

Syllabus

IN THE MATTER OF

NASH & KINSELLA LABORATORIES, INC. 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 6034. Complaint, Aug. 26, 1952—Decision, Jan. 6, 1953

Where a corporation and its three officers, engaged in the competitive interstate sale and distribution of an insecticide designated "2-Way Roach and Insect Spray"; in advertising in circulars sent to dealers for distribution to the purchasing public, directly or by implication—

- (a) Falsely represented that said product, when used as directed, would kill or control insects that normally infest food or feeds, including moths, mites, flour beetles and cadelles, without rendering such food or feeds unfit for consumption, and would control lice or mites on poultry, and could be wiped on the hair of dogs, cats or other animals in a sufficient amount to kill or repel lice or fleas without being injurious to such animals;
- (b) Falsely represented that fleas were flying insects and could be killed by their said product sprayed into the air;
- (c) Falsely represented that their said product, when used as directed and sprayed on doorways, screen doors, light bulbs or other surfaces, would kill or repel insects that gather outside such doorways and screen doors at night under light, and would kill all insects that walk on such sprayed surfaces;
- (d) Represented that, used as a spray, said product would kill termites, either inside or outside of buildings, and was of practical value in control thereof; the facts being that while it would kill termites in the flying stage, it would be of no practical value in the control of termites within such structures, and it could not be expected to kill any significant number of them outside a structure when used as a spray;
- (e) Falsely represented that it was absolutely harmless and nonpoisonous, and that children suffered no harm from it;
- (f) Represented that it was "28 times more potent" against all insects than 25 percent D.D.T.; the facts being that its comparative effectiveness depended upon the type of insect and that as to certain insects, D.D.T. was more effective;
- (g) Represented that the active ingredients in aerosol bombs were ordinarily 3 percent active and that a quart container of its spray contained 66 times more insecticide than a 1-pound bomb; the facts being that such ingredients constituted not 3 percent but 15 percent of the volume in such a bomb, and while a quart container of their product contained more insecticide than the average bomb, it did not contain 66 times more; and
- (h) Represented falsely that said spray was effective in killing flies or insects within a 25,000 cu. ft. area when the amount expelled from the container by a few strokes of the hydraulic sprayer was sprayed into an electric fan;

Complaint

49 F. T. C.

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true and to induce thereby its purchase of their said product; whereby substantial trade in commerce was diverted to them from their competitors, to the injury of competition, and there was placed in the hands of dealers and others a means and instrumentality for misleading and deceiving the purchasing public:

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

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Edward F. Downs for the Commission.

Mr. John D. Conner, 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 Nash & Kinsella Laboratories, Inc., a corporation, and Wesley K. Nash, Charles W. Taylor and Maxine B. Nash, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Nash & Kinsella Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri with its main office located at 1218 Olive Street, St. Louis, Missouri.

Respondents Wesley K. Nash, Charles W. Taylor and Maxine B. Nash are officers of said corporate respondent and as such formulate, direct and control the policies and practices of said corporation. Said individual respondents have their offices at the same place as the corporate respondent.

PAR. 2. The respondents are now and for more than one year last past have been engaged in the sale and distribution of an insecticide designated by them as "2-Way Roach and Insect Spray," containing ingredients consisting of Petroleum Distillate, Technical Piperonyl Butoxide*, Pyrethrins. *Consists of (Butyl Carbityl) (6-Propyl Piperonyl) Ether and related Compounds. The directions for use are as follows:

2-Way Roach & Insect Spray is formulated to kill Roaches, Water-Bugs, Silverfish, Bedbugs, Ants, Fleas, Ticks, Flies, Mosquitoes, Clothes Moths and certain other insects.

1. To control Roaches, Silverfish and Water Bugs, 2-WAY should be sprayed into cracks and crevices of sinks, cabinets, pantries, shelving, etc. Spray generously along baseboards of kitchen and sink, and in basement, including ceiling.

2. Spray once a week until complete control of Roaches, Silverfish and Water-bugs is obtained. Then spray twice each month to keep out new infestations. 2-WAY deposits a residue that kills German Roaches and early stages of American and Oriental Roaches, Water-Bugs and Silverfish for two weeks and longer.

3. To kill Flies and Mosquitoes, hit them directly with spray while still or on the wing or fog the room with spray, keeping it closed for ten minutes.

4. To kill Bed-Bugs, spray mattresses, beds, springs, floors, walls and all cracks and crevices in room. Repeat once per week until complete control is obtained.

5. To kill Ants, spray runways and nests, hitting as many insects as possible. Repeat weekly until no more ants are seen.

