate sale and distribution of its "Magnesia S. Pellegrino" medicinal preparation; by means of advertisements sent through the mails, by radio broadcasts, and otherwise, directly and by implication—

- (a) Falsely represented that said preparation acted as a disinfectant and would normalize the digestive system, and assure perfect digestion and health; that it would, regulate the intestines, was gentle and would not irritate the intestinal walls; and that a teaspoonful taken every morning and night was a sure and final remedy against constipation and stomach acidity;

The facts being it was not of any therapeutic value except as a laxative and cathartic which would temporarily evacuate the bowels and as an antacid which would temporarily reduce stomach acidity; and

- (b) Failed to reveal facts material in the light of such representations, or with respect to consequences which might result from use of preparation in question under prescribed or usual conditions, in that a laxative or cathartic, depending upon the dose, is potentially dangerous when taken by one suffering from abdominal pains, stomachache, cramps, nausea, vomiting, or other symptoms of appendicitis, while frequent or excessive use thereof may result in dependency on laxatives;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that such statements were true, thereby inducing it to purchase said preparation:

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

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

Mr. Joseph C. Fehr for the Commission.

Viault & Viault, of New York City, 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 Codrin Corporation, a corporation, hereinafter referred to as respondent, 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: