

Complaint

IN THE MATTER OF

MAURICE L. MYERS, TRADING AS CHARLES B. JOYCE
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4476. Complaint, Mar. 26, 1941—Decision, June 9, 1942*

Where an individual, engaged in competitive interstate sale and distribution of radios, clocks, flashlights, and other novelty merchandise to dealers and other purchasers, including certain assortments thereof which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers, a typical one involving sale of a radio through use of a 1,500-hole punchboard, chances on which were 5 cents each, under a plan by which the customer selecting, by chance, the winning number secured a radio, 8 others received 50 cents in trade, and 20 received 25 cents in trade, the remaining receiving nothing for their money except the right to punch—

Sold such assortments to dealers and other purchasers by whom they were exhibited and sold to the purchasing public in accordance with sales plan above set forth, and thereby supplied to and placed in the hands of others the means of conducting a game of chance or lottery in the sale of his said products;

With the result that many were attracted by said chance sales plan and the opportunity to procure merchandise at much less than its nominal retail price, and were thus induced to buy and sell his products in preference to those of his competitors who do not use any chance sales plan in the sale and distribution of their products, and with effect of unfairly diverting trade to him 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, were contrary to the 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. John W. Addison*, trial examiner.

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

Mr. Gordon L. Bazelon, 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 *Morris L. Myers*, an individual, trading as *Charles B. Joyce Co.*, 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

Complaint

34 F. T. C.

thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Morris L. Myers is an individual, trading and doing business as Charles P. Joyce Co., with his office and principal place of business at 2425 North Halstead Street, Chicago, Ill. Respondent is now and during the year last past has been engaged in the sale and distribution of radios, clocks, flashlights, clothing, and novelty merchandise to dealers and other purchasers thereof located in various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from his said place of business in the State of Illinois to purchasers thereof at their respective points of location in the various other States of the United States other than Illinois and in the District of Columbia. There is now and has been during the year last past a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his business respondent is and has been in competition with other individuals and with corporations and partnerships engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells and has sold to dealers and other purchasers various assortments of merchandise so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers thereof.

One of said assortments consists of a radio together with a device commonly called a punchboard. Said radio is distributed to the consuming public by means of said punchboard in the following manner:

On the face of said board appears a label bearing the following legend:

5¢ Fast Action		No Waiting 5¢
WIN THIS \$-----		
No. 100 WINS RADIO		
\$16.50	Additional Winners	\$16.50
Nos. 150—200—250—300—350—400—450—500—		
50¢ In Trade	WINS	50¢ In Trade
Nos. 550—600—650—700—750—800—850—900—950—1000—1050—1100—		
1150—1200—1250—1300—1350—1400—1450—1500—		
25¢ In Trade	WINS	25¢ In Trade

LAST PUNCH In Each SECTION gets 50¢ in Trade

The sales are 5 cents each, and when a punch is made from the board a number is disclosed. The numbers begin with 1 and continue to the number of purchases there are on the board (1,500), but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing the respective purchasers as to which number entitles the purchasers thereof to receive a radio and which numbers entitle the purchasers to receive certain amounts of merchandise. A purchaser who does not qualify by obtaining the number calling for the radio or one of the designated numbers calling for awards of merchandise receives nothing for his money. The radio and the merchandise awards are worth more than 5 cents each, and the purchaser who obtains the number calling for the radio or one of the numbers calling for the merchandise receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the number punched or separated from the board. The radio and merchandise are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various other assortments of merchandise involving a lot or chance feature but the sales plans or methods by which said merchandise is distributed are similar to the ones hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's merchandise directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondent thus supplies to and places in the hands of others a means of conducting a lottery in the sale of his product in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 by the method or sales plan hereinabove set forth involves a game of chance or the sale of a chance to procure merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute products in competition with respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a

chance to win something by chance or any other method which is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of his products and by the element of chance involved therein and are thereby induced to buy and sell respondent's products in preference to products of said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent because of said game of chance has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or equivalent methods.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 26th day of March A. D. 1941, issued and thereafter served its complaint in this proceeding upon the respondent, Maurice L. Myers (named in the complaint as Morris L. Myers), an individual, trading as Charles B. Joyce & Co., charging him 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 the complaint and filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission before John W. Addison, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, 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 upon the complaint, the answer thereto, the testimony and other evidence, the trial examiner's report and brief in support of the complaint: 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.

1355

Findings

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Maurice L. Myers, is an individual, trading as Charles B. Joyce Co., with his principal place of business at 2425 North Halstead Street, in the city of Chicago and State of Illinois.

