

Complaint

IN THE MATTER OF

BEN ARNOVITZ AND WILFORD ARNOVITZ, TRADING AS
UTAH BEVERAGE AND DISTRIBUTING COMPANY

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

Docket 4591. Complaint, Sept. 16, 1941—Decision, Oct. 27, 1942

Where two individuals, engaged in competitive interstate sale of various assortments of merchandise, including candles, gums, nuts, glassware, clocks, and handkerchiefs, which involved use of lottery schemes in sale and distribution to public, a typical assortment consisting of a number of uniform candy bars together with a push card for use in their sale and distribution under a plan, as there explained, by which a customer of said "Baseball" assortment received for 5 cents from 5 to 1 bars, dependent upon receipt of "Home Run," "3-Base Hit," or other legend concealed in that one of the board's 110 disks selected by him, with maker of "Last Play" in first section receiving 2 bars and of "Last Play" on card receiving 3;

Sold such assortments to retailers by whom they were exposed and sold to the purchasing public in accordance with said sales plan, and thereby supplied to and placed in the hands of such retailers means of conducting lotteries in the sale of their products, contrary to an established public policy of the United States Government, and in competition with many who do not use chance or lottery methods;

With effect, by reason of such element of chance, of diverting substantial trade unfairly to themselves from their said competitors:

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

Before *Mr. Miles J. Furnas*, 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 Ben Arnovitz and Wilford Arnovitz, individuals, trading and doing business as Utah Beverage and Distributing 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Ben Arnovitz and Wilford Arnovitz, are individuals, trading and doing business as Utah Beverage and

Complaint

35 F. T. C.

Distributing Co., with their office and principal place of business located at 166 Southwest Temple Street, Salt Lake City, Utah. Respondents are now and during the year last past have been engaged in the sale and distribution of candies, gums, nuts, glassware, clocks, handkerchiefs, luggage, cigars, cigarettes, and novelty merchandise, to dealers and other purchasers thereof located in various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise when sold to be transported from their said place of business in the State of Utah to purchasers thereof at their respective points of location in the various other States of the United States other than Utah and in the District of Columbia. There is now and has been during the year 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 competition with other individuals and with corporations and firms 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 sell and have 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 is as follows: This assortment consists of a number of bars of candy of uniform size and value, together with a device commonly called a push card. The push card contains 110 partially perforated disks, on the face of which is printed the word "Push." Sales are 5 cents each. Concealed within each of said disks is a legend which corresponds with a legend appearing on the face of said card. The legend or instructions on the face of the card are as follows:

BASEBALL

	(5¢)
HOME RUN receives.....	5 Bars
3-BASE HIT receives.....	3 Bars
2-BASE HIT receives.....	2 Bars
1-BASE HIT receives.....	2 Bars
BASE ON BALLS receives.....	2 Bars
FOUL receives.....	1 Bar
OUT receives.....	1 Bar
Last Play First Section Completed receives.....	2 Bars
Last Play on Card receives.....	3 Bars

Sales of respondent's candy by means of said push cards are made in accordance with the above legend or instructions. The legends or

657

Complaint

instructions aforesaid are effectively concealed from purchasers and prospective purchasers until a purchase has been made and the disks separated or removed from said card. The number of said candy bars to be procured by a purchaser for 5 cents is thus determined wholly by lot or chance.

Respondents sell and distribute and have 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 hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondents' merchandise directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondents thus supply to and place in the hands of others a means of conducting a lottery in the sale of their products in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plans or methods 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 plans or methods 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 methods or sales plans 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 respondents, as above alleged, do not use said methods, or any methods 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 respondents in the sale and distribution of their products and by the element of chance involved therein and are thereby induced to buy and sell respondents' products in preference to products of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents 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 respondents from their said competitors who do not use the same or equivalent methods.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competi-

tion 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 September 16, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, Ben Arnovitz and Wilford Arnovitz, individuals, trading and doing business as Utah Beverage and Distributing Co., charging them with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of that act. No answer was filed by respondents. Testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission before a trial examiner of the Commission theretofore duly designated by it, and such 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 on the complaint, 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 respondents and oral argument not having been 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. The respondents, Ben Arnovitz and Wilford Arnovitz, are individuals, trading as Utah Beverage and Distributing Co., with their office and principal place of business located at 166 Southwest Temple Street, Salt Lake City, Utah. Respondents are, and since 1937 have been, engaged in the sale and distribution of various articles of merchandise, including, among other things, candies, gums, nuts, glassware, clocks, and handkerchiefs.

PAR. 2. In the course and conduct of their business respondents cause and have caused their products, when sold, to be transported from their place of business in the State of Utah to dealers and other purchasers thereof located in various other States of the United States. Respondents maintain and have maintained a course of trade in their products in commerce among and between the various States of the United States.

