Syllabus

IN THE MATTER OF

DEAN MERCHANDISING COMPANY, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5950. Complaint, Jan. 24, 1952—Decision, Oct. 6, 1952

Articles of wearing apparel made from the chemical fiber rayon have the appearance and feel of wool, and many members of the purchasing public are unable to distinguish between such articles and those made from the latter substance, so that such rayon articles are readily accepted by some of the purchasing public as wool products.

Products made from wool have for many years held and still hold great public esteem and confidence because of their outstanding qualities, and in said connection camel's hair is a type of wool and is a highly desirable material for sweaters.

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of brushed rayon sweaters—

(*a*) Falsely represented through the labeling on the boxes containing said sweaters that they were hand tailored; when in fact they were machine made;

(*b*) Falsely represented through the depiction of a camel on the said boxes that the sweaters were made of camel's hair;

(*c*) Offered and sold said sweaters without informing the purchasing public of the fact that they were made of rayon and not wool; and

(*d*) Sold and distributed said sweaters—which they thus represented, and impliedly warranted through the labeling, sale and distribution thereof, as suitable and safe for wearing as sweaters ordinarily are—without revealing on the containers or otherwise that said products, by reason of the length of the fibers on the brushed-up surface, were highly inflammable and dangerous and unsafe to wear;

With tendency and capacity thereby to mislead and deceive a substantial portion of the purchasing public into the purchase of substantial quantities of such sweaters, and with result of placing in the hands of retailers a means whereby members of the purchasing public might be thus misled and deceived:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Joseph Callaway for the Commission.

Mr. Benedetto A. Cerilli, of Providence, R. I., for respondents.

260133—55——24

COMPLAINT [1]

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 Dean Merchandising Company, Inc., a corporation, and Vincent Mele and Anthony Mele, individually and as officers of said corporation, 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 Dean Merchandising Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 50 Alleppo Street, Providence, Rhode Island.

PAR. 2. The individual respondent Vincent Mele is President and Vice President of the corporate respondent, and the individual respondent Anthony Mele is its Secretary and Treasurer, and as such

[1] The complaint is published as amended by the Commission's order of May 6, 1952, which vacated the original initial decision and remanded the case to the hearing examiner, as follows:

Service of the initial decision of the hearing examiner in this proceeding having been completed on March 24, 1952, and the Commission having, on April 15, 1952, extended until further order of the Commission the date on which said initial decision would otherwise become the decision of the Commission; and

Counsel supporting the complaint having filed on March 31, 1952, a motion requesting that the Commission place this case on its own docket for review and thereafter amend the complaint and the initial decision of the hearing examiner in the respects set forth in said motion, and counsel for the respondents having interposed no objections to the granting of said motion and having agreed that the answer to the complaint, heretofore filed, shall be considered as respondents' answer to the complaint as amended, if said motion is granted; and

It appearing that the complaint herein does not adequately allege the reason or reasons why the garments manufactured and sold by the respondents are highly inflammable, and that, therefore, the initial decision of the hearing examiner, which is based upon said complaint and answer of the respondents admitting all of the material allegations of fact, does not constitute an appropriate disposition of this proceeding; and

The Commission being of the opinion that the complaint herein should be amended and that the initial decision of the hearing examiner should be vacated and set aside, rather than amended as requested by counsel supporting the complaint, and that the case should be remanded to the hearing examiner for further proceedings in conformity with the Commission's Rules of Practice:

It is ordered, In conformity with the provisions of Rule XXII of the Commission's Rules of Practice, that this case be, and it hereby is, placed on the Commission's own docket for review.

It is further ordered, That the complaint herein be, and it hereby is, amended by striking the second sentence of Paragraph Eight of said complaint and inserting in lieu thereof the following allegations:

In truth and in fact the said sweaters, made of brushed rayon, are highly inflammable because of the length of the fibers on the brushed-up surface of this particular material.

It is further ordered, That the initial decision of the hearing examiner heretofore filed in this proceeding be, and it hereby is, vacated and set aside.

