

Complaint

IN THE MATTER OF

JACK KLEIN AND MARTIN D. FRIEDMAN, TRADING AS
FRIEDMAN-KLEIN SALES COMPANY AND WESTERN
NOVELTY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 5452. Complaint, July 10, 1946—Decision, July 17, 1947

Where two individuals engaged in the competitive interstate sale and distribution of belts, novelties, candy and other merchandise, including certain assortments which were so packed and assembled as to involve the use of a lottery scheme or game of chance when sold or distributed to the purchasing public, such as 6 belts and a 1,000-hole punch board for use under a plan, as thereon announced, pursuant to which the customer received for 5 cents, one of the 6 belts, or one of 20 packages of cigarettes, or nothing, dependent upon his success or failure in selecting a lucky number—

Sold such assortments, so packed and assembled, to jobbers and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public in accordance with plan involving opportunity to secure by chance said products at much less than the normal retail price thereof; and thereby

Supplied to and placed in the hands of others the means of conducting a lottery in the sale of their merchandise in accordance with such sales plans, contrary to an established public policy of the United States Government, and in competition with many who do not use sales methods contrary to public policy;

With the result that many persons were attracted by said sales plans or method and the element of chance involved therein and were thereby induced to buy and sell their said products in preference to those of such competitors, and with tendency and capacity to unfairly divert trade in commerce:

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

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

Mr. D. C. Daniel for the Commission.

Mr. Al Lebrecht, of Kansas City, Mo., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Jack Klein and Martin D. Friedman, individuals trading as Friedman-Klein Sales Co., and Western Novelty Co., hereinafter referred to as the respond-

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ents, 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 and states its charges in that respect as follows:

PARAGRAPHS 1. Respondents Jack Klein and Martin D. Friedman, are individuals trading and doing business as Friedman-Klein Sales Co., and Western Novelty Co., with their office and principal place of business located at 217 West 9th Street, Kansas City, Mo. Respondents are now, and for 2 years last past have been, engaged in the sale and distribution of belts, novelties, candy, and other merchandise to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise when sold to be transported from their place of business in the State of Missouri to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia.

In the course and conduct of their business, respondents are and have been engaged in competition with other individuals, firms, and corporations engaged in the sale of belts, novelties, candy 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 their business as described in paragraph 1 hereof, respondents sell and have sold to jobbers and retailers certain assortments of merchandise so packed and assembled as to involve the use of a lottery scheme or game of chance when sold or distributed to the purchasing public.

One of said assortments consist of six belts and a device commonly known as a punch board. On the face of the punch board appears the following legend:

5¢	TEXAS TOOLED BELTS	5¢
Per Sale	Numbers	Per Sale
	100—200—300—400—500	
	And Last Sale on Board Each Receives a Belt	
	Numbers	
	25 — 50 — 75 — 125 — 150	
	175 — 225 — 250 — 275 — 325	
	350 — 375 — 425 — 450 — 475	
	525 — 550 — 575 — 625 — 650	
	Each Receives 1 Pkg. (20) Cigarettes	
	Last Sale in Each Section Receives	
	1 Pkg. (20) Cigarettes.	

Said belts are distributed to the purchasing public by means of said punch board in the following manner: Sales are 5 cents each and when

a punch is made on the board a number is disclosed. If the number corresponds with one of five designated numbers appearing in the legend printed on the said board; the person punching said number receives one of the belts. Persons punching one of the other designated numbers receives a package of cigarettes and persons who do not punch one of the designated numbers receives nothing for their purchase money. There are 1,000 punches in the board, containing numbers from 1 to 1,000 but not arranged in numerical sequence. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the said punch separated from the board. The said belts and cigarettes are thus distributed to purchasers of punches from the board by lot or chance. The belts and packages of cigarettes are worth more than 5 cents each and the person who punches the number calling for one of them receives the same for 5 cents.

Respondents sell and distribute and have sold and distributed various assortments consisting of merchandise and punch boards and merchandise and push cards, all of which involve lot or chance when said merchandise is sold and distributed to the purchasing public and the methods of sale and distribution of said merchandise by means of the said punch boards or push cards are similar to the ones described above and vary only in detail.

PAR. 3. Retail dealers and others who purchase respondents' belts, novelties, candy, and other merchandise directly or indirectly expose, sell, and distribute the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others a means of conducting a lottery in the sale of their merchandise in accordance with the sales plans hereinabove set forth. The use by respondents of said sales plans or methods in the sales of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice 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 methods 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 merchandise in competition with respondents as above alleged do not use said methods 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

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respondents in the sale and distribution of their product and by the element of chance involved therein and are thereby inducted to buy and sell respondents' products in preference to products of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents 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.

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 in 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 July 10, 1946, issued and thereafter served its complaint in this proceeding upon respondents Jack Klein and Martin D. Friedman, individuals trading as Friedman-Klein Sales Co., and Western Novelty Co., charging them with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of said Act.

By order of the Commission respondents' answer dated March 14, 1947, was filed as of August 1, 1946. In said answer respondents admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto and the Commission having considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Jack Klein and Martin D. Friedman, are individuals trading and doing business as Friedman-Klein Sales Co., and Western Novelty Co., with their office and principal place of business located at 217 West Ninth Street, Kansas City, Mo. Respondents are now, and for 2 years last past have been, engaged in the sale and distribution of belts, novelties, candy and other merchandise to purchasers thereof located in the various States of the

United States and in the District of Columbia. Respondents cause and have caused said merchandise when sold to be transported from their place of business in the State of Missouri to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia.

