

IN THE MATTER OF

LORILLARD, DIVISION OF LOEWS THEATRES, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2486. Complaint, Jan. 7, 1974—Decision, Jan. 7, 1974

Consent order requiring a New York City manufacturer, seller and distributor of cigarettes, among other things to cease misrepresenting the manner in which any promotion game, contest or device will be judged and failing to determine or judge entries in accordance with the published rules. Further, the order requires respondent to rejudge the "Kent Castle Contest," a 1971 promotion for Kent cigarettes, with Lorillard paying up to \$100,000 in costs for Blue Ribbon Promotions, Inc., a co-respondent, to rejudge the contest.

Appearances

For the Commission: *Ellis M. Ratner, F. Kaid Benfield and Richard A. Olderman.*

For the respondents: *Martin Kleinbard* of Paul, Weiss, Rifkind, Wharton & Garrison, New York, N.Y. and *James M. Nicholson* of *Nicholson Carter*, Washington, D. C. for Lorillard, Division of Loews Theatres, Inc. *Steven P. Raymond* of *Weisman, Celler, Spett, Modlin Wertheimer*, New York, N.Y. for Blue Ribbon Promotions, Inc. and Donald Jagoda.

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 Lorillard, a Division of Loews Theatres, Inc. hereinafter sometimes referred to as Lorillard, a corporation, and Blue Ribbon Promotions, Inc., a corporation, and Donald Jagoda, individually and as officer of Blue Ribbon Promotions, Inc., 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 Lorillard, Division of Loews Theatres, Inc., a 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 200 East 42nd Street, in the city of New York, State of New York.

Respondent Blue Ribbon Promotions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the

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State of New York, with its principal office and place of doing business located at 366 Fifth Avenue in the city of New York, State of New York.

Respondent Donald Jagoda is an individual and officer of respondent Blue Ribbon 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 the same as that of respondent Blue Ribbon Promotions, Inc.

The aforementioned respondents cooperated and acted together in carrying out the acts and practices herein set forth.

PAR. 2. Respondent Lorillard is now, and for some time last past has been engaged in the manufacturing, advertising, sale and distribution of cigarettes.

Respondent Blue Ribbon Promotions, Inc. and Donald Jagoda, individually and as officer of said corporation, are now, and for some time last past have been engaged in the planning, creating, administering and judging of sweepstakes, contests, incentive and premium programs and other promotional programs and devices used in and to induce the sale of cigarettes and various other products.

PAR. 3. In the course and conduct of their aforesaid businesses, 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 and 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 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 respective businesses, respondents have acted separately or in concert for the purpose and with the result of conducting, in commerce, a promotional game known as "Kent Castle Contest" in connection with and for the purpose of inducing the sale of Kent cigarettes. The aforesaid "Kent Castle Contest" was a promotional device in the nature of a game of skill.

PAR. 6. In the course and conduct of their aforesaid businesses, respondents made certain statements the representations in connection with the operation of the aforementioned "Kent Castle Contest." Typical and illustrative of said statements and representations, but not inclusive, is the following:

With "Kent Micronite Filter Cigarettes" word contest, you'll get more than smoking measure.

Enter Kent's CASTLE CONTEST

50 GRAND PRIZE WINNERS—Win a Kent Castle trip for two. Enjoy a lavish one week stay at the elegant Churchill, London's newest Hotel, including fabulous Castle tour and medieval banquet, roundtrip transportation via Pan Am 747 Jet Clipper and \$500 spending money.

1,000 SECOND PRIZE WINNERS—Win attractive golden toned sets of Kent Castle ladies' brooch and man's tie tac specially created by famous Trifari.

1. Using only the letters from the words "KENT MICRONITE FILTER CIGARETTES," make as many English words as you can consisting of four letters or more. Ex.: RENT, SCENT, Use letters appearing in the phrase, "KENT MICRONITE FILTER CIGARETTES" as often as you wish. Ex.: MINIMAL, KNOCK. Winners will be judged by highest total of eligible words made.

2. You may NOT use proper nouns, abbreviations, contractions, words with a hyphen or apostrophe. Decisions on word eligibility will be made by an independent judging organization whose decisions are final. Only words appearing in the main body of Webster's Seventh New Collegiate Dictionary are eligible.

3. Word lists must be legibly typed or printed by hand on paper of your choice. You must also show total number of words made, plus your name, address and zip code. This is your entry.

