

Syllabus

IN THE MATTER OF
HARRY C. HAYES DOING BUSINESS AS DELUXE SALES
CO. AND DELUXE MANUFACTURING CO.

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

Docket 5750. Complaint, Mar. 15, 1950—Decision, Aug. 18, 1952

There is a preference on the part of dealers and of the purchasing public for dealing with the manufacturer of the products directly, due to their belief that thereby lower prices and other advantages may be obtained.

Where an individual engaged in the interstate sale and distribution of various kinds 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 purchasers who, by chance, selected certain specified numbers, received articles at much less than their normal retail prices 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 them with assortments of candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles, following which they were exposed and sold by the retail dealer purchasers by lot or chance; and

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

With the result that many members of the purchasing public were induced to trade or deal with retailers who thus sold or distributed merchandise; many retailers were induced to deal with suppliers who sold and distributed said assortments; and gambling among members of the public was taught and encouraged, all to their injury; and

- (b) Represented through use of the trade name "Deluxe Manufacturing Company" that he manufactured the devices and merchandise sold by him; when in fact he purchased said products from the manufacturers;

With effect of misleading and deceiving many persons into the erroneous belief that he was a manufacturer, and into the purchase of his said products in such belief; and with capacity and tendency so to do:

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.

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

Complaint

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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 Harry C. Hayes, an individual, trading as De Luxe Sales Co. and De Luxe Manufacturing Company, hereinafter referred to as respondent, 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:

PARAGRAPH 1. Harry C. Hayes is an individual, trading and doing business as De Luxe Sales Co. and De Luxe Manufacturing Company, with his office and principal place of business located at Blue Earth, Minnesota. 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 located in the various States of the United States.

Respondent causes and has caused said devices when sold to be transported from his place of business in the State of Minnesota 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 enterprise 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 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 and in the various States of the United States, purchase and have purchased respondent's 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 card and punchboard devices by respondent 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 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. Through the use of the trade name De Luxe Manufacturing Company, respondent represents that he manufactures the products and merchandise sold by him as aforesaid. In truth and in fact, respondent does not manufacture such push cards, punchboards or other merchandise but purchases the same from others who do manufacture said products.

There is a preference on the part of dealers and the purchasing public for dealing with the manufacturer of products direct, such preference being due to a belief on the part of such dealers and the purchasing public that thereby lower prices and other advantages may be obtained.

PAR. 6. The use as hereinabove set forth of the foregoing false and misleading trade name has had the capacity and tendency to mislead and deceive, and has misled and deceived many persons into the erroneous and mistaken belief that respondent is a manufacturer and because of said mistaken belief have purchased respondent's products.

PAR. 7. 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 15, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, Harry C. Hayes, an individual, charging said respondent with the use of unfair acts and practices in commerce in violation of the provisions of said Act. Respondent filed his answer denying certain of the allegations of said complaint. On May 1, 1950, respondent filed with the Commission a substitute answer to the complaint, admitting all of the material allegations of fact and waiving all intervening procedure, which answer was filed subject to the condition that the Commission would take no action herein until the matter of Superior Products, Inc., Docket No. 5561, was before the Commission for final determination. The Commission having issued its order to cease and desist in the matter of Superior Products, Inc., and having served upon the respondent herein its tentative decision, together with leave to show cause why such tentative decision should not be entered as the final decision of the Commission, and respondent not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration before the Commission upon the aforesaid complaint and respondent's substitute answer; 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. Harry C. Hayes is an individual trading and doing business as De Luxe Sales Co. and De Luxe Manufacturing Company, with his office and principal place of business located at Blue Earth, Minnesota. Respondent for more than five 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 located in the various States of the United States.

Respondent causes said devices, when sold, to be transported from his place of business in the State of Minnesota to purchasers thereof at their points of location in the various States of the United States 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.

Findings

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PAR. 2. In the course and conduct of his said business, respondent sells and distributes 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 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 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 cards 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 and in the various States of the United States, purchase respondent's

said push card and punchboard devices, and pack and assemble 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 punch 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.

PAR. 5. Through the use of the trade name De Luxe Manufacturing Company, respondent represented that he manufactured the products and merchandise sold by him as aforesaid. In truth and in fact, respondent does not manufacture such push cards, punchboards or other merchandise but purchases the same from others who do manufacture said products.

There is a preference on the part of dealers and the purchasing public for dealing with the manufacturer of products direct, such preference being due to a belief on the part of such dealers and the purchasing public that thereby lower prices and other advantages may be obtained.

PAR. 6. The use as hereinabove set forth of the foregoing false and misleading trade name has had the capacity and tendency to mislead

Order

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and deceive, and has misled and deceived, many persons into the erroneous and mistaken belief that respondent is a manufacturer, and because of said mistaken belief a substantial number of such persons have purchased respondent's products.

CONCLUSION

The acts and practices of the respondent 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 respondent's 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 respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Harry C. Hayes, individually, trading under the name De Luxe Sales Co. or De Luxe Manufacturing 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 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 said respondent and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of push cards, punchboards or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "manufacturing" or any other word or words of similar import or meaning in respondent's trade name; or otherwise representing, directly or by implication, that respondent manufactures the merchandise sold by him.

It is further ordered, That the respondent 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.

Syllabus

IN THE MATTER OF

LOUIS RAFANELO TRADING AND DOING BUSINESS AS
BRADFORD SPORTSWEAR COMPANY

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

Docket 5948. Complaint, Jan. 24, 1952—Decision, Aug. 19, 1952

Products made from wool, a highly desirable material for sweaters, have for many years held, and still hold, great public esteem and confidence because of their outstanding qualities.

Articles of wearing apparel made from rayon fibers so manufactured as to simulate wool in texture and appearance, have the appearance and feel of wool and cannot be distinguished by many members of the purchasing public, so that rayon articles of wearing apparel are readily accepted by some as wool.

Where an individual engaged in the manufacture and interstate sale and distribution of sweaters which, composed of brushed rayon, simulated wool in texture and appearance—

- (a) Falsely represented through the labeling on the boxes containing his sweaters that they were hand-tailored; when in fact they were machine-made;
- (b) Sold and distributed said sweaters without informing the purchasing public of the fact that they were made of rayon and not wool; and,
- (c) Sold and distributed said sweaters which he thus represented and impliedly warranted as suitable and safe for wearing, without revealing on the garments or otherwise that they were highly inflammable by reason of the length of the fibers on the brushed-up surface of the fabric, and were unsafe to wear;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public in the aforesaid respects and thereby into the purchase of substantial quantities of said sweaters; and with result of placing in the hands of retailers a means whereby members of the purchasing public might be misled and deceived as above set forth:

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

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

Mr. Joseph Callaway for the Commission.

Mr. Benedetto A. Cerilli, of Providence, R. I., for respondent.