

Docket C-1897. Complaint, Apr. 12, 1971—Decision, Apr. 12, 1971

Consent order requiring a major chain of hamburger restaurants with headquarters in Chicago Ill to cease failing to award its prizes as repre-

sented, failing to disclose that holders of winning numbers might be asked additional questions, failing to disclose the exact number, nature and value of prizes available, distributing winning numbers in States where such contests are illegal, failing to furnish lists of winners of prizes over \$5, failing to maintain records and engaging in any contest or game of chance without disclosing the total number and exact nature of the prizes, and other significant details.

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 McDonald's Corporation, McDonald's Systems, Inc., D'Arcy Advertising Company, corporations, and D. L. Blair Corporation, a corporation, and its wholly-owned subsidiary corporations, D. L. Blair Sales Company, Inc., D. L. Blair Service Corporation, D. L. Blair Visuals, Ltd., D. L. Blair Contest Corporation, Audit Bureau of Mailing, Inc., The Stock Game, Inc., Incentive Consultants, Incorporated, Promotion Audit Corporation, and Cy Draddy, individually and as an officer of D. L. Blair Corporation, and of each of its wholly owned subsidiary corporations, 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 McDonald's Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 221 North LaSalle Street, Chicago, Illinois.

Respondent McDonald's Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 221 North LaSalle Street, Chicago, Illinois. It is a wholly owned subsidiary of respondent McDonald's Corporation.

Respondent D'Arcy Advertising Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at Gateway Tower, 1 Memorial Drive, St. Louis, Missouri.

*Consolidated complaint *In the Matter of McDonald's Corporation et al.*, Docket No. C-1897 and *In the Matter of D'Arcy Advertising Company*, Docket No. C-1898, p. 616 herein.

Complaint

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Respondent D. L. Blair Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 575 Lexington Avenue, New York, New York. Respondents D. L. Blair Sales Company, Inc., D. L. Blair Service Corporation, D. L. Blair Visuals, Ltd., D. L. Blair Contest Corporation, Audit Bureau of Mailing, Inc., The Stock Game, Inc., Incentive Consultants, Incorporated, and Promotion Audit Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their principal offices and places of business located at 575 Lexington Avenue, New York, New York. They are wholly-owned subsidiaries of respondent D. L. Blair Corporation.

Respondent Cy Draddy is an individual and officer of respondents D. L. Blair Corporation; D. L. Blair Sales Company, Inc.; D. L. Blair Service Corporation; D. L. Blair Visuals, Ltd.; D. L. Blair Contest Corporation; Audit Bureau of Mailing, Inc.; The Stock Game, Inc.; Incentive Consultants, Incorporated; and Promotion Audit Corporation. He formulates, directs and controls the acts and practices of the corporate respondents of which he is an officer, including the acts and practices herein set forth. His address is the same as that of respondent D. L. Blair Corporation.

The aforementioned respondents cooperate and act together in carrying out the acts and practices herein set forth.

PAR. 2. Respondents McDonald's Corporation and McDonald's Systems, Inc., hereinafter referred to as McDonald's, are now and for some time past have been engaged in the operation of a number McDonald's restaurants, and engaged in the sale and lease to the public of facilities and licensed franchises to operate McDonald's restaurants, which are located in the various States of the United States and in the District of Columbia. These restaurants sell hamburgers and other food products.

Respondent D'Arcy Advertising Company is now and for some time past has been an advertising agency retained by respondents McDonald's; it prepares and places and for some time past has prepared and placed advertising material, including but not limited to the advertising referred to herein, for the purpose of promoting the sale of hamburgers and other food products in restaurants operated by respondents McDonald's and their lessees and franchisees.

Respondent D. L. Blair Corporation is now and for some time past has been engaged in the preparation and operation of contests, games, "sweepstakes" and other sales promotional devices. Respond-

ent D. L. Blair Corporation, together with its wholly-owned subsidiary corporations, respondents, herein, furnish various services in connection with such sales promotional devices including, but not limited to, administering and judging, procuring prizes, packaging and mailing services, printing and designing, brokerage services and research on sales promotion activities.

In connection with the above-described business, respondent D. L. Blair Corporation entered into an agreement with respondent D'Arcy Advertising Company to prepare and operate a sales promotional device for and on behalf of respondents McDonald's. This sales promotional device known as "McDonald's \$500,000 Sweepstakes" was prepared and operated by respondent D. L. Blair Corporation and its wholly-owned subsidiary corporations with the aid and assistance of respondent D'Arcy Advertising Company.

"McDonald's \$500,000 Sweepstakes" was prepared and operated in the following manner.

