

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.

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

Mr. Nathan Lavine, of Philadelphia, Pa., for respondent.

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 Marius J. Glerup, an individual, trading as Pacific Sales Board 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 public interests, hereby issues its complaint, stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondent Marius J. Glerup, is an individual, trading and doing business as Pacific Sales Board Co., with his office and principal place of business located at 709 Madison Street in the city of Seattle, Wash.

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

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

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, to said dealers in merchandise, pushcards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes, and has sold and distributed many kinds of pushcards 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 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 push or punch from the pushcard or punchboard, and when a push or punch is made a disk or printed slip is separated from the pushcard or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said pushcard and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those pushcards or punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondent on said pushcard and punchboard devices first hereinabove described. The only use to be made of said pushcard and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondent's said pushcard and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said pushcards and punchboard devices. Retail dealers who have purchased said assortments either directly or

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indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said pushcards 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 pushcards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said pushcards and punchboard devices by respondent as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise. The respondent thus supplies to, and places in the hands of, said persons, firms, and corporations the means of, and instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondent as hereinabove alleged are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

COUNT II

PARAGRAPH 1. Respondent Marius J. Glerup, an individual as described in paragraph 1 of count I herein, has also been engaged in the sale and distribution of dolls, novelties, sporting goods, and other articles of merchandise to dealers. Respondent causes, and has caused, said articles of merchandise when sold to be shipped or transported

from his aforesaid place of business in the State of Washington to purchasers thereof at their respective points of location in various other States of the United States, in the Territory of Alaska, 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 respondent in said merchandise, in commerce, between and among the various States of the United States, in the Territory of Alaska, and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells and has sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise or lottery scheme when said merchandise is sold and distributed to the purchasing public. One of said assortments, typical of the various assortments sold by the said respondent, consists of a number of dolls together with a punchboard bearing the following legend:

GIVE ME A HOME

Nos. 111—222—333—444—555—666—777—888—925—950—975—999 each Receive

A Cellophane Wrapped Cutie Doll

No. 500 Receives SMALL DOLL

No. 750 Receives MEDIUM DOLL

No. 555 Rec's 10 PACKS CIGARETTES

Nos. 25—50—75—100—125—150—175—200—225

250—300—325—400—425—450—475—525—550

575—600—625—650—675—700—725— Each Receive

5¢

Per Sale

1 PACKAGE CIGARETTES

LAST PUNCH IN FIRST THREE SECTIONS RECEIVE

5 PACKS CIGARETTES

LAST SALE ON BOARD RECEIVES LARGE DOLL

Said dolls are distributed to the purchasing public in accordance with the above legend in the following manner. Sales are 5 cents each, and when a punch is made a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears the legend above described, informing purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the articles listed on the board. A customer who does not qualify by punching one of the specified numbers receives nothing for his purchase money. Each of the various dolls has a retail value in excess of 5 cents, and the purchaser who punches a number calling for one of the various articles receives the same for 5 cents. The numbers are effectively concealed from pur-

chasers and prospective purchasers until the punch or selection has been made and the particular punch separated from the board. The dolls and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondent sells and has sold various punchboards and assortments to be distributed by the use of said punchboards in the manner above described and these punchboards vary only in detail as to the individual items of merchandise to be sold by said boards, the plans of all of said boards and assortments being similar to the one hereinabove described.

PAR. 3. Retail dealers who purchase respondent's punchboards and merchandise assortments directly or indirectly expose and sell merchandise to the purchasing public in accordance with the sales plans above described. Respondent thus supplies to and places in the hands of others the means of conducting lotteries or games of chance in the sale of his products in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plan or 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 sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondent and the element of chance involved therein and thereby are induced to buy and sell respondent's merchandise.

The use by respondent of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 26, 1948, issued and thereafter served upon Marius J. Glerup, an individual trading as Pacific

Sales Board Co., its complaint in this proceeding, charging said respondent with the use of unfair acts and practices in commerce in violation of the provisions of that act. The respondent's answer to said complaint was filed on December 17, 1948. On March 24, 1949, however, the respondent filed with the Commission a motion for permission to withdraw said answer and to file in lieu thereof a substitute answer dated February 25, 1949, admitting all of the material allegations of fact set forth in the complaint, but reserving to the respondent the right to file a brief and to present oral argument before the Commission (which right was waived in a letter from the respondent's counsel dated June 6, 1950), and this motion was granted and the 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, Marius J. Glerup, is an individual trading and doing business as Pacific Sales Board Co., with his office and principal place of business located at 709 Madison Street, in the city of Seattle, State of Washington.

