

Complaint

IN THE MATTER OF
E. F. PLONER TRADING AS MICHIGAN CITY NOVELTY
COMPANY

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

Docket 5786. Complaint, June 26, 1950—Decision, Apr. 30, 1952

Where an individual engaged in the interstate sale and distribution of push cards and punch boards which, bearing explanatory legends or space therefor, were designed for use, and were used by the ultimate purchaser, in the sale of merchandise to the consuming public under plans whereby the purchasers of a punch or push who, by chance, selected concealed winning numbers became entitled to designated articles of merchandise at much less than their normal retail price, others receiving nothing for their money other than the push or punch—

Sold and distributed such devices to dealers in candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles, assortments of which, made up with said devices, were exposed and sold by their direct or indirect retailer purchasers to the purchasing public in accordance with the aforesaid sales plan; and thereby supplied to and placed in the hands of others means for conducting lotteries, games of chance or gift enterprises in the sale and distribution of their merchandise, contrary to an established public policy of the United States Government, and in violation of criminal law; and means for engaging in unfair acts and practices;

With the result that many members of the purchasing public were induced by the element of chance involved to deal with retailers who thus sold or distributed their merchandise; many retailers were thereby induced to deal with suppliers of such assortments; and gambling among members of the public was taught and encouraged:

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

Before *Mr. William L. Pack*, hearing examiner.

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

Mr. F. W. James, of Evanston, Ill., 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 E. F. Ploner, an individual, trading and doing business as Michigan City Novelty Company, has violated 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 its complaint, stating its charges in that respect as follows:

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PARAGRAPH 1. Respondent, E. F. Ploner, is an individual trading and doing business as Michigan City Novelty Company, with its office and principal place of business located at 410 Franklin Street, Michigan City, Indiana.

Respondent is now, and, for more than three years last past, has been engaged in the sale and distribution of devices, commonly known as push cards and punchboards and in the sale and distribution of said devices to dealers in various 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.

Respondent causes and has caused said devices when sold to be transported from his place of business in the State of Indiana 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 three 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 and in the District of Columbia.

PAR. 2. In the course and conduct of his said business as described in Paragraph One hereof, respondent sells and distributes, and has sold and distributed, to said dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes, and has sold and distributed many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much

less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

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

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in Paragraph Two hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public,

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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 push cards and punchboard devices by respondent as hereinabove alleged supplies to and places in the hands of others 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated April 30, 1952, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 26, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, E. F. Ploner, individually and trading as Michigan City Novelty Company, charging him with the use of unfair acts and practices in commerce in violation of the provisions of that Act. After filing his answer to the complaint, respondent filed a motion for leave to withdraw such answer and to substitute therefor an answer admitting all of the material allegations of fact in the complaint and waving the taking of testimony and other procedure, the substitute answer reserving, however, the right of respondent to appeal from any decision rendered in the proceeding by the hearing examiner and/or the Commission. The substitute answer was tendered on condition that the initial decision of the hearing examiner in the proceeding

be deferred until the final determination by the Commission of another proceeding, that of Superior Products, Docket No. 5561. Respondent's motion being granted by the hearing examiner, the substitute answer was received and filed as a part of the record in the proceeding. On January 29, 1952, the Commission rendered its final decision in the Superior Products case. Thereafter, the present proceeding regularly came on for final consideration by the hearing examiner, theretofore duly designated by the Commission, upon the complaint and substitute answer, all intervening procedure having been waived, and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, E. F. Ploner, is an individual trading and doing business as Michigan City Novelty Company, with his office and principal place of business located at 410 Franklin Street, Michigan City, Indiana. Respondent is now, and for more than three years last past has been, engaged in the sale and distribution of devices commonly known as push cards 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 in the various States of the United States and in the District of Columbia.

Respondent causes and has caused his devices, when sold, to be transported from his place of business in the State of Indiana 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 three years last past a course of trade in such devices by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in Paragraph One, respondent sells and distributes to such dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes many kinds of push cards and punchboards, but all of them involve the same chance or lottery features when used in the sale or distribution of merchandise and vary only in detail.

Many of the push cards and punchboards have printed on the face thereof certain legends or instructions which explain the manner in

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which the 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 the push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to 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 the articles. 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 the card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

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

PAR. 3. Many persons, firms and corporations who sell and distribute 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 respondent's push card and punchboard devices, and pack and assemble assortments comprised of various articles of merchandise together with such push card and punchboard devices. Retail dealers who have purchased such assortments either directly or indirectly have exposed them to the purchasing public and have sold or distributed articles of merchandise by means of the push cards and punchboards in accordance with the sales plan described in Paragraph Two. Because of the element of chance involved in the sale and distribution of merchandise by means of such push cards and punchboards, many members of the purchasing public have been induced to trade or deal

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with retail dealers selling or distributing merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with manufacturers, wholesale dealers and jobbers who sell and distribute merchandise together with such devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of such devices 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 such sales plan or method in the sale of merchandise is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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

CONCLUSION

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

ORDER

It is ordered, That the respondent, E. F. Ploner, individually and trading as Michigan City Novelty Company or trading under any other name, and his 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.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein 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

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which he has complied with the order to cease and desist [as required by said declaratory decision and order of April 30, 1952].

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 Company.¹

¹ See 46 F. T. C. 606.

Syllabus

IN THE MATTER OF
NORLON CORPORATION ET ALCOMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5741. Complaint, Feb. 20, 1950—Decision, May 1, 1952*

The terms "arthritis" and "rheumatism" are general terms sometimes used interchangeably, which may refer to many diseases or pathological conditions including sciatica, neuritis, lumbago and bursitis, all of which are characterized by such symptoms and manifestations as pain, stiffness and inflammatory and destructive changes in the joints and tissues of the body, and which, as pathological conditions, are of known as well as unknown origin.

Where a corporation and two officers thereof, engaged in the interstate sale and distribution of a medicinal preparation designated "Sural"; in advertisements through radio broadcasts, in a newspaper of national circulation, and in a pamphlet distributed throughout the United States, directly or by implication—

- (a) Falsely represented that said preparation taken as directed constituted an adequate, effective and reliable treatment for, and would arrest the progress and correct the underlying causes of arthritis, rheumatism, bursitis, neuritis and sciatica;
- (b) Falsely represented that thus taken it constituted such a treatment for the symptoms and manifestations of said diseases and would afford complete and immediate relief from the aches, pains and discomforts thereof;

The facts being that there is no drug or combination of drugs which constitutes an adequate, effective or reliable treatment for any of the various forms of arthritis or rheumatism, or which can restore to normal the pathological changes which result from any such ailments; delay of proper diagnosis and appropriate treatment in such cases may result in irreparable crippling, especially in those forms caused by specific infections; and while said "Sural" might function as an analgesic and antipyretic, due to its salicylate content, it would have no significant effect upon severe pain, aches, and discomforts accompanying any such condition, but would afford temporary relief of only minor aches, pains, and discomforts;

- (c) Falsely represented that said preparation might be taken in large quantities over long periods of time without harmful effect;

The facts being that the only therapeutically operative ingredient in their said preparation was the salicylate, acetylsalicylic acid, commonly known as aspirin, and that salicylates may not be taken over long periods of time without the danger of incurring certain harmful effects;

- (d) Falsely represented that their said preparation was superior to and caused less gastric irritation than other salicylates; and
- (e) Falsely represented that they were the manufacturers of said preparation;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and with capacity and tendency so to do, and thereby induce its purchase of substantial quantities of their said product: