

Complaint

75 F.T.C.

IN THE MATTER OF

GIBSON SALES, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1519. Complaint, Apr. 24, 1969—Decision, Apr. 24, 1969.*

Consent order requiring a Chicago, Ill., distributor of punchboards and other lottery devices to cease selling or distributing these items in commerce.

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 Gibson Sales, a partnership, and Ruth Berdick and Frank W. James, individually and as copartners trading and doing business as Gibson Sales, 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 Gibson Sales is a partnership comprised of the following named individuals who formulate, direct and control its acts and practices as hereinafter set forth. The principal office and place of business of said partnership is located at 2222 South Michigan Avenue, in the city of Chicago, State of Illinois.

Respondents Ruth Berdick and Frank W. James are individuals and copartners trading and doing business as Gibson Sales with their principal office and place of business located at the above-stated address.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of various converted paper products 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 Illinois 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 herein above 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. Respondents sell and distribute, and have sold and distributed various kinds of punchboards, but all of said devices involved the same chance or lottery features when used in connection with the sale and distribution of merchandise and vary only in detail. Usually the winning numbers and the prizes to be awarded are set forth on legends appearing on the face of the punchboards. The prizes referred to in the legends have included such merchandise as cigarettes and candy. Said devices are frequently used by said jobbers 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 an 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 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 (b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Gibson Sales is a partnership comprised of the following named individuals. The principal office and place of business of said partnership is located at 2222 South Michigan Avenue, in the city of Chicago, State of Illinois.

Respondents Ruth Berdick and Frank W. James are individuals and copartners trading and doing business as Gibson Sales with their principal office and place of business located at the above-stated address.

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 respondents Gibson Sales, a partnership, and Ruth Berdick and Frank W. James, individually or as co-

Complaint

75 F.T.C.

partners trading and doing business as Gibson Sales or under any other trade 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.

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.