PAR. 2. Said respondent is now, and for more than 3 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 Washington to purchasers thereof at their respective points of location in the various States of the United States other than Washington, in the Territory of Alaska, and in the District of Columbia. There is now, and 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, in the Territory of Alaska, 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. Many of said devices have printed on the faces

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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 pushcards 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 entitled 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.

Others of said pushcard and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those pushcards or punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondent on said pushcard and punchboard devices first hereinabove described. The only use to be made of said pushcard 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 various articles of merchandise in commerce, such as candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise, 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 card or board 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 more than 6 months last past he has been, engaged also in the sale and distribution of dolls, novelties, sporting goods, and other articles of merchandise. He causes and has caused such articles of merchandise, when sold, to be transported from his place of business in the State

of Washington to purchasers thereof at their respective points of location in various other States of the United States, in the Territory of Alaska, 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, in the Territory of Alaska, 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 dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the purchasing public. One of such assortments, typical of the various assortments which the respondent sells and has sold, consists of a number of dolls, together with a punchboard bearing the following legend:

GIVE ME A HOME

Nos. 111—222—333—444—555—666—777—888—925—950

975—999 each Receive a Cellophane Wrapped

Cutie Doll

No. 500 Receives SMALL DOLL

No. 750 Receives MEDIUM DOLL

No. 555 Rec's 10 PACKS CIGARETTES

Nos. 25—50—75—100—125—150—175—200—225

250—300—325—400—425—450—475—525—550

575—600—625—650—675—700—725 Each Receive

5¢

1 PACKAGE CIGARETTES

Per Sale

LAST PUNCH IN FIRST THREE SECTIONS RECEIVE

5 PACKS CIGARETTES

LAST SALE ON BOARD RECEIVES LARGE DOLL

In this assortment the plan is for the dolls to be distributed to the purchasing public by the use of the punchboard in accordance with the above legend in the following manner. Sales are 5 cents each, and when a punch is made a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears the legend above described, informing purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the articles listed on the board. A customer who does not qualify by punching one of the specified numbers receives

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nothing for his purchase money. Each of the various dolls has a retail value in excess of 5 cents, and the purchaser who punches a number calling for one of the various articles receives the same for 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until the punch or selection has been made and the particular punch separated from the board. The dolls and cigarettes are thus distributed to the 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 dolls, novelties, sporting goods, and other articles of 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 members of the public are attracted by this method of sale and are induced to deal or trade with retail dealers and others distributing their merchandise 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondent, in which answer said respondent admitted all of the material allegations of fact set forth in the complaint, but reserved to himself the right to file a brief and to present oral argument before the Commission in defense of the proceeding, which right, however, the respondent has now waived, 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, Marius J. Glerup, individually and trading as Pacific Sales Board 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 dolls, novelties, sporting goods, and other articles 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 dolls, novelties, sporting goods or other merchandise or separately, which said pushcards or punchboards are to be used, or may be used, in selling or distributing such dolls, novelties, sporting goods, or other merchandise to the public.

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2. Selling or distributing dolls, novelties, sporting goods, or other merchandise so packed or assembled that sales of such dolls, novelties, sporting goods, 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.

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IN THE MATTER OF

WALTER H. LIESMAN ET AL. TRADING AS BECKMAN
AND GROHS, ETC.

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

Docket 5699. Complaint, Sept. 16, 1949—Decision, Sept. 19, 1950

Where three individuals engaged in the interstate sale and distribution of push-cards and punchboards designed for use in the sale and distribution of merchandise to the public by means of a game of chance whereby the purchaser of a push or punch who by chance selected 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 a push or punch—

Sold such devices to dealers in such merchandise as candy, cigarettes, clocks, razors, cosmetics, clothing, etc., by whom assortments were made up of various articles together with a card or board, and sold to retailers and others, who exposed and resold them to the purchasing public in accordance with the aforesaid sales plan, involving sale of a chance to procure articles at much less than their normal retail price; and thereby

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

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

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

Before *Mr. Abner E. Lipscomb*, trial examiner.

