

Complaint

IN THE MATTER OF
ISAAC JOSEPH OLSHER, TRADING AS MID-WEST
NOVELTY CO.

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

Docket 5521. Complaint, Dec. 3, 1947—Decision, June 1, 1948

Where an individual engaged in the interstate sale and distribution of cigarette lighters, clocks, radios, fountain pens, glassware, cameras, electric razors, and other assortments of articles, so packed and assembled as to involve use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the purchasing public, a typical assortment consisting of nine articles and three packs of cigarettes together with a punch board for use in their sale and distribution under a plan by which, at a cost of 5 cents, a customer selecting certain numbers by chance received a self-starting electric clock, flashlight, or other article or one or two packs of cigarettes, and last sale on the board also received such a clock, others receiving nothing for their money—

Sold such assortments to dealers and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public in accordance with the aforesaid sales plan, involving a game of chance or sale of a chance to procure one of the articles concerned at much less than its normal retail price; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of his products, contrary to an established public policy of the United States Government;

With the result that many persons were attracted by said sales plans and element of chance involved, and were induced thereby to buy and sell his said merchandise:

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

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

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 Isaac Joseph Olsher, an individual, trading as Mid-West Novelty Co., 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:

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PARAGRAPH 1. Respondent, Isaac Joseph Olsher, is an individual trading and doing business as Mid-West Novelty Co. with his office and principal place of business located at 604 West Lake Street in the city of Chicago, Ill. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of cigarette lighters, clocks, radios, fountain pens, glassware, cameras, electric razors, and other articles of merchandise, and has caused said merchandise when sold to be transported from his place of business in the city of Chicago, Ill., to purchasers thereof at their respective points of location in the various States of the United States other than Illinois and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by respondent in such 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 one hereof respondent sells and has sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the purchasing public. One of said assortments, typical of the various assortments sold by the said respondent, consists of several articles of merchandise, together with a punchboard bearing the following legend:

5¢ Per Sale	LUCKY JACK	5¢ Per Sale
No. 111—	RECEIVES SELF STARTING ELECTRIC CLOCK	
No. 122—	RECEIVES STAND-UP FLASHLIGHT	
No. 133—	RECEIVES PLASTIC-EYE FLASHLIGHT	
No. 144—	RECEIVES SPARK MILL TABLE MODEL LIGHTER	
No. 333—	RECEIVES SPARK PROP TABLE MODEL LIGHTER	
No. 166—	RECEIVES COMBINATION CIGARETTE CASE & LIGHTER	
No. 177—	RECEIVES COMBINATION CIGARETTE CASE & LIGHTER	
No. 188—	RECEIVES ALUMINUM 6 POWER TELESCOPE	
No. 199—	RECEIVES ALUMINUM 6 POWER TELESCOPE	

LAST SALE OF BOARD RECEIVES SELF STARTING ELECTRIC
CLOCK

25 — 35 — 45 — 55 — 65 — 75 — 85 — 95 — 105 — 115 — 125 — 135 — 145
155 — 165 — 175 — 185 — 195 — 205 — 305 — 405 — 415 — 425 — 435 —
445 — 455 — 465 — 475 — 485 — 495 — 505

EACH RECEIVES 1 PACK (20) CIGARETTES

100 — 200 — 300 — 400 — 500 — 600 — 700 — 800 — 900 — 1000

EACH RECEIVES 2 PACKS (40) CIGARETTES

Said merchandise is distributed to the purchasing public in accordance with the above legend in the following manner. Sales are 5 cents each and when a punch is made a number is disclosed. The numbers

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begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears the legend above described informing purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the articles listed on the board and that other specified numbers entitle the purchaser to receive a pack of cigarettes. A customer who does not qualify by punching one of the specified numbers receives nothing for his purchase money. The various articles and the packages of cigarettes are worth more than 5 cents each and the purchaser who obtains a number calling for one of the various articles or a pack of cigarettes receives the same for 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The articles of merchandise and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondent sells and has sold various punchboards and assortments to be distributed by the use of said punchboards in the manner above described, and these punchboards vary only in detail as to the individual items of merchandise to be sold by said boards, the plans of all of said boards and assortments being similar to the one hereinabove described.

PAR. 3. Retail dealers who purchase respondent's punchboards and merchandise assortments directly or indirectly expose and sell merchandise to the purchasing public in accordance with the sales plans above described. Respondent thus supplies to and places in the hands of others the means of conducting lotteries or games of chance in the sale of his products in accordance with the sales plans 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 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 in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondent and the element of chance involved therein and thereby are induced to buy and sell respondent's merchandise.

