

Complaint

IN THE MATTER OF

KENNETH E. BREWER, EVERETT R. BREWER, AND NELSON C. BREWER, TRADING UNDER THE NAME OF CHAS. A. BREWER & SONS

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

Docket 3952. Complaint, Nov. 16, 1939—Decision, Feb. 1, 1945

Where two individuals, who were the world's largest manufacturers of punch boards and push cards, with annual sales aggregating some two million or more of such devices, many of which were designed for use by retail dealers in sale and distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme, under a plan by which the particular concealed number or legend, secured by chance by the person playing the board or card, determined which article the purchaser received without additional cost, or whether he received merchandise of much less value than such article, or nothing other than the privilege of a chance, and under which, in some cases, amounts to be paid for such chances was also thus determined; and the advantages of which devices of chance—made in various types and sizes and to order, with from 50 to 10,000 holes in the case of the boards, and from 10 to 100 discs in that of the cards—in building business, with their "certain thrill," and attraction to "thousands of people in every community," they stressed in their catalog—

Sold and distributed said devices to manufacturers and wholesalers—many of whom made up assortments consisting of a board or card and quantity of merchandise and sold the same to the retailer,—and to retailers direct, by whom, whether as direct or indirect purchases, said devices were employed in the sale and distribution, by chance, of merchandise to the public as above described; and thereby

Supplied to and placed in the hands of others means whereby, through the appeal thereof, they were enabled to use unfair methods of competition and thereby divert to themselves substantial trade from many retailers, manufacturers and wholesalers who do not make use of lottery or chance in the sale and distribution of their products, or supply others with means of so doing:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. D. C. Daniel and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. Herlton H. Bowen, of Chicago, Ill., 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 Kenneth E. Brewer, Everett R. Brewer and Nelson C. Brewer, individually, and as copartners, trading under the name of Chas. A. Brewer & Sons, 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 in-

terest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Kenneth E. Brewer, Everett R. Brewer and Nelson C. Brewer, are individuals, doing business as copartners, under the name of Chas. A. Brewer & Sons, with their principal office and place of business located at 6320-32 Harvard Avenue, Chicago, Ill. Respondents are now, and for some time last past have been, engaged in the manufacture of devices commonly known as push cards and punch boards and in the sale and distribution of said merchandise to manufacturers of, and dealers in, various other articles of merchandise in commerce between and among the various states of the United States and in the District of Columbia.

Respondents cause and have caused said devices when sold, to be transported from their aforesaid place of business to purchasers thereof in various states of the United States other than the State of Illinois and in the District of Columbia at their respective points of location. There is now, and for some time last past has been, a course of trade in such push card and punch board devices by said respondents 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, to said manufacturers and dealers push cards and punch boards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed, many kinds of said push cards and punch boards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of other merchandise and vary only in detail.

Many of said push cards and punch boards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punch boards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the push card or punch board, and when a push or punch is made a disc or printed slip is separated from the push card or punch board and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punch board devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punch boards the purchasers thereof place instructions or legends which have the same import or meaning as the instructions or legends placed by the respondents on said push card and punch board de-

vices first hereinabove described. The only use to be made of said push card and punch board devices and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various states of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punch board devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push card and punch board devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punch boards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punch boards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices. Said persons, firms or corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various states of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punch board devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of push card or punch board devices or similar devices because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and in violation of criminal laws, and such competitors refrain from supplying to, or placing in the hands of, other push card or punch board devices, or any other similar devices which are to be used or which may be used in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery, game of chance or gift enterprise. As a result thereof substantial trade in commerce among and between the various states of the United States and in the District of Columbia has been unfairly diverted to said persons, firms and corporations from said competitors who do not sell or use said devices.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or method in the sale of merchandise and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of the sort which is contrary to an established public policy of the Government

of the United States and in violation of criminal laws, and constitutes unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The sale or distribution of said push card and punch board devices by respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging in unfair methods of competition in commerce and unfair acts and practices in commerce within intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents, as hereinabove alleged, are all to the prejudice and injury of the public, and constitute 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 November 16, 1939, issued and subsequently served its complaint in this proceeding upon the respondents, Kenneth E. Brewer, Everett R. Brewer, and Nelson C. Brewer, individually, and as copartners, trading under the name Chas. A. Brewer & Sons, charging them with the use of unfair acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer, testimony and other evidence in support of and in opposition to the complaint were introduced 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. On March 15, 1943, respondent Kenneth E. Brewer died, and an order dismissing the proceeding as to him was entered by the Commission on March 31, 1943. Subsequently, the proceeding regularly came on for final hearing before the Commission as to respondents Everett R. Brewer and Nelson C. Brewer on the complaint, answer, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, 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, Nelson C. Brewer, is an individual, trading as Chas. A. Brewer & Sons, with his principal office and place of business located at 6320 Harvard Avenue, Chicago, Ill. He is now and for many years last past has been engaged in the manufacture, sale and distribution of devices commonly known as punch boards and push cards. For a number of years immediately preceding September 22, 1939, respondent, Everett R. Brewer, was a copartner in the business, which was a copartnership composed of Everett R. Brewer, Nelson C. Brewer, and Kenneth E. Brewer. On that date (September 22, 1939), Everett R. Brewer severed