PAR. 3. Respondents are and have been in substantial competition with other individuals, and with corporations and firms, engaged in

Findings

the sale and distribution of similar articles of merchandise in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their business respondents sell to dealers and other purchasers various assortments of merchandise which involve the use of lottery schemes when such merchandise is sold and distributed to the public.

One of these assortments consists of a number of bars of candy of uniform size and value, together with a device commonly known as a push card. The push card contains 110 partially perforated disks, on the face of each of which is printed the word "Push." All persons desiring to push 1 of such disks pay 5 cents for such privilege. Concealed within each of the disks is a legend which corresponds with one of the legends appearing on the face of the card, the legends being terms used in the game of baseball, such as "Home Run," "2-Base Hit," "Foul," "Out," etc. On the face of the push card appears the following:

BASEBALL

(5¢)

HOME RUN receives-----	5 Bars
3-BASE HIT receives-----	3 Bars
2-BASE HIT receives-----	2 Bars
1-BASE HIT receives-----	2 Bars
BASE ON BALLS receives-----	2 Bars
FOUL receives-----	1 Bar
OUT receives-----	1 Bar
Last Play First Section Completed receives-----	2 Bars
Last Play on Card receives-----	3 Bars

Sales of respondents' candy are made in accordance with these instructions. For example, a person pushing a disk which has concealed within it the legend "Home Run" receives five bars of candy for the 5 cents paid, whereas a person pushing a disk which has concealed within it the legend "Out" receives only one bar of candy for the 5 cents paid. Purchasers have no information as to the number of bars of candy they will receive until after they have pushed the disk and have had an opportunity to examine the legend concealed therein. The quantity of candy which is obtained by a purchaser for the amount of money paid is thus determined wholly by lot or chance.

Other assortments of merchandise sold by respondents involve lot or chance features, but the sales plans or methods involved in such assortments are similar in all material respects to the plan described above, varying only in detail.

PAR. 5. Retail dealers who purchase respondents' merchandise expose and sell such merchandise to the purchasing public in accordance with the sales plans referred to above. Respondents thus supply

Order

35 F. T. C.

to and place in the hands of others a means of conducting lotteries in the sale of respondents' products. The use by respondents of such sales plans or methods in the sale of their merchandise and the sale of such merchandise to the consuming public by and through the use of such plans or methods is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 6. Many persons, firms, and corporations who sell and distribute candy and other merchandise in competition with respondents do not use the sales plans or methods used by respondents, or any other sales plan or method involving the use of games of chance, gift enterprises, or lottery schemes. Because of the element of chance involved in respondents' sales plans or methods, the use of such plans or methods by respondents has the tendency and capacity to divert and has diverted substantial trade unfairly to respondents from their competitors who do not use the same or equivalent plans or methods.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and of respondents' 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 (no answer having been filed by respondents), testimony and other evidence in support of the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Ben Arnovitz and Wilford Arnovitz, individually, and trading as Utah Beverage and Distributing Co., or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of candies, gums, nuts, glassware, clocks, handkerchiefs, or any other merchandise, do forthwith cease and desist from:

657

Order

1. Supplying to or placing in the hands of others push or pull cards, punch boards, or other lottery devices, either with merchandise or separately, which are to be used, or may be used, in selling or distributing respondents' merchandise, or any merchandise, to the public.
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 respondents shall, within 60 days after 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.

Complaint

35 F. T. C.

IN THE MATTER OF
CORA LEE WILEYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914*Docket 4419. Complaint, Dec. 16, 1940—Decision, Nov. 2, 1942*

Where an individual, engaged in interstate sale and distribution of her "SNL" (Suffer No Longer) medicinal preparation; by means of advertisements in newspapers and other advertising literature, directly or by implication—Represented that her said preparation was a cure or remedy for various diseases and disorders of the female organs, including gonorrhea, and constituted a competent and effective treatment therefor;

When in fact it had not therapeutic value in the treatment of aforesaid conditions or of gonorrhea; it being made up of an indiscriminate combination of drugs which in the proportions used and method of use had no basis in medical science;

With capacity and tendency of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby inducing its purchase of said preparation.

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. William L. Taggart 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 Cora Lee Wiley, an individual, hereinafter referred to as respondent, has 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:

PARAGRAPH 1. Respondent, Cora Lee Wiley, is an individual, with her principal place of business at R. F. D. No. 2, Adel, Ga., from which address she transacts said business.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain medicinal preparation designated as SNL (Suffer No Longer).

In the course and conduct of her business, the respondent causes said medicinal preparation when sold, to be transported from her place