

the initial decision of the Hearing Examiner shall, on the 22d day of August 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

FLEETWOOD COFFEE COMPANY ET AL.

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

Docket 8387. Complaint, May 4, 1961—Decision, Aug. 22, 1961

Consent order requiring Chattanooga, Tenn., distributors of ground coffee for resale, along with their wholly owned advertising agency, to cease promoting their coffee by means of a lottery sales plan under which each can or bag of coffee during a certain period, usually one month, contained money or a check in amounts from 1¢ to \$25, which could not be ascertained until selection was made and the container opened.

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 Fleetwood Coffee Company, a corporation, and Overton Dickinson, L. W. Oehmig and Carl C. Davis, individually and as officers of said corporation, and Nelson Chesman Co., Inc., a corporation, and R. H. Leiper, individually and as an officer of Nelson Chesman Co., Inc., 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 stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Fleetwood Coffee Company is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Tennessee, with its principal office and place of business located at 246 East Eleventh Street, in the City of Chattanooga, State of Tennessee.

Respondents Overton Dickinson, L. W. Oehmig and Carl C. Davis are officers of said corporate respondent. They formulate, direct and control the acts and practices of said corporation. Their address is the same as that of said corporate respondent.

PAR. 2. Respondent Fleetwood Coffee Company and its officers are now, and for some time last past have been, engaged in the sale to retail dealers of ground coffee for resale to the public.

PAR. 3. In the course and conduct of their business, said respondents now cause, and for some time last past have caused, their said coffee, when sold, to be shipped from their place of business in the State of Tennessee to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said coffee in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent Nelson Chesman Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 240 East Eleventh Street, in the City of Chattanooga, State of Tennessee. This corporate respondent is the advertising agency of the respondent Fleetwood Coffee Company and prepares advertising material used in store displays, newspapers, radio broadcasts and television commercials to promote the sale of coffee as hereinafter described. It is wholly owned by respondent Fleetwood Coffee Company.

Respondent R. H. Leiper is an officer of respondent Nelson Chesman Co., Inc. His address is the same as that of Nelson Chesman Co., Inc.

All of the respondents collaborate in carrying out the acts and practices hereinafter set forth.

PAR. 5. The product involved in this proceeding, coffee, is packed by respondent coffee company in one pound bags and cans. Each can or bag of coffee offered for sale during a promotional period, usually one month, contains a sum of money or a check payable to bearer in amounts ranging from one cent to twenty-five dollars. The ultimate purchaser, however, cannot ascertain the amount of money involved or of the check contained in the package until a selection is made and the individual can or bag is opened. Consequently, the amount of money received is determined wholly by lot or chance.

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PAR. 6. Among and typical of the advertising representations made by respondents in connection with the sale of said coffee during the aforesaid promotional periods and in the manner aforesaid are the following:

NEWSPAPER ADVERTISING

FREE! 1¢ to \$25.00
In Every 1 lb. Vacuum Can of
FLEETWOOD COFFEE
A special introductory offer . . .
It's true . . . for a limited time
only you get from 1¢ to \$25.00 in
every one pound . . . There's money
in every bag . . .

TELEVISION ADVERTISING

Slide

Slide of Fleetwood—
Money in the Can

Audio

Now and for a limited time only, Buy
and enjoy Fleetwood Coffee in the
vacuum can and get *free* 1¢ to
\$25.00 in every pound—There's
money in every can of Fleetwood
Coffee.

RADIO ADVERTISING

Now and for a limited time only,
every one pound can of Fleetwood
Coffee contains from 1¢ to \$25.00
and it's yours absolutely free of
extra cost. Yes, it's actually true
. . . for a limited time only you
get *free* from 1¢ to \$25.00 . . .

DISPLAY ADVERTISING PLACED
IN RETAIL STORES

FREE
Of Extra Cost
Money in Every 1 lb.
Vacuum Can of
FLEETWOOD COFFEE

PAR. 7. Many retailers are attracted by respondents' sales promotion plan, and the element of chance involved therein, and are thereby induced to buy and sell said coffee. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale of said coffee in accordance with the sales plan hereinabove set forth.

PAR. 8. The award of monetary prizes by the method or plan employed by respondents as described above constitutes a game of

chance, lottery or gift enterprise. The use of such a plan by respondents in connection with the sale of said coffee is contrary to the public interest and to an established public policy of the Government of the United States.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. DeWitt T. Puckett for the Commission.

Mr. John S. Fletcher, Jr., of Chattanooga, Tenn., for the respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued May 4, 1961, the respondents, Fleetwood Coffee Company and Nelson Chesman Co., Inc., both corporations organized and existing under the laws of the State of Tennessee, Overton Dickinson, L. W. Oehmig and Carl C. Davis, individually and as officers of Fleetwood Coffee Company, and R. H. Leiper, individually and as an officer of Nelson Chesman Co., Inc., were charged with engaging in lottery practices in connection with the advertising, sale and distribution of coffee, all in violation of the Federal Trade Commission Act. Fleetwood Coffee Company and its officers, the said Overton Dickinson, L. W. Oehmig and Carl C. Davis, are engaged in business at 246 East Eleventh Street, in Chattanooga, Tennessee; and Nelson Chesman Co., Inc. and its officer, R. H. Leiper, are engaged in business at 240 East Eleventh Street, in Chattanooga, Tennessee.

The respondents, the corporations and individuals so named (with the advice and agreement of their attorney), and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist, thus disposing of all the issues involved in this proceeding.

In the agreement it was expressly provided that the signing thereof was for settlement purposes only and did not constitute an admission by the respondents that they had violated the law as in the complaint alleged.

By the terms of the agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

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By the agreement, the respondents expressly waived any further procedural steps before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all rights they may have to challenge or contest the validity of the order to cease and desist to be entered in accordance therewith.

Respondents further agreed that the order to cease and desist, to be issued in accordance with the agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order to be issued pursuant to said agreement; and that such order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The Hearing Examiner has considered the agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and shall be filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice.

Now, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered. That respondents Fleetwood Coffee Company, a corporation, and its officers, and Overton Dickinson, L. W. Oehmig and Carl C. Davis, individually and as officers of said corporation, and Nelson Chesman Co., Inc., a corporation, and its officers, and R. H. Leiper, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale and distribution of coffee, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising or using any sales promotion plan or scheme whereby sales of their products to the consuming public are to be made, or may be made, by means of a game of chance, gift enterprise or lottery scheme.

2. Supplying to or placing in the hands of retail dealers, or others, packages of coffee, or other products, which are to be used, or may

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be used, to conduct a lottery, game of chance, or gift enterprise in the sale or distribution of their products to the public.

3. Selling or otherwise disposing of any product through the use of, or by means of, a game of chance, gift enterprise, or lottery scheme.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the Hearing Examiner shall, on the 22d day of August 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents herein 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.