

Complaint

IN THE MATTER OF

ASA ARNSBERG ET AL. TRADING AS PREMIER SALES
COMPANY

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

Docket 5662. Complaint, June 1, 1949—Decisions, July 9, 1952

Where three partners engaged in the interstate sale and distribution of watches, jewelry, and novelties, and of push cards and punchboards, which, bearing explanatory legends or space therefor, were designed for and used only in combination with other merchandise in the sale thereof by ultimate purchasers by lot or chance, under plans whereby customers who, by chance, selected certain specified numbers received articles without additional cost at much less than their normal retail price, and others received nothing for their money other than the privilege of a push or punch—

- (a) Sold and distributed such devices to dealers who packed assortments of candy, cigarettes, clocks, razors, cosmetics, clothing and other articles together with said lottery devices, which were exposed by retail dealer purchasers to the purchasing public and sold and distributed by means of the aforesaid devices; and
- (b) Sold assortments of the articles they dealt in, as above set forth, packed and assembled with punchboards, directly or indirectly to retail dealer purchasers by whom they were exposed and sold to the purchasing public by means of the aforesaid devices; 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 or distribution of merchandise, in contravention of an established public policy of the United States Government; and assisted and participated in the violation thereof; With the result that many persons were attracted by the element of chance involved and were thereby induced to buy merchandise thus sold, and gambling among members of the public was encouraged:

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. Abner E. Lipscomb*, hearing examiner.

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

Pedersen & 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 Asa Arensberg, Henry C. Arensberg, and Dorothy Schubach, individuals and co-partners trading and doing business as Premier Sales Company, hereinafter referred to as respondents, have violated the provisions of

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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:

COUNT I

PARAGRAPH 1. Respondents, Asa Arensberg, Henry C. Arensberg, and Dorothy Schubach, are individuals and co-partners trading as Premier Sales Company with their office and principal place of business located at 625 S. W. Twelfth Avenue, in the city of Portland, Oregon. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter alleged.

Respondents are now and for more than three years last past have 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.

Respondents cause and have caused said devices when sold to be transported from their place of business in the State of Oregon to purchasers thereof at their points of location in the various States of the United States, and in the District of Columbia. There is now and has been for more than 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 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 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 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, 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, 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 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.

COUNT II

PARAGRAPH 1. Respondents, Asa Arensberg, Henry C. Arensberg, and Dorothy Schubach, are individuals and co-partners trading as Premier Sales Company with their office and principal place of business located at 625 S. W. Twelfth Avenue, in the city of Portland, Oregon. Respondents are now and for more than three years last past have been engaged in the sale of watches, jewelry, novelties, and other articles of merchandise, and have caused said merchandise when sold to be transported from their place of business in the city of Portland, Oregon, to purchasers thereof at their respective 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 by respondents in such merchandise 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 business as described in Paragraph One hereof, respondents sell and have sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprises or lottery schemes when said merchandise is sold and distributed to the purchasing public.

Said assortments include a number of articles of merchandise and a punchboard. The punchboard has printed on the face thereof a legend or instructions that explain the manner in which the said device is to be used or may be used in the sale or distribution of the various specified articles of merchandise. The prices of the sales of punches on said punchboards vary in accordance with the individual device. Each purchase entitles the purchaser to one punch from the board and when a punch is made a printed slip is separated from the punchboard and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the punch completed. Certain specified numbers entitle the purchaser thereof to receive a designated article of merchandise. Persons punching a lucky or winning number receive an article of merchandise at a price much less than the normal retail price of said article. Persons who do not punch a lucky or winning number receive nothing for their money other than the privilege of making a punch from said board. The articles of merchandise are thus distributed to the consuming or purchasing public solely by lot or chance.

Respondents have sold and distributed numerous assortments of merchandise and punchboards, all of which are distributed by the dealer to the purchasing public as above described and such assortments vary only in detail as to the individual items of merchandise, the number of punches on the board and the price of each punch, the plans of all of said boards and assortments being similar to the one hereinabove described.

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

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

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 1, 1949, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof charging them with the use of unfair acts and practices in commerce in violation of the provisions of that Act. Thereafter, on December 5, 1949, respondents filed their answer to said complaint, permission to file after time allowed by the Commission's Rules of Practice having been granted by a hearing examiner of the Commission duly designated by it. Said answer, which was filed subject to the condition that any order entered in this matter be held in abeyance pending the final determination by the Commission of the matter of Superior Products, Inc., et al., Docket No. 5561, admits all of the material allegations of fact in said complaint and waives all intervening procedure herein. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint and answer (the Commission in the meantime having issued an order to cease and desist in the matter of Superior Products, 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. Respondents, Asa Arnsberg and Harry C. Arnsberg (erroneously named in the complaint as Asa Arensberg and Henry

C. Arensberg), and respondent, Dorothy Schubach, are individuals and copartners trading as Premier Sales Company, with their office and principal place of business located at 625 S. W. Twelfth Avenue, Portland, Oregon. Respondents for more than five years last past have been engaged in the sale of watches, jewelry, novelties, and of devices commonly known as push cards and punchboards.