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

Mr. James A. O'Callaghan, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Walter H. Liesman, Fred Grohs, and Cecil Beckman, individually and trading as Beckman & Grohs, hereinafter referred to as respondents, have vio-

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lated the provisions of said act, and it appearing to the Commission that a proceeding by it in regard thereto would be in the public interest, hereby issues this complaint by stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Walter H. Liesman, Fred Grohs, and Cecil Beckman, are individuals and copartners trading and doing business as Beckman & Grohs, and formerly doing business as Beckman & Grohs Amusement Co. Their office and principal place of business is located at 1308 SW Alder Street, Portland, Oreg. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter alleged.

Respondents are now and for more than 3 years last past have been engaged in the sale and distribution of devices commonly known as pushcards and punchboards and in the sale and distribution of said devices to dealers in various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia and to dealers in various articles of merchandise in the various States of the United States 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 Oregon to purchasers thereof at their points of location in the various States of the United States and in the District of Columbia. There is now and has been for more than 3 years last past a course of trade in such devices by said respondents in commerce between and among the various States of the United States 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, pushcards 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 pushcards 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 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 pushcard or punchboard, and when a push or punch is made a disk or printed slip is separated from the pushcard or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said pushcard and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those pushcards 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 pushcard and punchboard devices first hereinabove described. The only use to be made of said pushcard 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 pushcards 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 pushcards 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 pushcards 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

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to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said pushcards 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 of 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 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 September 16, 1949, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with the use of unfair acts and practices in commerce in violation of the provisions of that act. The respondents' answer to said complaint was filed on October 19, 1949, and on the same date a trial examiner of the Commission was appointed by it to take testimony and receive evidence in this proceeding. On April 3, 1950, the respondents filed with the trial examiner a motion for permission to withdraw their original answer to the complaint and to file in lieu thereof a substitute answer, attached to the motion, admitting all of the material allegations of fact set forth in the complaint and waiving all intervening

procedure and further hearing as to said facts, which was granted, and the substitute answer was accordingly received and filed. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint of the Commission and the respondents' substitute 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, Walter H. Liesman, Fred Grohs, and Cecil Beckman, are individuals and copartners trading and doing business as Beckman & Grohs. They formerly did business as Beckman & Grohs Amusement Co. Said respondents have their office and principal place of business at 1308 SW Alder Street, in the city of Portland, State of Oregon. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter found.

PAR. 2. The respondents are now, and for more than 3 years last past they have been, engaged in the sale and distribution of devices commonly known as pushcards and punchboards. The respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of Oregon to purchasers thereof at their respective points of location in the various 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 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 pushcards and punchboards sold by the respondents 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. Such cards and boards vary in detail, but all of them involve the same general principle. Many of said pushcards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which they 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 or punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the pushcard or punchboard, and when a push or punch is made a disk or printed slip

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is separated from the pushcard or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said pushcard and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those pushcards 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 pushcard and punchboard devices first hereinabove described. The only use to be made of said pushcard 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 various articles of merchandise in commerce, such as candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise, purchase and have purchased the respondents' pushcards and punchboards, and such purchasers make up and have made up assortments consisting of various articles of merchandise and a card or board and sell and have sold and distributed their merchandise so packed and assembled to retail dealers and others for resale to the public.

PAR. 5. Retail dealers who have purchased assortments of merchandise herein referred to have exposed and sold said merchandise to the purchasing public by the use of the pushcards and punchboards in accordance with the aforesaid sales plan. Thus, the respondents supply to and place 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 consuming public.

PAR. 6. Because of the element of chance involved in the purchase of merchandise by means of pushcards and punchboards, many mem-

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bers 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 pushcard and punchboard devices.

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, and teaches and encourages gambling among members of the public. The use of said sales plan or method in the sale of merchandise, and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method, is a practice which is contrary to an established public policy of the Government of the United States and is in violation of criminal laws.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the respondents' substitute answer thereto, 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, Walter H. Liesman, Fred Grohs, and Cecil Beckman, individually and trading as Beckman & Grohs, 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, pushcards, punchboards, or other lottery devices, which are to be used or may be used in the sale or dis-

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tribution 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 sixty (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 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 Company.¹

¹ See 46 F. T. C. 606. March 10, 1950.

