

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

LEE ROGERS DOING BUSINESS AS AMERICAN HOLIDAY
ASSOCIATION

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

Docket C—2312. Complaint, Nov. 1, 1972—Decision, Nov. 1, 1972

Consent order requiring a Los Angeles, Calif., conductor of puzzle contests, among other things to cease using misrepresentations in promoting the contests and failing to disclose material facts.

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 Lee Rogers, an individual trading and doing business as American Holiday Association, hereinafter sometimes referred to as respondent, has 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 Lee Rogers is an individual trading and doing business as American Holiday Association, with his office and principal place of business located at 8831 Sunset Boulevard, Los Angeles, California.

PAR. 2. Respondent is now and for some time last past has been engaged in the conduct of puzzle contests.

PAR. 3. In the course and conduct of respondent's aforesaid business, respondent has disseminated and has caused to be disseminated from his place of business located in Los Angeles, California advertisements and promotional literature for said puzzle contests through the United States mail, in egg cartons distributed in various States of the United States and in newspapers of general circulation located in various States of the United States.

In the further course and conduct of respondent's aforesaid business, respondent has disseminated and has caused to be disseminated puzzles and prize money through the United States mail.

In the further course and conduct of respondent's aforesaid business, respondent has induced by the use of the aforementioned advertisements and promotional literature entrants of respondent's puzzle contests to transmit extra cash prize eligibility fees through the United States mail.

Through the aforementioned dissemination and transmission of said advertisements, promotional literature, puzzles, extra cash prize eligibility fees, and prize money, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in puzzle contests in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of respondent's aforesaid business, respondent employs a general method of operation which consists of the following:

1. The contest is initiated by advertisements placed in newspapers, in egg cartons, or sent through the United States mail.
2. Said advertisements include a solicitation to the public to enter, an entry blank containing the first puzzle, a statement of the rules, the total amount of prize money to be awarded, the amount of prize money to be awarded each winner, and the date by which the puzzle must be returned.
3. Respondent mails to persons successfully completing the original puzzle a letter informing the contestant that he or she is tied with a number of others for first prize. The contestant is provided with a statement of the rules, an entry blank containing the first tiebreaker puzzle and the date by which the first tiebreaker puzzle must be returned.
4. The aforesaid letter also indicates heretofore unstated extra cash prizes may be won if certain amounts of money are enclosed with the contestant's tiebreaker entry and the contestant wins a prize. Space

is provided on the entry blank for the contestant to indicate the extra cash prizes for which the contestant wishes to become eligible and the amount charged the contestant for each.

5. Respondent mails to contestants successfully completing the first tiebreaker puzzle a letter informing the contestant that he or she is still tied with others for the first prize. The contestant is provided with a statement of the rules, an entry blank containing the second tiebreaker puzzle, and the date by which the second tiebreaker puzzle must be returned. Any contestant who did not indicate he or she wished to become eligible for any extra cash prize upon submission of the first tiebreaker puzzle is resolicited.

6. Respondent mails to contestants successfully completing the second tiebreaker puzzle a letter informing the contestant that he or she is still tied with others for first prize. The contestant is provided with a statement of the rules, an entry blank containing the third tiebreaker puzzle, and the date by which the puzzle must be returned. If ties remain this procedure is repeated until the predetermined number of tiebreaker puzzles are completed.

7. If more than one contestant successfully completes all tiebreaker puzzles, duplicate prizes are awarded.

8. When new contests are run, respondent solicits prior contestants of respondent's contests.

PAR. 5. By the use of the aforesaid general method of operation and advertisements, promotional literature, solicitations and other written materials, respondent induces the entry into said puzzle contests and the payment for eligibility for aforesaid extra cash prizes by representing and implying in substance as follows:

1. The contest is free and there are no fees of any kind.
2. Tiebreaker puzzles may be submitted only upon payment of money.
3. Only a small number of persons successfully solved the original puzzle and were tied for first prize.
4. Only one tiebreaker puzzle will be needed to determine the prize winner.
5. Contestants are allowed to pay money and to become eligible for extra cash prizes only at the time they submit the first tiebreaker puzzle.
6. Extra cash prizes are awarded eligible winners of any prize.

PAR. 6. In truth and in fact:

1. The contest is free if contestants wish to play for the prizes announced during the initial promotion of the contest, but fees are required to become eligible for substantially larger extra cash prizes

announced during the promotions of the first and second tiebreaker puzzles.

2. Although contestants may submit any puzzle without paying a fee, they are not given the opportunity to choose whether they wish to play for free or pay money to become eligible for extra cash prizes.

3. After the original puzzle is completed, substantially all contestants are tied for first prize.

4. More than one tiebreaker puzzle is always necessary to determine the prize winners.

5. Contestants may pay money to become eligible for extra cash prizes when they submit either the first or the second tiebreaker puzzle.

6. Extra cash prizes may be won only by the first prize winner.

Therefore, the general method of operation, statements and representations as set forth in Paragraph Four and Paragraph Five herein, were and are unfair, false, misleading and deceptive.

