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in detail the manner and form in which it has complied with this modified order to cease and desist.

IN THE MATTER OF
NATE GELLMAN ET AL. DOING BUSINESS AS
GELLMAN BROTHERS

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7298. Complaint, Nov. 6, 1958—Decision, May 23, 1960

Order requiring a Minneapolis, Minn., partnership to cease selling and distributing lottery devices for the sale of merchandise to the public through games of chance.

Mr. William A. Somers for the Commission.

Mr. Maurice Weinstein, of Milwaukee, Wisc., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Respondents, who are engaged in the sale and distribution of punchboards, are charged with violating the Federal Trade Commission Act by thus placing in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale and distribution of merchandise.

Upon the basis of the entire record, and after considering the proposed findings of facts, conclusions and legal memoranda submitted by counsel, the following findings of facts are made, conclusions reached, and order issued:

1. Respondents Nate Gellman, Burt Horwitz and Peter Podany are individuals and co-partners trading and doing business as Gellman Brothers. The office and principal place of business of all respondents is located at 119 North Fourth Street in the City of Minneapolis, State of Minnesota.

2. Respondents are now, and for more than a year last past have been, engaged in the sale and distribution of merchandise, including devices commonly known as punchboards, to retail dealers, organizations and individuals located in the several states of the United States. Their gross sales, including punchboard sales, for 1957 were in excess of \$1,400,000, and approximately the same for 1958. Of this, approximately 50% represented sales outside the State of Minnesota. The volume of respondents' punchboard business was not ascertainable for two reasons: (1) respondents kept no separate

record of punchboard sales, and (2) although a subpoena duces tecum was issued for their production, no records of punchboard purchases could be found by respondents even after diligent search. Since punchboard items are carried and prominently displayed in respondents' catalogue, it is presumed that they constitute a substantial part of respondents' sales.

3. Respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of Minnesota to purchasers located in various states of the United States, other than the State of Minnesota, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their said business, respondents sell and distribute, and have sold and distributed, to said retail dealers, organizations and individuals, 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 public.

5. One of respondents' punchboards presented in evidence is a "GETZUM SMOKES" board (Commission's Exhibit 4) which is, as referred to in respondents' 1957-58 Annual Buyer's Guide No. 72, page 324, a "600-holes, 5¢ play, red, white and blue tickets, semi-thick style board," which takes in \$30.00 and pays out, as shown by the legend thereon, 80 packages of cigarettes. The punches are 5¢ each. Red tickets 15, 35, 55, 75, 115 and 135, when punched, each entitle the player to five packs of cigarettes; white tickets 20, 40, 60, 80, 100 and 120 likewise entitle the lucky player to five packs each, as do blue tickets 22, 44 and 66; the last punch on the board also is good for five packs. Thus, out of 600 punches, only sixteen entitle the player to a share of the merchandise, and the merchandiser takes in \$30.00 for eighty packs of cigarettes. Each lucky winner gets five packs of cigarettes for one 5¢ punch. Those who punch other than the designated lucky names receive nothing. Another of respondents' boards which is in evidence (Commission's Exhibit 1; Respondents' No. 6455) is described in the catalogue as follows:

GRAND PRIZE
MERCHANDISE
BOARD
POCKET SIZE
BOOK STYLE

No. 6455—Grand Prize Board. 200-hole, 1¢ to 35¢ prize board. Regular Midget style, desirable pocket size. Takes in \$63.50 and pays out one Grand Prize as offered by the oper-

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ator. Suitable for use by Legions, Churches, Lodges, and similar organizations.

Each ----- \$1.60.

The only legend on this board is—

Numbers Ending in
0 and 5

Register For

G R A N D P R I Z E

Numbers 1 to 15

ARE FREE

Numbers 16 to 35

Pay What You Draw

Over 35 Pay Only 35¢.

A third board (Commission's Exhibit 2; respondents' No. 6454) is in evidence, which is identical with the board just described except that it "(t)akes in \$86.55" and provides that punched numbers 16 to 49 must be paid for in the amount of cents represented by the numbers on the punched slips, and those with numbers larger than 49 sell for 50¢ each.

6. On the lids of the latter two boards are lines in which those who punch the lucky qualifying numbers may register their names. From this list the "grand prize" winner is determined by punching the number in the starred circle at the upper right corner of the board. The purchasers and users of boards of this type can select whatever grand prize they choose, and customarily each board is used for the disposition of a single item of merchandise. Thus there would be but one prize or item of merchandise disposed of by the 200 punches.

7. Respondents' catalogue, pages 324 and 325, describes several money-type boards, and other boards of various sizes and types, some of which obviously are intended for, and conveniently can be used for disposition and sale of merchandise. Typical of these are boards which provide for one "grand prize" and eight to twelve "consolation winners." On many of these boards the price per punch is not designated, the catalogue stating:

Operator sets his own payout and price per sale;

Operator sets his own price per sale and amount of all awards;

Designed to enable the dealer to decide his own price per sale and amounts of awards for consolation and grand prize winners.

