

Complaint

IN THE MATTER OF

J. M. TROTTER AND H. K. CADE TRADING AS T. & C.
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 5908. Complaint, July 23, 1951—Decision, Oct. 15, 1952

Where two partners engaged in the interstate sale and distribution of various articles of merchandise; and of push cards and punchboards which, bearing explanatory legends or space therefor, were used in the sale of other merchandise by lot or chance under plans whereby the purchasers who by chance selected certain specified numbers received articles without additional cost at prices which were much less than their normal 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 consisting of other articles together with said devices, which, exposed by the direct or indirect retailer purchasers thereof to the purchasing public, were sold and distributed in accordance with the aforesaid sales method; and
- (b) Sold assortments of other articles also dealt in by them such as jewelry, watches and novelty items, packed and assembled with said devices, to retail dealer purchasers by whom they were exposed and sold to the public by means of the aforesaid devices and plans; 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 of merchandise, contrary to the established public policy of the United States Government; and there was placed in the hands of purchasers of such devices the means and instrumentalities for engaging in unfair acts and practices:

With the result that gambling among members of the public was taught and 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. William L. Pack*, hearing examiner.

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

Mr. F. W. James, of Evanston, Ill., 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 J. M. Trotter and H. K. Cade, individually and as copartners, trading and doing busi-

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ness as T. & C. Sales Company, 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, hereby issues its complaint and states its charges in that respect as follows:

Count I

PARAGRAPH 1. Respondents J. M. Trotter and H. K. Cade are individuals and copartners trading and doing business as T. & C. Sales Company with their office and principal place of business located at 811 Hardin Avenue, Jacksonville, Illinois.

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 to dealers engaged in the sale of various articles of merchandise in commerce between and among the various States of the United States, and to dealers engaged in the sale of merchandise within the several States of the United States.

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 push or punch from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitled 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 received 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, cigarette lighters, watches, and other articles of merchandise in commerce between and among various States of the United States, 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, and retail dealers who have purchased said devices directly from respondents and made up their own assortments 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

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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 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 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.

Count II

PARAGRAPH 1. Respondents J. M. Trotter and H. K. Cade are individuals and copartners trading and doing business as T. & C. Sales Company with their office and principal place of business located at 811 Hardin Avenue, Jacksonville, Illinois. Respondents are now and for more than three years last past have been engaged in the sale and distribution of watches, jewelry, cigarette lighters, fountain pens, rings, 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 Jacksonville, Illinois, to purchasers thereof at their respective points of location in various States of the United States other than Illinois. 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.

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 enterprise 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 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 his 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.

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 respondents and the element of chance 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

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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.

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 July 23, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereinabove charging them with the use of unfair acts and practices in commerce in violation of the provisions of that Act. After the filing by respondents of their joint answer to the complaint, a hearing was held before a hearing examiner of the Commission, theretofore designated by it, at which a stipulation theretofore executed by counsel supporting the complaint and counsel for respondents was introduced into evidence, together with certain exhibits, and such stipulation and exhibits were duly recorded and filed in the office of the Commission. On April 14, 1952, the hearing examiner filed his initial decision.

The Commission, having reason to believe that the initial decision did not constitute an appropriate disposition of the proceeding, placed this case on the Commission's own docket for review and, on July 24, 1952, it issued and thereafter served upon the parties its order affording the respondents an opportunity to show cause why the initial decision should not be altered in the manner and to the extent shown in the tentative decision attached to said order. Respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration by the Commission upon the record herein on review; 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 the following findings as to the facts, 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. Respondents J. M. Trotter and H. K. Cade are individuals and copartners trading under the name T. & C. Sales Company, with their office and principal place of business located at 811 Hardin Avenue, Jacksonville, Illinois. Respondents are engaged in the sale

and distribution of devices commonly known as punchboards and push cards, such devices being sold to dealers in various other articles of merchandise. Respondents are also engaged in the sale of various articles of merchandise in addition to such devices, and in the course of their business sell assortments or deals consisting of a punchboard and other merchandise. All of respondents' products are sold to purchasers located in various States of the United States, the products, when sold, being shipped by respondents from their place of business in the States of Illinois to such purchasers located in other States.

