

Complaint

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IN THE MATTER OF

U. S. PRINTING & NOVELTY CO., INC. ET AL.

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

Docket 5647. Complaint, Apr. 1, 1949—Decision, Sept. 4, 1952

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of push cards and punchboards, which, bearing explanatory legends or space therefor, were designed and used only for the sale of other merchandise by ultimate purchasers by lot or chance under a plan whereby purchasers who, by chance, selected specified numbers received articles of merchandise 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—

Sold and distributed such devices to dealers who made them up with assortments of candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles which were exposed and sold by direct or indirect retail purchasers to the public by means of said 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 their merchandise, contrary to established public policy of the United States Government; and supplied to and placed in their hands means for engaging in unfair acts and practices; With the result that many members of the purchasing public, because of the element of chance involved, were induced to trade or deal with retail dealers who thus sold or distributed their merchandise; many retailers were thereby induced to deal with suppliers of said merchandise packed with said push cards and punchboards; and gambling among members of the public was taught and encouraged, all to the injury of the public:

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. Clyde M. Hadley* and *Mr. Abner E. Lipscomb*, hearing examiners.

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

Nash & Donnelly, of Washington, D. C., 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 U. S. Printing & Novelty Co., Inc., a corporation, and Benjamin Blush, Jack Blush, and Hyman Abramowitz, individuals, officers, and directors of said U. S. Printing & Novelty Co., Inc., hereinafter referred to as respond-

ents, have 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. Respondent U. S. Printing & Novelty Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 195-197 Chrystie Street, in the city of New York, New York. Respondents Benjamin Blush, Jack Blush and Hyman Abramowitz are officers and directors of respondent corporation U. S. Printing & Novelty Co., and said corporation is owned, dominated and controlled by the individual respondents Benjamin Blush, Jack Blush, and Hyman Abramowitz. 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 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 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 New York to purchasers thereof at their points of location in the various States of the United States other than New York, 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 herein, 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 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 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 pur-

chasing 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 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 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 1, 1949, issued and subsequently served its complaint in this proceeding upon the respondents U. S. Printing & Novelty Co., Inc., a corporation, and Benjamin Blush, Jack Blush, and Hyman Abramowitz, individuals, officers, and directors of said corporate respondent, charging them with the use of unfair acts and practices in commerce in violation of the provisions of said Act. On April 27, 1949, respondents filed an answer to said complaint. Thereafter, on June 23, 1950, upon respondents' motion the hearing examiner of the Commission duly designated herein permitted respondents to withdraw the answer previously filed herein and to substitute therefor an answer admitting all the material al-

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legations of fact and waiving the taking of testimony and other procedure, but reserving the right to appeal from any decision and order issued herein by the hearing examiner or the Commission. Said answer was filed upon the condition that no action would be taken in this proceeding until after the final determination by the Commission had been made in the matter of Superior Products, a corporation, et al., Docket No. 5561. Said matter having been terminated by the Commission's order to cease and desist issued January 29, 1952, the above-entitled proceeding regularly came on for final consideration by said hearing examiner upon the complaint and substitute answer; and the said hearing examiner, on February 15, 1952, filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, counsel for respondents filed with the Commission an appeal from said initial decision and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including briefs in support of and in opposition to the appeal (respondents' application for oral argument of counsel before the Commission having been denied); and the Commission, having issued its order granting said appeal in part and denying it in part 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 and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Repondent U. S. Printing & Novelty Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 195-197 Chrystie Street, in the City of New York, New York. Respondents Benjamin Blush and Jack Blush are officers and directors of respondent corporation U. S. Printing & Novelty Co., and said corporation is owned, dominated and controlled by the individual respondents Benjamin Blush and Jack Blush. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter found. Respondent Hyman Abramowitz, being now deceased, is not included in the term respondents as used hereinafter.

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 merchan-

dise 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 New York to purchasers thereof at their points of location in the various States of the United States other than New York, 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 herein, 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 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 found.

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 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 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 a manner above described, involves a game of chance or the sale or 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 method 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.

The sale or distribution of said push cards and punchboard devices by 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

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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.

CONCLUSION

The aforesaid acts and practices of 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

It is ordered, That respondent U. S. Printing & Novelty Co., Inc., a corporation, its officers, and respondents Benjamin Blush and Jack Blush, individually and as officers and directors of said corporate respondent, U. S. Printing & Novelty Co., Inc., and their respective representatives, agents 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.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondent Hyman Abramowitz.

IN THE MATTER OF
MURRAY EPSTEIN ET AL. DOING BUSINESS AS SEAWOL
SEWING SUPPLIES

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

Docket 5894. Complaint, June 27, 1951—Decision, Sept. 4, 1952

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public not marked or not adequately marked showing that they are of foreign origin, or if foreign markings are concealed, such public understands and believes the articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machines.

The names "Majestic" and "Admiral" are parts of the name of corporations doing business in the United States, which are and have been well and favorably known to the purchasing public and long established in various industries, and some of them use said words as a trade name, mark or brand for their products.

Where four partners engaged in importing sewing machine heads displaying on the back of the vertical arm the words "Made in Occupied Japan" or "Japan," which became concealed when they attached a motor thereto, and in the competitive interstate sale and distribution to distributors and retailers of the complete sewing machines of which such heads were a part—

- (a) Failed adequately to disclose on said sewing machine heads that they had been manufactured in Japan; and
- (b) Falsely represented, through the adoption of the words "Majestic" and "Admiral" as a trade or brand name for their said products and the conspicuous display thereof on the front horizontal arm and use thereof in advertising, that the machines were manufactured by the well and favorably known firms with which said names were associated;

With the result of placing in the hands of dealers a means whereby they might deceive the purchasing public in the aforesaid respects and with tendency and capacity so to mislead members thereof and thereby induce purchase of their said products and of unfairly diverting trade to them from their competitors, including makers and sellers of both the domestic and imported product, of whom some adequately informed the public of the origin thereof, to the substantial injury of competition in commerce:

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.