It is further ordered, That this case be, and it hereby is, remanded to the hearing examiner for further proceedings in conformity with the Commission's Rules of Practice.

officers formulate, direct and control the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter mentioned. These individual respondents also have their offices at 50 Alleppo Street, Providence, Rhode Island.

PAR. 3. The respondents are now, and for more than two years last past have been, engaged in the manufacture, sale and distribution of articles of wearing apparel including sweaters which are composed of rayon. Respondents cause their products when sold to be transported from their place of business in the State of Rhode Island to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Rayon is a chemical fiber which may be manufactured so as to simulate wool and other natural fibers in texture and appearance. Articles of wearing apparel manufactured from such rayon fibers have the appearance and feel of wool, and many members of the purchasing public are unable to distinguish between such rayon articles of wearing apparel and articles of wearing apparel manufactured from wool. Consequently, such rayon articles of wearing apparel are readily accepted by some of the purchasing public as wool products.

PAR. 5. The sweaters so manufactured are sold and distributed by the respondents under the brand name "Esquire" and simulate wool in texture and appearance. In the course and conduct of their said business respondents sell and distribute the sweaters in boxes labeled as follows:

Esquire Exclusive Sportswear

(picture of a camel)

Hand Tailored
For Town and Country

PAR. 6. By the aforesaid labeling, respondents have represented that said sweaters are hand tailored. In truth and in fact, they are not hand tailored but are machine made.

PAR. 7. Products manufactured from wool have for many years held, and still hold, great public esteem and confidence because of their outstanding qualities. Camel's hair is a type of wool and is a highly desirable material for sweaters.

By the picture of a camel on the boxes in which said sweaters are sold, respondents have represented by implication that said sweaters

are made of camel's hair. In truth and in fact said sweaters are not made of camel's hair or any other type of wool.

Respondents also sell and distribute said sweaters as aforesaid without informing the purchasing public of the fact that the sweaters are made of rayon and not wool.

PAR. 8. By the labeling of said sweaters and by selling and distributing them as aforesaid, respondents have represented and impliedly warranted that they are suitable and safe to be worn as sweaters are ordinarily worn. In truth and in fact the said sweaters, made of brushed rayon, are highly inflammable because of the length of the fibers on the brushed-up surface of this particular material. Sweaters made from such material are dangerous and unsafe to be worn as articles of clothing because of their inflammability. At no place on the sweaters themselves, on the containers in which they are packaged or otherwise is the fact revealed that said sweaters are highly inflammable and dangerous and unsafe to wear.

PAR. 9. The practice of respondents, as aforesaid, of representing that said sweaters are hand tailored, are made of camel's hair, failing to reveal that the sweaters are made of rayon and failing to reveal that they are made of highly inflammable material, unsafe to be worn as an article of clothing, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said sweaters are made by tailors by hand, are made of camel's hair or some other type of wool and are suitable and safe to be worn as sweaters are ordinarily worn, and into the purchase of substantial quantities of said sweaters because of such erroneous and mistaken belief. Furthermore, respondents' said practice places in the hands of retailers of respondents' sweaters a means and instrumentality whereby members of the purchasing public may be misled and deceived in the manner aforesaid.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated October 6, 1952, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 24, 1952, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. On February 6, 1952, respondents filed their answer in which they admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to such facts. Thereafter the proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon the complaint and answer, and the hearing examiner, after duly considering the matter, found that the proceeding was in the interest of the public, and on February 11, 1952, issued his Initial Decision in the matter. Subsequently, upon motion of counsel supporting the complaint, the Commission, on May 6, 1952, placed the proceeding on its docket for review, amended the complaint, vacated and set aside the Initial Decision of the hearing examiner, and remanded the case to the hearing examiner for further proceedings under the amended complaint. Thereafter, on June 13, 1952, respondents filed their answer to the amended complaint in which they admitted all of the material allegations of fact set forth therein and waived all intervening procedure and further hearing as to such facts. Subsequently, the proceeding regularly came on for final consideration by the hearing examiner upon the amended complaint and answer thereto and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Dean Merchandising Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 50 Alleppo Street, Providence, Rhode Island.

