

Complaint

IN THE MATTER OF

S.A. PROMOTIONS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-1835. Complaint, Dec. 17, 1970—Decision, Dec. 17, 1970*

Consent order requiring a New York City corporation dealing in sales promotional devices and games of chance to cease representing or implying that the Federal Trade Commission has endorsed any of its programs, or that any of its programs conform to a Government standard or regulation.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by that Act, the Federal Trade Commission, having reason to believe that S.A. Promotions, Inc., a corporation, and Harry Wasser, individually and as an officer of S.A. Promotions, Inc., hereinafter sometimes referred to as respondents, have violated the provisions of the Federal Trade Commission 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 S.A. Promotions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its business address at 217 Broadway, New York, New York.

Respondent Harry Wasser is an individual and officer of respondent S.A. Promotions, Inc. He formulates, directs, and controls the acts and practices of the corporate respondent of which he is an officer, including the acts and practices herein set forth. His address is 1955 Grand Boulevard, Schenectady, New York.

PAR. 2. Respondents S.A. Promotions, Inc., and Harry Wasser are now and for some time past have been engaged in the preparation and operation of chance promotions including a copyrighted game, "Play Square," and other sales promotional devices. S.A. Promotions, Inc., and Harry Wasser furnish various services in connection with such sales promotional devices including, but not limited to, licensing the use of copyrighted promotional devices, developing promotional programs, procuring prizes, and preparing and supplying,

for use in the program, entry cards, display materials and prize winner selection mechanisms.

PAR. 3. In order to promote the above-described business, respondents prepared and distributed certain promotional publications, which suggest that the Commission itself has examined and approved their promotion. These publications assert that one of its promotions, "Play Square," has been "cleared" by the Commission, that the promotion conforms to all Commission standards and regulations, and that the Commission "says" to use the promotion. These publications include an edited letter from the Commission staff which is purported to establish such Commission approval and endorsement.

PAR. 4. In the course and conduct of the above-described business, and at all times mentioned herein, respondents have been and now are in substantial competition with corporations, firms and individuals in the sale and distribution of their products and services.

PAR. 5. In the course and conduct of their business, respondents cause their products and services to be sold, placed and distributed throughout the United States. Respondents further engaged in commerce by distributing letters and publications promoting their products and services between New York and various other States and maintain and at all times mentioned herein have maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their business, and for the purpose of stimulating and increasing the sale and distribution of their products and services, the respondents have made or caused to be made certain statements and representations in promotional materials disseminated to potential customers. Typical and illustrative of statements and representations made in these promotional materials, but not all inclusive thereof, are the following:

1. F.T.C. says Play Square!
2. "Play Square" is F.T.C. cleared
3. ["Play Square"] conforms to all F.T.C. standards and regulations.
4. Testimony at F.T.C. hearings on games disclosed these shameful facts!; Testimony on 13 Games disclosed that on average the odds of winning any prize was 1 in 53,523 chance.
5. They [F.T.C.] were completely satisfied with Play Square's:
 - Honesty and Fairness
 - "Live" Television Selection of Winning Numbers
 - Full Disclosure of Prizes and Odds of Winning
 - Method of Distribution
 - Impossibility of "Seeding" Prizes

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Impossibility of Determining Winners In Advance

Advertising and Display Material

They were quite pleased with the number of prizes Play Square offers . . .

Why not be the first and only one in your area to offer a game that is beyond reproach. Not only is it honest in every way, it complies with all F.T.C. regulations . . .

6. See what F.T.C. says about "Play Square" followed by a letter from a Commission staff attorney edited so as to appear to establish the claims made throughout the material.

PAR. 7. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, respondents represented, directly or by implication that:

1. The Federal Trade Commission examined and cleared one of respondents' chance promotions; also, it endorsed the use of their chance promotions.

2. Their chance promotions conform to Federal Trade Commission standards and regulations.

3. The Commission has singled out their chance promotions from other competing chance promotions as being honest and fair, as having a generous prize structure, as being incapable of being fixed; and the Commission is "pleased" with some aspects of their promotions and "satisfied" with every aspect of their promotions; hence in these respects the Commission distinguishes their chance promotions from their competitors' chance promotions.

4. They received a letter from the Commission staff which supports all their representations as to the Commission's opinion of their promotions.

PAR. 8. In truth and in fact:

1. The Commission has never examined or issued an opinion concerning any of respondents' chance promotions; hence, it has neither cleared nor endorsed any such promotions.

2. There are no Commission standards or regulations governing respondents' chance promotions.

3. The Commission has never suggested that respondents' chance promotions were fairer, more honest, more satisfying, or more pleasing than other chance promotions, and hence, it has never suggested that it found their promotions distinguishable in these respects from those chance promotions it condemned in the "Games of Chance" proceedings cited by the respondents; further, it has never sent or directed to be sent correspondence supporting such representations.

4. The letter which is purported to support respondents' representations is a letter from a member of the Commission's staff offering

advice at the staff level only. Respondents edited that letter so as to omit certain statements in the original letter as to its limited nature and effect. It was this edited letter which respondents caused to be distributed.

Therefore, the statements and representations as set forth in Paragraphs Six and Seven were and are false, misleading, and deceptive.

PAR. 9. The use by respondents of the aforementioned false, misleading and deceptive statements and representations and practices has the capacity and tendency to mislead members of the business community into the erroneous and mistaken belief that said statements and representations were and are true.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair methods of competition in commerce and unfair and deceptive 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 Consumer Protection 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 draft of complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the 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 above 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 Commis-

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Decision and Order

sion hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents S.A. Promotions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 217 Broadway, in the city of New York, State of New York.

Respondent Harry Wasser is an officer of said corporation, and his address is 1955 Grand Boulevard, in the city of Schenectady, State of New York.

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 S.A. Promotions, Inc., a corporation, and its officers, and Harry Wasser, individually and as an officer of the aforesaid corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the preparation, promotion, sale, distribution or use of contests, chance promotions or any other promotional device, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. The Federal Trade Commission or its staff has approved or endorsed any promotional program offered by either, or both, respondents;

2. Any promotional program conforms to a government standard or regulation unless such standard or regulation actually exists and applies to the promotion and the promotion conforms to such standard or regulation in all respects.

It is further ordered, That respondents distribute a copy of this order to all parties which were sent material making the misrepresentation charged in the complaint.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of a subsidiary or any other change in the corporation, which may affect compliance obligations arising out of this order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon it of this order file with the Com-

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mission a report in writing setting forth in detail the manner and form in which they have complied with the order.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.