

Complaint

IN THE MATTER OF

JOHN H. FLING AND WILLIAM B. MAHANAY, TRADING
AS CENTRAL SALES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4948. Complaint, Apr. 19, 1943—Decision, July 13, 1943*

Where two individuals, engaged in the competitive interstate sale and distribution of smokers' articles, sporting goods, novelties, and other merchandise so assorted, packed, and assembled as to involve use of a lottery scheme and game of chance in sale thereof to the purchasing public; a typical assortment including two rifles, a cigarette lighter, camera, lantern, fountain pen and pencil set, shotgun, duck call, and a flashlight, together with a punchboard, for sale under a plan—as stated thereon—by which persons punching by chance certain specified numbers, and for the 5 cents charged, were awarded one of said articles, others receiving nothing—

Sold such assortments to purchasers and consignees, by whom they were exposed and sold to the public in accordance with aforesaid sales plan involving sale of chances to procure merchandise at much less than the normal retail price thereof; and thereby supplied to and placed in the hands of said purchasers and consignees means of conducting lotteries on the sale of their merchandise, contrary to an established public policy of the United States Government;

With the result that many persons were attracted by such sales plan and the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that of competitors who did not use such methods, and with tendency and capacity unfairly to divert trade from competitors aforesaid:

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.

Ryland, Stinson, Mag & Thomson, of Kansas City, Mo., 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 John H. Fling and William B. Mahaney, individuals, trading as Central Sales 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, John H. Fling and William B. Mahaney, are individuals, doing business under the firm name and style

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of Central Sales Co., with their principal office and place of business located at 108 West Nineteenth Street, Kansas City, Mo. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of smokers' articles, sporting goods, novelties, and other merchandise.

PAR. 2. In the course and conduct of their said business respondents cause, and have caused, their merchandise to be transported from their principal place of business in Kansas City, Mo., into the several States of the United States, other than the State of Missouri, for sale in said other States, and respondents sell, and have sold, in said States other than Missouri, the merchandise so transported. In said business respondents are engaged in competition with other individuals, firms, and corporations selling similar merchandise and offering the same for sale to customers located in the several States of the United States and in the District of Columbia.

PAR. 3. Respondents accomplish the distribution and sale of their said merchandise by the following method, among others:

Respondents and their agents transport the merchandise by automobile from Kansas City, Mo., to various places in States of the United States other than Missouri, and there place said merchandise in the hands of various consignees of respondents for sale on behalf of respondents at retail. Said consignees, upon selling the consigned merchandise and collecting the purchase price therefor (which price is fixed by respondents), retain an agreed commission as compensation for their services and pay the balance of the proceeds of such sales to respondents.

PAR. 4. A substantial portion of the merchandise, which respondents and their agents transport and sell as aforesaid, is assorted, packed, and assembled so as to involve or make use of lottery schemes and games of chance in connection with and to promote the sale thereof to the purchasing public. The following description of one of such merchandise assortments with its accompanying lottery scheme illustrates the method of sale used by respondents:

This assortment is composed of a number of articles of merchandise including two rifles, a cigarette lighter, camera, lantern, fountain pen and pencil set, shotgun, duck call, and a flashlight, together with a punchboard. The punchboard bears a legend to the effect that persons punching certain specified numbers are awarded one of the articles of merchandise. Purchasers pay 5 cents a punch and those who do not punch one of the specified numbers calling for the award of one of the articles of merchandise received nothing for their purchase money. The numbers are effectively concealed from purchasers and prospective purchasers until the punches are separated from the

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board. Whether a person who punches the board receives an article of merchandise or nothing for his purchase money is thus determined wholly by lot or chance.

Respondents furnish, and have furnished, various punchboards to purchasers and consignees for use in connection with, and to promote, the sale and distribution of respondents' merchandise by means of a game of chance or lottery scheme. Such punchboards are similar to the one herein described and vary only in detail.

PAR. 5. Purchasers and consignees of respondents' merchandise expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to, and place in the hands of said purchasers and consignees, the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth.

PAR. 6. The sale of merchandise to the purchasing public by the method or plan employed by respondents, as hereinabove described, involves a game of chance or the sale of a chance to procure merchandise at prices much less than the normal retail price thereof. Many persons are attracted by such sales plan or method and in the element of chance involved therein, and are thereby induced to buy and sell respondents merchandise in preference to merchandise of competitors of respondents who do not use the same or equivalent methods. The use of such methods by respondents has a tendency and capacity unfairly to divert trade to respondents from their said competitors who do not use the same or equivalent methods, and is a practice contrary to an established public policy of the Government of the United States.

PAR. 7. 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 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 19, 1943, issued and thereafter served its complaint in this proceeding upon respondents, John H. Fling and William B. Mahaney, individuals, trading as Central Sales Co., charging them with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of said act. On June 18, 1943, the respondents filed their answer, in which answer they admitted all material allegations of

fact set forth in said complaint, and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the 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. Respondents, John H. Fling and William B. Mahaney, are individuals, doing business under the firm name and style of Central Sales Co., with their principal office and place of business located at 108 West Nineteenth Street, Kansas City, Mo. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of smokers' articles, sporting goods, novelties, and other merchandise.