6. To kill Fleas and Ticks, cracks and crevices in infested walls, floors and ceilings and bedding should be thoroughly sprayed once per week until control is obtained.

7. To kill Clothes Moths spray stored articles thoroughly with special attention to seams and folds. **Storage containers and closets** should also be sprayed. Applications should be repeated every two weeks except where treated articles are stored in a moth-tight container.

Respondents cause their said product, when sold to be transported from their place of business in the State of Missouri, to purchasers thereof, located in various other States of the United States and in the District of Columbia and maintain and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. Their volume of trade in such commerce has been and is substantial.

Respondents are now, and at all times hereinafter mentioned have been, in substantial competition with other corporations and with individuals, partnerships and firms engaged in the sale in commerce of insecticides.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondents, in circulars sent by them to dealers for distribution to the purchasing public, have made certain claims with respect to their

Complaint

49 F. T. C.

said product. Among and typical, but not all inclusive, of such claims are the following:

The report states that the 2-WAY formula does control the insects normally found around food, feeds, processing plant and household. This means . . . moths, mites, flour beetles, cadellles . . .

2-Way controls poultry lice, mites. A few drops of 2-Way wiped on the hair of dogs or cats or other animals kills and repels lice, fleas, gnats and biting flies.

You can spray into the air and kill . . . fleas and other fliers.

You can spray doorways, light bulbs, and door screen to kill and repel insects that gather outside at night under the light.

You can spray surfaces and kill insects that walk on them.

You can kill . . . termites inside or outside.

Children and food are safe with 2-Way.

Non-poisonous.

2-Way is as safe to humans and animals as the odorless, stainless oil base in which it is mixed.

288 Deaths from just one type of insecticide—be safe . . .

28 times more potent than 25 percent D. D. T. . . .

Contains 66 times more insecticide than a 1 lb. bomb (3% active) . . .

You can get a quart container full of miracle 2-Way Roach and Insect Spray—66 times more active insecticide than comes in a 1 lb. aerosol bomb with 3 percent active ingredients.

2-Way is so powerful a few strokes of the hydraulic sprayer into an electric fan in a home or a commercial establishment kills flies and other insects within a 25,000 cu. ft. area where the air currents are circulating.

PAR. 4. Through the use of the statements and representations herein above set forth, and others similar thereto not specifically set out herein, respondents have represented, directly or by implication, as follows:

(a) That 2-Way Roach and Insect Spray, when used as directed, will kill or control insects that are normally found around food or feeds, including moths, mites, flour beetles and cadellles, without rendering such food or feeds unfit for consumption.

(b) That 2-Way Roach and Insect Spray will control lice, or mites, on poultry, and that it can be wiped on the hair of dogs, cats or other animals in a sufficient amount to kill or repel lice, fleas, gnats or biting flies without being injurious to such animals.

(c) That fleas are flying insects and can be killed by spraying 2-Way Roach and Insect Spray into the air.

(d) That 2-Way Roach and Insect Spray, when used as directed and sprayed on doorways, screen doors, light bulbs, and other surfaces, will kill or repel insects that gather outside such doorways and screen doors at night under the light, or that walk on such sprayed surfaces.

(e) That used as a spray 2-Way Roach and Insect Spray will kill termites either inside or outside of buildings and is of practical value in the control of termites.

(f) That 2-Way Roach and Insect Spray is absolutely harmless and non-poisonous, that it can be used to kill insects around or infesting food without rendering such food unfit for consumption and that children suffer no harm from it.

(g) That 2-Way Roach and Insect Spray is 28 times more effective against all insects than 25 percent D. D. T.

(h) That the active ingredients in aerosol bombs is ordinarily 3 percent active, and that a quart container of 2-Way Roach and Insect Spray contains 66 times more insecticide than such aerosol bomb.

(i) That 2-Way Roach and Insect Spray is effective in killing flies or insects within a 25,000 cu. ft. area when the amount expelled from the container by a few strokes of the hydraulic sprayer is sprayed into an electric fan.

PAR. 5. The aforesaid statements and representations used and disseminated by respondents are false, misleading and deceptive. In truth and in fact:

(a) Respondents' product will not, when used as directed, kill or control insects that are normally found around food, or feeds, including moths, mites, flour beetles and cadelles, without rendering such food or feeds unfit for consumption.

(b) Respondents' product will not control lice or mites on poultry, and it cannot be wiped on the hair of dogs, cats or other animals in a sufficient amount to kill or repel lice, fleas, gnats or biting flies without being injurious to such animals.