In the course and conduct of their business, respondents are and have been engaged in competition with other individuals, firms, and corporations engaged in the sale of belts, novelties, candy, 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 their business as described in paragraph 1 hereof, respondents sell and have sold to jobbers and retailers certain assortments of merchandise so packed and assembled as to involve the use of a lottery scheme or game of chance when sold or distributed to the purchasing public.

One of said assortments of six belts and a device commonly known as a punch board. On the face of the punch board appears the following legend:

5¢	TEXAS TOOLED BELTS					5¢
Per Sale	Numbers					Per Sale
	100 — 200 — 300 — 400 — 500					
	And Last Sale on Board Each Receives a Belt					
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	25 — 50 — 75 — 125 — 150					
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	525 — 550 — 575 — 625 — 650					
	Each Receives 1 Pkg. (20) Cigarettes					
	Last Sale in Each Section Receives					
	1 Pkg. (20) Cigarettes.					

Said belts are distributed to the purchasing public by means of said punch board in the following manner: Sales are 5 cents each and when a punch is made on the board a number is disclosed. If the number corresponds with one of five designated numbers appearing in the legend printed on the said board, the person punching said number receives one of the belts. Persons punching one of the other designated numbers receive a package of cigarettes and persons who do not punch one of the designated numbers receive nothing for their purchase money. There are 1,000 punches in the board, containing numbers from 1 to 1,000 but not arranged in numerical sequence. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the said

punch separated from the board. The said belts and cigarettes are thus distributed to purchasers of punches from the board by lot or chance. The belts and packages of cigarettes are worth more than 5 cents each and the person who punches the number calling for one of them receives the same for 5 cents.

Respondents sell and distribute and have sold and distributed various assortments consisting of merchandise and punchboards and merchandise and push cards, all of which involve lot or chance when said merchandise is sold and distributed to the purchasing public and the methods of sale and distribution of said merchandise by means of the said punchboards or push cards are similar to the ones described above and vary only in detail.

PAR. 3. Retail dealers and others who purchase respondents' belts, novelties, candy and other merchandise directly or indirectly expose, sell, and distribute the same to the purchasing public in accordance with the sales plans as aforesaid. Respondents thus supply to and place in the hands of others a means of conducting a lottery in the sale of their merchandise in accordance with the sales plans hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice 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 methods or sales plan hereinabove found 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 merchandise in competition with respondents as above found do not use said methods 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 respondents in the sale and distribution of their products and by the element of chance involved therein and are thereby induced to buy and sell respondents' products in preference to products of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents 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.

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 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 hearing as to said facts and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents Jack Klein and Martin D. Friedman, individuals, trading as Friedman-Klein Sales Co. and Western Novelty Co., or trading under any other name or names jointly or severally, their representatives, agents and employees directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of any merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from directly or indirectly:

(1) Supplying to or placing in the hands of others any merchandise, together with push or pull cards, punchboards, or any other lottery device, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling or distributing such merchandise to the public;

(2) Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices, either with any merchandise or separately, which push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling or distributing such merchandise to the public;

(3) Selling or otherwise disposing of any merchandise by the use of push cards, pull cards, punchboards, or other lottery device.

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.

IN THE MATTER OF
MARGOOD PUBLISHING CORPORATION ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 5463. Complaint, Oct. 8, 1946—Decision, Aug. 8, 1947

Where 12 corporations and a husband and wife, who were chief officers thereof, and formulated and directed their policies and practices, engaged in the competitive interstate sale and distribution of books and other publications containing novels, fiction, and other stories or articles to dealers and users—

- (a) Falsely represented and implied that their said books or other publications contained original, complete and unabridged novels, stories, or articles, and, in a number of instances, had placed conspicuously on the cover the words "a complete \$2.00 novel" or other words of like import, and did not adequately inform dealers and the public of condensation, abridgement, or alteration of the original novel, story or article, through frequently contradictory notice, if any, set forth in fine print on an inside page; and
- (b) Changed the titles of a number of said novels, stories, or articles and did not disclose such changes, or disclosed them inadequately through notice in fine print on an inside page, and thereby caused or tended to cause purchasers to buy condensed or abridged versions of novels, stories or articles which they had read previously and which they would not have purchased if such novels, etc., had been properly identified as to the original titles;

With effect of misleading prospective purchasers and of thereby causing a substantial number of members of the public to buy their products; whereby trade and commerce was diverted to them from their competitors who did not misrepresent their books or publications or the novels, stories, or articles therein contained; to the serious injury of competition in commerce:

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 and deceptive acts and practices therein.

In a proceeding in which the record indicated that respondents had discontinued the deceptive practices therein challenged, as above set forth, namely, the offer and sale of condensed novels, etc., as the original and complete stories or articles by the particular author, and stories, etc., of which the original title had been changed, all without adequate notice, if any, but in which there was no assurance that practices in question would not be resumed in the future: the Commission was of the opinion that in the public interest the findings as to the facts should issue, together with an order requiring respondents to cease and desist from practices concerned.

Mr. John L. York for the Commission.

Grossman & Perles, of New York City, for respondents.