

IN THE MATTER OF
LEO LICHTENSTEIN ET AL. TRADING AS HARLICH MAN-
UFACTURING CO. AND LOOMIS MANUFACTURING CO.

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

Docket 4879. Complaint, Nov. 18, 1943¹—Decision, June 30, 1950

Where three individuals engaged in the interstate sale and distribution of a variety of push cards and punch boards, which ranged in size from 10 to 100 disks, and from 50 to 10,000 holes, respectively, were arranged with and without depictions of specific articles of merchandise and instructions, blank spaces therefor, or cut-outs, or made to order, and were designed for use by retail dealers in the sale and distribution of merchandise to the public through schemes whereby the purchasers who selected by chance certain numbers or legends concealed in the card or board, became entitled to designated articles of merchandise at no additional cost, and others received nothing further for their money other than the privilege of making a play, or, in some cases, merchandise of much less value than that above referred to—

- (a) Sold and distributed such push cards and punch boards to manufacturers, jobbers, and wholesale dealers in candy, cigarettes, cigarette lighters, cigarette chests, knives, novelties, and other articles of merchandise, who made up assortments thereof, and sold them to retailers, by whom they were exposed and sold to the purchasing public in accordance with the aforesaid sales plan; and

Where said individuals, engaged also in selling and distributing to dealers cigarette chests or boxes, including assortments packed for use of a similar lottery scheme in sales to the purchasing public, typical assortment consisting of a chest and cigarettes, and a punch board for use in sale and distribution thereof under a plan whereby the purchaser who secured by chance a certain number received the chest packed with cigarettes, and other specified numbers entitled the purchasers to a package of cigarettes, the value of which exceeded the five cents paid, others receiving nothing for their money—

- (b) Sold such assortments thus packed and assembled to dealers and retailers, by whom they were directly or indirectly exposed and sold to the purchasing public through the use of said punch boards and in accordance with the aforesaid sales plan; and

Thereby supplied to and placed in the hands of others, through such assortments as above described and through those assembled by the purchasers of their punch boards and push cards, the means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of their merchandise, contrary to an established public policy of the United States Government;

¹ Amended.

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With the result that members of the purchasing public, by reason of the element of chance involved in such merchandising, were induced to deal with retailers who used such lottery devices; many retailers were thereby induced to deal or trade with suppliers who sold their product together with such devices; competitors of such retailers were faced with the alternatives of using such sale of their merchandise or suffering the loss of substantial trade; competitors of suppliers who did not use such devices often had sales diverted to those who did; and gambling was taught and encouraged thereby: *Held*, That such acts and practices, under the circumstances set forth, were all to the injury and prejudice of the public and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. John W. Addison* and *Mr. James A. Purcell*, trial examiners.

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

Mr. George M. Glassgold and *Mr. James A. Murray, Jr.*, of Washington, D. C., for respondents.

AMENDED 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 *Leo Lichtenstein*, *Libbie Lichtenstein*, and *Byron J. Lichtenstein*, individually and trading as *Harlich Manufacturing Co.* and *Loomis Manufacturing Co.*, 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 interest of the public, hereby issues its amended complaint stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondents *Leo Lichtenstein*, *Libbie Lichtenstein*, and *Byron J. Lichtenstein*, are individuals doing business as copartners under the name of *Harlich Manufacturing Co.*, with their principal office and place of business located at 1401-1417 West Jackson Boulevard, Chicago, Ill. Respondents are now and for some time last past have been engaged in the manufacture of devices commonly known as push cards and punch boards, and in the sale and distribution of said merchandise to manufacturers of, and in the sale and distribution of said merchandise to manufacturers of, and 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.

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Respondents cause and have caused said devices, when sold, to be transported from their aforesaid place of business to purchasers thereof in various States of the United States other than the State of Illinois and in the District of Columbia, at their respective points of location. There is now and has been for some time last past a course of trade in such push-card and punch board devices by said respondents in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, to said manufacturers and dealers push cards and punch boards 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 said push cards and punch boards, 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 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 disc 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 respondents 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 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 punch board devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punch board 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 punch boards 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 punch boards, 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. Said persons, firms, or corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punch board devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of push card or punch board devices or similar devices because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and in violation of criminal laws, and such competitors refrain from supplying to, or placing in the hands of, others push card or punch board devices, or any other similar devices which are to be used, or which may be

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used in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery or chance. As a result thereof, substantial trade has been unfairly diverted to said persons, firms, and corporations from said competitors in said commerce, who do not sell or use such 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 of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair methods of competition and 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 enterprise 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 methods of competition and 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.

