

IN THE MATTER OF
LOUIS GORDON AND BEN GORDON TRADING AS BENGOR
PRODUCTS CO.

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

Docket 4420. Complaint, Dec. 16, 1940—Decision, June 20, 1951

Where two partners engaged in the interstate sale and distribution of miscellaneous merchandise including cosmetics, perfumes, shaving and dental cream, soap, drug and household sundries, handkerchiefs, ladies' hose, pajamas, pocketbooks, punchboards, push cards, novelties, and household notions; in advertising their merchandise in trade magazines and newspapers, and in catalogs and advertising circulars distributed through the mail and otherwise to wholesale purchasers—

- (a) Represented that various products were ordinarily and customarily sold to consumers at a stated price through such typical statements as "Dr. Sachs Dental Cream 35¢ size tube Dozen 45¢ 60¢ size tube Dozen 65¢," "Royal Blue Dental Cream * * * 35¢ size tube Dozen 45¢ 60¢ size tube Dozen 65¢," and "Powder & Perfume Combination * * * a real Flash. Is packed 12 deals to a box. Retail for 25¢ each. Priced to Beat All Competition. Dozen 65¢ gross \$7.20 * * * Sun Glo Roses Annette price \$1.00";

When in fact the aforesaid and other products offered and sold by them were ordinarily sold to consumers at prices considerably lower than those so represented as consumer prices;

With the result of placing in the hands of retailers buying such products for resale an instrumentality whereby they might deceive the purchasing public by offering said products at purported discounts from the factitious retail price;

- (b) Falsely represented that certain of their products were made in accordance with the formula and under the supervision of a member of the medical or dental profession through such statements as "Dr. Dade's Skin Soap," etc.;
- (c) Falsely represented that certain of their domestic perfumes were manufactured in France and imported into the United States through the use of the term "Parfums Jockey Club de Paris"; and,
- (d) Falsely represented that certain rayon products were composed wholly of silk and that others were composed of silk in combination with rayon, through such statements as "Ladies' Silk Rayon Hose," "Ladies Hose Rayon Silk Ringless," "A dainty and distinctive handkerchief of rayon silk * * *" "Men's Pure Silk Handkerchiefs," and "Men's Silk Pajamas Manufactured from Rayon Silk";

With effect of misleading and deceiving the purchasing public and retailers into the erroneous belief that such false representations were true, and with capacity and tendency so to do and thereby induce purchase of their said products; and,

Where said partners, engaged in the interstate sale and distribution of push cards and punchboards which, bearing explanatory legends or blank spaces

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provided therefor, were designed for use in the sale and distribution of merchandise at retail by means of a game of chance under a plan whereby the purchaser of a push or punch who, by chance, selected a concealed winning number, secured an article without additional cost and at much less than the normal retail price, others receiving nothing further for their money—

Sold such device to dealers engaged in the sale and distribution of other merchandise; 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 their merchandise to the consuming public, contrary to established public policy of the United States:

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

As respects the allegations in the complaint that respondents represented that they were giving certain merchandise free, that in fact the merchandise was given only to purchasers of other merchandise, that the price of the so-called free merchandise was included in that of other merchandise, and that such offer of free goods constituted their regular method of doing business:

It appearing that the record showed that respondents had discontinued such false representations in 1940, the Commission, in the absence of any reason to believe that they would be resumed, was of the opinion that in the circumstances the public interest did not then required further corrective action as to said discontinued practice.

Before *Mr. L. C. Russell* and *Mr. John L. Hornor*, trial examiners.
Mr. Joseph C. Fehr and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. Samuel J. Ernstoff, of New York City, 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 Louis Gordon and Ben Gordon, individuals and copartners trading as Bengor Products Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Louis Gordon and Ben Gordon, are copartners doing business under the trade name of Bengor Products Co., with their principal office and place of business located at 878 Broadway, in the city of New York, State of New York.

