

Complaint

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IN THE MATTER OF

ALEX LEWIS AND HERMAN OFFENHENDEN TRADING
AS LOC PRODUCTSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5542. Complaint, May 18, 1948—Decision, July 7, 1949*

Where two individuals engaged in the interstate sale and distribution of push cards and punchboards, including (1) many designed for the sale of various specified articles, as explained by instructions thereon, whereunder those who by chance punched lucky or winning numbers received articles of merchandise without additional cost at much less than normal retail prices, and others received nothing for their money other than the privilege of a push or punch; and (2) other devices upon which the purchasers placed in the blank spaces provided instructions of similar import, and which were made use of only in combination with other merchandise so as to enable them to sell and distribute the same by lot or chance—

Sold and distributed such devices to dealers in candy, cigarettes, clocks, razors, cosmetics, clothing and other articles in commerce, by whom assortments of such articles, as packed and assembled together with said cards and boards were sold for sale to the public through sales of chances to procure articles at much less than the normal retail price thereof, contrary to an established public policy of the United States and in violation of criminal laws;

With the result that many retailers were thereby induced to deal or trade with manufacturers, wholesalers and jobbers who sold and distributed merchandise together with said push card or punchboard devices; and they thereby supplied to and placed in the hands of such retailers the means of conducting lotteries, games of chance or gift enterprises in the sale and distribution of merchandise, and the means and instrumentalities for engaging in unfair acts and practices:

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

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 Alex Lewis and Herman Offenhenden, individuals and as copartners trading as Loc Products, have violated the provisions of the said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Alex Lewis and Herman Offenhenden, are individuals and partners trading and doing business as Loc Prod-

ucts, with their office and principal place of business located at 524 Broadway, in the city of Seattle, Wash.

Respondents are now, and for more than 1 year last past, have 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.

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 territories of the United States 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 respondents in commerce between and among the various States of the United States, the territories of the United States 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 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 merchan-

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dise 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 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 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 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 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 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 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 May 18, 1948, issued and thereafter served its complaint in this proceeding upon the respondents, Alex Lewis and Herman Offenhenden, individually and as copartners trading as Loc Products, charging said respondents with the use of unfair acts and practices in commerce in violation of the provisions of that act. On September 7, 1948, the respondents filed their answer, in which answer 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. The respondents, Alex Lewis and Herman Offenhenden, are individuals and partners trading and doing business as Loc Products, with their office and principal place of business located at 524 Broadway, in the city of Seattle, Wash.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of devices commonly known as push cards and punchboards and in the sale and distribution and in the District of Columbia, and to dealers in various articles of merchandise located within 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. 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 territories of the United States and in the District of Columbia. There is now, and at all times mentioned herein there has been, a course of trade in such devices by said respondents in commerce between and among the various States of the United States, the territories of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of their said business as aforesaid, respondents sell and distribute, and have sold and distributed, to many dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used by such dealers 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 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 the push card and punchboard devices first hereinabove described. The only use to be made of such 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 described.

PAR. 4. 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 respondents' said push card and punchboard devices. Such purchasers pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise, together with said push cards and punchboard devices, and sell and have sold their merchandise so packed to retail dealers for resale to the public.

PAR. 5. Because of the element of chance involved in the purchase of merchandise by means of push cards and punchboards, 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 merchandise together with said push card or punchboard devices.

PAR. 6. The sale of merchandise to the purchasing public through the use of, or by means of, push cards or punchboards 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

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

The sale or distribution of said push cards and punchboard devices by respondents as herein found 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.

CONCLUSION

The acts and practices of 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 said respondents admitted all of the material allegations of fact set forth in the complaint and 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 respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Alex Lewis and Herman Offenhenden, individually and trading as Loc Products, or trading under any other name, and their 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.

Syllabus

IN THE MATTER OF

HYMAN GREENGLASS TRADING AS GREENGLASS SALES
CO., PROFIT MANUFACTURING CO. AND ZENO GAME
CO.

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

Docket 5556. Complaint, May 24, 1948—Decision, July 7, 1949

There is a marked preference on the part of purchasers for resale, and a substantial portion of the purchasing public, for dealing directly with and buying products from the manufacturer thereof.

Where an individual engaged in the interstate sale and distribution of push cards and punchboards, including (1) many designed for the sale of various specified articles which were awarded at much less than normal retail prices to purchasers of lucky numbers while others received nothing for their money other than the push or punch; and (2) other devices with blank spaces upon which the purchasers placed their own instructions of similar import, and used to sell merchandise by lot or chance—

- (a) Sold and distributed such devices to dealers in candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles in commerce, who sold assortments thereof packed with said cards and boards, for sale to the public in accordance with the aforesaid chance sales plan, contrary to an established public policy of the United States Government and in violation of criminal laws;

With the result that many members of the public were induced to deal with retailers who thus sold such merchandise; many retailers were induced to deal with manufacturers, wholesalers, and jobbers, who followed said practice; gambling was taught and encouraged among members of the public; and he 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

Where said individual, engaged also in the interstate sale and distribution of games, cigarette lighters, clocks, and other articles, including, as typical of lottery assortments thus sold and dealt in, a number of cigarette lighters and packages of cigarettes with a punchboard for use in their sale and distribution to purchasers punching lucky numbers, while others received nothing for the 5 cents paid—

- (b) Sold and distributed 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 aforesaid chance sales plans, contrary to established public policy;

With the result that he thereby supplied to and placed in the hands of others the means of conducting games of chance in the sale of his product; and many persons were attracted by said sales plans and were thereby induced to buy and sell his merchandise; and

- (c) Conveyed the erroneous impression, through use of the abbreviation "Mfg." as part of his trade name on letterheads, invoices and other statements,