Syllabus

IN THE MATTER OF

ARTHUR WOOD TRADING AS ARTHUR WOOD AND CO.

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

Docket 4069. Complaint, Mar. 20, 1940—Decision, Sept. 7, 1950

Where an individual engaged in the interstate sale and distribution of pushcards and punchboards including many which arranged with explanatory legends or instruction or, in some cases, with blank spaces provided therefor, were designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme, whereby a lucky purchaser of a push or punch secured, by his chance selection of a concealed winning number, an article of merchandise at much less than its normal retail price and others received nothing for their money other than the privilege of making a push or punch—

(*a*) Sold such devices to dealers in such merchandise as candy, cigarettes, etc. who made up assortments of various articles together with a pushcard or punchboard, and sold the same to retailers by whom they were exposed and sold to purchasing public in accordance with the aforesaid sales plan; and

Where said individual, engaged also in the competitive interstate sale and distribution of knives and other articles, including assortments which were so packed and assembled as to involve the use of a lottery scheme in the sale and distribution thereof, typical one consisting of 12 knives together with a punchboard, under a plan, as explained thereon, whereby those who secured by chance certain lucky numbers, or the last sale in the different sections, received for their 5 cents, a knife, the value of which was in excess thereof, others receiving nothing other than the privilege of a punch;

(*b*) Sold such assortments to wholesalers, jobbers and retailers, by whom they were directly or indirectly exposed and sold to the purchasing public by means of the pushcards and punchboards in accordance with such plans; and

Thereby supplied to and placed in the hands of others the means of conducting games of chance in the sale and distribution of merchandise to the purchasing public, involving sale of a chance to procure articles at much less than their normal retail prices; 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 purchasing public were attracted by such method of sale and were induced to trade with retailers and others who thus distributed their merchandise; and many retailers and others were induced to deal with manufacturers, wholesalers, and jobbers who thus sold and distributed their products; whereby trade in commerce was unfairly diverted to those employing such plans from their competitors who did not use such methods, and with tendency and capacity so to do:

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

Before *Mr. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

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 Arthur Wood, an individual trading as Arthur Wood & Co., hereinafter referred to as respondent, has 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 complaint stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondent, Arthur Wood, is an individual trading as Arthur Wood & Co. with his principal office and place of business located at 219 Market Street, St. Louis, Mo. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of knives and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in St. Louis, Mo., to purchasers thereof, at their respective points of location, in the various other States 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 by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his said business respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers, certain assortments of merchandise so packed or assembled, as to involve the use of game of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for

the purpose of showing the method used by respondent and is as follows:

This assortment consists of 12 knives, together with a device commonly called a punchboard. Said knives are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 5 cents each and when a punch is made from the board, 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 statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a knife and that purchasers of the last sale in each section receives a knife. A purchaser who does not qualify by obtaining one of the lucky numbers, or by punching the last number in one of the sections receives nothing for his money other than the privilege of punching a number from the board. The said knives are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the knives, or the last punch on the board, receives the same for the price of 5 cents. The said 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. These said knives are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of merchandise along with punchboards involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said 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 the criminal laws.

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, firms, and corporations who sell and distribute merchandise in competition

with respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent, who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia, to respondent from his said competitors who do not use the same or an equivalent method. As a result thereof, substantial injury is being and has been done by respondent 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 respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

COUNT II

PARAGRAPH 1. Respondent Arthur Wood is an individual trading as Arthur Wood & Co., with his principal office and place of business located at 219 Market Street, St. Louis, Mo. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of devices commonly known as pushcards and punchboards to dealers in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices, when sold, to be transported from his aforesaid place of business in St. Louis, Mo., to purchasers thereof, at their respective points of location, in various States of the United States, other than the State of Missouri, and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by said respondent in such pushcards and punchboard devices in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, to dealers pushcards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of their merchandise to the consuming public. Respondent sells and distributes, and has sold and distributed, many kinds of said pushcards and punchboards but all of said pushcards and punchboards involve the same chance or lottery features, when used in connection with the sale or distribution of merchandise and vary only in detail. The majority of said pushcards 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 pushcards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the device, for the amount of money paid, and when a push or punch is made a disk or printed slip is separated and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price of said articles of merchandise. Persons not obtaining one of the 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.