PAR. 7. The use by respondent of the aforesaid unfair, 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, representations and practices were and are fair and true. By reason of said erroneous and mistaken belief, members of the public have entered said contests, paid substantial quantities of money and believed respondents general method of operation to be fair.

PAR. 8. In the course and conduct of respondent's aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in commerce, with corporations, firms and individuals engaged in the conduct of puzzle contests of the same general kind and nature as those conducted by respondent.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Los Angeles Regional Office proposed to present to the Commission for its consideration and which,

if issued by the Commission, would charge the 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 Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Lee Rogers is an individual trading and doing business as American Holiday Association, with his office and principal place of business located at 8831 Sunset Boulevard; Los Angeles, California.

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 respondent Lee Rogers, an individual trading and doing business as American Holiday Association, or any other name or names, his successor and assigns and respondent's agents, representatives, salesmen and employees, directly or through any corporation, subsidiary, division or other device, in connection with the conduct of puzzle contests or the advertising, offering for sale, or sale of any product or service in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, orally or in writing, that the contest, or any puzzle, is free unless it is clearly and conspicuously disclosed in close proximity thereto that the contestant will be given the option to pay money to become eligible to win

extra prizes; or misrepresenting in any manner the cost to enter or to remain a contestant in respondent's contests.

2. Representing, directly or by implication, orally or in writing, that any tiebreaker puzzle may be entered upon the payment of money qualifying the contestant for an extra cash or any other type prize or prizes unless:

(a) It is clearly and conspicuously disclosed contestants are not required to pay money and play for an extra cash or any other type prize or prizes;

(b) It is clearly and conspicuously disclosed contestants may choose to play for any single extra cash prize that may be offered; and

(c) Contestants are clearly and conspicuously given the opportunity to indicate they wish to enter any phase of the contest for free. The contestants' opportunity to indicate they wish to enter for free shall be in immediate conjunction with and in a like manner as the contestants' opportunity to indicate they wish to play for an extra prize.

3. Failing to:

(a) Clearly and conspicuously disclose, prior to or at the time of any solicitation for money, the total number of contestants anticipated based on prior experience and the average percentage of contestants correctly solving the initial puzzle and all succeeding tiebreaker puzzles in respondent's three most recently completed contests; and

(b) Send to all persons upon specific request, the actual number and percentage of contestants correctly solving each puzzle in respondent's most recently completed contest; or misrepresenting in any manner the odds of winning any prize.

4. Failing to clearly and conspicuously disclose with all promotional literature and in immediate conjunction with all puzzles:

(1) the maximum number of tiebreaker puzzles that may be necessary to complete the contest and determine winners, (2) successive tiebreaker puzzles will become significantly more difficult and (3) the method of determination of all prize winners if a tie remains after the last tiebreaker puzzle is completed.

5. Representing, directly or by implication, orally or in writing, that contestants may pay money to become eligible for extra prizes only at the time they submit the first tiebreaker puzzle unless such is the fact; or misrepresenting in any manner when payments of money may be made by contestants.

6. Representing, directly or by implication, orally or in writing, that extra cash prizes apply to other than first prize, unless such is the fact.

It is further ordered, That the respondent clearly and conspicuously disclose in respondent's initial contest promotional literature the deadline for submission of the original puzzle, the minimum time contestants will be allotted to solve and submit each tiebreaker puzzle and the approximate date on which the contest will terminate.

It is further ordered, That the respondent clearly and conspicuously disclose with all tiebreaker puzzles and on all entry blanks the deadline for submission of that puzzle, and the approximate date on which the contest will terminate.

It is further ordered, That the respondent refund all money or other consideration to contestants requesting such refund in writing within one year of payment who are unable to participate in any aspect of any contest through no fault of the contestant.

It is further ordered, That the respondent cease and desist from failing to clearly and conspicuously disclose with all entry blanks and contracts, all rules, terms and conditions of the puzzle or contest or of the offer for sale or sale of any product or service sold by respondent, including all obligations imposed upon members of the public by respondent; or misrepresenting in any manner all such rules, terms, conditions and obligations.

It is further ordered, That the respondent at the conclusion of the contest send to all entrants upon their request the names of all winners, the correct or winning solution to each puzzle, and the number of points scored by the first prize winner on each puzzle.

It is further ordered, That the respondent maintain for no less than two (2) years after all prizes are awarded adequate records which disclose the names and addresses of all contestants, the approximate date each contestant is sent a tiebreaker puzzle by respondent, all tiebreaker puzzles and correspondence sent by a contestant, and copies of replies thereto.

It is further ordered, That the respondent shall notify the Commission at least thirty (30) days prior to any proposed change in his business organization such as dissolution, assignment, incorporation, or sale resulting in the emergence of a successor firm, partnership, or corporation, or any other change which may affect compliance obligations arising out of this order.

It is further ordered, That the respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employ-

ment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondent herein shall, within sixty