COUNT II

PARAGRAPH 1. Respondents Leo Lichtenstein, Libbie Lichtenstein, and Byron J. Lichtenstein are individuals trading as copartners under the names of Loomis Manufacturing Co. and Harlich Manufacturing Co., with their principal office and place of business located at 1417 West Jackson Boulevard, Chicago, Ill. Respondents are now and for more than 6 months last past have been engaged in the sale and distribution of cigarette chests or boxes to dealers. Respondents cause and have caused their said cigarette chests, when sold, to be shipped or transported from their aforesaid place of business in the State of

Illinois to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. There is now and for more than 6 months last past has been a course of trade by said respondents to purchase cigarette chests in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their business, respondents are and have been in competition with other individuals and with firms and corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of said chests so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said chests are sold and distributed to the purchasing public. One of said assortments is sold or distributed to the purchasing public in the following manner. This assortment consists of a punchboard and one of the treasure chests. Appearing on the face of the punchboard is the following legend:

(Picture of 2 Chests)	Treasure Chest in Rich Pig Grain — Packed with 550 Cigarettes — Number 100 Receives Treasure Chest Packed With 550 Cigarettes	
Ideal Chest for Hosiery, Handkerchiefs, Gloves, Trinkets and other articles.	Numbers 125-135-145-155-225- 235-245-255-325-335-345-355- 425-435-445 Each Receive 1 Package (20) Cigarettes	5¢ Per Sale
	Numbers 525-535-545-555-625 635-645-655-725-735-745-755 Each Receive 1 Package (20) Cigarettes	

Numbers 825-835-845 Each Receive 1 Package (20) Cigarettes

Said treasure chest is distributed to the purchasing public by means of said punch board in the following manner: Sales are 5 cents each and when a punch is made 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 and said numbers are arranged in 10 sections. The board bears a statement informing purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the

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cigarette chests packed with cigarettes and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes. A customer who does not qualify by obtaining one of the specified numbers receives nothing for his money. The cigarette chest and the packages of cigarettes are worth more than 5 cents each and the purchaser who obtains a number calling for the cigarette chest 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 cigarette chest and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondents furnish and have furnished various punch boards and gift assortments for use in the sale and distribution of their cigarette chests by means of a game of chance, gift enterprise, or lottery scheme. Such punch boards are similar to the one hereinbefore described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' cigarette chests directly or indirectly expose and sell same to the purchasing public and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The use by the respondents of said sales plan or method in the sale of a cigarette chest and the sale of said cigarette chests 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.

PAR. 4. The sale of merchandise to the purchasing public by the method or sales plan hereinabove set forth involves a game of chance or the sale of a chance to procure a cigarette chest at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondents as above alleged do not use said method or any method involving a game of chance, or the sale of a chance to win something by chance or by any other method which is contrary to public policy. Persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their merchandise and by the element of chance involved therein and are thereby induced to buy and sell respondent's merchandise in preference to merchandise of said competitors of respondents who do not use the same or equivalent methods.

The use of said methods by respondents because of said game of chance has a tendency and capacity to unfairly divert trade in com-

merce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent methods and as a result thereof substantial injury is being done and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 18, 1943, issued and thereafter served upon the respondents named in the caption hereof its amended complaint in this proceeding, charging said respondents with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of that act. After the filing of the respondents' answer, testimony, and other evidence in support of and in opposition to the allegations of the amended complaint were introduced before a trial examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the amended complaint, the respondents' answer thereto, the testimony and other evidence, the trial examiner's recommended decision and exceptions thereto filed on behalf of the respondents, and briefs and oral argument of counsel and the Commission, having disposed of the respondents' exceptions to the recommended decision and 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, Leo Lichtenstein, Libbie Lichtenstein, and Byron J. Lichtenstein are individuals trading and doing business as copartners under the names of Loomis Manufacturing Co. and Harlich Manufacturing Co., with their principal office and

place of business located at 1401-1417 West Jackson Boulevard, in the city of Chicago, State of Illinois.

PAR. 2. Trading under the name of Harlich Manufacturing Co., the respondents are now, and for a number of years last past they have been, engaged in the manufacture of devices commonly known as punch boards and push cards, and in the sale and distribution of said devices to manufacturers of and dealers in various other articles of merchandise. The respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of Illinois 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 at all times mentioned herein there has been a regular course of trade in such devices by the respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Among the various types of punch boards and push cards manufactured and sold by the respondents, as aforesaid, are many which are designed for use by retail dealers in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme. These boards and cards vary in detail, but all of them involve the same general principle. The punch boards contain a certain number of holes in which are placed slips of paper bearing different numbers or legends. These slips of paper are effectively concealed from view. Persons desiring to "play" the board pay to the operator thereof a designated sum, and thus become entitled to punch the board and to remove therefrom one of the slips of paper. Certain specified numbers or legends on the slips entitle purchasers to designated articles of merchandise without additional cost. Purchasers who do not punch a lucky or winning number receive nothing for their money other than the privilege of playing the board, or in some cases, merchandise which is of much less value than that which would be received if lucky numbers were punched. The articles of merchandise are thus distributed to the public wholly by lot or chance. On some of the boards, the amount to be paid for the privilege of making the punch is also determined by chance.