Approximately 18,900,000 copies of an advertising insert entitled "Mini-Trips for Maxi-Fun" were printed and inserted into the June 1968 issue of Reader's Digest magazine. Attached to each insert was a coupon bearing one of eleven different numbers. Five of these numbers, before printing and distribution of the inserts, were designated as winning numbers and were printed on 15,610 coupons. Six other numbers were selected and designated as losing numbers and were printed repeatedly on the remaining millions of coupons. Purchasers of the magazine were instructed to compare the number on the coupon with a list of winning numbers on display in restaurants operated by respondents McDonald's and their lessees and franchisees. If the numbers matched, the holder of the coupon was entitled to one of the 15,610 prizes.

The above-described promotional devices in which winning numbers are designated before their distribution is commonly known as a "matching" or "pre-selected 'sweepstakes'."

In the course and conduct of their respective businesses, respondents have acted separately and in concert for the purpose and with the result of bringing about the use of the above-described "McDonald's \$500,000 Sweepstakes."

PAR. 3. In the course and conduct of their aforesaid businesses, and at all times mentioned herein, respondents have been and now are in substantial competition in commerce with corporations, firms and individuals in the sale and distribution of their respective products or services.

PAR. 4. In the course and conduct of their aforesaid businesses,

respondents cause their respective products and services to be sold, placed and distributed throughout the United States. Respondents further engage in commerce by the transmission and receipt of letters, invoices, reports, contracts and other documents of a commercial nature between New York, New York, and Chicago, Illinois, and their respective offices and restaurants and restaurants operated by their lessees and franchisees in the various 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. 5. In the course and conduct of their businesses, and for the purpose of inducing others to patronize restaurants operated by respondents McDonald's and their lessees and franchisees, the respondents have acted separately and in concert to prepare and place or to cause to be prepared and placed advertising relating to the "McDonald's \$500,000 Sweepstakes" promotion in *Reader's Digest*, a magazine sold and distributed in various States of the United States and in the District of Columbia.

Typical and illustrative of statements and representations made in said advertising and other promotional material, but not all inclusive thereof, are the following:*

PAR. 6. 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:

(a) 15,610 prizes worth \$500,000 at retail, consisting of 10 Ford Country Squire Station Wagons, 100 Magnavox 23" color television sets, 1,500 Kodak Mini-Super 8 Hawkeye Instamatic movie cameras with Super 8 Instamatic projector, 4,000 Aurora Mini-Electric trains and 10,000 Tensor Mini-High Intensity lamps were to be awarded to individuals who held winning coupons in "McDonald's \$500,000 Sweepstakes."

(b) Individuals who submitted coupons bearing winning numbers in accordance with the rules stated on the back of the coupon would be awarded a prize and had only to sign such winning coupon and mail it to respondent D. L. Blair Corporation by registered mail in order to claim and obtain a prize.

(c) Individuals participating in "McDonald's \$500,000 Sweepstakes" were afforded a reasonable opportunity to win the represented prizes.

*Pictorial material omitted in printing.

(d) Respondents distributed 15,610 winning coupons to individuals eligible to participate in and win prizes in "McDonald's \$500,000 Sweepstakes."

(e) 15,610 prizes had been purchased or "reserved" for individuals who held winning coupons in respondents "McDonald's \$500,000 Sweepstakes."

PAR. 7. In truth and in fact:

(a) 15,610 prizes worth \$500,000 were not awarded to individuals who participated in the "sweepstakes." Approximately 227 prizes, consisting of 1 Ford Country Squire Station Wagon, 2 Magnavox 23" color television sets, 31 Kodak Mini-Super 8 Hawkeye Instamatic movie cameras with Super 8 Instamatic projector, 71 Aurora Mini-Electric trains and 122 Tensor Mini-High Intensity lamps were in fact awarded. The approximate retail value of prizes actually awarded was \$13,000.

(b) Respondents do not always award prizes to individuals who submit coupons bearing winning numbers in accordance with the rules. Some individuals were denied prizes even though they submitted coupons bearing winning numbers. Further, individuals who mail coupons bearing winning numbers to respondent D. L. Blair Corporation are informed that they are only "potential winners," and that in order to determine the participant's eligibility for a prize the participant must submit a notarized affidavit which gives respondents McDonald's, *inter alia*, the right to use the participant's name, photograph and any statement the participant may make about respondents McDonald's products. In addition, individuals who obtain winning numbers for prizes valued at \$1,000 or more are subjected to interviews concerning personal matters by private detectives before they can obtain a prize.

(c) Individuals who participated in "McDonald's \$500,000 Sweepstakes" were not afforded a reasonable opportunity to win the represented prizes. Respondents distributed approximately 18,900,000 coupons to the public. Winning numbers were printed on 15,610 of the coupons. All other coupons contained a non-winning number. Of the 15,610 winning number coupons, ten were first prizes; 100 were second prizes; 1,500 were third prizes; 4,000 were fourth prizes; and 10,000 were fifth prizes. As a result of such distribution of winning coupons, participants in "McDonald's \$500,000 Sweepstakes" had one chance in approximately 1.9 million to win a first prize; one chance in approximately 190,000 to win a second prize; one chance in approximately 12,500 to win a third prize; one chance in

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approximately 4,700 to win a fourth prize; and one chance in approximately 1,800 to win a fifth prize.