(c) Fleas are not flying insects and they cannot be killed by spraying respondents' product into the air.

(d) Respondents' product will not, when used as directed and sprayed on doorways, screen doors, light bulbs or other surfaces, kill or repel insects that gather outside such doorways and screen doors at night under the light, or that walk on such sprayed surfaces.

(e) While respondents' product will kill termites in the flying stage when found inside a structure, such use will be of no practical value in the control of termites in such structures. It could not be expected to kill any significant number of these insects outside a structure when used as a spray.

(f) Respondent's product is not absolutely harmless and non-poisonous and it cannot be used to kill insects around or infesting food without, in some instances, rendering such food unfit for consumption, nor is it so safe that children can suffer no harm from it.

(g) The effectiveness of respondents' product as compared to D. D. T. depends upon the type of insect. D. D. T. is more effective than respondents' product as to certain insects.

Consent Settlement

49 F. T. C.

(h) The active ingredients in ordinary aerosol bombs is not 3 percent but 15 percent of the volume. A quart container of respondents' product contains more insecticide than the average aerosol bomb, but not 66 times more.

(i) Respondents' product will not be of any practical effect in the killing of flies and other insects when sprayed into an electric fan.

PAR. 6. The use by respondents of the foregoing false, misleading and deceptive statements and representations, and others similar thereto, has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' said product. As a direct result of the practices of respondents, as aforesaid, substantial trade in commerce is and has been diverted to respondents from their said competitors and injury has been and is done to competition in commerce between and among the various States of the United States.

PAR. 7. Respondents' said acts and practices also place in the hands of dealers and others a means and instrumentality for misleading and deceiving the purchasing public as aforesaid.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of the competitors of respondents and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 26, 1952, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, and any review thereof, and the enforcement of the order consented

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on January 8, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of the answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

1. Admit all of the jurisdictional allegations set forth in the complaint.

2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts and practices stated therein to be in violation of law.

3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Nash & Kinsella Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri with its main office located at 1218 Olive Street, St. Louis, Missouri.

Respondents Wesley K. Nash, Charles W. Taylor and Maxine B. Nash are officers of said corporate respondent and as such formulate, direct and control the policies and practices of said corporation. Said individual respondents have their offices at the same place as the corporate respondent.

PAR. 2. The respondents are now and for more than one year last past have been engaged in the sale and distribution of an insecticide designated by them as "2-Way Roach and Insect Spray," containing ingredients consisting of Petroleum Distillate, Technical Piperonyl Butoxide *, Pyrethrins. * Consists of (Butyl Carbityl) (6-Propyl Piperonyl) Ether and related Compounds. The directions for use are as follows:

2-Way Roach & Insect Spray is formulated to kill Roaches, Water-Bugs, Silverfish, Bedbugs, Ants, Fleas, Ticks, Flies, Mosquitoes, Clothes Moths and certain other insects.

Findings

49 F. T. C.

1. To control Roaches, Silverfish and Water Bugs, 2-Way should be sprayed into cracks and crevices of sinks, cabinets, pantries, shelving, etc. Spray generously along baseboards of kitchen and sink, and in basement, including ceiling.

2. Spray once a week until complete control of Roaches, Silverfish and Water-Bugs is obtained. Then spray twice each month to keep out new infestations. 2-Way deposits a residue that kills German Roaches and early stages of American and Oriental Roaches, Water-Bugs and Silverfish for two weeks and longer.

3. To kill Flies and Mosquitoes, hit them directly with spray while still or on the wing or fog the room with spray, keeping it closed for ten minutes.

4. To kill Bed-Bugs, spray mattresses, beds, springs, floors, walls and all cracks and crevices in room. Repeat once per week until complete control is obtained.

5. To kill Ants, spray runways and nests, hitting as many insects as possible. Repeat weekly until no more ants are seen.

6. To kill Fleas and Ticks, cracks and crevices in infested walls, floors and ceilings and bedding should be thoroughly sprayed once per week until control is obtained.

7. To kill Clothes Moths spray stored articles thoroughly with special attention to seams and folds. Storage containers and closets should also be sprayed. Applications should be repeated every two weeks except where treated articles are stored in a mothtight container.

Respondents cause their said product, when sold to be transported from their place of business in the State of Missouri, to purchasers thereof, located in various other States of the United States and in the District of Columbia and maintain and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. Their volume of trade in such commerce has been and is substantial.