PAR. 2. Respondents are now, and for more than 2 years last past have been, wholesale dealers engaged in the sale and distribution in

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commerce among and between the various States of the United States of a variety of miscellaneous merchandise, including cosmetics, perfumes, shaving and dental creams, soap, drug and household sundries, handkerchiefs, ladies' hose, pajamas, pocketbooks, punchboards, novelties, and various household notions. Respondents cause said products when sold by them to be shipped from their principal place of business in the State of New York to the purchasers thereof located in various other States of the United States, and in the District of Columbia.

Respondents maintain, and at all the times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business the respondents are now and during all times mentioned herein have been, engaged in substantial competition with various other individuals and copartnerships and with corporations engaged in the offering for sale and selling various items of merchandise similar to those sold and distributed by respondents in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business the respondents publish catalogs and various advertising circulars listing and describing the various articles of merchandise sold and distributed by them. Respondents distribute such catalogs and circulars by United States mails and by other means to purchasers and prospective purchasers located in the various States of the United States and in the District of Columbia.

For the purpose of inducing the purchase of the various products sold and distributed by them and listed in said catalogs and circulars, the respondents in the course and conduct of their business have engaged in the practice of falsely representing the quality, material, construction, durability, price, point of origin, and other characteristics of the products sold and distributed by them. In furtherance of this practice the respondents place in said catalogs and circulars various descriptive statements concerning their various products, which statements are exaggerated, false, and misleading.

PAR. 5. Typical of these acts and practices are representations made by the respondents with reference to the retail selling price or value of certain of their products as follows:

(1) DR. SACHS DENTAL CREAM:

35¢ size tube Dozen 45¢.

60¢ size tube Dozen 65¢.

(2) ROYAL BLUE DENTAL CREAM:

Quality guaranteed.

35¢ size tube Dozen 45¢.

60¢ size tube Dozen 65¢.

- (3) POWDER & PERFUME COMBINATION. A large box of quality face powder in assorted shades and a bottle of perfume cellophaned together. A real FLASH. Is packed 12 deals to a box. Retail for 25¢ each. PRICED TO BEAT ALL COMPETITION. Dozen 65¢. Gross \$7.20. (Illustration of single box or package shows words and figures as follows:) Sun Glo Roses Annette Price \$1.00.

By means of the above representations and others similar thereto not specifically set out herein, the respondents represent that various of their products have a retail price greatly in excess of the actual selling price at which such merchandise ordinarily and customarily is sold to consumers. Respondents' dental creams, represented as "60¢ size," actually are sold to the retail trade at 65 cents per dozen. Respondents' "Powder and Perfume Combination," represented as retailing at 25 cents, is sold to retailers at 65 cents per dozen packages.

The aforesaid false and misleading statements and representations consisting of fictitious retail prices for such products place in the hands of retailers and peddlers, buying such products from respondents for resale, an instrumentality and means whereby said retailers and peddlers may mislead and deceive a substantial portion of the purchasing public by enabling such peddlers and dealers to represent and offer for sale and sell respondents said products at various purported discounts from the marked resale price.

PAR. 6. Also typical of the acts and practices hereinabove described are representations that certain items of merchandise are given free on various quantity purchases, such as the following:

FREE MERCHANDISE—Your choice.

Value \$7.50, E-Z ELECTRIC RAZOR FREE with an order of \$100.00 or more.

Value \$5.00, 26 Piece Wm. A. Rogers Silverware Set FREE with an order of \$60.00 or more.

LIGHTHOUSE ELECTRIC CLOCK, Value \$5.00 FREE with an order of \$75.00 or more.

The products and articles of merchandise which the respondents represent are given free are not free in any instance. The respondents do not give any specified items of merchandise free, as the price of the so-called "free" items of merchandise are included in the price of other articles of merchandise. The price paid by the purchaser is the regular price which would be paid for the combination of various items including so-called "free" goods. Furthermore, this offer of "free" goods is one of long-standing and constitutes respondents' per-

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manent method of doing business, and the price of the "free" goods is included in the price of other items which must be purchased to obtain the so-called "free" items.