The push cards are operated in substantially the same manner except that instead of having holes, the cards usually have perforated discs which contain the numbers or legends. As in the case of the boards, the numbers or legends are effectively concealed from the purchaser of the chance until after the punch has been made and the disc separated from the card. The punch boards range in size from 50

holes to 10,000 holes, while the push cards usually are much smaller, ranging in size from 10 discs to 100 discs.

PAR. 4. Many of the punch boards and push cards bear picturizations and descriptions of certain articles of merchandise such as candy, cigarettes, cigarette lighters, cigarette chests, etc., as well as instructions which explain the operation of the device and the prizes to be awarded to those obtaining the lucky numbers.

Others have no pictures or instructions thereon, but have blank spaces in which the purchaser of the devices may insert his own instructions and a statement of the merchandise to be awarded as prizes.

Some of the punch boards are known as "cut out" boards, which means that the board contains a large hole or depression in which may be exhibited a sample of the merchandise offered by the dealer.

Many of the boards and cards sold by the respondents are made to order to meet the requirements of the particular purchaser.

Except in the case of so-called money boards used solely for gambling, the only use to be made of said punchboard and push card devices and the only manner in which they are used by the ultimate purchaser thereof is in combination with other merchandise so as to enable said ultimate purchaser to sell or distribute the other merchandise by means of lot or chance.

PAR. 5. Manufacturers, jobbers, and wholesale dealers in various articles of merchandise in commerce, such as candy, cigarettes, cigarette lighters, cigarette chests, knives, novelties, and other articles, purchase the respondents' punchboards and push cards and make up assortments consisting of various articles of merchandise and a board or card and sell their merchandise so packed and assembled to retail dealers for resale to the public.

PAR. 6. In addition to manufacturing and selling punchboards and push cards as separate items, as herein described, the respondents, trading as Loomis Manufacturing Co. and as Harlich Manufacturing Co. for a number of years have been engaged also in the sale and distribution of cigarette chests or boxes to dealers. The respondents have caused their said cigarette chests, when sold, to be shipped or transported from their place of business in the State of Illinois to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. At all times mentioned herein there has been a regular course of trade by the respondents in such cigarette chests or boxes in commerce between and among the various States of the United States and in the District of Columbia.

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In connection with this phase of the respondents' business, it has been their practice to sell to dealers certain assortments of their cigarette chests or boxes so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said chests are sold and distributed to the purchasing public. One of such assortments has been sold or distributed to the purchasing public in the following manner. Said assortment has consisted of a punchboard and one of the chests. Appearing on the face of the punchboard was the following legend:

(Picture of two chests)	Treasure Chest in Rich Pig Grain —Packed with 550 Cigarettes— Number 100 Receives Treasure Chest Packed With 550 Cigarettes	5¢
Ideal Chest for Hosiery, Handkerchiefs, Gloves, Trinkets and other articles.	Numbers 125-135-145-155-225 235-245-255-325-335-345-355 425-435-445 Each Receive 1 Package (20) Cigarettes	Per Sale
	Numbers 525-535-545-555-625 635-645-655-725-735-745-755 Each Receive 1 Package (20) Cigarettes	
	Numbers 825-835-845 Each Receive 1 Package (20) Cigarettes	

In such an assortment the plan was for the chest to be distributed to the purchasing public by means of said punch board 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 1 and continued to the number of punches there were on the board, but the numbers were not arranged in numerical sequence and said numbers were arranged in 10 sections. The board bore a statement informing purchasers and prospective purchasers that a certain specified number entitled the purchaser thereof to receive one of the cigarette chests packed with cigarettes and certain other specified numbers entitled the purchasers thereof to receive a package of cigarettes. A customer who did not qualify by obtaining one of the specified numbers received nothing for his money. The cigarette chest and the packages of cigarettes were worth more than 5 cents each, and the purchaser who obtained a number calling for the cigarette chest or a pack of cigarettes received the same for 5 cents. The numbers were effectively concealed from the purchasers and prospective purchasers until a punch or selection had been made and the particular punch separated from the board. The cigarette chest and cigarettes

were thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondents have furnished various punch boards and gift assortments for use in the sale and distribution of their cigarette chests by means of a game of chance, gift enterprise, or lottery scheme. Such punch boards were similar to the one hereinabove described and varied only in detail.