PAR. 2. Respondent for more than a year next preceding the issuance of the complaint herein has been, and now is, engaged in the sale and distribution of radios, clocks, flashlights, and other novelty merchandise to dealers and other purchasers thereof located in various States of the United States. Respondent causes said merchandise, when sold, to be transported from his place of business to the purchasers thereof located in various States of the United States, and during all of the time herein mentioned respondent has maintained a constant course of trade in commerce between and among various States of the United States, and has been, during such time, in competition with other individuals and with corporations and partnerships 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. Respondent, in the course and conduct of his business, sells and has sold to dealers and other purchasers various assortments of merchandise so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said assortments consists of a radio, together with a device known as a "punchboard." The radio is distributed to the consuming public by means of the punchboard in the following manner:

On the face of said board appears a label bearing the following legend:

5¢ Fast Action	WIN THIS \$-----	No Waiting 5¢
	No. 100 WINS RADIO	
\$16.50	Additional Winners	\$16.50
	Nos. 150—200—250—300—350—400—450—500	
50¢ In Trade	WINS	50¢ In Trade
	Nos. 550—600—650—700—750—800—850—900—950—1000—1050—1100— 1150—1200—1250—1300—1350—1400—1450—1500	
25¢ In Trade	WINS	25¢ In Trade
LAST PUNCH in Each SECTION gets 50¢ In Trade		

Conclusion

34 F. T. C.

The punchboard has 1,500 holes, each containing a slip of paper bearing a number which is not disclosed until the slip of paper is pushed from the hole. These numbers range from 1 to 1,500 and are not consecutively distributed. Punches are sold at 5 cents each, and the prizes listed are distributed in accordance with the legend appearing on the punchboard. A person who does not punch a number entitling him to a prize receives nothing for his money except the right to punch.

The radio and other prizes are worth more than the price of the punch, but are distributed to the winners without additional payment. The radio and other merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various other assortments of merchandise by means of games of chance, the sales plans differing only in detail from that hereinabove described.

PAR. 4. Persons who purchase respondent's merchandise, directly or indirectly, exhibit and sell the same to the purchasing public in accordance with the sales plan described in paragraph 3 hereof. Respondent thus supplies to and places in the hands of others the means of conducting a game of chance or lottery in the sale of his products.

PAR. 5. Many of respondent's competitors are unwilling to and do not adopt and use any sales plan involving a game of chance or lottery scheme in the sale and distribution of their merchandise. Many persons are attracted by respondent's sales plan and by the element of chance involved therein and the opportunity to procure merchandise at a cost much less than its nominal retail price, and are thereby induced to buy and sell respondent's products in preference to products of competitors of the respondent who do not use the same or similar methods.

Respondent's sales methods have the tendency and capacity to, and do, unfairly divert trade in commerce between and among various States of the United States to the respondent from his competitors who do not use the same or equivalent methods.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondent's competitors, and are contrary to the public policy of the United States Government, 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.

1355

Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence in support of the allegations of the complaint taken before J. W. Addison, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, the report of the trial examiner, and brief in support of the complaint; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Maurice L. Myers, trading as Charles B. Joyce Co., or trading under any other name, directly or indirectly, or through any corporate or other device, in connection with the offering for sale, sale, and distribution of radios, clocks, flashlights, or any other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

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

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

IN THE MATTER OF

A. E. STALEY MANUFACTURING COMPANY AND THE
STALEY SALES CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSECTION (A) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT.
15, 1914, AS AMENDED BY ACT OF JUNE 19, 1936

Docket 3803. Complaint, June 1, 1939—Decision, June 10, 1942

Where a corporate processor and refiner of corn products, owning and operating in Decatur, Ill., a plant with capacity for processing about 50,000 bushels of corn daily, together with its subsidiary, engaged in competitive interstate sale and distribution of products of such processing;

In selling their glucose or corn sirup unmixed—a major raw material in many candies, constituting from 5 to 90 percent of the finished weight thereof, and about 85 percent of mixed table sirups—to candy manufacturers and mixers of such sirups, engaged in the competitive resale thereof to wholesalers, chain stores, retailers, and others, likewise in competition—

- (a) Discriminated in price unlawfully through sales of glucose of like grade and quality, fulfilled by shipments to purchasers from their Decatur, Ill. plant at differing delivered prices through a pricing system based upon their Chicago tank car prices, to which were added as differentials the amounts of the railroad tariff from Chicago to destination; and
- (b) Discriminated in price between different purchasers through preferential operation or application of their booking system—under which, following announcement of a new price increase, purchasers were granted a period of 5 to 10 days within which to purchase at the old and lower price provided shipment was made within 30 days—by use of practices under which favored buyers received price advantages varying from 5 cents to 55 cents per hundredweight of glucose; in that, among other things, they—
- (1) Permitted large buyers with unused balances booked by them an extension of delivery time in response to threat of taking business elsewhere;
- (2) Accepted statements of their brokers or salesmen as to orders booked without proper confirmation as to fact of such orders;
- (3) Made offers to take business at the lower prices long after expiration of the time for so doing; and
- (4) Made sales or offers at the lower tank car prices to buyers with no facilities for such purchasing, while making delivery in tank wagon quantities from their filling station stocks, and continuing such deliveries at the older and lower price for several months after the price advance;

With the result that—

- (1) Candy manufacturers who were obliged to pay higher prices for glucose than some of their competitors, might sell their candies—as to which, in the case of the low-priced product bearing no differentiating name or brand customers may be attracted by a difference of as little as one-eighth of a cent per pound, and especially so in the case of the large quantity purchasers to whom a small difference is determinative—only by absorbing the higher glucose costs or by attempting to recover such higher costs by increasing