PAR. 7. Another typical example of the acts and practices hereinabove described is the use of such designations as "Dr. Sachs," and "Dr. Dade's," in the trade or brand name of their various products by which respondents represent that the formula of such products has been prepared from a formula of a member of the medical or dental professions or that such products are made under the supervision and direction of a medical or dental practitioner. Examples of the use of such names by the respondents are the following:

Dr. Sachs Dental Cream

Dr. Dade's Skin Soap

The products so marked, stamped, branded, advertised, and sold by the respondents are not made in accordance with the formula of a member of the medical or dental profession. Said products are not made under the supervision of a member of the medical or dental professions as represented.

PAR. 8. Another and typical example of the acts and practices hereinabove described is the representation by the respondents that certain of their cosmetic products are manufactured in France and imported into the United States. In this connection the respondents use the statements "Parfums. Jockey Club de Paris" in describing various of their products. By this means the respondents represent that such products are manufactured in France and imported into the United States.

In truth and in fact such perfumes sold and distributed by the respondents are not imported from France or any other foreign country into the United States but are wholly manufactured within the United States.

There is a preference on the part of the buying public for perfumes which are manufactured in foreign countries and imported into the United States. This is particularly true regarding perfumes manufactured in France, and such goods so manufactured and imported demand and bring from the purchasing public a higher price in the markets of the United States than domestic perfumes and cosmetics of the same nature and description.

PAR. 9. A further typical example of the acts and practices of the respondents as hereinabove described are false representations with reference to the constituent fibers of which various of their products are made. In describing ladies' hose, men's handkerchiefs, and men's pajamas, the respondents make the following statements:

LADIES' SILK Rayon Hose.

LADIES' HOSE, Rayon Silk Ringless.

A dainty and distinctive handkerchief of rayon silk with beautiful cut-out borders.

Men's Pure Silk Handkerchiefs.

Men's Silk Pajamas Manufactured from Rayon Silk.

By means of the above statements and representations the respondents represent that the various products so described are made wholly of silk, the product of the cocoon of the silkworm, or are composed of silk in combination with rayon, when in truth and in fact all of said products are composed wholly of rayon.

PAR. 10. Over a period of many years the word "silk" has had, and still has, in the minds of the purchasing and consuming public generally a definite and specific meaning as being the product of the cocoon of the silkworm. Silk products for many years have held, and still hold, great public esteem and confidence for their pre-eminent qualities.

Rayon is a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk and when so manufactured it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities, rayon, when manufactured to simulate silk and not designated as rayon, is readily believed and accepted by the purchasing public as being silk, the product of the cocoon of the silkworm.

PAR. 11. The use by the respondent of the acts and practices hereinabove described, and the foregoing false, deceptive, and misleading statements and representations, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public and retail dealers into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and to induce a portion of the purchasing public and retail dealers, because of such erroneous and mistaken belief, to purchase respondents' products.

PAR. 12. In addition to the false, deceptive, and misleading representations hereinabove described, the respondents are also engaged in the sale and distribution in commerce among and between various States of the United States of devices commonly known as push cards and punchboards to dealers engaged in the sale and distribution of various other articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia. These various lottery devices are listed and described by the respondents in their various catalogs and advertising circulars. Said push

cards and punchboards are so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of articles of merchandise to the purchasing public. Respondents sell and distribute, and have sold and distributed, various kinds of said punchboards or lottery devices, all of which 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 punchboards or lottery devices 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 punchboards or lottery devices vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the punchboard or lottery device, and when a push or punch is made a disk or printed slip is separated from the punchboard or lottery device 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 prices of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said punchboards or lottery devices have no instructions or legends thereon but have blank spaces provided therefor. On those punchboards or lottery devices 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 punchboards or lottery devices first hereinabove described. The only use to be made of said punchboards or lottery 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. 13. 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 punchboard and push-card devices, and pack and assemble, and have

packed and assembled, assortments comprised of various articles of merchandise together with said punchboard and push-card 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 punchboards and push cards in accordance with the sales plan as hereinabove described. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said devices, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices. Said persons, firms, 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 lottery 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 loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of said devices or similar devices because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and in violation of criminal laws, and such competitors refrain from supplying to, or placing in the hands of, others punchboard or push-card devices, or any other similar devices which are to be used, or which may be used in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery or chance. As a result thereof, substantial trade has been unfairly diverted to said persons, firms, and corporations from said competitors in said commerce, who do not sell or use such devices.