Syllabus

IN THE MATTER OF
HORLICKS CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (A) OF SEC. 2, AND SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5701. Complaint, Oct. 3, 1949—Decision, Sept. 19, 1950

Where a corporation engaged in the manufacture of malted-milk products, including instant cocoa and malted milk for sale at soda fountains, malted-milk tablets and packages of malted milk for sale to consumers through drug, confectionery and grocery stores, and in the interstate sale thereof to different purchasers, some of whom were competitively engaged in the resale thereof at wholesale or retail or both, and including a large corporate wholesaler which sold drugs, fountain supplies, including malted milk, and many other items to retail drug stores throughout the United States—

Contracted to sell and sold its said products on the condition, agreement or understanding that the purchasers thereof should not use or deal in the malted-milk products of its competitors, and, since on or about April 1, 1948, contracted to sell and sold malted milk for soda fountain use to said wholesaler at prices which were fixed on the condition, etc., that it would supply said purchaser with all its requirements of said product, with the result that said purchaser did not deal in malted-milk products of said corporation's competitors;

Effect of which sales and contracts for sale on said condition, agreement or understanding might be to substantially lessen competition or tend to create a monopoly in the lines of commerce in which it and said purchaser were respectively engaged:

Held, That such acts and practices, under the circumstances set forth, constituted a violation of section 3 of the Clayton Act.

In said proceeding in which count 1 of the complaint charged respondent with violation of subsection (a) of section 2 of the Clayton Act, as amended, by reason of having sold, and selling malted milk products to some purchasers at higher prices than to others: the trial examiner found the evidence in the record insufficient to support said charges, and granted respondent's motion to dismiss count 1, in view of a stipulation between counsel supporting the complaint and the respondent, that respondent could produce evidence which would demonstrate that the price differentials alleged in the complaint and shown by the record made only due allowance for differences in the cost of sale and delivery resulting from the differing methods or quantities or both, and that witnesses, if called, would testify that said price differentials made only due allowances for such differences, and that such testimony could not be rebutted in any material respect.

Complaint

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Before *Mr. Frank Hier*, trial examiner.

Mr. Rice E. Schrimsher for the Commission.

Bell, Boyd, Marshall & Lloyd, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that Horlicks Corp. is violating and has violated the provisions of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, sec. 13), and section 3 of the Clayton Act (U. S. C. Title 15, sec. 14), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

Charging violation of subsection (a) of section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Respondent, Horlicks Corp., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in Racine, Wis.

PAR. 2. Respondent is now and, since June 19, 1936, has been engaged in the manufacture of malted-milk products, including malted-milk powder, in Racine, Wis., and has sold and now sells such products to different purchasers located in the various States of the United States and the District of Columbia for use, consumption, or resale therein. Respondent transports said products, or causes the same to be transported, from Racine, Wis., to said purchasers so located, thereby creating a continuous current of commerce in said products.

PAR. 3. The respondent, in the course and conduct of its business, has been and is in competition with other corporations, individuals, partnerships, and firms engaged in manufacturing, selling, and distributing malted-milk products, including malted-milk powder, in commerce between and among the various States of the United States and the District of Columbia.

Some of respondent's purchasers, and some customers of such purchasers are competitively engaged in the resale of its malted-milk products at wholesale or at retail, or both, in the various territories and places where they respectively carry on their businesses.

PAR. 4. In the course and conduct of its business, as above described, respondent has sold and now sells its malted-milk products to some

purchasers at higher prices than it has sold and now sells such products of like grade and quality to other purchasers.

For example, respondent, since on or about April 1, 1948, has sold and now sells malted-milk powder to certain favored purchasers such as Rexall Drug Co. and McKesson & Robbins, Inc., at lower prices than it has sold or offered to sell malted-milk powder of like grade and quality to other purchasers. The monetary differential between the selling price to such favored purchasers and the selling price to other nonfavored purchasers remains constant. In other words, in the event of an increase or decrease in the selling price per container to nonfavored purchasers, the price charged favored purchasers is increased or decreased by the same amount. The following table illustrates prices charged said favored purchasers and the comparable prices charged other purchasers:

Prices are delivered prices (minimum shipment 100 lbs. freight prepaid) in effect July 1, 1948	Container size				
	5-pound jar	10-pound tin	25-pound tin	100-pound drum	200-pound drum
	<i>Each</i>	<i>Each</i>	<i>Each</i>	<i>Each</i>	<i>Each</i>
Price to favored purchasers.....	\$1. 15	\$2. 175	\$5. 25	\$20. 30	\$39. 80
Price to other purchasers.....	\$1. 50	\$2. 90	\$6. 75	\$26. 00	\$50. 00
Price discrimination:					
Per container.....	\$0. 35	\$0. 725	\$1. 50	\$5. 70	\$10. 20
Percent.....	23. 3	25. 0	22. 2	21. 9	20. 4

PAR. 5. The effect of such discriminations in price made by respondent, as set forth in paragraph 4 hereof, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its purchasers are respectively engaged; or to injure, destroy, or prevent competition with respondent or with purchasers of respondent who receive the benefit of such discriminations, or with customers of said purchasers.