Respondents are now, and at all times hereinafter mentioned have been, in substantial competition with other corporations and with individuals, partnerships and firms engaged in the sale in commerce of insecticides.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondents, in circulars sent by them to dealers for distribution to the purchasing public, have made certain claims with respect to their said product. Among and typical, but not all inclusive, of such claims are the following:

The report states that the 2-Way formula does control the insects normally found around food, feeds, processing plant and household. This means . . . moths, mites, flour beetles, cadelles . . .

2-Way controls poultry lice, mites. A few drops of 2-Way wiped on the hair of dogs or cats or other animals kills and repels lice, fleas, gnats and biting flies.

You can spray into the air and kill . . . fleas and other fliers.

You can spray doorways, light bulbs and door screen to kill and repel insects that gather outside at night under the light.

You can spray surfaces and kill insects that walk on them.

You can kill . . . termites inside or outside.

Children and food are safe with 2-Way.

Non-poisonous.

2-Way is as safe to humans and animals as the odorless, stainless oil base in which it is mixed.

288 Deaths from just one type of insecticide—be safe . . .

28 times more potent than 25 percent D. D. T. . . .

Contains 66 times more insecticide than a 1 lb. bomb (3 percent active) . . .

You can get a quart container full of miracle 2-Way Roach and Insect Spray—66 times more active insecticide than comes in a 1 lb. aerosol bomb with 3 percent active ingredients.

2-Way is so powerful a few strokes of the hydraulic sprayer into an electric fan in a home or a commercial establishment kills flies and other insects within a 25,000 cu. ft. area where the air currents are circulating.

PAR. 4. Through the use of the statements and representations herein above set forth, and others similar thereto not specifically set out herein, respondents have represented, directly or by implication, as follows:

(a) That 2-Way Roach and Insect Spray, when used as directed, will kill or control insects that normally infest food or feeds, including moths, mites, flour beetles and cadelles, without rendering such food or feeds unfit for consumption.

(b) That 2-Way Roach and Insect Spray will control lice, or mites, on poultry, and that it can be wiped on the hair of dogs, cats or other animals in a sufficient amount to kill or repel lice, or fleas, without being injurious to such animals.

(c) That fleas are flying insects and can be killed by spraying 2-Way Roach and Insect Spray into the air.

(d) That 2-Way Roach and Insect Spray, when used as directed and sprayed on doorways, screen doors, light bulbs, and other surfaces, will repel insects that gather outside such doorways and screen doors at night under the light, and kill all insects that walk on such sprayed surfaces.

(e) That used as a spray 2-Way Roach and Insect Spray will kill termites either inside or outside of buildings and is of practical value in the control of termites.

(f) That 2-Way Roach and Insect Spray is absolutely harmless and nonpoisonous, and that children suffer no harm from it.

Findings

49 F. T. C.

(g) That 2-Way Roach and Insect Spray is 28 times more effective against all insects than 25 percent D.D.T.

(h) That the active ingredients in aerosol bombs is ordinarily 3 percent active, and that a quart container of 2-Way Roach and Insect Spray contains 66 times more insecticide than such aerosol bomb.

(i) That 2-Way Roach and Insect Spray is effective in killing flies or insects within a 25,000 cu. ft. areas when the amount expelled from the container by a few strokes of the hydraulic sprayer is sprayed into an electric fan.

PAR. 5. The aforesaid statements and representations used and disseminated by respondents are false, misleading and deceptive. In truth and in fact:

(a) Respondents' product will not, when used as directed, kill or control insects that normally infest food, or feeds, including moths, mites, flour beetles and cadelles, without rendering such food or feeds unfit for consumption.

(b) Respondents' product will not control lice or mites on poultry, and it cannot be wiped on the hair of dogs, cats or other animals in a sufficient amount to kill or repel lice or fleas without being injurious to such animals.

(c) Fleas are not flying insects and they cannot be killed by spraying respondents' product into the air.

(d) Respondents' product will not, when used as directed and sprayed on doorways, screen doors, light bulbs or other surfaces, kill or repel insects that gather outside such doorways and screen doors at night under the light, and it will not kill all insects that walk on such sprayed surfaces.

(e) While respondents' product will kill termites in the flying stage when found inside a structure, such use will be of no practical value in the control of termites in such structures. It could not be expected to kill any significant number of these insects outside a structure when used as a spray.

(f) Respondents' product is not absolutely harmless and non-poisonous, nor is it so safe that children can suffer no harm from it.

(g) The effectiveness of respondents' product as compared to DDT depends upon the type of insect. DDT is more effective than respondents' product as to certain insects.

(h) The active ingredients in ordinary aerosol bombs is not 3 percent but 15 percent of the volume. A quart container of respondents' product contains more insecticide than the average aerosol bomb, but not 66 times more.

