

IN THE MATTER OF
BRODIE'S, INC. ET AL.

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

Docket 5564. Complaint, June 7, 1948—Decision, Aug. 25, 1948

Where a corporation and two individuals who controlled the same, engaged in the interstate sale and distribution of push cards and punchboards, including (1) many designed for the sale or distribution of various specified articles, as explained by legends or instructions set forth thereon, under plans whereby there was determined by lot or chance the amount paid by a customer for a punch or push, and whether or not the customer received, without further charge, one of the articles being thus disposed of at much less than the normal retail price thereof, or nothing further; and (2) other devices upon which the purchasers placed, in the blank spaces provided therefor, instructions or legends of similar import, and which were made use of by ultimate purchasers only in combination with other merchandise so as to enable them to sell or distribute the same by lot or chance—

Sold and distributed such devices to dealers in candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce and to retailers thereof by whom, whether as direct or indirect purchasers, the assortments of such articles, as packed and assembled, together with said push cards and punchboard devices, by the purchasers thereof, were exposed to the purchasing public and sold and distributed by means of said cards and boards in accordance with the sales plan above described, involving a game of chance or sale of a chance to procure articles at much less than the normal retail price thereof; contrary to an established public policy of the United States Government; and thereby—

Supplied to and placed in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their merchandise; and means of or instrumentalities for engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act;

Whereby many members of the purchasing public were induced to trade or deal with retailers who sold or distributed such merchandise by means of said cards and boards, and the element of chance involved therein; and many retailers, as a result thereof, were induced to deal with or trade with manufacturers, wholesalers, and jobbers who sold and distributed such merchandise together with aforesaid devices:

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.

Mr. J. W. Brookfield, Jr. for the Commission.

Complaint

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 Brodie's, Inc., a corporation, and John L. Stratton and Thor C. Anderson, individuals and officers of Brodie's, Inc., 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Brodie's, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 2032-34 Fifth Avenue, in the city of Seattle, Wash. Respondent John L. Stratton is president and sales manager of respondent corporation, Brodie's Inc., and respondent Thor C. Anderson is secretary-treasurer of respondent corporation, and both respondents Stratton and Anderson are major stockholders in said corporation and have their place of business at the same location as the corporate respondent. All of said respondents have cooperated and acted together in doing the things and carrying on the practices hereinafter alleged.

Respondents are now and for more than 3 years last past have been engaged in the sale and distribution of devices commonly known as push cards and punchboards to dealers in various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, and to dealers in various articles of merchandise located in the various States of the United States, the Territory of Alaska, and in the District of Columbia.

Respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of Washington to purchasers thereof at their respective points of location in the various States of the United States other than Washington, in the Territory of Alaska, and in the District of Columbia. There is now and has been for more than 3 years last past a course of trade in such devices by said respondents, in commerce, between and among the various States of the United States, in the Territory of Alaska, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, to said dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchan-

Complaint

45 F. T. C.

dise to the consuming public. Respondents sell and distribute, and have sold and distributed, many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards 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 punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or push from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard 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 number 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 punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard 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, in the Territory of Alaska, and in the District of Columbia, purchase and have purchased respondents' said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments

comprised of various articles of merchandise together with said push card and punchboard 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 punchboards 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 punchboards, 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.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices 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 methods 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 which is contrary to an established public policy of the Government of the United States and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push cards and punchboard 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 acts and practices within the 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 June 7, 1948, issued and there-

Findings

45 F. T. C.

after served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with the use of unfair acts and practices in commerce in violation of the provisions of that act. On July 9, 1948, the respondents filed their answer in which they admitted all of 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 upon the 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 Brodie's, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 2032-34 Fifth Avenue, in the city of Seattle, Wash. Respondent John L. Stratton is president and sales manager of respondent corporation, Brodie's, Inc., and respondent Thor C. Anderson is secretary-treasurer of respondent corporation, and both respondents Stratton and Anderson are major stockholders in said corporation and have their place of business at the same location as the corporate respondent. All of said respondents have cooperated and acted together in doing the things and carrying on the practices hereinafter set forth.

