

Complaint

IN THE MATTER OF

MRS. ANN B. GOLDSTEIN, TRADING AS CHAMPION
SPECIALTY COMPANY

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

Docket 4723. Complaint, Mar. 6, 1942—Decision, June 30, 1942

Where an individual, engaged in the competitive interstate sale and distribution of drug sundries, notions, novelties, and premium merchandise, including certain assortments which were so packed or assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed, a typical one including 12 pocket knives of equal value and a push card with 12 feminine names thereon for use in sale and distribution of said knives under a plan by which number concealed under particular name selected determined what amount, from 1 to 30 cents, purchaser should pay;

Sold such assortments to retailers and others, by whom they were exposed and sold to the purchasing public in accordance with aforesaid plan involving a game of chance to procure merchandise at much less than its normal retail price, and thereby supplied to and placed in the hands of others means of conducting a lottery, contrary to an established public policy of the United States Government, and in competition with many who are unwilling to use a method contrary to public policy and refrain therefrom; With the result that many persons were attracted by her said sales plan because of the element of chance involved, and purchased her products in preference to those of said competitors, whereby trade was diverted unfairly to her from them, to the injury of competition in commerce:

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 and unfair acts and practices therein.

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 Mrs. Ann B. Goldstein, individually, and trading as Champion Specialty 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 thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Mrs. Ann B. Goldstein, is an individual, trading and doing business as Champion Specialty Co., with her

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office and principal place of business located at 814-16 Central Street, Kansas City, Mo. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of drug sundries, notions, novelties, and premium merchandise to purchasers thereof located in the 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 her said place of business in the State of Missouri to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia.

In the course and conduct of her business, respondent is and has been in competition with other individuals, firms, and corporations, engaged in the sale 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 her business, as described in paragraph 1 hereof, respondent sells and has sold to retail dealers and others, certain assortments of merchandise so packed and assembled as to involve the use of a lottery scheme or game of chance when sold and distributed to the purchasers thereof. One of said assortments consists of 12 pocket knives of equal value and a device commonly known as a push card. The push card bears on its face 12 feminine names. Over each feminine name appears a small, partially perforated disk, on the face of which is printed the word "Push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The numbers which are concealed within each disk are between the limits of number 1 and number 39. A person selecting number 1 would pay 1 cent; and, a person selecting number 12 would pay 12 cents; and, a person selecting number 39 would pay 39 cents and so forth. Every person who pushes out one of the partially perforated disks receives one of the aforesaid pocket knives. The push card bears the following legend or instructions:

TRY YOUR LUCK

1¢ to 39¢

EVERYBODY WINS

PAY WHAT YOU PUNCH

FROM 1¢ TO 39¢—NO HIGHER

EVERY PUNCH WINS

Sales of the respondent's pocket knives by means of the said push card are made in accordance with the above-described legend or instructions. The fact as to whether a purchaser pays 1 cent or

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39 cents or any intermediate amount of money for a pocket knife is thus determined wholly by lot or chance.

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 above described, varying only in detail.

PAR. 3. Retail dealers and others 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 her products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of her 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 sales 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 her 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 her 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 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 March 6, 1942, issued and thereafter served its complaint in this proceeding upon respondent, Mrs. Ann B. Goldstein, an individual, doing business as Champion Specialty Co., charging her with the use of unfair methods of competition in commerce and unfair 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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, Mrs. Ann B. Goldstein, is an individual, trading and doing business as Champion Specialty Co., with her office and principal place of business located at 814-816 Central Street, Kansas City, Mo. Respondent, is now, and for more than 1 year last past, has been engaged in the sale and distribution of drug sundries, notions, novelties, and premium merchandise to purchasers thereof located in the 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 her said place of business in the State of Missouri to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia.

In the course and conduct of her business, respondent is and has been in competition with other individuals, firms, and corporations engaged in the sale 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 her business, as described in paragraph 1 hereof, respondent sells and has sold to retail dealers and

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others, certain assortments of merchandise so packed and assembled as to involve the use of a lottery scheme or game of chance when sold and distributed to the purchasers thereof. One of said assortments consists of 12 pocket knives of equal value and a device commonly known as a push card. The push card bears on its face 12 feminine names. Over each feminine name appears a small, partially perforated disk, on the face of which is printed the word "Push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The numbers which are concealed within each disk are between the limits of number 1 and number 39. A person selecting number 1 would pay 1 cent; and, a person selecting number 12 would pay 12 cents; and, a person selecting number 39 would pay 39 cents, and so forth. Every person who pushes out one of the partially perforated disks receives one of the aforesaid pocket knives. The push card bears the following legend or instructions:

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PAY WHAT YOU PUNCH

FROM 1c to 39c—NO HIGHER

EVERY PUNCH WINS

Sales of the respondent's pocket knives by means of the said push card are made in accordance with the above-described legend or instructions. The fact as to whether a purchaser pays 1 cent or 39 cents or any intermediate amount of money for a pocket knife is thus determined wholly by lot or chance.

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 one above described, varying only in detail.

PAR. 3. Retail dealers and others 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 her products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of her 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.

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PAR. 4. The sale of merchandise to the purchasing public by the method or sales plan hereinabove found involves a game of chance, 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 found, 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 her 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 method. 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 her said competitors who do not use the same or equivalent methods. As a result thereof, injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of 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 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 and the answer of respondent, in which answer respondent admits all the material allegations of facts set forth in said complaint, and states that she waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Mrs. Ann B. Goldstein, individually, and trading as Champion Specialty Co., or trading under any other name, her representatives, agents, and employees, directly

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or through any corporate or other device, in connection with the offering for sale, sale, and distribution of drug sundries, notions, novelties, premium merchandise, 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 push or pull cards, punchboards, or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, punchboards, or other 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 respondent shall, within 60 days after service upon her of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which she has complied with this order.