Dealers purchasing punchboards or pushcards without said printed instructions or legends thereon place printed instructions or legends on the faces of said pushcards or punchboards on the blank space provided therefor. The legends or instructions placed on the faces of said devices by said dealers and used in conjunction therewith involve the same chance or lottery features as those legends or instructions placed or printed on the faces of pushcard or punchboard devices by respondent, as hereinabove described.

PAR. 3. Many persons, firms and corporations who sell and distribute candy, cigarettes, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia have purchased respondent's said pushcards and punchboard devices and have packed and assembled

assortments comprised of various articles of said merchandise, together with said pushcards and punchboard devices. Retail dealers who have purchased such assortments, either directly or indirectly, or retail dealers who have purchased said devices direct from respondent and made up their own assortments, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said pushcards or punchboards in accordance with the sales plan as described in paragraph 2 hereof. Many dealers in, and ultimate consumers of, said merchandise have been induced to deal with or purchase said merchandise from dealers selling or distributing the same by means of or together with respondent's said pushcards and punchboards because of the lottery feature involved therein and inherent thereto. Said persons, firms, and 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 pushcard and punchboard 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 and distribute their said merchandise by means of pushcard or punchboard devices or similar devices because of the element of chance or lottery feature involved therein and because such practices are contrary to the public policy of the Government of the United States and such competitors refrain from supplying to or placing in the hands of others such pushcard or punchboard devices or any other similar devices to be used in connection with the sale and distribution of the merchandise of such competitors to the general public by lot 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 said merchandise to the purchasing public 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 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 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 meth-

ods of competition and unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

The sale or distribution of said pushcards and punchboards 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 and 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 methods of competition and unfair and deceptive 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 and deceptive 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 March 20, 1940, issued and thereafter served upon the respondent Arthur Wood, an individual trading as Arthur Wood & Co., its complaint in this proceeding, charging said respondent 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. The respondent's original answer to said complaint was filed on May 10, 1940. At a hearing held on March 13, 1947, before a trial examiner of the Commission theretofore designated by it, the respondent requested of the trial examiner and was by him granted permission to withdraw the original answer to said complaint and to file in lieu thereof a substitute answer admitting all of the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearings as to said facts, and said substitute answer was accordingly received and filed. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and substitute answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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 respondent, Arthur Wood, is an individual trading and doing business as Arthur Wood & Co., with his principal of-

fice and place of business located 926 North Broadway, in the city of St. Louis, State of Missouri.

PAR. 2. Said respondent is now, and for a number of years last past he has been, engaged in the sale and distribution of devices commonly known as pushcards and punchboards. The respondent causes and has caused said devices, when sold, to be transported from his place of business in the State of Missouri to purchasers thereof at their respective points of location in the various States of the United States other than Missouri 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 respondent 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 pushcards and punchboards sold by the respondent to dealers in other merchandise are many which are designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme. These cards and boards vary in detail, but all of them involve the same general principle. The majority of said devices have printed on the faces thereof certain legends or instructions which explain the manner in which they are to be used or may be used in the sale or distribution of specified articles of merchandise. The prices of the sales on said punshcards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the device, for the amount of money paid, and when a push or punch is made a disk or printed slip is separated and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price thereof. Persons not obtaining one of the 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.

Dealers purchasing pushcards or punchboards without said printed instructions or legends thereon place printed instructions or legends on the faces of said pushcards or punchboards on the blank space provided therefor. The legends or instructions placed on the faces of said devices by said dealers and used in conjunction therewith involve the same chance or lottery features as those legends or instructions placed

or printed on the faces of pushcard or punchboard devices by the respondent, as hereinabove described.

PAR. 4. Many persons, firms, and corporations who sell and distribute various articles of merchandise in commerce, such as candy, cigarettes, and other articles, purchase and have purchased the respondent's pushcards and punchboards, and such purchasers make up and have made up assortments consisting of various articles of merchandise and a board or card and sell and have sold their merchandise so packed and assembled to retail dealers and others for resale to the public.