Respondents have caused said merchandise and devices when sold to be transported from their place of business in the city of Portland, Oregon, to purchasers thereof at their respective 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 by respondents in such merchandise and said devices in commerce between and among the various States of the United States and in the District of Columbia.

Respondents have sold and distributed push cards and punchboards in the manner above described to 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 such other articles of merchandise in 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 above described, respondents sell and distribute 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. 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 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 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.

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 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. These assortments are sold directly or indirectly to retail dealers who expose them to the purchasing public and sell and distribute said articles of merchandise to the public by means of the push cards and punchboards in the manner above described.

PAR. 3. In addition to selling push cards and punchboards as separate items, as hereinabove described, respondents in the course and conduct of their said business sell other articles of merchandise packed with a punchboard and assembled in such a manner as to provide a means by which said merchandise can be sold and distributed to the purchasing public by means of a game of chance, gift enterprise or lottery scheme. The punchboards so included have printed on them instructions that explain the manner in which they may be used in the sale and distribution of the merchandise with which they are packed. These punchboards, which are operated in the same manner as those described hereinabove, are so designed that the articles of merchandise sold and distributed through the use thereof are sold and distributed solely by lot or chance.

Respondents have sold and distributed numerous assortments of merchandise and punchboards, which assortments vary only in detail as to the individual items of merchandise, the number of punches on

the board and the price of each punch. These assortments are sold directly or indirectly to retail dealers who expose them to the purchasing public and sell and distribute said merchandise to the public by means of punchboards in the manner above described.

PAR. 4. By means of the sale of said push cards and punchboards separately and the sale of said assortments of merchandise packed with punchboards, respondents supply and place in the hands of others the means of conducting lotteries or games of chance in the sale of merchandise. The sale of merchandise by lottery or games of chance provides the purchasing public with a chance to procure the merchandise at prices much less than the normal retail price thereof. Many persons are attracted by the element of chance involved therein and are induced to buy merchandise sold in this manner. The sale of merchandise in this manner encourages gambling among members of the public and is a practice which is contrary to the established public policy of the Government of the United States and these respondents by supplying such means of selling merchandise through lotteries or games of chance in this manner assisted and participated in the violation of such policy.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and 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 respondents, Asa Arnsberg, Harry C. Arnsberg and Dorothy Schubach, individually or as copartners trading under the name Premier Sales Company or trading under any other name, 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 which, due to their design are

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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 said respondents and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of watches, jewelry, novelties or other merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards, punchboards, or other lottery devices, either with other merchandise or separately, which said push cards, punchboards, or other lottery devices are to be used, or which, due to their design, are suitable for use in the sale or distribution of said merchandise to the public.

2. Selling or distributing merchandise packed or assembled in such a manner as to provide the means of selling or distributing said merchandise to the public through the use of a game of chance, gift enterprise or lottery scheme.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise or lottery scheme.

It is further ordered, That the 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.

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IN THE MATTER OF

FLORIDA CITRUS CANNERS COOPERATIVE ET AL.

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

Docket 5640. Complaint, Feb. 18, 1949—Decision, July 14, 1952

Where a corporate cooperative association, engaged in the canning of citrus fruit juice products processed from fruit obtained principally from its members, and in the competitive interstate sale and distribution thereof to customers competitively engaged with each other and with the customers of said association, also competitors, in the purchase and resale of such products within their respective trade areas;

In selling its said products to the Great Atlantic and Pacific Tea Company chain grocery system which, with its parent company and subsidiary organizations and affiliates, constituted the largest purchasers of retail grocery products within the United States, with warehouses in some thirty cities, and during the 1945-46 canning season purchased about 750,000 cases of said association's "Donald Duck" brand citrus products—

Discriminated in price between purchasers competing in the resale of its products of like grade and quality by selling to some at lower prices than it sold to others, and thereby discriminated in favor of said A & P system;

With the result that the aforesaid system, as recipient of discriminatory price benefits aggregating some \$600,000, was enabled to retail said "Donald Duck" citrus fruit juice products at a decided price advantage over competitive retailers selling said cooperative's products of like grade and quality in the areas involved;

Effect of which discriminations was, and might be, to substantially lessen competition in the sale and distribution of citrus fruit juice products in the respective lines of commerce in which said cooperative and its customers were engaged, and to injure, destroy or prevent competition in the sale and distribution of said products with it and its customers who received the benefits of said discriminatory prices:

Held, That such discriminations in price, under the circumstances set forth, constituted violations of Sec. 2 (a) of the Clayton Act, as amended.

Mr. Eldon P. Schrup and Mr. James S. Kelaher for the Commission.
Mr. Counts Johnson, of Tampa, Fla., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of section 2 (a) of the Clayton Act (U. S. C. Title 15, sec. 13), as amended by the Robinson-