

Syllabus

IN THE MATTER OF

LAURIE AND COMPANY, INC.

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

Docket 5555. Complaint, May 24, 1948—Decision, Nov. 19, 1948

Where a corporation engaged in the interstate sale and distribution of push cards and punch boards, including (1) many designed for the sale and distribution of specified articles, as explained thereon, under plans whereby there was determined by customer's chance success or failure in securing a winning number, whether he received one of said articles at much less than the normal retail price, or nothing; and (2) other devices upon which the purchasers placed, in the blank spaces provided, instructions of similar import, and which were made use of by ultimate purchasers only to sell or distribute other merchandise by lot or chance—

- (a) Sold and distributed such devices in commerce to dealers in candy, cigarettes, clocks, razors, cosmetics, clothing, and other merchandise, who assembled the articles and devices and sold the combinations to retail dealers who exposed and sold them to the purchasing public in accordance with aforesaid sales plan; and

Where said corporation packed and assembled knives, watches, etc., for sale by chance to purchasing public, typical assortment consisting of a number of knives and a punch board for use in their sale and distribution under a plan whereby the success or failure of the purchaser in securing certain numbers determined whether he received for the 5 cents paid, a knife, a package of cigarettes, or nothing—

- (b) Sold such assortments to dealers, by whom, whether as direct or indirect purchasers, they were exposed and sold at retail to the purchasing public in accordance with the aforesaid lottery plan; and thereby,

Supplied to and placed in the hands of others, the means of conducting lotteries, gift enterprises, or games of chance in the sale or distribution of their merchandise, contrary to an established public policy of the Government of the United States, and in violation of criminal laws;

With the result that many members of the purchasing public, by reason of the element of chance involved, were induced to trade or deal with retailers who thus sold or distributed their merchandise; many retailers were induced to deal or trade with manufacturers, wholesalers, and jobbers who sold and distributed their products together with said push cards or punch boards; and gambling was taught and encouraged; to the injury of the public:

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

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

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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 Laurie & Co., Inc., a corporation, 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 it charges in that respect as follows:

Count I

PARAGRAPH 1. Respondent, Laurie & Co., 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 107 Spring Street, in the city of Seattle, Wash.

Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of devices commonly known as push cards and punchboards, and in the sale and distribution of said devices to 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, and to dealers in various articles of merchandise located within the various States of the United States, its territories, and in the District of Columbia.

Respondent causes and has caused said devices when sold to be transported from its 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 1 year last past a course of trade in such devices by said respondent in commerce between and among the various States of the United States, Territory of Alaska, and in the District of Columbia.

PAR. 2. In the course and conduct of its said business as described in paragraph 1 hereof, respondent sells and distributes, and has 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. Respondent sells and distributes, and has 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 punch or push 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 respondent 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 and in the District of Columbia, purchase and have purchased respondent's 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 cards 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

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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 in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push cards and punchboard devices by respondent 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 respondent thus supplies to, and places 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 respondent 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.

Count II

PARAGRAPH 1. Respondent, Laurie & Co., 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 107 Spring Street, in the city of Seattle, Wash.

Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of knives, watches, and other

articles of merchandise, and has caused said merchandise when sold to be transported from its place of business in the city of Seattle, Wash., to purchasers thereof at their respective points of location in the various States of the United States other than Washington, and in the Territory of Alaska, 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, in the Territory of Alaska, and in the District of Columbia.

PAR. 2. In the course of its business as described in Paragraph 1 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 said respondent, consists of a number of knives together with a punch board bearing the following legend:

5¢ per punch	GOOD LUCK KNIVES						5¢ per punch
	ELECTRICALLY TEMPERED RAZOR STEEL BLADES						
25	50	75	100	125	150	175	200
225	LAST PUNCH ON BOARD						
Nos. 250-275-300-325-350-375-400-425-450-475				EACH RECEIVES			
500-525-550-575-600-625-650-675-700-725				20 Cigarettes.			

Said knives are 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 begin with 1 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 knives 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 knives and the packages of cigarettes are worth more than 5 cents each and the purchaser who obtains a number calling for one of the knives 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.

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The respondent sells and has sold various punch boards and assortments to be distributed by the use of said punch boards in the manner above described and these punch boards 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 punch boards 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 its products in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plan or method in the sale of its 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 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 May 24, 1948, issued and thereafter served its complaint in this proceeding upon the respondent, Laurie & Co., Inc., a corporation, charging said respondent with the use of unfair acts and practices in commerce in violation of the provisions of that act. On August 19, 1948, the respondent filed its answer, in which

answer it 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 facts and its conclusion draw therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Laurie & Co., 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 107 Spring Street, in the city of Seattle, State of Washington.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of devices commonly known as push cards and punch boards, and in the sale and distribution of said devices to dealers in various other articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia, and to dealers in various articles of merchandise located within the various States of the United States, its Territories, and in the District of Columbia. The respondent causes and has caused said devices, when sold, to be transported from its place of business in the State of Washington to the purchasers thereof at their respective points of location in the various States of the United States other than Washington, and in the Territory of Alaska and the District of Columbia. There is now, and at all times mentioned herein there has been, a course of trade in such devices by the respondent in commerce among and between the various States of the United States, in the Territory of Alaska, and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid the respondent sells and distributes, and has sold and distributed, to many dealers in merchandise, push cards, and punch boards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used by such dealers in making sales of their merchandise to the consuming public. The respondent sells and distributes, and has sold and distributed, many kinds of push cards and punch boards, but all of said devices; when used in connec-

tion with the sale or distribution of merchandise, involve the same chance or lottery features 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 disk 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 and meaning as the instructions or legends placed by the respondent on said push card and punch board devices 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 described.