(d) Respondents did not distribute 15,610 coupons to individuals eligible to participate in and win prizes in "McDonald's \$500,000 Sweepstakes." A number of coupons bearing winning numbers were inserted into *Reader's Digest* magazines distributed in the States of Nebraska and Wisconsin where "sweepstakes" and other promotional devices are prohibited. As a result of such insertion, the number of potential prizes to be awarded was fewer and the approximate retail value of the prizes was less than the represented number and value.

(e) 15,610 prizes were not purchased or "reserved" by the respondents either before or during the time "McDonald's \$500,000 Sweepstakes" was in progress. Prizes were purchased only after the termination of the "sweepstakes."

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

PAR. 8. By and through the use of the aforesaid acts and practices, respondents place in the hands of licensees and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things herein alleged.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had and now has the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and has induced many members of the public to participate in "McDonald's \$500,000 Sweepstakes" and into the purchase of substantial quantities of respondents McDonald's products by reason of said erroneous and mistaken belief.

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.

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The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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, and having duly considered the comments filed thereafter pursuant to § 2.34 (b) of its Rules, now, in further conformity with the procedure prescribed in such Rule, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent McDonald's Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 221 North LaSalle Street, Chicago, Illinois.

Respondent McDonald's Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 221 North LaSalle Street, Chicago, Illinois.

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

ORDER

It is ordered, That McDonald's Corporation, a corporation, and McDonald's System, Inc., a corporation, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the preparation, promotion, sale, distribution or use of any "sweepstakes," contests or games of chance, or similar promotional devices in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. (1) Failing to award and distribute all prizes of the value and type represented.

(2) Failing to award and distribute to individuals submitting winning numbers, coupons, tickets, symbols or other entries, any prize or award to which they are entitled.

(3) Failing to disclose, clearly and conspicuously, in all advertising that individuals who hold winning coupons might be asked for an interview or an affidavit; and failing to disclose all terms or conditions which individuals will be asked to or have to comply with in order to obtain a prize.

(4) Failing to disclose, clearly and conspicuously, in all advertising and promotional material, the exact number of prizes in each category or denomination to be made available, the exact nature of the prizes, their approximate retail value, and the odds of winning each such prize: *Provided, however*, That in those promotional devices in which the odds cannot be determined with reasonable accuracy, respondents shall clearly and conspicuously disclose the approximate number of individuals to whom the promotional device is being disseminated.

(5) Distributing winning numbers, coupons, tickets, symbols, or other entries to states in which such sweepstakes, contests or games of chance, or similar promotional devices have been voided or prohibited by law: *Provided, however*, That this subparagraph shall not apply to those distributions the respondents have neither participated in nor directed, authorized, ratified or condoned.

(6) Representing, directly or by implication, that prizes have been purchased unless they have in fact been purchased before or during the time the promotional device is in progress.

(7) Failing to furnish to requesting individuals a complete list of the names of winners of all prizes having a retail value of \$5 or more, together with the address of and prize won by each.

(8) Failing to maintain adequate records (a) which disclose the facts upon which any of the representations of the type described in Paragraphs 1-7 of this order are based, and (b) from which the validity of the representations of the type described in Paragraphs 1-7 of this order can be determined.

(9) Failing to furnish upon the request of the Federal Trade Commission:

(a) A complete list of the names and addresses of the winners of each prize, having a retail value of \$5 or more,

and a description of the prize, including its approximate retail value;

(b) A list of the winning numbers or symbols, if utilized, for each prize;

(c) The total number of coupons or other entries distributed;

(d) The total number of known participants in the promotion;

(e) The total number of prizes in each category or denomination which were made available; and

(f) The total number of prizes in each category or denomination which were awarded.

B. Engaging in the preparation, promotion, sale, distribution, or use of any "sweepstakes," contests or games of chance, or similar promotional devices unless the following are disclosed clearly and conspicuously in all advertising and promotional material concerning such devices:

(1) The total number of prizes to be awarded;

(2) The exact nature of the prizes, their approximate retail value and the number of each;

(3) All of the terms, conditions and obligations with which individuals will be asked to or have to comply with in order to obtain a prize; and

(4) The odds of winning each prize: *Provided, however,* That in those promotional devices in which odds cannot be determined with reasonable accuracy respondents shall clearly and conspicuously disclose the approximate number of individuals to whom the promotional device is being disseminated.

For the purpose of this order, the phrase "directly or through any corporate or other device," insofar as it imposes responsibility upon respondents for acts and practices engaged in by respondents' licensees and said licensees' representatives, shall be construed to impose such responsibility upon respondents for only those said acts or practices which have been participated in, or directed, authorized, ratified or condoned by respondents.

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

It is further ordered, That the respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale result-

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ing in the emergence of successor corporations, or any other change in the corporations which may affect compliance with this order.

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