4. Include with your entry the bottom flaps from any two packages of KENT or KENT MENTHOL cigarettes. Mail your entry and bottom flaps to KENT CONTEST, P.O. Box #1, Murray Hill Station, New York, New York 10016. Enter as often as you like; each entry must be mailed separately with two bottom flaps enclosed and postmarked by May 15, 1971, and received no later than May 25, 1971. Entries become property of Lorillard. Winners will be notified by mail.

5. Entries for this contest of skill must be wholly the work of the person in whose name the entries are submitted and winners will be determined on the basis of the highest totals of eligible words.

PAR. 7. In the further course and conduct of their aforesaid businesses in connection with the promotional device "Kent Castle Contest," respondents determined the winning entries in the following manner. An initial cut-off score of 8,000 words was set. That figure was later raised to 9,000 words. All entries containing fewer than 8,000 or 9,000 words were eliminated. Those entries above the 8,000 or 9,000 word cut-off were first checked against a master list for words beginning with the letter "K." Respondents determined the total number of eligible "K" words to be 162. Any entry with less than 161 eligible "K" words was eliminated as a contender for the grand prize. Each of the remaining entries was then checked against the master list for words beginning with the letter "O." Respondents determined the total number of eligible "O" words to be 248. Any entry with fewer than 246 eligible "O" words was eliminated as a contender for the 50 grand prizes. Similarly, the remaining entries were next checked against the master list for the letter "I" at which time the top 50 entries were isolated. The second prize winners were judged by their performance in creating words beginning with the letter "K."

PAR. 8. By and through the use of the aforesaid representations, directions, explanations, rules and other statements of similar import and meaning not set out specifically herein, respondents represented to a vast segment of the general public, directly and by implication that the judging method used in the contest would insure the identification and selection of those qualified entries containing the greatest number of total eligible words.

PAR. 9. In truth and in fact, the judging method used in the contest did not insure the identification and selection of those qualified entries containing the greatest number of total eligible words.

Therefore, respondents' said statements and representations, as set forth in Paragraphs Six and Eight hereof, were, and are false, misleading and deceptive.

PAR. 10. By and through the aforesaid statements, representations, acts and practices, respondents have utilized a method of judging in connection with the "Kent Castle Contest," that was not consistent with the published rules and which, furthermore, contained significant opportunity for error. As a result, those entrants to whom prizes were awarded may not have submitted the entries superior under the terms of the published contest rules. Respondents' failure to employ a method of judging calculated to insure that winners be selected and prizes be awarded in accordance with the terms of the published contest rules is an unfair act or practice.

PAR. 11. The use by respondents of the false, misleading and deceptive statements, representations, as aforesaid, has had, and now has, the capacity and tendency to mislead a substantial portion of the general public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of substantial quantities of Kent cigarettes by reason of said erroneous and mistaken belief, and furthermore, respondents' failure to employ a method of judging calculated to insure the selection of winners and awarding of prizes in accordance with the terms of the published contest rules was, and is now, an unfair act or practice.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and continue to be all to the prejudice and injury of the public and the respondents' 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 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

Respondents Lorillard, Blue Ribbon Promotions, Inc., and Donald Jagoda 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 has 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 agreement, placed such agreement on the public record for a period of thirty (30) days, and received and considered comments, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission thereby issues its complaint, makes the following jurisdictional findings, and enters the following order.

1. Respondent, Lorillard, a Division of Loews Theatres, Inc., is a division of 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 200 East 42nd Street, in the city of New York, State of New York.

Respondent Blue Ribbon 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 principal office and place of doing business located at 350 Fifth Avenue in the City of New York, State of New York.

Respondent Donald Jagoda is an individual and officer of respondent Blue Ribbon 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 the same as that of respondent Blue Ribbon Promotions, Inc.