PAR. 4. Many persons, firms, and corporations who sell and distribute candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce purchase, and have purchased, the respondent's push card and punch board devices. Such purchasers pack and assemble, and have packed and assembled, assortments consisting of various articles of merchandise, together with said push cards and punch board devices, and sell and have sold their merchandise so packed and assembled to retail dealers for resale to the public.

PAR. 5. In addition to selling push cards and punch boards as separate items as herein described, the respondent as a regular part of its business also sells and distributes and for more than 1 year last past has sold and distributed to retail dealers knives, watches, and other articles of merchandise, and has caused this merchandise, when sold, to be transported from its place of business in Seattle, Wash., to purchasers thereof at their respective points of location in the various States of the United States other than the State of Washington and in the Territory of Alaska and in the District of Columbia. At all times mentioned herein there has been a course of trade by the respondent in such merchandise in commerce among and between the various States of the United States, in the Territory of Alaska, and in the District of Columbia.

In connection with this phase of the respondent's business it has been the respondent's practice to so pack and assemble its merchandise in assortments as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold to the purchasing public. One of such assortments, which is typical of the various assortments sold by the respondent, as aforesaid, consists of a number of knives, together with a punch board bearing the following legend:

5¢ per punch	GOOD LUCK KNIVES						5¢ per punch
	ELECTRICALLY TEMPERED RAZOR STEEL BLADES						
25	50	75	100	125	150	175	200
	225						
							LAST PUNCH ON BOARD
NOS.	250-275-300-325-350-375-400-425-450-475	EACH RECEIVES					
	500-525-550-575-600-625-650-675-700-725	20 CIGARETTES					

In such an assortment the plan is for the knives to be 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 begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bearing the legend above described informs purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the knives 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 knives and the packages of cigarettes are worth more than 5 cents each, but the purchaser who obtains a number calling for one of the knives 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. Under the respondent's sales plan 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 punch boards and assortments to be distributed by the use of said punch boards in the manner above described, and these punch boards vary only in detail as to the individual items of merchandise to be sold through the use of said boards, the plans of all of the boards and assortments being similar to the one hereinabove described.

PAR. 6. Retail dealers who have purchased the assortments of merchandise herein referred to, both those packed and assembled by the respondent and those packed and assembled by the purchasers of the respondent's push cards and punch boards as separate items, directly or indirectly expose and have exposed and sold said merchandise to the purchasing public by means of the push cards and punch boards in accordance with the aforesaid sales plan. Thus, both in the sale of its knives, watches, and other merchandise, packed and assembled by the respondent as hereinabove described, and in the sale of its push cards and punch boards as separate items, the respondent supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of their merchandise.

PAR. 7. Because of the element of chance involved in the purchase of merchandise by means of push cards and punch boards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing their merchandise by means thereof. As a result, many retail dealers have been induced to deal or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute their products together with said push cards or punch board devices.

PAR. 8. The sale of merchandise to the purchasing public through the use of, or by means of, push cards or punch boards in the manner above described, 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, 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 which is

contrary to an established public policy of the Government of the United States and is in violation of criminal laws, and constitutes unfair acts and practices in commerce.

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 answer of the respondent, in which answer said respondent admitted all of the material allegations of fact set forth in said complaint and stated that it 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 the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Laurie & Co., Inc., a corporation, and its officers, agents, representatives, and employees, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, push cards, punch boards, 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 said respondent and its officers, agents, representatives, and employees, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of knives, watches, or any other article of merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards, punch boards, or other lottery devices, either with assortments of knives, watches or other merchandise or separately, which said push cards or punch boards are to be used, or may be used, in selling or distributing such knives, watches, or other merchandise to the public.

2. Selling or distributing knives, watches, or other merchandise so packed or assembled that sales of such knives, watches, or other merchandise to the public are to be made or, due to the manner in which

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such merchandise is packed and assembled at the time it is sold by the respondent, may be made by means of a game of chance, gift enterprise, or lottery scheme.

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 it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Complaint

IN THE MATTER OF
 INTER-COMMUNICATION SYSTEM OF AMERICA, 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 5540. Complaint, May 10, 1948—Decision, Dec. 1, 1948

Where a corporation and its three officers who managed and controlled it, engaged in the interstate sale and distribution of intercommunication devices which they designated "Flash-A-Call"; through advertisements in newspapers, pamphlets, circulars, letters, magazines, and other media—

- (a) Represented and implied that they gave to each of their salesmen or agents one of their said devices "free" or without charge or performance of service therefor;

Notwithstanding the fact that a specified deposit and sale of ten devices were required under one plan, and sale of a designated number under another, before the agent became entitled to receive the so-called "free" device;

- (b) Falsely represented that said device was a new invention, and that there were no products sold on the market in competition therewith; that sale thereof required no capital and no sales effort or ability; and that 99 out of every 100 prospective customers purchased the same;

- (c) Represented that the average usual weekly net earnings or profits consistently made in the ordinary course of business and under normal conditions by their salesmen, representatives or agents were from \$221.90 to \$442.40; when in fact such figures represented unusual, exceptional weekly earnings or profits not consistently made under normal conditions;

- (d) Falsely represented that conversations transmitted over their said devices were strictly private or confidential; when in fact the devices were not such as to enable the users of them to converse privately; and

- (e) Misleadingly and deceptively represented or implied through the use of the statement "fully guaranteed", without disclosing the nature and extent of their guarantee and the manner of performance undertaken by the guarantor, that their devices were guaranteed in every respect;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true and to induce many members of the public to purchase substantial numbers of their said device:

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. D. C. Daniel for the Commission.

Mr. Eugene Bernstein, 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