Respondents are now and for more than 3 years last past have been engaged in the sale and distribution of devices commonly known as push cards and punchboards to dealers in various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, and to dealers in various articles of merchandise located in the various States of the United States, the Territory of Alaska, and in the District of Columbia.

Respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of Washington to purchasers thereof at their respective points of location in the various States of the United States other than Washington, in the Territory of Alaska, and in the District of Columbia. There is now and has been for more than 3 years last past a course of trade in such devices by said respondents, in commerce, between and among the various States of the United States, in the Territory of Alaska, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, to said dealers in merchandise, push cards and punchboards 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 push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards 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 punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the push card or punchboard, and when a push or punch is made a disk or printed slip is separated from the push card or punchboard 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 punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard 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 stated.

Findings

45 F. T. C.

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, in the Territory of Alaska, and in the District of Columbia; purchase and have purchased respondents' said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push card and punchboard 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 punchboards 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 punchboards, 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.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above set forth, 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 methods 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 methods is a practice which is contrary to an established public policy of the Government of the United States and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push cards and punchboard devices by respondents, as hereinabove stated, 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 the instrumentalities for engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The acts and practices of the respondents 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 answer of the respondents, in which answer the respondents admitted all of the material allegations of fact set forth in said complaint and stated that they waived all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Brodie's, Inc., a corporation, and its officers, and John L. Stratton and Thor C. Anderson, individuals, and said 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, push cards, punchboards, 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.

IN THE MATTER OF
GERALD A. RICE DOING BUSINESS AS OFFICE OF CIVIL
PREPARATION

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

Docket 5321. Complaint, May 19, 1945—Decision, Aug. 27, 1948

Where an individual engaged under the trade names "Public Service Institute" and "Chicago Secretarial College," and, less recently, "Civil Extension Service" and "Office of Civil Preparation," in the interstate sale and distribution of correspondence courses of studies for examinations for civil service position in the United States Government, and in advertising the same through printed matter and letters which were mailed and distributed to prospective students throughout the United States and particularly throughout the Northwestern States, and which included post cards, with return card, hand-out cards, and circulars, and included, in connection therewith, one of aforesaid trade names, and a spread eagle design or emblem similar to and in imitation of the great seal of the United States, or other similar emblems;

In selling his said courses through such advertising matter, wherein were made such statements as "CIVIL SERVICE Men—Women—18 to 45 Years of Age MANY OPPORTUNITIES, Common School Education Usually Sufficient," followed by a list of positions and salaries and the statement, "If you want to be ready to fill one of the next thousands of jobs with the Government that must be filled from time to time due to death, retirements, and normal Government expansion, fill in the attached card and mail at once,"; "GOVERNMENT POSITIONS ATTENTION! WANTED AT ONCE: * * ", etc.; and, under the caption, "Office of Civil Preparation, Spokane, Washington," the words, "Subject to change without notice. Positions as rated by the Civil Service Commission," followed by a list of 28 positions, with sex, age, etc.; and through personal calls of himself and his salesmen—

(a) Falsely represented and implied that his so-called "Public Service Institute," "Civil Extension Service," and "Office of Civil Preparation" were branches of or connected with the United States Civil Service Commission and that he and his agents were representatives of the Government; through aforesaid advertising and trade names, use of the designations "Director," "Assistant Director," and "Chief Special Agent," in correspondence with prospective students and purchasers, use of aforesaid emblems in application blanks and elsewhere as above set out, and statements to such effect in said personal calls, in which he and his salesmen referred to themselves as Government men, employed by said commission; and

(b) Falsely represented, as aforesaid, that civil service positions were immediately available and that he could place prospective students and purchasers, thus contacted, in such Government positions;