PAR. 14. 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 prices 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 a sort which is contrary to an established public policy of

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the Government of the United States and in violation of criminal laws, and constitutes unfair methods of competition and unfair acts and practices in said commerce.

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

PAR. 15. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair 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 December 16, 1940, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer, testimony, and other evidence in support of the allegations of the complaint, including a stipulation of counsel admitting all of the allegations of the complaint with the exception of those included in the second subparagraph of paragraph 4 and paragraphs 12 to 15, inclusive, were introduced before trial examiners of the Commission theretofore duly designated by it (no testimony or other evidence having been presented in opposition to the allegations of the complaint) and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony, and other evidence, and the recommended decision of the substitute trial examiner, the trial examiner originally designated by the Commission being deceased, and brief in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); 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. Respondents, Louis Gordon and Ben Gordon, are co-partners doing business under the trade name of Bengor Products Co., with their principal office and place of business located at 119 Fifth Avenue, in the city of New York, State of New York.

PAR. 2. Respondents are now and for many years have been wholesale dealers engaged in the sale and distribution in commerce among and between the various States of the United States of a variety of miscellaneous merchandise, including cosmetics, perfumes, shaving and dental creams, soap, drug and household sundries, handkerchiefs, ladies' hose, pajamas, pocketbooks, punchboards, push cards, novelties, and various household notions. Respondents cause said products, when sold by them, to be shipped from their principal place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents now maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now and during all times mentioned herein have been engaged in substantial competition with various other copartnerships and with individuals and corporations also engaged in the offering for sale and selling of various items of merchandise similar to those sold and distributed by respondents in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their said business respondents have made representations with respect to the said merchandise in advertisements placed in trade magazines and newspapers and in catalogs and advertising circulars listing and describing the various articles of merchandise sold and distributed by them. Respondents cause such representations to be distributed by the United States mails and by other means to wholesale purchasers and prospective wholesale purchasers located in the various States of the United States and in the District of Columbia.

PAR. 5. Among and typical of respondents' said representations are the following:

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DR. SACHS DENTAL CREAM:

35¢ size tube Dozen 45¢.

60¢ size tube Dozen 65¢.

ROYAL BLUE DENTAL CREAM:

Quality guaranteed.

35¢ size tube Dozen 45¢.

60¢ size tube Dozen 65¢.

POWDER & PERFUME COMBINATION. a large box of quality face powder in assorted shades and a bottle of perfume cellophaned together. A real FLASH. Is packed 12 deals to a box. Retail for 25¢ each. PRICED TO BEAT ALL COMPETITION. Dozen 65¢ Gross \$7.20.

(Illustration of single box or package shows words and figures as follows:)
Sun Glo Roses Annette Price \$1.00.

Dr. Dade's Skin Soap.

Parfums Jockey Club de Paris.

LADIES SILK Rayon Hose.

LADIES HOSE, Rayon Silk Ringless.

A dainty and distinctive handkerchief of rayon silk with beautiful cut out borders.
Men's Pure Silk Handkerchiefs.

Men's Silk Pajamas Manufactured from Rayon Silk.

PAR. 6. By the use of the foregoing statements and representations, and others of similar import, the respondents have represented directly or by implication—

(a) That various of their products are ordinarily and customarily sold to consumers at a stated price;

(b) That certain of their products were made in accordance with a formula and under the supervision of a member of the medical or dental profession;

(c) That certain of their perfumes are manufactured in France and imported into the United States; and

(d) That certain of their products are composed wholly of silk and that other of their products are composed of silk in combination with rayon.

