

Complaint

38 F. T. C.

IN THE MATTER OF

J. P. LEONARD, TRADING AS J. P. LEONARD COMPANY;
R. L. JACOBY; AND LIBERTY SALES SYSTEM, INC.

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

Docket 4949. Complaint, Apr. 19, 1943—Decision, Apr. 28, 1944

Where two individuals and a corporation engaged in the manufacture and interstate sale and distribution of sales promotion plans or devices, trading stamps and trading cards, a typical plan including a number of booklets along with sales receipts, trading stamps or coupons to be pasted therein, and providing that the consumer-customer who filled his booklet with purchase receipts from his dealer, became entitled, upon answering correctly quiz question concealed under seal of booklet, to awards or prizes of varying value such as \$25 war savings bond; \$10, \$5, \$2.50, \$2, \$1 or 50¢ in war savings stamps; or 25, 10, 5 or 3 gallons of gasoline; or a 5 quart Conoco oil change; or 4, 3 or 2 quarts of Conoco motor oil; as disclosed by the broken seal, and thus determined by lot or chance; and entitling him, should he be unable to answer question—a feature not included in a prior plan subsequently discarded—to certain specified merchandise—

Sold their said plans and devices to merchants, who distributed them to their customers and honored the awards as shown under the booklets' secret panels; thereby supplying to and placing in the hands of others, means of conducting games of chance, gift enterprises and lottery schemes in the sale of merchandise, contrary to the established public policy of the United States Government;

With tendency and capacity to induce members of the consuming public to deal with merchants using such plans, in preference to those using sales promotion plans of competitors of said individuals and corporation, which do not contain element of lot or chance, and with the result that retailers and merchants were attracted to their said sales plans by the element of chance involved and were thereby induced to purchase said promotion plans in preference to those offered by their competitors which do not involve lot or chance, and with capacity and tendency thereby unfairly to divert trade to them from their aforesaid competitors:

Held, That such acts and practices, under 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.

Before *Mr. John W. Addison*, trial examiner.

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

Cahill & Gallagher, 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 J. P. Leonard, an individual, trading as J. P. Leonard Co., R. L. Jacoby, an individual, and Liberty Sales System, Inc., a corporation, 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. Respondent, J. P. Leonard, is an individual, trading as J. P. Leonard Co. with his office and principal place of business located at 111 North Canal Street, in the city of Chicago, Ill. Respondent, R. L. Jacoby, is an individual, with his office and principal place of business also located at 111 North Canal Street, Chicago, Ill. Respondent, Liberty Sales System, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at the above address. All the respondents have acted together and in cooperation with each other in doing the acts and things herein alleged. Respondents are now and have been for more than one year last past engaged in the manufacture, printing and production of sales promotion plans or devices, trading stamps and trading cards and in the sale and distribution thereof to retail merchants and others located at points in the various States of the United States. Respondents cause and have caused their products when sold to be shipped and transported from their aforesaid place of business in the State of Illinois to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now and has been for more than one year last past a course of trade by said respondents in such products 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 said business, respondents are and have been in competition with other individuals and corporations and with partnerships engaged in the sale and distribution of sales stimulating plans which do not involve the use of lottery schemes or games of chance 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 distribute and have sold and distributed various sales promotion plans so designed, printed and arranged that their use constitutes a lottery scheme or gift enterprise when used by retail merchants and others in promoting and increasing sales of merchandise of such merchants, to the consuming public. One of said plans so sold by respondents is substantially as follows:

Respondent furnishes merchants or other customers with a number of booklets, together with a larger number of sales receipts, trading stamps or coupons. In the booklet are blank spaces providing for the pasting in of 210 of the sales receipts or trading stamps. On the outside of the booklet is a gold colored seal under which is listed a prize to be awarded when the spaces for the sales receipts or trading stamps are completely filled. The booklets which are distributed by the merchants of respondents' other customers to the consuming public contain the following legend:

DIVIDEND PLAN

(Gold colored seal here)

HOW YOU RECEIVE FREE AWARDS

of U. S. Defense Bonds, U. S. Defense
Stamps and other valuable awards.

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You will receive a receipt for each 10¢ purchase made at our station. Paste your receipts in this book. A quiz question is concealed under the seal of this book. Do not damage or destroy the seal or you will not be allowed to participate in this dividend plan. When the book has been filled with receipts present it at our station and the attendant will open the seal revealing the quiz question underneath it. Also beneath the seal is shown the amount that you will win if you can answer this question correctly.

If you are able to give our attendant the correct answer you will win the award shown under the seal. If you are unable to answer the question correctly you will still receive the minimum award of 3 quarts of Cities Service Motor Oil.

The products, services or other awards so designated and described under the seal vary in accordance with the individual booklet and such designations or descriptions of said awards or prizes are effectively concealed from the purchasing public and the prospective purchasing public until the said receipts have been pasted in all the blank spaces of each of said booklets and the gold colored seal thereof is then broken and removed therefrom. The amount of said prize or prizes to be thus distributed to the purchasing public is determined wholly by lot or chance.

