

Order

IN THE MATTER OF

LEO LICHTENSTEIN ET AL. TRADING AS HARLICH
MANUFACTURING COMPANY AND LOOMIS MANUFACTURING
COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 4879. Modified order, Jan. 16, 1953

Modified order eliminating the words "or may be used" from the Commission's original order, issued on June 30, 1950, 46 F. T. C. 984, in accordance with the decision and decree of the Court of Appeals, Ninth Circuit, February 5, 1952, in *Leo Lichtenstein et al. v. Federal Trade Commission*, 194 F. (2d) 607; and in other respects affirming the Commission's order—

Requiring respondents to cease and desist from selling or distributing in commerce, punchboards, etc., and in connection with the offer, etc., of cigarette chests or other articles of merchandise; and to cease and desist from supplying to others, punchboards, etc., for use in the sale, etc., of merchandise to the public, as in said order in detail below set out.

Before *Mr. John W. Addison* and *Mr. James A. Purcell*, hearing examiners.

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

Mr. George M. Glassgold and *Mr. James A. Murray, Jr.*, of Washington, D. C., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the amended complaint introduced before a hearing examiner of the Commission theretofore duly designated by it, the hearing examiner's recommended decision, and briefs and oral argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act and having issued its order to cease and desist on June 30, 1950; and

Respondents having filed in the United States Court of Appeals for the Ninth Circuit their petition to review and set aside the order to cease and desist issued herein, and that Court having heard the matter on briefs and oral argument and fully considered the matter, and having, thereafter, on February 5, 1952, entered its final decree modifying and affirming, as modified, the aforesaid order to cease and desist pursuant to its opinion announced on that same date; and

Order

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Respondents' petition to the Supreme Court of the United States for writ of certiorari to the United States Court of Appeals for the Ninth Circuit being denied on October 13, 1952, and their petition for rehearing also being denied by said Court; and

Thereafter, the Commission having reconsidered the matter, and being of the opinion that its order to cease and desist herein should be modified to conform with the decree of said Court of Appeals:

It is ordered, That the respondents, Leo Lichtenstein, Libbie Lichtenstein, and Byron J. Lichtenstein, individually and trading as Harlich Manufacturing Company and as Loomis Manufacturing Company, or trading under any other name or trade designation, and said respondents' 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, punch boards, push cards, or other lottery devices, which are to be used 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 cigarette chests or boxes, or other articles of merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others punch boards, push cards, or other lottery devices, either with assortments of cigarette chests or boxes or other merchandise, or separately, which said punch boards, push cards, or other lottery devices, are to be used, or may be used, in selling or distributing such cigarette chests or boxes or other merchandise to the public.

2. Selling or distributing cigarette chests or boxes, or other articles of merchandise, so packed or assembled that sales thereof to the public are to be made or, due to the manner in which such merchandise is packed or assembled at the time it is sold by the respondents, may be made by means 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.

Complaint

IN THE MATTER OF

WESTERN GRAIN COMPANY

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

Docket 6039. Complaint, Sept. 4, 1952—Decision, Jan. 27, 1953

Where a corporation constituting the second largest miller of corn meals in the United States and the largest in the South, engaged in milling corn into various products, including corn meal, grits, corn flour, and hominy feeds for animals, and in manufacturing approximately twenty-five varieties of commercial feeds for animals, and in the competitive interstate sale of its said products to large retail grocers and chains for resale to consumers, and to wholesale grocers generally, who resold to the remaining larger number of smaller retail grocers, and each of whom included among common customers a substantial number of such retailers—

Without following any systematic ratio of price discrimination, discriminated in price between its purchasers, many of whom were competitively engaged in the resale of its products with other customers who purchased the same from it and were not so favored, within the various trading areas in which said favored customers were engaged in business;

Effect of which discriminatory pricing practices might be substantially to lessen competition and tend to create a monopoly in the lines of commerce in which it and its purchasers were engaged, and to injure, destroy or prevent competition with it or with its purchasers who received the benefits of such discrimination:

Held, That such acts and practices, under the circumstances set forth, constituted violation of Section 2 (a) of the Clayton Act, as amended.

Before *Mr. William L. Pack*, hearing examiner.

Mr. James I. Rooney, *Mr. James S. Kelaher* and *Mr. Brockman Horne* for the Commission.

Mr. Raoul Berger, of Washington, D. C., and *Mr. J. P. Mudd*, of Birmingham, Ala., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C. Title 15, Section 13), hereby issues its complaint against the said respondent, stating its charges as follows: