

Complaint

IN THE MATTER OF

NOEL'S GAY GAMES, INC. ET AL.

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

Docket 5554. Complaint, May 24, 1948—Decision, June 17, 1952

Where a corporation and its president-treasurer, engaged in the manufacture and interstate sale of various kinds of push cards and punchboards, which, bearing explanatory legends or space therefor, were designed for and used only in the sale of merchandise to the consuming public through means of games of chance, under plans whereby purchasers who, by chance, selected certain specified numbers, received articles of merchandise without additional cost at prices which were much less than the normal retail price thereof, others receiving nothing for their money other than the privilege of a push or punch—

Sold and distributed such devices to manufacturers of and dealers in merchandise, including candy, cigarettes, clocks, razors, cosmetics, clothing and other articles, assortments of which, along with said device, made up by dealers, were exposed and sold by the direct or indirect retailer purchasers to the purchasing public in accordance with aforesaid sales plans, involving a game of chance or the sale of a chance to procure articles at much less than their normal retail prices; and,

Thereby supplied to and placed in the hands of others the means of 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, in the violation of which they assisted and participated; With the result that many members of the purchasing public were induced, because of the element of chance involved, to trade or deal with retailers who thus sold or distributed their merchandise; many retailers were induced to deal or trade with manufacturers, wholesalers and jobbers who sold and distributed such assortments; and gambling among members of the public was taught and encouraged, to the injury thereof:

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

Before *Mr. Frank Hier*, hearing examiner.

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Noel's Gay Games, Inc., a corporation, and Guy E. Noel, an individual and officer of Noel's Gay Games, Inc., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commis-

Complaint

48 F. T. C.

sion 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:

PARAGRAPH 1. Respondent, Noel's Gay Games, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 422 East Howard Street, Muncie, Indiana. Respondent Guy E. Noel is President and Treasurer of respondent corporation, Noel's Gay Games, Inc., and said corporation is owned, dominated, controlled and directed by said individual respondent Guy E. Noel. Both 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 three years last past have been engaged in the manufacture of devices commonly known as push cards and punch boards, and in the sale and distribution of said devices to manufacturers of and 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 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 Indiana to purchasers thereof at their points of location in the various States of the United States other than Indiana, 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 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 One hereof, respondents sell and distribute, and have sold and distributed, to said manufacturers of and dealers in merchandise, push cards and punch boards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed many kinds of push cards and punch boards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punch boards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punch boards vary in accordance with

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

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

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punch board devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punch board devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punch boards in accordance with the sales plan as described in Paragraph 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 punch boards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means

Findings

48 F. T. C.

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 and distribution of said push cards and punch board devices by respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprise in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging 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 May 24, 1948, issued and subsequently served its complaint in this proceeding upon respondent Gay Games, Inc., a corporation (erroneously named in the complaint herein as Noel's Gay Games, Inc.) and respondent Guy E. Noel, an individual, charging said respondents with the use of unfair acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it. Thereafter, upon permission granted by said hearing examiner, respondents withdrew their said answer to the complaint and filed a new answer which, subject to the condition that the Commission take no action herein until its final determination of the matter of Superior Products Company, Inc., Docket No. 5561, ad-

mitted all of the material allegations of fact in said complaint and waived all intervening procedure, including the filing of a recommended decision by the hearing examiner, but which expressly reserved respondents' right of appeal from any decision of the Commission herein. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint and respondents' answer admitting all of the material allegations of fact therein (the Commission in the meantime having issued its order to cease and desist in the matter of Superior Products Company, Inc.); 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. Respondent, Gay Games, Inc. (erroneously named in the complaint as Noel's Gay Games, Inc.) is a corporation organized and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 422 East Howard Street, Muncie, Indiana. Respondent Guy E. Noel is president and treasurer of respondent corporation, Gay Games, Inc., and said corporation is owned, dominated, controlled and directed by said individual respondent Guy E. Noel. Both of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter found.

Respondents for more than six years last past have been engaged in the manufacture of devices commonly known as push cards and punchboards, and in the sale and distribution of said devices to manufacturers of and dealers in various other articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia, and to dealers in various other articles of merchandise located in the various States of the United States and in the District of Columbia.

Respondents cause said devices, when sold, to be transported from their place of business in the State of Indiana to purchasers thereof at their points of location in the various States of the United States other than Indiana, and in the District of Columbia. There has been for more than six 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 One hereof, respondents sell and distribute to said manufacturers of and dealers in merchandise, push cards and punch-

Findings

48 F. T. C.

boards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute 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 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 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 respondents 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.

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 respondents' said push cards and punchboard devices, and pack and assemble assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers

1449

Order

who purchase said assortments either directly or indirectly expose the same to the purchasing public and sell and distribute said articles of merchandise to the public through the use of said push cards and punchboards by means of the use of lot or chance. 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 with retail dealers selling or distributing said merchandise by means thereof. As a result, many retail dealers have been induced to 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 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, all to the injury of the public.

The sale or distribution of said push cards and punchboard devices by the respondents, as hereinabove found, 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 sale of merchandise by and through the use of a game of chance, gift enterprise or lottery scheme is a practice which is in contravention of an established public policy of the Government of the United States and these respondents, through the supplying of such means of selling merchandise, have assisted and participated in the violation of said policy.

CONCLUSION

The acts and practices of the respondents as hereinabove 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' answer admitting all of the material allegations of fact therein and waiving all intervening procedure, 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 respondent Gay Games, Inc., a corporation, and its officers; and the respondent Guy E. Noel, an individual, and

Order

48 F. T. C.

their respective 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 which, due to their design, are suitable for use 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 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.

Complaint

IN THE MATTER OF

ALBERT GREENBERG AND P. D. BERGEN, DOING
BUSINESS AS ALLIED DISTRIBUTORS

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

Docket 5661. Complaint, June 1, 1949—Decision, June 17, 1952

Where an individual engaged in the manufacture and interstate sale of various kinds of push cards and punchboards, which, bearing explanatory legends or space therefor, were designed for and used only in the sale of merchandise to the consuming public through means of games of chance, under plans whereby purchasers who, by chance, selected certain specified numbers, received articles of merchandise without additional cost at much less than the normal retail price, others receiving nothing for their money other than the privilege of a push or punch—

Sold and distributed such devices to manufacturers of and dealers in candy, cigarettes, clocks, razors, jewelry, cosmetics, clothing and other articles, assortments of which, along with said devices, made up by dealers, were exposed and sold by the direct or indirect retailer purchasers to the purchasing public in accordance with aforesaid sales plans, involving a game of chance or the sale of a chance to procure articles at much less than their normal retail prices; and

Thereby supplied to and placed in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale and distribution of their merchandise, in violation of an established public policy of the United States Government;

With the result, because of the element of chance involved, that many members of the purchasing public were induced to trade or deal with such retailers, many retailers were induced to deal with suppliers of such assortments, and gambling among members of the public was taught and encouraged, to their injury:

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

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

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

Mr. John F. Reynolds, of Portland, Oreg., 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 Albert Greenberg and P. D. Bergen, individuals and copartners trading as Allied Distributors, 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,