Respondents have distributed other sales plans and devices for the distribution of merchandise to the purchasing public by lottery means or games of chance, including the plan designated "Right in the Palm of Your Hand," all of which are similar to the sales plans hereinabove described.

PAR. 3. The retail merchants and others to whom respondents sell and have sold their sales plan, including the booklets and trading stamps, distribute the same to their customers and prospective customers and honor the awards as shown under the secret panel of said booklets. Respondents thus supply to, and place in the hands of others, the means of conducting lotteries, gift enterprises or games of chance in the sale of merchandise in accordance with the sales plans or methods hereinabove described.

The lot or chance feature connected with respondents' sales plan has the tendency and capacity to induce many of the consuming public to deal with or purchase merchandise from retail merchants using respondents' said sales plans in preference to retail merchants using sales promotion plans or devices of respondents' competitors which have connected with them no element of lot or chance and for this reason many retail merchants are induced to purchase respondents' said booklets and stamps in preference to the devices or plans of respondents' competitors and the sale by respondents of said sales plans involving lottery or games of chance is a practice contrary to the established public policy of the government of the United States.

PAR. 4. Many retail dealers and merchants are attracted by respondents' said sales plans or methods and by the element of chance involved in the sale of merchandise by said plans in the manner above described and are thereby induced to purchase said plans from respondents in preference to the sale of similar plans of respondents' competitors which do not involve lottery, game of chance or other chance elements and the use and sale of said sales plans by respondents has the capacity and tendency, because of such lottery scheme or element of chance, unfairly to divert trade to respondents from their competitors who do not use the same or similar 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 respondents' competitors and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the 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 subsequently served its complaint in this proceeding upon respondents, J. P. Leonard, an individual, R. L. Jacoby, an individual, and Liberty Sales System, Inc., a corporation, 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 said act. After the issuance of said complaint and the filing of respondents' answer thereto, certain facts were stipulated into the record and certain exhibits introduced at a hearing before an examiner of the Commission duly designated by it, and said stipulated facts 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 said complaint, the answer thereto, stipulated facts and other evidence, report of the trial examiner, and briefs in support of and in opposition to the complaint (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. Respondent, J. P. Leonard, is an individual, trading as J. P. Leonard Company, with his office and principal place of business located at 111 North Canal Street, Chicago, Ill. Respondent, R. L. Jacoby, is an individual, with his office and principal place of business located at 111 North Canal Street, Chicago, Ill. Respondent, Liberty Sales System, Inc., is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business located at 111 North Canal Street, Chicago, Ill. Respondents are now, and have been for more than one year last past, engaged in the manufacture, printing, sale, and distribution of sales promotion plans or devices, trading stamps, and trading cards, and have acted together and in cooperation with one another in carrying on said business and in doing the acts and things herein found.

PAR. 2. In the course and conduct of the aforesaid business respondent's cause, and have caused, their sales promotion plans or devices, trading stamps, and trading cards, when sold, to be shipped and transported from their place of business in the State of Illinois to purchasers at their respective points of location in the various States of the United States and in the District of Columbia. Respondents maintain, and have maintained, a course of trade in such products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Typical of the sales promotion plans and devices sold and distributed by respondents to merchants and other customers is one consisting of a number of booklets, together with a larger number of sales receipts, trading stamps, or coupons. In each booklet blank spaces are provided for pasting in 210 of the sales receipts, trading stamps, or coupons. On the outside of each booklet is a seal under which is listed a prize to be awarded when the spaces for sales receipts, trading stamps, or coupons in the booklet are filled. These booklets are distributed by the purchasers thereof to members of the consuming public. The operation of the plan is described in the booklet:

HOW YOU RECEIVE FREE AWARDS
OF WAR SAVINGS BONDS, STAMPS
AND OTHER GIFTS.

You will receive a receipt for each 10¢ purchase made at our station. Paste your receipts in this book. A quiz question is concealed under the seal of this book. Do not damage or destroy the seal or you will not be allowed to participate in this dividend plan. When the book has been filled with receipts present it at our station and the attendant will open the seal revealing the quiz question underneath it. Also beneath this seal is shown the amount that you will win if you can answer this question correctly.

If you are able to give our attendant the correct answer you will win the award shown under the seal. If you are unable to answer the question correctly you may still redeem your filled book of stamps for 2 Qts. of Conoco Motor Oil (Com. Ex. 1-A).

The products, services, or other prizes or awards designated and described under the seal, as well as the questions which must be answered, vary among the individual booklets. One such plan lists the "Prizes in Our Superior Dividend Plan" as a \$25 War Savings Bond; \$10, \$5, \$2.50, \$2, \$1, or 50¢ in War Savings Stamps; 25, 10, 5, or 3 gallons of gasoline; a 5-quart Conoco oil change; 4, 3 or 2 quarts of Conoco Motor Oil (Com. Ex. 1-A). The particular quiz question and the designation or description of the particular award or prize in each booklet are effectively concealed from the purchasing public until the seal is broken and removed. The amount of the prize or prizes thus distributed to members of the public is determined by lot or chance.

Until January 1942 respondents sold and distributed a sales promotion plan designated as "Right in the Palm of Your Hand" which was similar to the sales plan described above, except that no question to be answered was concealed with the designation of the award under the seal on the booklet.