PAR. 7. (a) Dr. Sachs Dental Cream, Royal Blue Dental Cream, Powder and Perfume combination, and various other products offered for sale and sold by respondents are ordinarily and customarily sold to consumers at prices considerably lower than those prices represented by respondents to be the actual consumer prices as hereinabove described. Respondents' said representations are false and misleading.

The aforesaid false and misleading representations consisting of fictitious retail prices for such products place in the hands of retailers buying such products from respondents for resale an instrumentality

and means whereby said retailers may mislead and deceive a substantial portion of the purchasing public by enabling such retailers to represent and offer for sale and sell respondents' said products at various purported discounts from the fictitious retail price.

(b) Respondents' articles of merchandise, the trade or brand name of which contains the designation "Doctor," or any abbreviation or simulation thereof, are not made in accordance with a formula of, or under the supervision of, a member of the medical or dental profession. Respondents' use of such a trade or brand name is false and misleading.

(c) The perfumes sold and distributed by the respondents are not imported from France into the United States but are wholly manufactured within the United States, and respondents' representations to the contrary are untrue.

There is a preference on the part of the buying public for perfumes which are manufactured in France and imported into the United States, and such goods so manufactured and imported bring a higher price in the markets of the United States than domestic perfumes of the same nature and description.

(d) The products which respondents represented as being composed wholly of silk and those products which they represented as being composed of silk in combination with rayon are in fact products composed wholly of rayon. A substantial portion of the purchasing public prefers silk products to those composed of rayon.

PAR. 8. The use by the respondents of the acts and practices hereinabove described and the foregoing false, deceptive, and misleading statements and representations has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public and retail dealers into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and to induce a portion of the purchasing public and retail dealers, because of such erroneous and mistaken belief, to purchase respondents' products.

PAR. 9. The respondents are now, and for many years have been, engaged in the sale and distribution of lottery devices commonly known as push cards and punchboards to dealers engaged in the sale and distribution of various other articles of merchandise. Respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their respective places of business in various States of the United States other than the State of New York.

PAR. 10. Certain of the said punchboards and push cards have printed on the faces thereof certain legends or instructions that explain the manner in which they are to be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said punchboards and push cards vary in accordance with the individual device. Each purchaser, upon paying the price for one chance, is entitled to one punch or push from the lottery device, and when a push or punch is made a disk or printed slip is separated from the lottery device 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 selecting winning numbers receive the articles of merchandise without additional cost. The cost of one chance is much less than the normal retail price of the said article of merchandise. Persons who buy a chance but do not select a winning number receive nothing for their money. The said articles of merchandise are thus distributed to the consuming public wholly by lot or chance.

The said punchboards and push cards sold by respondents which carry legends as above described are designed for use by the ultimate purchasers in combination with merchandise of the type described on the said legend so as to enable the ultimate purchasers to sell such merchandise by means of lot or chance in the manner hereinabove described. That these punchboards and push cards are designed and sold for that specific purpose is evident not only from the make-up of the boards and cards themselves, but also from statements made by the respondents in their catalogs advertising the said devices. 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. 11. Certain other of the said punchboards and push cards have no instructions or legends thereon but have blank spaces provided therefor. Except when used for gambling, where persons securing winning numbers are paid money prizes, the only use to be made of said boards or cards by the ultimate purchasers is in the sale or distribution of merchandise by lot or chance.

PAR. 12. The sale and distribution of said lottery devices by respondents, as above set forth, 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. Supplying the means of conducting lotteries, games of chance, or gift enter-

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prise in the sale or distribution of merchandise is a practice contrary to established public policy of the United States.

