

Complaint

IN THE MATTER OF
HARRY V. PLATTNER, TRADING AS PLATTNER
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 4655. Complaint, Dec. 8, 1941—Decision, Sept. 28, 1944

Where an individual engaged in competitive interstate sale and distribution of various articles of merchandise, including cigarette lighters, cosmetics, barber supplies, and razor blades to wholesalers, jobbers and retailers—

Furnished in connection with the sale of certain merchandise, lottery devices for the purchaser's use in the resale thereof to the purchasing public, a typical assembly consisting of a cigarette lighter, together with a push card for use in its sale under a plan by which the amount paid for a chance was dependent upon the number disclosed by a punch on one of the twelve months of the year—as displayed on the card—ranging from one cent to twenty-nine cents, and the person selecting by chance the month found to correspond with that concealed under the card's master seal, secured the lighter, others receiving nothing; and thereby—

Supplied to and placed in the hands of retail dealers who, as direct or indirect purchasers, exposed and sold his merchandise in accordance with such sales plans, means of conducting lotteries in the sale of his products, contrary to an established public policy of the United States government, and in competition with those who do not use, in the sale and distribution of their merchandise, sales plans or methods involving lotteries or games of chance;

With the result that many persons were attracted by said plan and the element of chance involved therein, and were thereby induced to buy and sell his merchandise in preference to that of his aforesaid competitors, and with tendency and capacity, by reason thereof, to divert substantial trade unfairly to him from them, whereby substantial injury was done by him to competition in commerce:

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

Before *Mr. John W. Addison* and *Mr. Lewis C. Russell*, trial examiners.
Mr. J. W. Brookfield, Jr. for the Commission.
Mr. Gordon L. Bazelon, 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 Harry V. Plattner, an individual, trading under the name of Plattner Distributing 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, Harry V. Plattner, is trading as the Plattner Distributing Co., with his office and principal place of business located at 1330 Oak Street, in the city of Kansas City, State of Missouri. Respondent is now and for more than six months last past has been engaged in the sale and distribution of cigarette lighters, cosmetics, barber supplies, razor blades, novelties and other merchandise, to wholesale dealers, jobbers, salesmen and retail dealers, 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 his principal place of business in the city of Kansas City, State of Missouri, to purchasers thereof at their respective points of location in various States of the United States other than Missouri, and in the District of Columbia. There is now, and has been for more than six months last past a course of trade by respondent in such cigarette lighters and other merchandise 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 individuals and with corporations and partnerships engaged in the sale and distribution of cigarette lighters 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 his business as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, salesmen and retail dealers, 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 a cigarette lighter and a device commonly known as a push card. The push card bears on its face the names of the twelve months of the year with a space underneath each name for writing in the name of the purchaser of the name selected. Said push card has twelve small partially perforated discs on the face of which is printed the word "Push." Concealed within each disc is a number which is disclosed when the disc is pushed or separated from the card. The price to be paid for the push or chance is determined by the number appearing under the disc. The purchaser who pushes No. 1 pays 1¢, the purchaser of No. 2 pays 2¢, and so forth. The push card also has a larger master seal and concealed within the master seal is the name of one of the months appearing on the face of the card. The person selecting the name of the month corresponding to the one under the master seal receives a Dunhill cigarette lighter. The push card bears the legend or instructions as follows:

PICK YOUR LUCKY MONTH & WIN!

PAY 1¢ to 29¢		NONE HIGHER
LUCKY MONTH WINS THIS VALUABLE ARTICLE	(Green seal) Remove This Seal When All Sold	This card is used in lieu of advertising to bring you good merchandise at a fraction of the retail price
(PUSH) JANUARY	:	JULY (PUSH)
(PUSH) FEBRUARY	:	AUGUST (PUSH)
(PUSH) MARCH	:	SEPTEMBER (PUSH)
(PUSH) APRIL	:	OCTOBER (PUSH)
(PUSH) MAY	:	NOVEMBER (PUSH)
(PUSH) JUNE	:	DECEMBER (PUSH)
	:	

No. 300 PLATTNERS—1330 Oak St., Kansas City, Mo.

Sale of respondent's lighters by means of the said push cards are made in accordance with the above described legend or instructions. The facts as to whether a purchaser of a push receives a lighter or nothing, and the amount of money paid for a push are 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 his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 sale 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 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 which is contrary

to public policy. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of his 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 his 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.

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 December 8, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Harry V. Plattner, an individual, trading as Plattner Distributing Co., charging him 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. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before trial examiners 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, the answer thereto, testimony and other evidence, report of the trial examiners upon the evidence and the exceptions of such report, briefs in support of and in opposition to the complaint, and oral argument; 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 respondent, Harry V. Plattner, is an individual, trading as Plattner Distributing Co., with his office and principal place of business located at 1330 Oak Street, Kansas City, Mo. He is now, and for a number of years last past, has been engaged in the sale and distribution of various articles of merchandise, including, among others, cigarette lighters, cosmetics, barber supplies, and razor blades, such merchandise being sold to wholesale dealers, jobbers, and retail dealers.

PAR. 2. Respondent causes and has caused his merchandise, when sold, to be transported from his place of business in the State of Missouri to pur-

chasers thereof located in various other States of the United States. Respondent maintains and at all times mentioned herein has maintained a course of trade in his merchandise in commerce among and between the various States of the United States.

PAR. 3. In the sale and distribution of his merchandise respondent is and has been in competition with other individuals and with corporations and partnerships engaged in the sale and distribution of similar merchandise in commerce among and between the various States of the United States.