The use by respondent of a sales plan or method involving distribution of merchandise by means of chance, lottery, or gift enterprise is

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contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondent as herein 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 December 3, 1947, issued and subsequently served its complaint in this proceeding upon the respondent, Isaac Joseph Olsher, an individual trading as Mid-West Novelty Co., charging him with the use of unfair acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, respondent, upon motion, withdrew said answer and filed a substitute answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint and substitute answer filed by the respondent; 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, Isaac Joseph Olsher, is an individual formerly trading and doing business as Mid-West Novelty Co. with his office and principal place of business at 604 West Lake Street in the city of Chicago, Ill. Respondent, for several years prior to July 1, 1947, was engaged in the sale and distribution of cigarette lighters, clocks, radios, fountain pens, glassware, cameras, electric razors, and other articles of merchandise, and caused said merchandise when sold to be transported from his place of business in the city of Chicago, Ill., to purchasers thereof at their respective points of location in the various States of the United States other than Illinois and in the District of Columbia. During the times mentioned herein the respondent maintained a course of trade in such 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 respondent sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise was sold and distributed to the purchasing public. One of said assortments, typical of the various assortments sold by the said respondent, consisted of several articles of merchandise, together with a punchboard bearing the following legend:

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EACH RECEIVES 1 PACK (20) CIGARETTES

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EACH RECEIVES 2 PACKS (40) CIGARETTES

Said merchandise was distributed to the purchasing public in accordance with the above legend in the following manner. Sales were 5 cents each and when a punch was made a number was disclosed. The numbers began with one and continued to the number of punches there were on the board, but the numbers were not arranged in numerical sequence. The board bore the legend above described informing purchasers and prospective purchasers that a certain specified number entitled the purchaser thereof to receive one of the articles listed on the board and that other specified numbers entitled the purchaser to receive a pack of cigarettes. A customer who did not qualify by punching one of the specified numbers received nothing for his purchase money. The various articles and the packages of cigarettes were worth more than 5 cents each and the purchaser who obtained a number calling for one of the various articles or a pack of cigarettes received the same for 5 cents. The numbers were effectively concealed from purchasers and prospective purchasers until a punch or selection had been made and the particular punch separated from

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the board. The articles of merchandise and cigarettes were thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondent sold various punchboards and assortments to be distributed by the use of said punchboards in the manner above described, and these punchboards varied only in detail as to the individual items of merchandise sold by said boards, the plans of all of said boards and assortments being similar to the one hereinabove described.

PAR. 3. Retail dealers who purchased respondent's punchboards and merchandise assortments directly or indirectly exposed and sold merchandise to the purchasing public in accordance with the sales plans above described. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries or games of chance in the sale of his products in accordance with the sales plans 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 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 in the manner above alleged involved a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons were attracted by said sales plans or methods used by respondent and the element of chance involved therein and thereby were induced to buy and sell respondent's merchandise.

CONCLUSION

The acts and practices of the respondent as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearings as to said facts; and the Commission having made its findings as to the facts and conclu-

sion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Isaac Joseph Olsher, an individual trading as Mid-West Novelty Co., or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cigarette lighters, clocks, radios, fountain pens, glassware, cameras, electric razors and other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing assortments of merchandise so packed or assembled that sales of said merchandise to the public are to be made, or, due to the manner in which such merchandise is packed or assembled at the time it is sold by respondent, may be made, by means of a game of chance, gift enterprise or lottery scheme.

2. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, punchboards, or other lottery devices are to be used or may be used in selling or distributing merchandise to the public.

3. 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
MASTER ENGRAVERS GUILD ET AL.

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

Docket 5088. Complaint, Nov. 27, 1943—Decision, June 3, 1948

"The conception of commerce is not static but of necessity has evolved coincident with the increasing complexities of our economic system, and, what is or is not interstate commerce is to be determined upon a broad conception of the substance of the whole transaction." And while personal effort not related to production, such as professional baseball, may not be a subject of commerce, a contract or agreement which by its terms provides for the processing for a consideration of commodities—even though not owned by the processors—and the transportation thereof across state lines must be held a contract or agreement made in the course of commerce, and the parties thereto engaged in such commerce and, therefore, subject to the jurisdiction of the Commission. *Federal Trade Commission v. Pacific States Paper Trade Association*, 273 U. S. 52.

Price fixing was illegal under the common law and is contrary to the public policy of the United States, and there is no more powerful internal enemy of the American system of free enterprise than monopolistic practices and price-fixing conspiracies.

In a proceeding in which the Commission found that respondents' association and respondent members had engaged in practices in violation of the provisions of section 5 of the Federal Trade Commission Act, and in which it appeared that the Commission, some 10 years theretofore, by letter, had advised said association that the Commission did not find at that time that respondents were engaging in practices coming within the purview of the laws administered by the Commission, said letter was simply indicative of the fact that in said year the Commission did not have reason to believe that respondents were violating the laws administered by it, and it was obvious that subsequent thereto the Commission procured additional information as to said practices, for the reason that some 6 years thereafter it directed that the complaint in the proceeding in question be issued.

Where a membership organization or guild, organized in 1935; and some 20 individual, partnership, and corporate members, which (a) were engaged in the business of etching and engraving designs to be imposed upon textile fabrics for "converters," under the custom pursuant to which "converter" purchasers of gray and white fabrics from the manufacturer deliver the fabrics to the dyers or printers, who print them from copper rollers upon which the desired design has been engraved by the engraver and return them to the converter for sale to department stores or manufacturers of printed-goods products; and (b) which, prior to the organization of their said guild had been in competition as to price with one another in the sale of etchings and engravings to their printer customers and would still be but for the agreements, practices, and methods below set forth—

(a) Entered into and engaged, for a number of years before, and particularly since, 1935, in agreements and understandings among themselves and with