PAR. 2. In the course and conduct of their said business respondents cause and have caused their merchandise to be transported from their principal place of business in Kansas City, Mo., into the several States of the United States other than the State of Missouri for sale in said other States, and respondents sell and have sold in said States other than Missouri the merchandise so transported. In said business respondents are engaged in competition with other individuals, firms, and corporations selling similar merchandise and offering the same for sale to customers located in the several States of the United States and in the District of Columbia.

PAR. 3. Respondents accomplish the distribution and sale of their said merchandise by the following method, among others:

Respondents and their agents transport the merchandise by automobile from Kansas City, Mo., to various places in States of the United States other than Missouri, and there place said merchandise in the hands of various consignees of respondents for sale on behalf of respondents at retail. Said consignees, upon selling the consigned merchandise and collecting the purchase price therefor (which price is fixed by respondents), retain an agreed commission as compensation for their services and pay the balance of the proceeds of such sales to respondents.

PAR. 4. Prior to December 31, 1942, a substantial portion of the merchandise which respondents and their agents transported and sold as aforesaid was assorted, packed, and assembled so as to involve or make use of lottery schemes and games of chance in connection with and to promote the sale thereof to the purchasing public. The following description of one of such merchandise assortments with

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its accompanying lottery scheme illustrates the method of sale used by respondents:

This assortment was composed of a number of articles of merchandise, including two rifles, a cigarette lighter, camera, lantern, fountain pen and pencil set, shotgun, duck call, and a flashlight, together with a punchboard. The punchboard bore a legend to the effect that persons punching certain specified numbers would be awarded one of the articles of merchandise. Purchasers paid 5 cents a punch, and those who did not punch one of the specified numbers calling for the award of one of the articles of merchandise received nothing for their purchase money. The numbers were effectively concealed from purchasers and prospective purchasers until the punches were separated from the board. Whether a person who punched the board received an article of merchandise or nothing for his purchase money was thus determined wholly by lot or chance.

Respondents furnished various punchboards to purchasers and consignees for use in connection with and to promote the sale and distribution of respondents' merchandise by means of a game of chance or lottery scheme. Such punchboards were similar to the one herein described and varied only in detail.

PAR. 5. Purchasers and consignees of respondents' merchandise exposed and sold the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supplied to and placed in the hands of said purchasers and consignees the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth.

PAR. 6. The sale of merchandise to the purchasing public by the method or plan employed by respondents, as hereinabove described, involved a game of chance or the sale of a chance to procure merchandise at prices much less than the normal retail price thereof. Many persons were attracted by such sales plan or method and the element of chance involved therein, and were thereby induced to buy and sell respondents' merchandise in preference to merchandise of competitors of respondents who did not use the same or equivalent methods. The use of such methods by respondents had the tendency and capacity unfairly to divert trade to respondents from their said competitors who did not use the same or equivalent methods, and was a practice contrary to an established public policy of the Government of the United States.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, were all to the prejudice and injury of the public and of respondents'

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competitors, and constituted 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 respondents, in which answer respondents admit all of the material allegations of fact set forth in the complaint and state that they waive all intervening procedure and further hearing as to said facts, 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, John H. Fling and William B. Mahaney, individually, and trading as Central Sales Co., or trading under any other name, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of smokers' articles, sporting goods, novelties, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing any merchandise so packed and assembled that sales of such merchandise to the public are to be made or, due to the manner in which such merchandise is packed and assembled at the time it is sold by respondents, 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 are to be used or may be used in selling and distributing respondents' merchandise or any 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 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.

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IN THE MATTER OF

DEARBORN SUPPLY COMPANY

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

Docket 3593. Complaint, Sept. 17, 1938—Decision, July 14, 1943

Where a corporation, engaged in offer, sale, and distribution of its "Mercolized Wax or "Mercolized Wax Cream" cosmetic; in advertisements thereof—

Failed to reveal facts material in the light of the representations therein made:

1. e., (1) that it should not be applied at any one time to an area larger than the face and neck, that too frequent applications and use over excessive periods of time should be avoided, that adequate rest periods between series of treatments should be observed, that it should not be used where the skin was cut or broken, and that in all cases a proper patch test should be made to determine whether the patient was allergic or sensitive to the preparation; or (2) to caution public that it should be used only as set forth in directions which sufficiently apprised reader of precautions necessary to avoid injurious effects;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that preparation in question was safe for indiscriminate use, thereby causing its purchase thereof, whereby substantial trade was diverted unfairly to it from 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 and deceptive acts and practices therein.

Before *Mr. Arthur F. Thomas* and *Mr. Edward E. Reardon*, trial examiners.

Mr. C. S. Cox, *Mr. John W. Carter, Jr.*, and *Mr. Carrel F. Rhodes*, for the Commission.

Mr. Louis A. Spies and *Nash & Donnelly*, of Washington, D. C., and *Mr. Thomas A. Brennan*, 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 the Dearborn Supply Co., a corporation, 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: