

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-

mission 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, Union Trading Stamp Company, 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 549 West Randolph Street, in the city of Chicago, Ill. Respondent, Frank A. Hayes, is an individual, and president and treasurer of respondent, Union Trading Stamp Company, with his office and principal place of business located also at 549 West Randolph Street. Both 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 or pamphlets, together with a larger number of sales receipts, trading stamps or coupons. In the booklet are blank spaces provided for the pasting in of a designated number of 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 or respondents' other customers to the consuming public, contain the following legend:

POT OF GOLD

(Gold colored seal here)

Void If Seal Is Broken

QUIZ CONTEST

HOW TO RECEIVE FREE CASH AWARD

You will be given a receipt for each 10¢ purchase at our station. 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 this 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 award you will receive if you can answer this question correctly.

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 "Pot of Gold" and "Major Dividend Plan," all of which are similar to the sales plans hereinbefore described, and are used by respondents' customers for the distribution of merchandise in the same manner as the plans above 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 July 19, 1943, issued and subsequently served its complaint in this proceeding upon respondents, Union Trading Stamp Company, a corporation, and Frank A. Hayes, individually, and as president and treasurer of Union Trading Stamp Company, 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 September 4, 1943, the respondents filed their answer admitting all the material allegations of fact set forth in the complaint and waiving 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. Respondent, Union Trading Stamp Company, 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 549 West Randolph Street, in the city of Chicago, Ill. Respondent, Frank A. Hayes, an individual, is president and treasurer of respondent, Union Trading Stamp Company, with his office and principal place of business located at 549 West Randolph Street. Both the respondents have acted together and in cooperation with each other in doing the acts and things herein found. 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 conduct of their aforesaid business, 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 by 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 or pamphlets, together with a larger number of sales receipts, trading stamps, or coupons. In the booklet are blank spaces provided for the pasting in of a designated number of 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 or respondents' other customers to the consuming public, contain the following legend:

POT OF GOLD

(Gold-Colored seal here)

Void If Seal Is Broken

QUIZ CONTEST

HOW TO RECEIVE FREE CASH AWARD

You will be given a receipt for each 10¢ purchase at our station. 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 this 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 award you will receive if you can answer this question correctly.

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 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 "Pot of Gold" and "Major Dividend Plan," all of which are similar to the sales plans hereinbefore described, and are used by respondents' customers for the distribution of merchandise in the same manner as the plans above described. Said sales plans are designed and intended by respondents as a means by which the retail merchants and others to whom they are sold may promote the sale of merchandise through the appeal supplied by the lottery or chance element inherent in such plans.

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 members 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 promo-

tion plans or devices of respondents' competitors which have no element of lot or chance connected with them, 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 sales plans of respondents' competitors which do not involve a 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.

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 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 the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearings as to the said facts, and the Commission having made its findings as to the facts and conclusion that said respondent is violating the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Union Trading Stamp Company, a corporation, its officers, and Frank A. Hayes, individually, and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, sales promotion cards, booklets, or other articles so designed that their use in connection with the distribution of merchandise in accordance with such design or plan constitutes the operation 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

SYLVIA PIETRI, TRADING AS DR. H. A. PIETRI COMPANY

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

Docket 5146. Complaint, Mar. 31, 1944—Decision, Feb. 6, 1945

Where an individual engaged in the interstate sale and distribution of a lead acetate hair dye designated as "Zenaida"—

- (a) Represented, directly and by implication, through advertisements in Spanish in newspapers and other advertising material, that her said preparation would restore the hair of the user to its original color, and restore thereto "the appearance of its natural color";

The facts being said product was a dye, its only action was that of a dye, and the color it imparted did not have, in many respects, the appearance of a natural color, particularly as respected hair which was originally of a light shade;

- (b) Falsely represented that it would not stain clothing, hands or scalp; and
- (c) Falsely represented, through the use of the trade name "Dr. H. A. Pietri Co." that her said preparation was the prescription of a member of the medical profession by that name, or was made under his supervision or offered for sale by him;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true, and of thereby inducing it to purchase substantial quantities of her 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.

Mr. B. G. Wilson 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 Sylvia Pietri, an individual, trading as Dr. H. A. Pietri Company, 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, Sylvia Pietri, is an individual, trading as Dr. H. A. Pietri Company, with her office and principal place of business at 620 West 141st Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of a lead acetate hair dye designated as "Zenaida."

Respondent causes her said preparation when sold to be shipped from her said place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in her said preparation in commerce between and among the various States of the United States and in the District of Columbia.