ORDER

It is ordered, That respondent Lorillard, a Division of Loews Theatres, Inc., a division of a corporation, Blue Ribbon Promotions, Inc., a corporation, and Donald Jagoda, individually and as officer of Blue Ribbon Promotions, Inc., and their respective officers, agents,

representatives and employees, directly or through any corporate or other device, in connection with the preparation, advertising, sale, distribution or use of the "Kent Castle Contest" or any other promotional game, contest or device which involves or offers an opportunity to receive a prize or anything of value, by any means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. a. Misrepresenting the manner in which any promotion game, contest or device, will be judged;
b. Failing to determine or judge entries in accordance with the published rules.
2. Engaging in or promoting, directly or indirectly, the use of any such promotional game, contest or device by means of any announcement notice, or advertisement unless:
 - a. The rules, and entry blanks where used, relating to promotional games, contests, or devices of skill shall clearly and conspicuously present a fair summary of the manner in which any such promotional games, contests, or devices of skill will be judged; moreover, such rules and entry blanks shall state all of the requirements, terms and conditions for participating therein and for entitlement to prizes or other awards;
 - b. All offered prizes or other awards are distributed to those participants so entitled under the rules;
 - c. Following the awarding of prizes in any promotional games, contests, or devices, respondents shall furnish to participants, upon request, the names and city and state of all winners, or with regard to sweepstakes contests, of all winners of prizes having a retail value of fifty dollars (\$50) or more, their respective winning scores, and a detailed statement enunciating the basis or method used to determine entitlement to prizes; furthermore, respondents shall clearly and conspicuously present in the statement of the rules, and entry blanks where used, pertaining to any such promotional games, contests, or devices the fact that such information will be furnished to participants therein upon such request.
 - d. For the purpose of 2(a) and 2(c) hereof, clearly and conspicuously shall be satisfied only if the required presentation appears in bold face type so as to distinguish it from that type used to state the text of the rules.
3. Lorillard shall pay the costs and expenses of rejudging the "Kent Castle Contest" which rejudging shall be conducted in the following manner.

a. Each entry in the Kent Castle Contest which discloses, pursuant to the rules of the contest, a word total within such entry of 9,700 or more words, shall be segregated from all entries in such contest with lower word total.

b. All entries of 9,700 words or more, so segregated, shall be numbered for identification and judging in accordance with the procedures set forth below. (Such entries are hereinafter referred to as "Entries to be Judged.")

c. Research Triangle Institute or such other person or organization mutually satisfactory to Lorillard and the Federal Trade Commission (hereinafter referred to as "Institute") shall prepare 100 separate word lists (hereinafter referred to as "First Stage Lists"), each consisting of 200 words selected at random from the master word list. Master word list means the list previously prepared by Blue Ribbon Promotions, Inc. (hereinafter referred to as "Blue Ribbon") for the original judging of the Kent Castle Contest.

d. Institute shall number the first stage lists and shall assign, at random, one first stage list to each entry to be judged. Institute shall then select at random 1,000 entries to be judged and shall determine the number of words in each such entry to be judged that appear on the first stage list assigned to such entry. Upon completion of this determination, Institute shall analyze and evaluate the statistical information thus developed and shall report and set forth the method or methods which reasonably could be used in judging the remaining entries to be judged, and furthermore, shall set forth, in declining order of confidence levels, each such method and the alternate statistical approach set forth in e. below. Blue Ribbon shall thereupon "cost" the method or methods set forth in the institute report. If any method contained in the Institute report offers a higher level of confidence than the alternate statistical approach, as determined by Institute in its report, and if the cost of judging all entries by applying such method to judging the remaining entries to be judged shall not thereby exceed \$100,000, then such method shall be followed by Blue Ribbon in judging the Kent Castle Contest. If more than one such method is found, the method offering the highest confidence level shall be followed. Otherwise, the Kent Castle Contest will be judged by Blue Ribbon in accordance with the alternate statistical approach set forth in e. below.

e. In the event there is no method suggested in the Institute report which provides a higher confidence level within the

maximum cost limitation than the alternate statistical approach set forth below, then Blue Ribbon shall undertake the judging pursuant to the following procedure (hereinafter referred to as the "Alternate Statistical Approach"):

(i) It is understood and agreed between the parties to this order that the maximum cost to Lorillard for Blue Ribbon's judging of the Kent Castle Contest under the alternate statistical approach, as more specifically set forth in 3e(ii) of this order, shall not exceed \$100,000. However, whatever the actual cost of judging may be, Blue Ribbon shall complete the judging in accordance with the procedures outlined in 3e(ii). Institute shall furnish to Blue Ribbon such word lists, random selection of numbers, analyses, and other data as may be necessary to permit Blue Ribbon to judge the contest strictly and solely in accordance with this order.