his connection with the business. The copartnership operated under the same trade name as that now used by respondent, Nelson C. Brewer.

The findings hereinafter made, insofar as respondent, Everett R. Brewer, is concerned, relate only to that period of time during which Everett R. Brewer was connected with the business—that is, the period prior to September 22, 1939.

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

PAR. 3. Respondents are the world's largest manufacturers of punch boards and push cards, their annual sales aggregating some two million or more of such devices. They manufacture some five thousand different types of punch boards and some three thousand different types of push cards. The devices are sold to manufacturers of various other articles of merchandise and to both wholesale and retail dealers in other merchandise.

PAR. 4. Among the various types of punch boards and push cards manufactured and sold by respondents are many which are designed for use by retail dealers in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme. These boards and cards vary in detail but all of them involve the same general principle. The punch boards contain a certain number of holes in which are placed slips of paper bearing different numbers or legends. These slips of paper are effectively concealed from view. Persons desiring to "play" the board pay to the operator thereof a designated sum, and thus become entitled to punch the board and to remove therefrom one of the slips of paper. Certain specified numbers or legends on the slips entitle purchasers to designated articles of merchandise without additional cost. Purchasers who do not punch a lucky or winning number receive nothing for their money other than the privilege of playing the board, or in some cases merchandise which is of much less value than that which would be received if lucky numbers were punched. The articles of merchandise are thus distributed to the public wholly by lot or chance. On some of the boards, the amount to be paid for the privilege of making the punch is also determined by chance.

The push cards are operated in substantially the same manner except that instead of having holes, the cards usually have perforated discs which contain the numbers or legends. As in the case of the boards, the numbers or legends are effectively concealed from the purchaser of the chance until after the punch has been made and the disc separated from the card. The punch boards range in size from fifty holes to ten thousand holes, while the push cards usually are much smaller, ranging in size from ten discs to one hundred discs.

PAR. 5. Many of the boards and cards bear picturizations and descriptions of certain articles of merchandise, such as candy, cigarettes, etc., as well as instructions which explain the operation of the device and the prizes to be awarded to those obtaining lucky numbers. Others have no pictures or instructions thereon but have blank spaces in which the purchaser of the device may insert his own instructions and a statement of the merchandise to be awarded as prizes. Some of the punch boards are

known as "cut-out" boards, which means that the board contains a large hole or depression in which may be exhibited a sample of the merchandise offered by the dealer. In addition to the boards and cards, respondents also sell printed headings which may be affixed by the purchaser to a blank board or card. Many of the boards and cards sold by respondents are made to order to meet the requirements of the particular purchaser. In numerous instances, manufacturers and wholesale dealers purchasing respondents' boards and cards make up assortments consisting of a board or card and a quantity of merchandise, and sell the complete assortment to the retail dealer.

PAR. 6. Retail dealers who acquire respondents' punch boards and push cards (either directly from respondents or from a manufacturer or wholesaler of merchandise) use them in the sale and distribution of merchandise to the public in the manner described above. That the boards and cards are designed and sold by respondents for that specific purpose is evident not only from the make-up of the boards and cards themselves, but also from statements made by respondents in the catalogs advertising their devices.

Among these statements are the following:

A FEW POINTS WORTH KNOWING...

HUGE CANDY SALES

Last year over \$30,000,000 worth of Candy was sold by means of Sales Boards. Over half of all the box candy sold in the United States was sold in this manner and over 75% of all Candy Manufacturers and Jobbers used Brewer Boards and Cards to build up their volume.

TOBACCO INDUSTRY REAPS PROFITS

The same is true of the Tobacco Industry. Millions of Dollars worth of cigars and cigarettes were sold by the use of Brewer Boards and Cards. The Candy and Tobacco industries were not the only ones to reap extra profits. Hundreds of other items were sold in this same manner and with like success.

ELIMINATE SLACK SEASONS

Brewer Boards have a year round appeal to every class of trade and give quick turnover—and quick turnover means added PROFITS. There are no slack seasons when Brewer Boards are used.