PAR. 13. The complaint in this proceeding further alleges that respondents represented that they were giving certain merchandise free, that in fact the merchandise was given only to purchasers of other merchandise, that the price of the so-called free merchandise was included in the price of the other merchandise, and that this offer of free goods constituted respondents' regular method of doing business. The record shows that respondents discontinued these complained of false representations in 1940. The Commission, having no reason to believe that the complained of representations will be resumed, is of the opinion that in the circumstances the public interest does not require further corrective action as to this discontinued practice at this time.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice and injury of the public. The acts and practices of the respondents relating to false representations as found in paragraphs 4 through 8, inclusive, of these findings, constitute unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce within the meaning of the Federal Trade Commission Act. The acts and practices of the respondents relating to the sale of lottery devices as found in paragraphs 9 through 12, inclusive, of these findings, 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, the respondents' answer thereto, testimony, and other evidence in support of the allegations of the complaint introduced before trial examiners of the Commission theretofore duly designated by it (respondents having presented no evidence in opposition to the allegations of the complaint), the recommended decision of the substitute trial examiner, the trial examiner originally designated herein being deceased, and brief in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested), 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:

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It is ordered, That the respondents, Louis Gordon and Ben Gordon, individually and as copartners trading as Bengor Products Co., or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of any merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication, that any merchandise offered for sale or sold has a retail price in excess of the actual selling price at which such merchandise ordinarily is sold to consumers.

2. Using the word "Doctor," or any abbreviation or simulation thereof, to designate, describe, or refer to any merchandise not made in accordance with the formula or under the supervision of a member of the medical or dental profession; or otherwise representing directly or by implication, that any such product has been so made.

3. Using the term "Parfums Jockey Club de Paris," or any other term or word or words indicative of French origin as a brand or trade name for perfumes manufactured or compounded in the United States; or representing in any other manner that perfumes so manufactured or compounded were manufactured or compounded in France.

4. Representing, directly or by implication, that any merchandise is composed wholly or in part of silk when such is not the fact.

It is further ordered, That said respondents and their agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as commerce is defined in the Federal Trade Commission Act, push cards, punchboards, or other lottery devices which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the allegations of the complaint relating to the use of the word "free" be, and they hereby are, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action at any time in the future with respect to the subject matter of such allegations as may be warranted by the then existing circumstances.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with said order.

Syllabus

IN THE MATTER OF
AMERICAN TOBACCO CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4827. Complaint, Mar. 9, 1943¹—Decision, June 20, 1951*

Where one of the largest manufacturers of tobacco products in the United States, engaged in the competitive interstate sale and distribution of its said products; in advertising its Lucky Strike cigarettes in magazines of Nation-wide circulation, in newspapers of interstate circulation, by radio broadcasts in Nation-wide hook-ups, and by other means—

- (a) Represented that among independent tobacco experts—buyers, auctioneers, and warehousemen—Lucky Strike cigarettes had over twice as many exclusive smokers as all other cigarettes combined;

The facts being that the results of its prior survey did not and could not accurately reflect such a preference; of 1,184 persons represented as such exclusive smokers, about 50 out of 440 included in said figure smoked no cigarettes; more than 100 of the 440 testified that they did not smoke Luckies exclusively; others testified that they smoked other brands exclusively, could not recall ever having been interviewed or had no connection with the tobacco business; others were the recipients from it of free cigarettes or sums of money; and some testified that they smoked Luckies before its representative and other brands in the presence of its competitors;

- (b) Represented that twice as many of such experts smoked Lucky Strike cigarettes exclusively as smoked all other brands because they sold and handled tobacco and saw the grade and quality purchased at auction for use in Luckies, represented as being superior to and more expensive than that purchased for competing brands, and because they knew tobacco best;

The facts being that any preference which they might have had for Luckies did not result from their knowledge as to the quality of the tobacco used therein, since the blend employed in its said product, among many others made by it, is a trade secret; its competitors bid on and purchase the same types and grades as it does, at tobacco auctions, and when a pile of tobacco is purchased by it, neither the auctioneer nor any other independent tobacco expert can tell whether it will be used by it in the manufacture of said cigarettes;

- (c) Represented that Luckies were less acid than other popular brands, and that other popular brands had an excess acidity over such cigarettes of from 53 to 100 percent;

The facts being that there is no significant difference in the acid in the tobacco used in the manufacture of popular brands or in the smoke therefrom;

- (d) Represented that its said cigarettes were less irritating to the throat than competing brands, offered one's throat protection, were easy on one's throat, and provided protection against throat irritation and coughing;

¹ Amended.