(ii) Blue Ribbon shall judge each entry to be judged against the first stage list assigned to it by Institute and shall determine the number of words in each entry to be judged that appear on the first stage list against which it is judged. Blue Ribbon shall determine the 500 entries to be judged which contain the highest number of words appearing on its first stage list. Blue Ribbon shall then judge those 500 entries to be judged against word lists containing 400 words each, (hereinafter referred to as "Second Stage Lists") in the manner described with respect to the first stage judging. The second stage lists to be used in judging the 500 entries to be judged shall be supplied to Blue Ribbon by Institute. Blue Ribbon shall then certify to Lorillard, with a copy to the Federal Trade Commission, the 50 entries to be judged which contain the greatest number of words on the first and second stage lists against which they were judged, and certify and declare those 50 entries to be judged grand prize winners of the Kent Castle Contest.

4. Lorillard shall award prizes in the amount of \$2,000 each to each of the winners so certified by Blue Ribbon which winners have not been previously awarded a grand prize as a result of the winning of the Kent Castle Contest.

5. The sole responsibility of Lorillard with respect to the judging of the Kent Castle Contest shall be to pay the expenses and fees of the Institute in an amount to be agreed upon by Lorillard and the Institute, and the expenses and fees of Blue Ribbon in an amount

not to exceed the \$100,000 as set forth in Paragraph 3e(i) above, and, if Blue Ribbon for any reason shall fail to judge the contest as provided above, any other expenses and fees which may be necessary in order that the contest be judged by an individual or organization acceptable to the Commission in the manner set forth in Paragraph 3 above. This provision shall not affect the obligation of Blue Ribbon to judge the contest in the manner set forth in Paragraph 3 above regardless of the actual cost of judging the contest.

6. Except for the initial activities of the Institute set forth herein, Blue Ribbon shall be solely responsible, and Lorillard shall not be responsible, for the execution of the judging of the Kent Castle Contest pursuant to this consent order, except as set forth in Paragraph 5 above.

7. A person or organization satisfactory to the Federal Trade Commission shall examine the judging by Blue Ribbon and shall certify to the Commission the accuracy of the judging hereunder by Blue Ribbon. Such examination may be by periodic observation and by sampling of judged entries against the results certified by Blue Ribbon.

8. Where reference is made to "Blue Ribbon" in connection with rejudging, the obligation for such rejudging is also applicable to respondent, Donald Jagoda.

9. As progress payments are made by Lorillard to Blue Ribbon for its rejudging, 25 percent of each payment which Lorillard is obligated to make, pursuant to its agreement with Blue Ribbon, shall be withheld by Lorillard until completion of the judging. Judging shall be deemed completed for the purposes of this paragraph upon the certification by Blue Ribbon pursuant to Paragraph 3e(ii) above.

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

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

It is further ordered, That respondents shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

IN THE MATTER OF
CHRYSLER CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATIONS
OF THE CLAYTON AND FEDERAL TRADE COMMISSION ACTS

Docket C-2484. Complaint, Jan. 9, 1974—Decision, Jan. 9, 1974

Consent order requiring Chrysler Corporation, a manufacturer and seller of residential and commercial air conditioners, to cease interlocking its directors with General Electric Company.

Appearances

For the Commission: *Jonathan E. Gaines.*

For the respondent: *William E. Huth of Ziegler, Dykhouse, Wise & Huth, Detroit, Mich.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated the provisions of Section 8 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the interest of the public, issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Chrysler Corporation (Chrysler) is a corporation organized and existing under and by virtue of the laws of the State of Delaware, maintaining its principal place of business at Detroit, Mich. At all times relevant to this complaint, Chrysler had capital, surplus, and undivided profits aggregating in excess of 1 billion dollars. In 1971 it had revenues of approximately 8 billion dollars.

PAR. 2. General Electric Company (General Electric) is a corporation organized and existing under and by virtue of the laws of the State of New York, maintaining its principal place of business at 570 Lexington Avenue, New York, N.Y. At all times relevant to this complaint, General Electric had capital, surplus, and undivided profits aggregating in excess of 2 billion dollars. In 1971 General Electric had revenues of approximately 9.4 billion dollars.

PAR. 3. Mr. Edmund W. Littlefield is a resident of the State of California. In 1964 he was elected to the board of directors of General Electric and has served in that capacity from the time of his election to and including the date of this complaint. In 1969 he was elected to the board of directors of Chrysler, and he was a director of Chrysler from that time until Mar. 22, 1973. He resigned from Chrysler's board having