LIVE RETAILERS USE BOARDS

Thousands of people in every community enjoy punching Boards. The "up to the minute" and "Live" retailer, realizing this, uses them to bring customers to his store. They build up his sales volume and boost his profits.

BOARD SALES BRING OTHER SALES'

Compare two stores—one using Brewer Boards and one not using them—other factors being equal the one with Brewer Boards invariably has the largest group of regular customers. There is a certain thrill to punching boards and the public will favor the store using them. Records show that the average customer who spends 25¢ to 50¢ will spend twice this amount when the storekeeper uses Brewer Boards—and in addition to this the customer usually makes other purchases while in the store.

ARE YOU GETTING YOUR SHARE

Thousands of merchants are increasing their sales in this manner. Are you getting your share of this business? (Com. Ex. 1, p. 1)

PAR. 7. Respondents thus supply to and place in the hands of retail dealers, either directly or indirectly, the means of conducting lotteries or games of chance in the sale of merchandise to the general public. The sale of merchandise by and through such means and methods is a practice which is in contravention of an established public policy of the Government of the United States, and respondents, through the supplying of such means, knowingly and purposely assist and participate in the violation of such policy.

PAR. 8. There are many retail dealers who do not use lotteries or games of chance in the sale and distribution of their merchandise, and, by reason of the appeal which games of chance have for a large portion of the public, substantial trade is diverted from such dealers to those who do use such methods. Likewise, there are many manufacturers of and wholesale dealers in merchandise who do not supply to their retail dealers the means of conducting lotteries in the sale of their merchandise. As in the case of the retail dealer, such manufacturers and wholesalers suffer a substantial loss of trade to competitors who do supply such means to their dealers. The practice of respondents in selling and distributing their lottery devices thus serves to place in the hands of others means and instrumentalities whereby they are enabled to use unfair methods of competition and thereby unfairly to divert substantial trade to themselves from those who do not use such methods.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST ¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (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, Everett R. Brewer and Nelson C. Brewer, individually, and trading as Chas. A. Brewer & Sons, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

¹ By order dated March 31, 1943 the Commission dismissed proceedings as to Kenneth E. Brewer, as follows:

This matter coming on to be heard by the Commission upon the request filed by counsel for respondents that this proceeding be dismissed as to the individual respondent, Kenneth E. Brewer, because of the death on March 15, 1943, of said Kenneth E. Brewer, and the Commission having duly considered said request and the record, and being now fully advised in the premises.

It is ordered, That the request of counsel for respondents that this proceeding be dismissed as to the individual respondent, Kenneth E. Brewer, be and the same hereby is, granted.

Order

40 F. T. C.

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, punch boards, push cards or other lottery 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.

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

IN THE MATTER OF

UNION TRADING STAMP COMPANY, AND FRANK A.
HAYES, PRESIDENT AND TREASURER THEREOF

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

Docket 5011. Complaint, July 19, 1943—Decision, Feb. 1, 1945

Where a corporation and an individual, its president and treasurer, engaged in the manufacture and competitive interstate sale and distribution to retail merchants and others, of various sales promotion plans involving a lottery scheme or gift enterprise when used in promoting sales to the consuming public, typical plan including for distribution to retail customers, booklets, which had blank spaces for the pasting in of a designated number of the sales receipts or trading stamps supplied therewith, contained on the outside a gold-colored seal concealing name of a prize to be awarded when the book was filled, and a legend advising members of the consuming public that products, services, or other awards designated and described under the seal, the value of which varied with the individual booklet, would be awarded to the holder of the book upon his presenting the same to the merchant concerned, with the seal unbroken and answering the quiz question therein propounded—

Sold and distributed such plans, in which the amount of the prizes distributed was determined wholly by lot or chance, and which were designed and intended by them as a means by which the retail merchant purchasers might promote the sale of merchandise through the appeal supplied by the lottery or chance element inherent therein, to such merchants and others; and

Thereby supplied to and placed in their hands the means of conducting lotteries, gift enterprises, or games of chance in the sale of merchandise in accordance therewith, contrary to the established public policy of the United States Government;

With tendency and capacity to induce many members of the consuming public to deal with such merchants using their said sales plan, by reason of the lottery or chance feature thereof, in preference to those using sales promotion plans or devices of their competitors with no such feature connected therewith, and with result that many retail merchants were thereby induced to purchase aforesaid booklets or stamps in preference to the devices and stamps of such competitors; and with capacity and tendency, because of such element of chance, unfairly to divert trade from aforesaid competitors to them:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and their competitors, and 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 by said act, the Federal Trade Commission, having reason to believe that Union Trading Stamp Company, a corporation, and Frank A. Hayes, an individual, and president and treasurer of Union Trading Stamp Company, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Com-