

IN THE MATTER OF  
DAVID CHALMERS TOBACCO COMPANY

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

*Docket 4746. Complaint, Apr. 13, 1942—Decision, July 2, 1942*

Where a corporation, engaged in the competitive interstate sale and distribution, among other things, of assortments of pipes so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, a typical assortment consisting of twelve of its "Yello-Bole" pipes and a punch-board for use in sale thereof under a plan by which purchasers securing, by chance, certain numbers received said pipes, as did those making last punch in each of sections into which board was divided, those securing certain other numbers each received 20 cents, and others received nothing, and under which the amount paid for a chance was determined by the number punched—

Sold such assortments to wholesalers, jobbers, and retailers by whom they were exposed and sold to the purchasing public in accordance with aforesaid plan involving sale of chance to procure pipes at much less than retail price thereof, and thereby supplied to, and placed in the hands of others the means of conducting lotteries in the sale of its products; contrary to established Government policy, and in competition with many who do not use such or other methods contrary to public policy;

With the result that many persons were attracted by said chance sales plan, and were thereby induced to buy and sell products of said corporation in preference to pipes of said competitors, whereby trade was unfairly diverted to it from them, and substantial injury was done to competition;

*Held*, That such acts and practices, under the circumstances set forth, 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 my said act, the Federal Trade Commission, having reason to believe that David Chalmers Tobacco Co., 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 interest of the public, hereby issues it complaint stating its charges in that respect as follows:

## Complaint

PARAGRAPH 1. Respondent, David Chalmers Tobacco Co., is a corporation, organized and doing business under the laws of the State of Missouri with its office and principal place of business located at 724 Main Street, Kansas City, Mo. Respondent is now, and for more than 6 months last past, has been, engaged in the sale and distribution of smoking pipes, cigars, leather goods, and other articles of merchandise to jobbers and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be transported from its principal place of business in the city of Kansas City, Mo., to purchasers thereof at their respective points of location in the various States of the United States other than Missouri and in the District of Columbia. There is now and has been for more than 6 months last past, a course of trade by respondent in such smoking pipes and other 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 said business respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of smoking pipes and other 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 its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of smoking pipes so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes, when sold and distributed to the consumers thereof.

One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment includes 12 "Yello-Bole" smoking pipes and a punchboard. Appearing on the face of the punchboard is the following inscription:

Complaint

35 F. T. C.

## 70 FREE NUMBERS 70

ALL NUMBERS ENDING IN "0" ARE FREE

Nos. 177-200-277-377-400-477-500-577 EACH RECEIVES A \$1.50 IMPERIAL

YELLO-BOLE PIPE—Nationally Advertised

|                                                                                                                                                                        |                                                                                                       |                                                                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Sweet<br/>as<br/>Honey<br/>YELLO-BOLE<br/>\$1.50<br/>(Depiction<br/>of Pipe)<br/>Cured with<br/>Honey<br/>Free Draft<br/>Double Condenser</p> <hr/> <p>IMPERIAL</p> | <p>The Pipe<br/>That Is<br/>Cured With<br/>Honey<br/>EQUAL TO<br/>THE BEST<br/>AT ONLY<br/>\$1.50</p> | <p>All Numbers Ending in<br/>1 PAY -----1¢<br/>2 PAY -----2¢<br/>3 PAY -----3¢<br/>4 PAY -----4¢<br/>5-6-7-8-9<br/>EACH PAY ONLY 5¢<br/>Numbers Ending in 0<br/>Are FREE</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Nos. 22-44-66-122-144-166-222-244

266-322-344-366-422-444-466-522

544-566-622-644 Each Rec's 20 Cigarettes

*Last Punch in Each Section Rec's A \$1.50 Imperial Yello-Bole Pipe*

Said pipes are distributed to the purchasing public in accordance with the foregoing legend. The sales price of a punch on the board is determined by the number punched. Persons punching numbers ending in 1 pay 1 cent, 2 pay 2 cents, 3 pay 3 cents, 4 pay 4 cents, and persons punching the numbers 5, 6, 7, 8, and 9 pay 5 cents. Persons punching the number ending in "0" pay nothing for their chance to receive one of the pipes which are distributed to the persons punching the numbers designated on the punchboard legend. Persons punching the numbers which are not designated on the legend as receiving a pipe or cigarettes receive nothing for their money. The pipes are worth more than 5 cents each and the purchaser who purchases a number calling for a pipe or a package of cigarettes receives the same for from 1 cent to 5 cents or in some cases free. The numbers under the punches are effectively concealed from the purchasers or prospective purchasers until the punch has been made and the particular punch has been separated from the board. The pipes are thus distributed to the purchasers of the punches from the board wholly by chance and the amount such purchasers pay for the punch is also wholly determined by chance.

The respondent furnishes and has furnished other punchboards and pipe assortments for use in the sale and distribution of its

## Findings

smoking pipes by means of a game of chance, gift enterprise, or lottery scheme; such punchboards and assortments are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's smoking pipes, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to, and places in the hands of others, the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its smoking pipes and the sale of said smoking pipes 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 smoking pipes to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure smoking pipes at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute smoking pipes in competition with respondent, as above alleged, do not 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 contrary to public policy. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its smoking pipes by the element of chance involved therein and are thereby induced to buy and sell respondent's smoking pipes in preference to smoking pipes of said competitors of respondent who do not use the same or equivalent methods. The use of said method 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 its 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 April 13, 1942, issued and thereafter served its complaint in this proceeding upon respondent, David Chalmers Tobacco Co., a corporation, charging it with the use of unfair methods of competition in commerce and unfair acts and practices

## Findings

35 F. T. C.

in commerce, in violation of the provisions of said act. On June 9, 1942, the respondent filed its answer, in which it admitted all the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to the facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and answer thereto, 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, David Chalmers Tobacco Co., is a corporation organized and doing business under the laws of the State of Missouri with its office and principal place of business located at 724 Main Street, Kansas City, Mo. Respondent is now, and for more than 6 months last past has been, engaged in the sale and distribution of smoking pipes, cigars, leather goods, and other articles of merchandise to jobbers and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be transported from its principal place of business in the city of Kansas City, Mo., to purchasers thereof at their respective points of location in the various States of the United States other than Missouri and in the District of Columbia. There is now and has been for more than 6 months last past, a course of trade by respondent in such smoking pipes and other 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 said business respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of smoking pipes and other 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 its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of smoking pipes so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes, when sold and distributed to the consumers thereof.