PAR. 4. In connection with the sale of certain of his merchandise respondent supplies to the purchasers thereof lottery devices for use in the resale of such merchandise to the purchasing public. One of such articles of merchandise is a cigarette lighter, with which is supplied a device commonly known as a push card. The push card bears the names of the twelve months of the year, and opposite each name is a small, partially perforated disc on which is printed the word "Push." Concealed within each disc is a number which is disclosed when the disc is pushed or separated from the card, and the amount to be paid by the person pushing the disc is determined by this number. For example, one who pushes a disc revealing the number "1" pays one cent, while on pushing a disc revealing the number "29" pays twenty-nine cents. The card also contains a large master seal, under which is concealed the name of one of the twelve months. The person who happens to select the month whose name corresponds to that under the master seal receives as a prize a cigarette lighter having a retail value of approximately \$1.95. The persons pushing the other discs on the card receive nothing. The amount of money paid for the privilege of pushing the card and whether those pushing the card receive a cigarette lighter or nothing for the amount paid are thus determined wholly by lot or chance. The card reads as follows:

PICK YOUR LUCKY MONTH & WIN!			
P A Y 1¢ to 29¢		NONE HIGHER	
LUCKY MONTH		THIS CARD IS USED IN LIEU OF ADVERTISING TO BRING YOU GOOD MERCHANDISE AT A FRACTION OF THE RETAIL PRICE.	
WINS THIS	(Green seal) Remove This Seal		
VALUABLE	When All Sold		
ARTICLE			
	JANUARY	:	JULY
(PUSH)		:	(PUSH)
	FEBRUARY	:	AUGUST
(PUSH)		:	(PUSH)
	MARCH	:	SEPTEMBER
(PUSH)		:	(PUSH)
	APRIL	:	OCTOBER
(PUSH)		:	(PUSH)
	MAY	:	NOVEMBER
(PUSH)		:	(PUSH)
	JUNE	:	DECEMBER
(PUSH)		:	(PUSH)

Respondent supplies various other lottery devices for use in the sale of his merchandise to the public, but the sales plans or methods used in connection with such devices are similar in principle to that described above, varying only in detail.

PAR. 5. Retail dealers who directly or indirectly purchase respondent's merchandise expose and sell such merchandise to the public in accordance with the sales plans or methods referred to above. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of his merchandise. The use by respondent of such sales plans or methods in the sale of his merchandise and the sale of the merchandise to the public through the use and by the aid of such plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 6. Among the competitors of respondent referred to in paragraph 3 hereof are those who do not use in the sale and distribution of their merchandise sales plans or methods involving the conducting of lotteries or games of chance. Many persons are attracted by the sales plans or methods employed by respondent and by the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to that of his competitors who do not use such plans or methods. The use by respondent of such plans or methods therefore has the tendency and capacity to divert substantial trade unfairly to respondent from his competitors, and in consequence, substantial injury is being and has been done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The acts and practices of the respondent, as herein found, are all to the prejudice 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, the answer of respondent, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Harry V. Plattner, individually, and trading as Plattner Distributing Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of 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, push cards, punch-boards, or other lottery devices, either with merchandise or separately, which are to be used or may be used in the sale or distribution of respondent's 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 the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
SLAGTER OIL & GREASE COMPANY

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

Docket 4720. Complaint, Mar. 4, 1942—Decision, Sept. 28, 1944

Where the distinctive emblem of the Pennsylvania Grade Crude Oil Association had come to indicate pure and unadulterated oil products derived from the Pennsylvania Grade oil fields—decidedly preferred by a substantial part of the purchasing public—and, along with the name “Pennsylvania” and derivatives therefrom, had come to acquire a definite secondary meaning when used in connection with motor and lubricating oils and greases, due to the activities of said long organized association of the refiners of motor oil produced from said fields and a large number of jobbers and distributors thereof, which had spent large sums to acquaint the purchasing public with oils made from such crude oil, and provided advertising for use by member refiners and distributors, and its emblem certifying that the oil sold under it was a pure unadulterated product derived from the Pennsylvania Grade oil fields, guaranteed by each member’s bond; and thereafter a corporation engaged in the compounding and blending of motor lubricating oils and greases and in the sale and distribution thereof to wholesalers and retailers for resale to the purchasing public, including products designated by it as its “Bonded Penn,” “Cream O’ Penn” and “Mr. Penn”—

- (a) Represented directly and by implication, through use of aforesaid brand names and such statements as “Bonded Penn 100% Pure Pennsylvania 1500 Mile Motor Oil,” “Cream O’Penn Motor Oil 100% Pure Pennsylvania; Made from Selected 100% Pure Pennsylvania Crude. Refined and Filtered by Latest and Most Improved Refining Methods,” “Mr. Penn 2,000 Mile Motor Oil,” picture of a Quaker on the containers of its “Mr. Penn” Oil, and display of the aforesaid Association emblem on its advertising circulars, that its aforesaid oil products were made entirely from oil derived from the Pennsylvania Grade oil fields; when in fact all of said products contained large amounts of oil from other fields;
- (b) Falsely represented that a bond had been given by it to guarantee the Pennsylvania Grade origin of its “Bonded Penn” motor oil;
- (c) Falsely represented that it was a member of the aforesaid Pennsylvania Grade Crude Oil Association; and
- (d) Falsely represented that it owned an oil field from which its products or some of them were obtained, through inclusion of words “Oil Field,” in characterization of its various business activities;

With tendency and capacity to mislead and deceive a substantial number of dealers and a substantial portion of the purchasing public with respect to the nature and origin of its products and its business status, and to cause such persons as a result to purchase substantial quantities of its products; and with result of placing in the hands of uninformed or unscrupulous wholesalers and retailers means and instrumentalities whereby they were enabled to mislead and deceive the purchasing 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.