PAR. 2. Many of respondents' punchboards and push cards have printed thereon certain legends or instructions which explain the manner in which the devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The price paid for a punch or push on such devices varies in accordance with the individual device. Each purchaser is entitled to one punch or push from the punchboard or push card. When a punch or push is made, a disc or printed slip is separated from the board or card and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the punch or push completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons obtaining lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of such articles. Those persons who do not obtain such lucky or winning numbers receive nothing for their money other than the privilege of making a punch or push from the board or card. The articles of merchandise are thus distributed to the consuming public wholly by lot or chance.

Others of respondents' punchboards and push cards have no instructions or legends thereon but have blank spaces provided therefor. On these punchboards and push cards the purchasers thereof place instructions or legends similar to those placed by respondents on the boards and cards described above.

PAR. 3. Some of the purchasers of respondents' punchboards and push cards are themselves dealers in various other articles of merchandise in interstate commerce, and such purchasers make up assortments consisting of a punchboard or push card and other articles and sell such assortments to retail dealers. Other purchasers are retailers who purchase punchboards and push cards from respondents direct and make up their own assortments. In either event the retail dealer sells or distributes merchandise to the public by means of respondents' devices in accordance with the sales method described above.

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PAR. 4. The assortments or deals sold by respondents (as distinguished from the punchboards and push cards sold without other merchandise) consist of a punchboard and other articles of merchandise, such as jewelry, watches, various novelty items, etc. Retail dealers purchasing such assortments expose them to the public and sell or distribute the merchandise by means of the punchboard, which is operated in the manner described in Paragraph Two.

PAR. 5. The sale of merchandise to the public through the use of respondents' devices in the manner above described involves a game of chance or the sale of a chance to obtain articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public. The use of such sales plan or method in the sale of merchandise and the sale of merchandise by and through the use of such plan or method is a practice which is contrary to an established public policy of the Government of the United States. Through the sale and distribution of punchboard and push card devices respondents supply to and place in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale of merchandise. And where the purchasers of such devices are themselves engaged in interstate commerce, respondents' practices serve to place in the hands of such purchasers means and instrumentalities for engaging in unfair acts and practices in violation of the Federal Trade Commission Act.

CONCLUSION

The acts and practices of respondents, as herein found, are all to the prejudice 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 the respondents, J. M. Trotter and H. K. Cade, individually and as copartners trading as T. & C. 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 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 jewelry, watches, novelties or any 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.

IN THE MATTER OF
AMERICAN SURGICAL TRADE ASSOCIATION ET AL.

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

Docket 5979. Complaint, Apr. 24, 1952—Decision, Oct. 16, 1952

Where (I) the members of the unincorporated trade association, "ASTA", who were manufacturers, importers and distributors of and dealers in surgical instruments, supplies and equipment, and handled over one-half of the annual \$300,000,000 trade involved; and as such members enjoyed among member and non-member manufacturers and among purchasers the preference which their association sought to create through advertising and other ways; and (II) the members of "MSTA", a second association composed of some 56 manufacturers, wholesalers and importers of the aforesaid products, of whom about 50 manufacturers were members also of the aforesaid ASTA; engaged in substantial competition with one another and with others except as below described;

Acted together through and by means of their said and other predecessor associations, to restrain and eliminate competition in the manufacture, sale and distribution of products concerned and attempted to monopolize and control trade in commerce; and

Where the members of said "ASTA", pursuant to such purpose—

- (a) Denied membership to dealers for such competitive reasons as a belief among their membership that there were enough dealers in the territory of the dealer applicant, and applicant's failure to adhere to published prices or the fact that an applicant, otherwise qualified, was also engaged in another business; and by failing to act on certain applications for membership within a reasonable time, publishing in the by-laws of their association ostensible standards for membership, while in practice imposing others; and by publicly grading and differentiating the members from non-members arbitrarily, to the advantage of the former;
- (b) Attempted to and did divert trade from non-members to themselves by establishing and maintaining a reciprocal arrangement preferring one another over non-members through use of preferential listings, denying the latter full access to advertising, and other means;
- (c) Attempted to and did promote resale price maintenance and uniformity in terms and conditions of sale by filing complaints as to price cutting with one another through their association; by recommending for their common usage publication by respondent manufacturers of price lists in accordance with the form devised and promulgated by themselves through said ASTA; and by dividing themselves into districts so that all those who were in immediate competition with one another were in a given district and discussing prices, terms and conditions of sale and problems of resale price maintenance at district meetings; and