One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

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Findings

This assortment includes 12 "Yello-Bole" smoking pipes and a punchboard. Appearing on the face of the punchboard is the following inscription:

70 FREE NUMBERS 70

ALL NUMBERS ENDING IN "0" ARE FREE

Nos. 177-200-277-377-400-477-500-577 EACH RECEIVES A \$1.50 IMPERIAL YELLO-BOLE PIPE—Nationally advertised

|                                                                                                                                                  |                                                                                                       |                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Sweet<br/>as<br/>Honey<br/>YELLO-BOLE<br/>\$1.50<br/>(Depletion<br/>of Pipe)<br/>Cured with<br/>Honey<br/>Free Draft<br/>Double Condenser</p> | <p>The Pipe<br/>That Is<br/>Cured With<br/>Honey<br/>EQUAL TO<br/>THE BEST<br/>AT ONLY<br/>\$1.50</p> | <p>All Numbers Ending in<br/>1 PAY -----1¢<br/>2 PAY -----2¢<br/>3 PAY -----3¢<br/>4 PAY -----4¢<br/>5-6-7-8-9<br/>EACH PAY ONLY---5¢<br/>Numbers Ending in<br/>0 are FREE</p> |
| <p>IMPERIAL</p>                                                                                                                                  |                                                                                                       |                                                                                                                                                                                |

Nos. 22-44-66-122-144-166-222-244

266-322-344-366-422-444-466-522

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Said pipes are distributed to the purchasing public in accordance with the foregoing legend. The sales price of a punch on the board is determined by the number punched. Persons punching numbers ending in 1 pay 1 cent, 2 pay 2 cents, 3 pay 3 cents, 4 pay 4 cents, and persons punching the numbers 5, 6, 7, 8, and 9 pay 5 cents. Persons punching the number ending in "0" pay nothing for their chance to receive one of the pipes which are distributed to the persons punching the numbers designated on the punchboard legend. Persons punching the numbers which are not designated on the legend as receiving a pipe or cigarettes receive nothing for their money. The pipes are worth more than 5 cents each and the purchaser who purchases a number calling for a pipe or a package of cigarettes receives the same for from 1 to 5 cents or in some cases free. The numbers under the punches are effectively concealed from the purchasers or prospective purchasers until the punch has been made and the particular punch has been separated from the board.

The pipes are thus distributed to the purchasers of the punches from the board wholly by chance and the amount such purchasers pay for the punch is also wholly determined by chance.

The respondent furnishes and has furnished other punchboards and pipe assortments for use in the sale and distribution of its smoking pipes by means of a game of chance, gift enterprise, or lottery scheme; such punchboards and assortments are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's smoking pipes, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its smoking pipes and the sale of said smoking pipes 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 smoking pipes to the purchasing public by the method or plan hereinabove found involves a game of chance or the sale of a chance to procure smoking pipes at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute smoking pipes in competition with respondent, as above found, do not 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 contrary to public policy. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its smoking pipes by the element of chance involved therein and are thereby induced to buy and sell respondent's smoking pipes in preference to smoking pipes of said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent methods, and as a result thereof substantial 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.

## Order

## CONCLUSION

The aforesaid acts and practices of respondent as herein set forth 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 fact set forth in said complaint, and states that it 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 the said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, David Chalmers Tobacco Co., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of smoking pipes, cigars, leather goods, and other articles of 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 distributing 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.

## IN THE MATTER OF

THE RENESOL CORPORATION, MAURICE GOLDBERG  
AND CHARLES GOLDBLATT

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

*Docket 3695. Complaint, Jan. 25, 1939—Decision, July 6, 1942*

Where a corporation and two individuals, who controlled and directed its affairs and activities, engaged in the interstate sale and distribution of their "Renesol" medicinal preparation for the treatment of epilepsy—

Represented, directly and indirectly, through advertisements disseminated by them that their said product contained no harmful drugs, was not habit forming, and was safe to use;

The facts being that while phenobarbital—of which each capsule of said product contained a grain—is recognized by the medical profession as an appropriate treatment for some of the symptoms of epilepsy, the drug is definitely habit forming; and while various individuals have different tolerances therefor, there are those to whom the administration of a small dose would be dangerous and, in unusual instances, fatal; continued use of said drug in excessive amounts will, in some cases, affect the comprehension, concentration, memory, and judgment, and may produce toxic psychosis with hallucinations; their recommended dosage was excessive; and their product could not be considered safe and harmless;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby causing it to purchase said preparation; whereby injury was done to a substantial portion of said public:

*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. Lewis C. Russell* and *Mr. John L. Hornor*, trial examiners.

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

*L. J. and G. A. Shapiro*, of Brooklyn, N. Y., 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 The Renesol Corporation, and Maurice Goldberg and Charles Goldblatt, individuals, hereinafter referred to as respondents, have violated the provisions of the 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: