

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,

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hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Albert Greenberg and P. D. Bergen, are individuals and copartners trading and doing business as Allied Distributors, with their office and principal place of business located at 417 S. W. Twelfth Street, in the city of Portland, Oregon.

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 punchboards, 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 within the several 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 other than Oregon 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 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 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 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 as hereinabove alleged.

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, jewelry, 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 card 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

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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 push card 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 or gift enterprises 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 June 1, 1949, issued and subsequently served its complaint in this proceeding upon the respondents Albert Greenberg and P. D. Beugen (erroneously named in the complaint as P. D. Bergen) charging said respondents with the use of unfair acts and practices in commerce in violation of the provisions of said Act. No answer having been filed to said complaint within the time permitted under the Commission's Rules of Practice, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, upon motion of counsel for respondent Albert Greenberg, the hearing examiner permitted said respondent to file his answer to said complaint. Said answer of respondent Albert Greenberg, which was filed 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, admits all of the material allegations of fact in said complaint and waives all intervening procedure, including the filing of a recommended decision by the hearing examiner, but specifically reserves the

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right of appeal from any decision entered by the Commission herein. Upon motion of counsel supporting the complaint, all of the testimony taken herein other than that relating to respondent P. D. Beugen was stricken from the record.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the answer of respondent Albert Greenberg, the testimony and other evidence, and the recommended decision of the hearing examiner as to respondent P. D. Beugen (the recommended decision as to respondent Albert Greenberg having been specifically waived, no briefs having been filed, and oral argument not having been requested, and 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 Albert Greenberg is an individual trading and doing business as Allied Distributors, with his office and principal place of business at 417 Southwest Twelfth Street, Portland, Oregon. Respondent P. D. Beugen (erroneously named in the complaint herein as P. D. Bergen), an individual residing at 3934 Northeast Fortieth Street, Portland, Oregon, was connected with the said business of respondent Albert Greenberg only in the capacity of an employee and in that capacity only for a portion of the year 1947. The Commission, therefore, being of the opinion that the allegations of the complaint should be dismissed as to P. D. Beugen, the term respondent as used hereinafter will refer to respondent Albert Greenberg only.

Respondent, for more than five years last past, has 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 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 within the several states of the United States and in the District of Columbia.

Respondent causes said devices, when sold, to be transported from his place of business in the State of Oregon to purchasers thereof at their points of location in the various states of the United States other than Oregon, and in the District of Columbia. There has been for more than five 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, respondent sells and distributes to said manufacturers of and 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 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 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.

PAR. 3. Many persons, firms and corporations who sell and distribute candy, cigarettes, clocks, razors, jewelry, cosmetics, clothing,

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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 said push card and punchboard devices and pack and assemble assortments comprised of various articles of merchandise, together with said push card 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 by 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 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 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 card and punchboard devices by respondent, 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 this respondent, through the supplying of such means of selling merchandise, has assisted and participated in the violation of said policy.

CONCLUSION

The acts and practices of the respondent Albert Greenberg 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, the answer of respondent

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Albert Greenberg admitting all of the material facts alleged therein and waiving all intervening procedure as to him, testimony and other evidence relating to the allegations of the complaint as to respondent P. D. Beugen, introduced before a hearing examiner of the Commission theretofore duly designated by it, and the hearing examiner's recommended decision as to the allegations of the complaint relating to respondent P. D. Beugen, and the Commission having made its findings as to the facts and its conclusion that respondent Albert Greenberg has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent Albert Greenberg, individually, and trading under the name Allied Distributors 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 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 complaint herein be, and it hereby is, dismissed as to respondent P. D. Beugen.

It is further ordered, That respondent Albert Greenberg 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.

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IN THE MATTER OF
ALLIED WEAVERS OF AMERICA ET AL.COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5953. Complaint, Feb. 12, 1952—Decision, June 19, 1952*

Where a corporation and its two officers, engaged in the interstate sale and distribution by mail of a study course designed to prepare students for work as commercial weavers; through advertisements in newspapers and other printed matter, and in radio broadcasts, directly and by implication—

(a) Represented falsely that weaving is easy to learn and to do, and that after taking their course of instruction persons would become expert weavers; the facts being that a considerable amount of manual dexterity, which many people do not possess and cannot acquire, along with a substantial amount of practical experience are prerequisites to so qualifying;

(b) Represented falsely that such persons would be able to earn \$10.00 a day in their spare time and \$15.00 and up a day for full time, and that from \$10.00 to \$12.00 was the usual charge for the type of weaving taught by them; The facts being the usual charge for their type of weaving was considerably less than aforesaid amount, and there was no particular demand for persons so trained; and

(c) Falsely represented that their course was available only for a limited time; and

(d) Represented falsely through their sales agents that they would assist their graduates in obtaining weaving work from dry cleaners in their neighborhood and would grant only a limited number of franchises in each neighborhood; when in fact they issued their so-called franchise to as many people in the same neighborhood as would buy and complete the course;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that such representations were true and thereby induce purchase of their said course:

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 in commerce.

Before *Mr. John Lewis*, hearing examiner.

Mr. B. L. Williams and *Mr. B. G. Wilson* 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 Allied Weavers of America, a corporation, and Walter E. Powell and George Wallace, individually and as officers of said corporation, 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