Across the tops of the two catalogue pages on which respondents' punchboards are described are the words, in 24-point type,

Cigarette, Put and Take and Tip Sales Boards and Cards The Ever Popular Selling Charley and Color Sales Boards.

The prices of the boards vary from \$2.50 per dozen to \$2.95 each. Of the punchboards in evidence, Commission's Exhibits 1 and 2 are catalogue-priced at \$1.60 each; Commission's Exhibit 4 at \$1.95.

8. The operation of these punchboards is similar to that of other merchandise boards, which have been described in several Commission decisions. The numbers on the slips which are to be punched are effectively concealed from the purchaser or prospective purchaser until the selection has been made and the punch completed. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail prices 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 having made a futile punch. The articles of merchandise which are used as prizes are thus distributed to the purchasing and consuming public wholly by lot or chance.

9. Purchasers of respondents' boards have used them as a means of selling and distributing various types and articles of merchandise, which is the purpose for which the boards hereinabove described were designed, made and distributed. Because of the element of chance involved in connection with the sale and distribution of merchandise by means of punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers, organizations and individuals selling or distributing said merchandise by means thereof.

10. The sale of merchandise to the purchasing public through the use of, or by the means of, such devices in the manner above described involves a lottery, game of chance or gift enterprise through the sale of a chance to procure articles of merchandise at a price much less than the normal retail prices thereof; it teaches and encourages gambling among members of the public, is contrary to established public policy, and constitutes unfair acts and practices in commerce in violation of the Federal Trade Commission Act.

11. The sale or distribution of said punchboard devices by respondents supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in connection with the sale or distribution of merchandise, and thus of engaging in unfair methods of competition and unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

12. The aforesaid acts and practices of the respondents 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.

13. The Federal Trade Commission has jurisdiction over the acts and practices of the respondents as herein found, and this proceeding is in the public interest. The order which follows effectively disposes of respondents' motion to dismiss.

Accordingly,

It is ordered, That respondents Nate Gellman, Burt Horwitz and Peter Podany, individually or as co-partners trading under the name of Gellman Brothers or 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, punchboards or other devices which are designed or intended 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having been heard on the respondents' appeal from the hearing examiner's initial decision wherein the respondents were ordered to forthwith cease and desist from selling or distributing in commerce punchboards or other devices which are designed or intended 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; and

The Commission, on the authority of *R. B. James and Patrick Zurla, trading as Chicago Board Company v. Federal Trade Commission*, 253 F. 2d 78 (7th Cir. 1958), *cert. denied*, 358 U.S. 821; *Bernice Feitler, et al., trading as Gardner & Company v. Federal Trade Commission*, 201 F. 2d 790 (9th Cir. 1953); and *Gay Games, Inc., et al. v. Federal Trade Commission*, 204 F. 2d 197 (10th Cir. 1953), having determined that the initial decision is adequate and appropriate in all respects to dispose of this proceeding:

It is ordered, That the respondents' appeal be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision, filed December 23, 1959, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, Nate Gellman, Burt Horwitz and Peter Podany, 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 the order to cease and desist contained in said initial decision.

IN THE MATTER OF
CHAS. PFIZER & CO., INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7487. Complaint, May 14, 1959—Decision, May 23, 1960

Order dismissing, following voluntary abandonment of the challenged practices two years previously, complaint charging a large drug manufacturer with falsely representing, in advertising its antibiotic "Sigmamycin," that fictitiously named physicians were actual doctors who prescribed the product.

Mr. Edward F. Downs supporting the complaint.

Dewey, Ballantine, Bushby, Palmer & Wood by *Mr. John E. F. Wood*, *Mr. Charles E. Stewart, Jr.*, and *Mr. L. Robert Fullem* of New York, N.Y., for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

On May 14, 1959 the Federal Trade Commission issued its complaint herein alleging that respondent had engaged in false and misleading advertising by representing that fictitiously named physicians were actual physicians who prescribed its product "Sigmamycin." Respondent filed its answer admitting the use of this advertising and denying that such advertising was false, misleading or deceptive. A hearing was held at which evidence was received in support of the allegations of the complaint and counsel supporting the complaint rested his case-in-chief. Thereafter respondent filed a motion to dismiss the complaint and a hearing was held at which evidence was received in support of this motion.

Upon consideration of the entire record, as it now stands before respondent offers its evidence in defense, it is found that the allegations in paragraphs 1 through 6 of the complaint are proved and they are incorporated herein by reference, as a part of this initial decision and all of the statements in paragraphs 1 through 6 of the complaint are found to be facts.

It is further found that two of the grounds stated for respondent's motion are supported by the evidence and they are found as facts as follows:

(1) The acts complained of in the instant proceeding occurred approximately two years prior to the issuance of the complaint herein.

(2) Prior to issuance of the complaint herein, and prior to any knowledge on the part of the respondent that any governmental