PAR. 4. The merchants and others to whom respondents sell, and have sold, their aforesaid sales plans and devices, including the booklets and trading stamps described above, distribute the same to their customers and prospective customers and honor the awards as shown under the secret panel of the booklets. Respondents thus supply to and place in the hands of others a means of conducting games of chance, gift enterprises, and lottery schemes in the sale of merchandise in accordance with the plans or methods described above. The lot or chance feature of such sales plans has the tendency and capacity to induce members of the consuming public to deal with or purchase merchandise from merchants or others using such sales plans in preference to merchants or others using sales promotion plans of respondents' competitors which do not

contain the element of lot or chance. Retail dealers and merchants are attracted to respondents' said sales plans or methods by the element of chance involved in the sale of merchandise by said plans in the manner described above, and are thereby induced to purchase said plans from respondents in preference to sales promotion plans offered by respondents' competitors which do not involve lot or chance, and the use of said sales plans by respondents has the capacity and tendency, because of the lot or chance feature, unfairly to divert trade to respondents from their competitors who do not use the same or similar methods. The sale by respondents of the plans and devices involving luck or chance is a practice contrary to the established public policy of the Government of the United States.

CONCLUSION

The aforesaid acts and practices of respondents as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, certain facts stipulated into the record and other evidence introduced before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and briefs in support of and in opposition to the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, J. P. Leonard, an individual, trading as J. P. Leonard Company or under any other name, respondent, R. L. Jacoby, an individual, and respondent Liberty Sales System, Inc., a corporation, and its officers, and their respective representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of sales promotion plans or devices, trading stamps, trading cards, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others sales plans or devices which are to be used, or may be used, in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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 respondents shall, within 60 days after the 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.

IN THE MATTER OF

PREFERRED HAVANA TOBACCO COMPANY, ETC.

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

Docket 4983. Complaint, June 23, 1943—Decision, Apr. 28, 1944

Where a corporation continuously engaged at Tampa, Fla., in the manufacture of cigars from Havana tobacco and in interstate sale and distribution thereof to jobbers and retailers throughout the United States, since organization thereof in 1913, when it acquired all the stock and goodwill of (1) "Bustillo Bros. & Diaz, Inc., theretofore engaged in manufacture in Tampa, of cigars made exclusively from tobacco grown in Cuba and packed and branded by it under brand name "Flor del Mundo," and of (2) "Calixto Lopez & Co.," engaged prior to 1932 in manufacture, in Havana, at 48 and 50 Zuleta Street, of cigars packed and branded under names "Eden de Bances y Lopez Habana" and "Calixto Lopez Habana," acquiring also all the right, title and interest of said companies in and to the trade names and brands used by them, in addition to Bances y Lopez and Lopez Hermanos;

- (a) Represented that its said "Eden" brand of cigars were genuine Cuban cigars made at Havana, Cuba, of Cuban tobacco, and exported by a firm by the name of "Bances y Lopez" through use on the containers and bands of said cigars of designation "EDEN de Bances y Lopez Habana," the words "Vuelta Abajo," statement on the inside lid, in very small type and in capital letters;—"These cigars, now manufactured at Tampa, by SPANISH HAND WORKED METHOD of tobacco FULLY PREPARED IN CUBA—are identical with the famous IMPORTED EDENS made by us for over fifty years at Havana, Cuba," and legend on the outer front side of the container "Flor Fina Eldorados Claro Bances y Lopez Habana"; while statement "Formerly Eden—Imported" was so placed on the inside of the container as to be obscured by cigars when filled therewith;
- (b) Represented that the cigars branded and labeled as "Calixto Lopez" were manufactured in a three-story factory building operated at Havana, Cuba, by the Cuban firm of "Calixto Lopez & Co.," and imported into the United States, through use on containers and bands of such legends and matters as "Calixto Lopez Habana Flor Fina," "Calixto Lopez y Ca.," use, on the inside of the container lid, of full size picture of a factory building, with words, in large gilt letters "Calixto Lopez—Habana," and use thereof also in advertising material, including inside container cover labels, together with words in gold letters, immediately above and below the picture, "Calixto Lopez y Ca. Habana," and photographic likeness of the person Calixto Lopez, and address "Zulueta 48 y 50 Habana" beneath; and
- (c) Represented that the cigar labeled and branded "Flor del Mundo" (Flower of the World) originated with and was imported into the United States by the Cuban firm of "Bustillo Bros. & Diaz" located at Havana, through use on containers thereof, etc., of the words "Flor del Mundo de B. Bros. & D. Habana," and on the interior of the container in red letters the firm name "Bustillo Bros. & Diaz," with words "Tampa, Fla." beneath said line and hidden by cigars when contained therein;

Notwithstanding the fact that all the aforesaid brand names were employed in the sale of cigars made in and exported from Cuba prior to 1932, and since then manufactured exclusively at Tampa; no cigars were made at Havana thereafter in the factory building depicted, which since said year was used by it and its subsidiaries for Havana tobacco to be shipped to its Tampa factory; company in question, since 1932, made no cigars in Cuba; nor operated then or theretofore in Cuba any