PAR. 2. The individual respondent Vincent Mele is President and Vice President of the corporate respondent, and the individual respondent Anthony Mele is its Secretary and Treasurer, and as such officers these individuals formulate, direct and control the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter mentioned. The individual respondents

also have their offices at 50 Alleppo Street, Providence, Rhode Island.

PAR. 3. Respondents are now, and for more than two years last past have been, engaged in the manufacture, sale and distribution of articles of wearing apparel, including sweaters, which are composed of rayon. Respondents cause their products, when sold, to be transported from their place of business in the State of Rhode Island to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Rayon is a chemical fiber which may be manufactured so as to simulate wool and other natural fibers in texture and appearance. Articles of wearing apparel manufactured from such rayon fibers have the appearance and feel of wool, and many members of the purchasing public are unable to distinguish between such rayon articles of wearing apparel and articles of wearing apparel manufactured from wool. Consequently, such rayon articles of wearing apparel are readily accepted by some of the purchasing public as wool products.

PAR. 5. The sweaters so manufactured are sold and distributed by respondent under the brand name "Esquire" and simulate wool in texture and appearance. In the course and conduct of their business respondents sell and distribute the sweaters in boxes labeled as follows:

Esquire Exclusive Sportswear

(picture of a camel)

Hand Tailored
For Town and Country

PAR. 6. By this labeling, respondents have represented that such sweaters are hand tailored. In truth and in fact, they are not hand tailored but are machine made.

PAR. 7. Products manufactured from wool have for many years held, and still hold, great public esteem and confidence because of their outstanding qualities. Camel's hair is a type of wool and is a highly desirable material for sweaters.

By the picture of a camel on the boxes in which such sweaters are sold, respondents have represented by implication that the sweaters are made of camel's hair. In truth and in fact, the sweaters are not made of camel's hair or any other type of wool.

Respondents also sell and distribute such sweaters without informing the purchasing public of the fact that the sweaters are made of rayon and not wool.

PAR. 8. By the labeling of such sweaters and by selling and distributing them as aforesaid, respondents have represented and impliedly warranted that they are suitable and safe to be worn as sweaters are ordinarily worn. In truth and in fact the said sweaters, made of brushed rayon, are highly inflammable because of the length of the fibers on the brushed-up surface of this particular material. Sweaters made from such material are dangerous and unsafe to be worn as articles of clothing because of their inflammability. At no place on the sweaters themselves, on the containers in which they are packaged or otherwise is the fact revealed that the sweaters are highly inflammable and dangerous and unsafe to wear.

PAR. 9. The practice of respondents, as aforesaid, of representing that their sweaters are hand tailored, are made of camel's hair, failing to reveal that the sweaters are made of rayon, and failing to reveal that they are made of highly inflammable material, unsafe to be worn as an article of clothing, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such sweaters are made by tailors by hand, are made of camel's hair or some other type of wool, and are suitable and safe to be worn as sweaters are ordinarily worn, and into the purchase of substantial quantities of such sweaters because of such erroneous and mistaken belief. Furthermore, respondents' practice places in the hands of retailers of respondents' sweaters a means and instrumentality whereby members of the purchasing public may be misled and deceived in the manner above set forth.

CONCLUSION

The acts and practices of respondents as hereinabove set out are all to the prejudice of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Dean Merchandising Company, Inc., a corporation, and its officers, and Vincent Mele and Anthony Mele, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of sweaters or other garments, do forthwith cease and desist from:

1. Representing as hand tailored any garment which is not such in fact.

2. Offering for sale or selling garments composed in whole or in part of rayon, without clearly and affirmatively disclosing thereon, or on tags or labels affixed thereto, such rayon content.

3. Offering for sale or selling garments made of highly inflammable material, without clearly and affirmatively disclosing thereon, or on tags or labels affixed thereto, that said garments are highly inflammable and are dangerous and unsafe to be worn as articles of clothing.