PAR. 5. In addition to selling pushcards and punchboards as separate items, as herein described, the respondent is now, and for a number of years last past he has been, engaged also in the sale and distribution of knives and other articles of merchandise. He causes and has caused such knives and other articles of merchandise, when sold, to be transported from his place of business in the State of Missouri to purchasers therof at their respective points of location in various other States of the United States 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 merchandise by the respondent in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of this business, the respondent is and has been in competition with other individuals and with partnerships and corporations also engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In connection with this phase of the respondent's business it is and has been his practice to sell to wholesale dealers, jobbers, and retail dealers certain assortments of knives and other articles 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. For the purpose of illustrating this practice one of such assortments is described as follows:

The assortment consists of 12 knives, together with a punchboard. The knives are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 5 cents each and when a punch is made from the board, 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 statement or statements informing

prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a knife and that purchasers of the last sale in each section receive a knife. A purchaser who does not qualify by obtaining one of the lucky numbers, or by punching the last number in one of the sections receives nothing for his money other than the privilege of punching a number from the board. The said knives are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the knives, or the last punch on the board, receives the same for the price of 5 cents. The said 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. These knives are thus distributed to purchasers of punches from the board wholly by lot or chance.

The respondent sells and distributes, and has sold and distributed, various other assortments of merchandise and punchboards so packed and assembled as to involve the same lottery feature when the merchandise is sold to the purchasing public, but all of such assortments are and have been similar to the one hereinabove described, varying only in detail.

PAR. 6. Retail dealers who purchase 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 pushcards and punchboards as separate items, directly or indirectly expose and sell said merchandise to the purchasing public by means of the pushcards and punchboards in accordance with the aforesaid sales plan. Thus, both in the sale of his knives and other merchandise packed and assembled by the respondent as hereinabove described and in the sale of his pushcards and punchboards 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 merchandise to the purchasing public.

PAR. 7. The sale of merchandise to the purchasing public through the use of or by means of pushcards 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. 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.

PAR. 8. Because of the element of chance involved in the purchase of merchandise by means of pushcards and punchboards, many mem-

bers of the purchasing public are attracted by this method of sale and are induced to deal or trade with retail dealers and others distributing their mechandise by means thereof. As a result, many retail dealers and others are induced to deal or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute their products together with pushcards or punchboards. The use of said plan or method thus has the tendency and capacity to and does unfairly divert trade in commerce to those employing it from their competitors who do not use the same or an equivalent method.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair methods of competition 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 complaint of the Commission and the substitute answer of the respondent, in which answer said respondent admitted all of the material allegations of fact set forth in the complaint and stated that he 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 Arthur Wood, individually and trading as Arthur Wood & Co., or trading under any other name or trade designation, and said respondent's 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, pushcards, 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 said respondent and his 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 Commission Act, of knives or any other article of merchandise, do forthwith cease and desist from:

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

2. Selling or distributing knives or other merchandise so packed or assembled that sales of such knives or other merchandise to the public are to be made or, due to the manner in which 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 sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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 46 F. T. C. 606. March 10, 1950.

Syllabus

IN THE MATTER OF

MARIUS J. GLERUP, TRADING AS PACIFIC SALES BOARD COMPANY

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

Docket 5595. Complaint, Oct. 26, 1948—Decision, Sept. 7, 1950

Where an individual engaged in the interstate sale and distribution in the Territory of Alaska and elsewhere of pushcards and punchboards, which were designed for use in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme, whereby a lucky purchaser punching by chance a concealed winning number secured an article of merchandise at much less than its normal retail price, and others received nothing for their money other than the privilege of making a push or punch—

(*a*) Sold said devices to dealers in such merchandise as candy, cigarettes, razors, cosmetics, clothing, etc., who made up assortments of various articles together with a pushcard or punchboard, and sold them to retailers and others by whom they were exposed and sold to the purchasing public in accordance with the aforesaid sales plan; and

Where said individual, engaged also in the sale and distribution of dolls, novelties, sporting goods, and other articles, including assortments packed for lottery selling, and, as illustrative, an assortment of dolls of varying size and a number of packages of cigarettes together with a punchboard, for use under a plan, as explained thereon, whereby those who secured by chance certain lucky numbers or made the last punch in the board's section or the last one on the board, received a doll, worth more than the 5 cents paid, or one or more packages of cigarettes;

(*b*) Sold such assortments to purchasers by whom they were directly or indirectly exposed and sold to the purchasing public by means of the pushcards and punchboards included therewith; and

Thereby supplied to and placed in the hands of others the means of conducting games of chance in the sale and distribution of merchandise to the purchasing public, involving sale of a chance to procure articles at much less than their normal retail prices, 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 purchasing public were attracted by such method of sale and were induced to deal with retailers and others who thus distributed their merchandise, and many retailers and others were induced to trade with manufacturers, wholesalers, and jobbers who sold and distributed their products together with pushcards or punchboards:

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.