PAR. 6. Such discriminations in price by respondent between different purchasers of goods of like grade and quality in interstate commerce in the manner and form aforesaid, are in violation of the provisions of subsection (a) of section 2 of the above-mentioned act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (the Clayton Act), as amended by section 1 of the act of Congress entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. Title 15, Sec. 13, and for other purposes," approved June 19, 1936 (the Robinson-Patman Act).

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COUNT II

Charging violation of section 3 of the Clayton Act, the Commission alleges:

PAR. 7. Paragraph 1 to 3, inclusive, of count I hereof are hereby repeated and made a part of this count as fully and with the same force and effect as though here again set forth in full.

PAR. 8. Respondent in the course and conduct of its business, as herein described, has sold and now sells or has made contracts for the sale of its malted-milk products on the condition, agreement or understanding that the purchasers thereof shall not use or deal in the malted-milk products of a competitor or competitors of the respondent.

Respondent, since on or about April 1, 1948, has sold and now sells or has made contracts for the sale of its malted-milk powder, to certain purchasers, including Rexall Drug Co. and McKesson & Robbins, Inc., at prices which were and are fixed on the conditions, agreements, or understanding that respondent supply said purchasers all their requirements of malted-milk powder, with the result that said purchasers have not and do not now deal in malted-milk powder of a competitor or competitors of respondent.

PAR. 9. The effect of said sales, or contracts for sale on said condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said purchasers are respectively engaged.

PAR. 10. The aforesaid acts of respondent constitute a violation of the provisions of section 3 of the hereinabove mentioned act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission, on October 3, 1949, issued and subsequently served upon the respondent, Horlicks Corp., its complaint in this proceeding, charging said respondent, in count I thereof, with violation of subsection (a) of section 2 of said act as amended and, in count II thereof, with violation of section 3 of said act. After the issuance of the complaint and the filing of respondent's answer thereto, a trial examiner of the Com-

mission was designated by it to take testimony and receive evidence in support of and in opposition to the allegations of the complaint, and a number of hearings were held and a substantial amount of evidence was introduced and duly recorded and filed. At a hearing held on March 15, 1950, there was read into the record a stipulation as to the facts which had theretofore been agreed upon between counsel in support of the complaint and counsel for the respondent. Said stipulation provides, among other things, that the facts set forth therein are in addition to, and not in lieu of, any and all evidence in the record, and that said stipulation, together with such evidence, shall constitute the whole record herein.

Thereafter this proceeding came on for final consideration by the Commission upon the complaint, answer thereto, testimony and other evidence, stipulation as to the facts, recommended decision of the trial examiner, and memorandum of counsel supporting the complaint (no briefs having been filed and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Horlicks Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in Racine, Wis. Respondent also maintains warehouses in various of the larger cities in the United States.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the production and manufacture of malted-milk products, including Instant Cocoa and malted milk for sale at soda fountains, malted-milk tablets, and packages of malted milk for sale to consumers through drug, confectionery, and grocery stores.

Respondent now sells, and for many years last past has sold, its malted-milk products to different purchasers located in the various States of the United States and in the District of Columbia for use, consumption, or resale therein. Respondent transports said products, or causes the same to be transported, from Racine, Wis., to said purchasers so located, thereby creating a continuous current of commerce in said products.

PAR. 3. In the course and conduct of its business, respondent has been, and is, in competition with other corporations, individuals, partnerships, and firms engaged in manufacturing, selling, and dis-

tributing malted-milk products in commerce between and among the various States of the United States and the District of Columbia.

Some of respondent's purchasers, and some customers of such purchasers, are competitively engaged in the resale of its malted-milk products at wholesale or at retail, or both, in the various territories and places where they respectively carry on their businesses.

PAR. 4. Respondent, in the course and conduct of its business as aforesaid, has contracted to sell, has sold, and now sells its malted-milk products on the condition, agreement, or understanding that the purchasers thereof shall not use or deal in the malted-milk products of a competitor or competitors of the respondent.