PAR. 7. Retail dealers who have purchased the assortments of merchandise herein referred to, both those packed and assembled by the respondents and those packed and assembled by the purchasers of the respondents' punch boards and push cards as separate items, have directly or indirectly exposed and sold said merchandise to the purchasing public by the use of the punch boards and push cards in accordance with the aforesaid sales plan. Thus, both in the sale of their cigarette chests or boxes packed and assembled by the respondents as hereinabove described and in the sale of their punch boards and push cards as separate items, the respondents have supplied to and placed 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. 8. Because of the element of chance involved in the purchase of merchandise by means of punch boards and push cards, members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing their merchandise through the use of such devices. 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 punch board and push card devices.

Such retail dealers have competitors who sell or distribute like or similar articles of merchandise. Said competitors are faced with the alternative of also using punch boards and push cards and other similar devices in connection with the sale and distribution of their merchandise or suffering the loss of substantial trade.

Manufacturers, wholesale dealers, and jobbers who use punch boards, push cards and similar devices in connection with the sale of their merchandise to retailers also have competitors who do not use such devices. Such manufacturers, wholesalers, and jobbers who do not use lottery devices in promoting the sale of their merchandise often have their sales and potential sales diverted to those who do use these devices.

PAR. 9. The sale of merchandise to the purchasing public through the use or by means of punch boards and push cards in the manner

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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 prejudice 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 policy of the Government of the United States.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice and injury of the public and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the amended complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and briefs and oral argument of counsel, 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, Leo Lichtenstein, Libbie Lichtenstein, and Byron J. Lichtenstein, individually and trading as Harlich Manufacturing Co. and as Loomis Manufacturing Co., or trading under any other name or trade designation, 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, punchboards, pushcards, 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 respondents and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commis-

sion Act, of cigarette chests or boxes, or other articles of merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others punchboards, pushcards, or other lottery devices, either with assortments of cigarette chests or boxes or other merchandise, or separately, which said punchboards, pushcards, or other lottery devices, are to be used, or may be used, in selling or distributing such cigarette chests or boxes or other merchandise to the public.

2. Selling or distributing cigarette chests or boxes, or other articles of merchandise, so packed or assembled that sales thereof 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 the respondents, 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 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.

Commissioner Mason concurring in the findings as to the facts and conclusion, but not concurring in the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in docket 5203—Worthmore Sales Co.¹

¹ See *ante*, at p. 622 et seq.

IN THE MATTER OF
UNITED STATES RUBBER CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSECTION (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15,
1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 4972. Complaint, May 28, 1943—Decision, June 30, 1950

Where the largest single manufacturer of waterproof rubber footwear and, prior to its discontinuance of said line in 1942, of canvas footwear, in the United States, engaged in the interstate sale and distribution of such products to jobbers or wholesalers, national and regional and local retail chain store organizations, mail order houses and single retail store customers, selling its first grade products under its advertised and unadvertised brands through its numerous branch warehouses and sales agencies to single retail stores and local chains, and also under customers' private labels or special brands to mail order houses and national and regional chain stores;

In selling to retailers, many of which were engaged in competition with one another and with customers of its competitors in different trade areas, its said products of first grade and quality—other than its "U. S." and "U. S. Specialties Line" of waterproof footwear and its "Kedettes" and "Kedsman" canvas footwear, which it sold to all customers at uniform prices—under a discount schedule under which its advertised and nonadvertised brands were sold to retailers through its branch store system at list prices or at one of several discounts which ranged from 3 to 13 percent and 5 percent off list, depending upon the method and conditions of sale in each separate transaction, and under which its private brand footwear was sold to national stores and mail order houses at prices equivalent to 18 percent off list—

Discriminated in price through certain price differences thus brought about in the sale of its advertised and unadvertised brands of footwear to retailers under said branch store system, which exceeded differences in cost of manufacture, sale, and delivery by amounts ranging from \$0.0047 to \$0.0480 per dollar of gross sales in the case of certain of said discounts;

Effect of which discriminations in price had been or might be substantially to lessen competition in the line of commerce in which said corporation and its competitors were engaged and to injure, destroy, or prevent competition in the sale and distribution of rubber and canvas footwear between its purchasers who received the benefits of such discriminations and competing purchasers who did not;

Held, That such acts and practices under the circumstances set forth, were violative of subsection (a) of the Clayton Act as amended.

In said proceeding in which exhaustive cost studies disclosed that certain of respondent's price differences, including those between the prices on private brand footwear sold to national chains and mail order houses, and the prices on advertised and unadvertised brands sold to other retailers through its