
IN THE MATTER OF
WERTS NOVELTY COMPANY, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-1266. Complaint, Nov. 3, 1967—Decision, Nov. 3, 1967

Consent order requiring a Muncie, Ind., corporation to cease using punch-boards and other such devices to sell its merchandise by games of chance, gift enterprise, or lottery scheme.

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 Werts Novelty Company, Inc., a corporation, and O. Norman Wilner, individually and as an officer of said corporation, 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 Werts Novelty Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 1520 West 5th Street, in the city of Muncie, State of Indiana.

Respondent O. Norman Wilner is an individual, and is president of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, offering for sale, sale and distribution of various converted paper products of their own and other firms' manufacture, including punchboards and other devices. Respondents sell such devices to jobbers and distributors for resale to retail customers and also sell to other purchasers.

PAR. 3. Respondents, in the course and conduct of their business, now cause, and for some time last past have caused, said products, when sold, to be shipped and transported from their place of business in the State of Indiana to jobbers, distributors and other purchasers thereof located in various other States of the United States. Respondents 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.

PAR. 4. In the course and conduct of their business as hereinabove described, respondents sell and distribute, and have sold and distributed, to said jobbers, distributors and other purchasers, punchboards and other devices which are designed or intended for use as games of chance, gift enterprises or lottery schemes in selling or distributing merchandise to members of the general public. Many of respondents' said devices have blank spaces on

the face thereof so that said purchasers or their customers may place instructions or labels thereon, to explain the manner in which said devices are to be used, or may be used, in the sale or distribution of various articles of merchandise to the general public. Said devices are frequently used by said purchasers or their customers in selling or distributing merchandise to the general public in the following manner:

The price of a punch or selection from a punchboard or other device varies in accordance with the instructions attached thereto. When a printed slip is separated from such device by punching, tearing or other means, a previously concealed number is disclosed. Certain designated numbers entitle the participant to a specified article of merchandise according to the particular instructions attached to the device. Participants who select lucky or winning numbers receive the specified articles of merchandise without additional cost. Participants who do not select such lucky or winning numbers receive nothing for their money other than the privilege of selecting a slip from said punchboard or other device. The various articles of merchandise used in combination with said punchboards or other devices are thus sold or distributed to members of the general public wholly by lot or chance.

The use to be made of such punchboards or other such devices, and the manner in which they are used by purchasers from respondents or their customers, is in combination with various articles of merchandise, so as to enable them to sell or distribute said merchandise by means of lot or chance as herein alleged.

PAR. 5. Many persons, firms and corporations engaged in the sale and distribution of merchandise, pack and assemble, or have packed and assembled, various articles of merchandise into assortments combining such articles with punchboards or other devices sold and distributed by respondents. Many retail dealers have exposed said assortments to the general public and have sold or distributed said articles of merchandise by means of said devices to members of the general public in the manner hereinabove described. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said devices, many members of the general public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many of said retail dealers have been induced to deal with respondents' jobbers and distributors who sell and distribute said merchandise in combination with respondents' said devices.

PAR. 6. The sale and distribution of merchandise to the general public through the use of, or by means of, such punchboards or other devices in the manner above alleged involves a game of chance or the sale of a chance to procure articles of merchandise at prices lower than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The sale of said devices for use in the sale or distribution of said merchandise 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 and distribution of said punchboards and other 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 enterprises, in the sale or distribution of said merchandise. Respondents, through their jobbers, distributors and their other customers thus supply to, and place in the hands of, said persons, firms and corporations, the means of, and instrumentalities for, engaging in unfair methods of competition and unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. 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 in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having considered the agreement and having accepted same, and the agreement containing consent order having

thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Werts Novelty Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 1520 West 5th Street, in the city of Muncie, State of Indiana.

Respondent O. Norman Wilner is an individual and is president of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That the respondents Werts Novelty Company, Inc., a corporation, and its officers, and O. Norman Wilner, individually and as an officer of said corporation, and 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, 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.

It is further ordered, That the 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 this order.

IN THE MATTER OF

JOHN K. BURCH COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS
IDENTIFICATION ACTS