769

Order

(i) Respondents' product will not be of any practical effect in the killing of flies and other insects when sprayed into an electric fan by means of a hydraulic sprayer.

PAR. 6. The use by respondents of the foregoing false, misleading and deceptive statements and representations, and others similar thereto, has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' said product. As a direct result of the practices of respondents, as aforesaid, substantial trade in commerce is and has been diverted to respondents from their said competitors and injury has been and is being done to competition in commerce between and among the various States of the United States.

PAR. 7. Respondents' said acts and practices also place in the hands of dealers and others a means and instrumentality for misleading and deceiving the purchasing public as aforesaid.

CONCLUSION

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

ORDER TO CEASE AND DESIST

It is ordered, That Nash & Kinsella Laboratories, Inc., a corporation, and its officers and Wesley K. Nash, Charles W. Taylor, and Maxine B. Nash, individually and as officers of said corporation and respondents' representatives, agents 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 the insecticide preparation designated "2-Way Roach and Insect Spray" or any other insecticide of substantially similar composition or possessing substantially similar properties whether sold under the same name or under any other name or names, do forthwith cease and desist from representing directly or by implication:

(1) That said preparation will kill or control insects that normally infest food or feeds, including moths, mites, flour beetles and cadelles, without rendering such food or feeds unfit for consumption.

(2) That said preparation will control lice or mites on poultry or that it can be wiped on the hair of dogs, cats or other animals in a sufficient amount to kill or repel lice or fleas without being injurious to said animals.

(3) That fleas are flying insects and can be killed by spraying said preparation into the air.

(4) That said preparation will, when used as directed and sprayed on doorways, screen doors, light bulbs and other surfaces repel insects that gather outside such doorways and screen doors at night under the light or kill all insects that walk on such sprayed surfaces.

(5) That said preparation can be used to kill all termites either inside, other than flying termites, or outside of buildings, or that it has any practical value in the control of termites.

(6) That said preparation is absolutely harmless or non-poisonous or that children can suffer no harm from it.

(7) That said preparation is more effective against all insects than D. D. T.

(8) That aerosol bombs ordinarily contain a smaller percentage of active ingredients than they actually do contain, or that a quart container of said preparation contains more insecticide in comparison with an aerosol bomb than it actually does.

(9) That said preparation will be of practical effect in the killing of flies and insects when sprayed into an electric fan by means of a hydraulic sprayer.

It is further ordered, That respondents shall, within 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.

NASH & KINSELLA LABORATORIES, INC.

By [S] Wesley K. Nash, *President*

WESLEY K. NASH

By [S] Wesley K. Nash

WESLEY K. NASH

By [S] Charles W. Taylor

CHARLES W. TAYLOR

By [S] Maxine B. Nash

MAXINE B. NASH

DATE: Nov. 20 '52

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 6th day of January, 1953.

Syllabus

IN THE MATTER OF
JEWEL RADIO AND TELEVISION CORP. OF AMERICA
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 5683. Complaint, July 20, 1949—Decision, Jan. 9, 1953

Where two corporations and an individual who was in practical effect their owner, engaged in the interstate sale and distribution of cameras, radios, fountain pens, radio clocks, and other articles of merchandise—

Distributed to operators and to members of the public push cards, order blanks, and illustrated circulars which described their merchandise and their plan for distributing the same through allotting it as premiums or prizes to the operators of their push cards and to members of the public under schemes which involved the operation of a game of chance, gift enterprise, or lottery scheme, pursuant to which the purchasers who made the correct prearranged selections received certain articles for the varying and chance-determined amounts theretofore paid by them; others receiving nothing, and thereby supplied to and placed in the hands of such operators the means of conducting games of chance, contrary to an established public policy of the United States Government:

With the result that many persons attracted by said sales plans and the element of chance involved therein were thereby induced to buy and sell their merchandise:

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.

In said proceeding in which it appeared that more than a year after the issuance of the complaint steps were taken looking to the dissolution of both corporations and that said corporations were thereafter dissolved, but that during the period involved, orders were filled in the name of one of said corporations under the general supervision of the individual above referred to by persons originally employed by the other corporation: the Commission was of the opinion that the cease and desist order should not be directed to such corporations but be deemed dismissed as to them, and that it should also be dismissed as to certain other individuals who were joined but who, as it appeared, exercised no control or direction over the policies and practices above involved.

Before *Mr. Webster Ballinger*, hearing examiner.

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

Nash & Donnelly, of Washington, D. C., and *Mr. Arthur Block*, of New York City, for respondents.