Rexall Drug Co. is a large wholesaler which sells drugs, fountain supplies, including malted milk, and many other items to retail drug stores throughout the United States. Respondent, since on or about April 1, 1948, has contracted to sell, has sold, and now sells, malted milk for soda fountain use to Rexall Drug Co. at prices which were, and are, fixed on the condition, agreement, or understanding that respondent supply said purchaser all its requirements of said malted milk, with the result that said purchaser has not dealt, and does not now deal, in said malted milk of a competitor or competitors of respondent.

PAR. 5. The effect of said sales and contracts for sale on said condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said purchaser are, respectively, engaged.

PAR. 6. Count I of the complaint herein charges the respondent with violation of subsection (a) of section 2 of the Clayton Act, as amended, by reason of its having sold, and now selling, malted-milk products to some purchasers at higher prices than it has sold, and now sells, such products of like grade and quality to other purchasers. In a stipulation as to the facts which is a part of the record herein, it was stipulated and agreed between counsel supporting the complaint and the respondent that the respondent could produce evidence which would demonstrate that the price differentials alleged in the complaint and shown by the record are differentials which make only due allowance for differences in the cost to the respondent of sale and delivery resulting from the differing methods or quantities, or both, of such sale and delivery, and that witness, if called, would testify that said price differentials make only due allowances for such differences, and that such testimony could not be rebutted in any material respect. The trial examiner consequently found that the evidence in the record is insufficient to support the charges in count I of the

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complaint, and granted respondent's motion to dismiss count I of the complaint.

CONCLUSION

The acts and practices of the respondent as herein found constitute a violation of section 3 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, stipulation as to the facts entered into by and between counsel supporting the complaint and the respondent, recommended decision of the trial examiner, and memorandum of counsel supporting the complaint (no briefs having been filed and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act):

It is ordered, That the respondent, Horlicks Corp., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale, or making of any contract for the sale, of malted-milk products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

(1) Selling or making any contract for the sale of malted-milk products on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in the malted-milk products, or other goods or merchandise of, a competitor or competitors of the respondent.

(2) Fixing the price charged for malted milk products, or granting a discount from or rebate upon the price therefor, on the condition, agreement, or understanding that the purchaser of such products shall not use or deal in the malted-milk products, or other goods or merchandise, of a competitor or competitors of the respondent.

(3) Enforcing or continuing in operation or effect any condition, agreement, or understanding in or in connection with any existing sale or contract for the sale of malted-milk products, which condition,

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agreement, or understanding is to the effect that the purchaser of such products shall not use or deal in the malted-milk products, or other goods or merchandise, of a competitor or competitors of the respondent.

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF

CONSOLIDATED ROYAL CHEMICAL CORPORATION;
TRADING ALSO AS CONSOLIDATED DRUG TRADE
PRODUCTS

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

Docket 5302. Complaint, Apr. 3, 1945—Decision, Sept. 21, 1950

Where a corporation engaged in the interstate sale and distribution of a medicinal preparation designated as "New Pe-Ru-Na," and also as "New Pe-Ru-Na Tonic"; in advertisements thereof through radio continuities and by other means—

- (a) Falsely represented that the use of said preparation would build resistance to colds, prevent them and shorten their duration;
- (b) Represented that its use would be effective in relieving the symptoms of colds, and would relieve coughs, the facts being that its therapeutic value in relieving the symptoms or discomfort of a cold was limited to its expectorant qualities, which tend, in a slight degree, to increase the exudate from the mucous membranes, thereby making it more liquid and more easily removed by coughing; and
- (c) Represented that it would assist in building up the strength, energy, and vigor of the user because of its tonic properties; the facts being that it had no tonic properties which would accomplish such results, except to the extent that it might increase the appetite, and might, because of its iron and ammonium citrate content, aid slightly in correcting iron deficiency when taken for a considerable length of time;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby into the purchase of substantial quantities of said products:

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.

As respects the charge in the complaint that respondent's advertisements concerning its "Pe-Ru-Na" constituted false advertisements for the further reason that they failed to reveal facts material in the light of such representations or material with respect to the consequences which might result from its use under the prescribed or usual conditions, no evidence was introduced, and consequently no findings with respect thereto were made.

Before *Mr. Abner E. Lipscomb*, trial examiner.

Mr. Joseph Callaway for the Commission.

Mr. Elwood H. Seal, of Washington, D. C., *Nash & Donnelly*, of Chicago, Ill., and *Mr. Harlan W. Kelley*, of Milwaukee, Wis., for respondent.