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 the order to cease and desist [as required by said declaratory decision and order of October 6, 1952].

IN THE MATTER OF

J. M. TROTTER AND H. K. CADE TRADING AS T. & C. SALES COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5908. Complaint, July 23, 1951—Decision, Oct. 15, 1952

Where two partners engaged in the interstate sale and distribution of various articles of merchandise; and of push cards and punchboards which, bearing explanatory legends or space therefor, were used in the sale of other merchandise by lot or chance under plans whereby the purchasers who by chance selected certain specified numbers received articles without additional cost at prices which were much less than their normal price, and others received nothing for their money other than the privilege of a push or punch—

(*a*) Sold and distributed such devices to dealers who packed assortments consisting of other articles together with said devices, which, exposed by the direct or indirect retailer purchasers thereof to the purchasing public, were sold and distributed in accordance with the aforesaid sales method; and

(*b*) Sold assortments of other articles also dealt in by them such as jewelry, watches and novelty items, packed and assembled with said devices, to retail dealer purchasers by whom they were exposed and sold to the public by means of the aforesaid devices and plans; and

Thereby supplied to and placed in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale of merchandise, contrary to the established public policy of the United States Government; and there was placed in the hands of purchasers of such devices the means and instrumentalities for engaging in unfair acts and practices:

With the result that gambling among members of the public was taught and encouraged:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair acts and practices in commerce.

Before *Mr. William L. Pack*, hearing examiner.
Mr. J. W. Brookfield, Jr., for the Commission.
Mr. F. W. James, of Evanston, Ill., for respondents.

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 J. M. Trotter and H. K. Cade, individually and as copartners, trading and doing busi-

ness as T. & C. Sales Company, 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 and states its charges in that respect as follows:

Count I

PARAGRAPH 1. Respondents J. M. Trotter and H. K. Cade are individuals and copartners trading and doing business as T. & C. Sales Company with their office and principal place of business located at 811 Hardin Avenue, Jacksonville, Illinois.

Respondents are now and for more than three years last past have been engaged in the sale and distribution of devices commonly known as push cards and punchboards to dealers engaged in the sale of various articles of merchandise in commerce between and among the various States of the United States, and to dealers engaged in the sale of merchandise within the several States of the United States.

PAR. 2. In the course and conduct of their said business, as described in Paragraph One hereof, respondents sell and distribute, and have sold and distributed, to said dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute and have sold and distributed many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitled purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers received nothing

for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices and the only manner in which they are used, by the ultimate purchasers thereof is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance, as hereinabove alleged.

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, cigarette lighters, watches, and other articles of merchandise in commerce between and among various States of the United States, purchase and have purchased respondents' said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers who have purchased said assortments, either directly or indirectly, and retail dealers who have purchased said devices directly from respondents and made up their own assortments have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in Paragraph Two hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods

in the sale of merchandise and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method 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 or distribution of said push card and punchboard 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 enterprise in the sale or distribution of their merchandise. The respondents 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. 5. 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 within the intent and meaning of the Federal Trade Commission Act.

Count II

PARAGRAPH 1. Respondents J. M. Trotter and H. K. Cade are individuals and copartners trading and doing business as T. & C. Sales Company with their office and principal place of business located at 811 Hardin Avenue, Jacksonville, Illinois. Respondents are now and for more than three years last past have been engaged in the sale and distribution of watches, jewelry, cigarette lighters, fountain pens, rings, novelties and other articles of merchandise and have caused said merchandise, when sold, to be transported from their place of business in the city of Jacksonville, Illinois, to purchasers thereof at their respective points of location in various States of the United States other than Illinois. There is now and has been for more than three years last past a course of trade by respondents in such merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in Paragraph One hereof, respondents sell and have sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise or lottery schemes when said merchandise is sold and distributed to the purchasing public.

Said assortments include a number of articles of merchandise and a punchboard. The punchboard has printed on the face thereof a legend or instructions that explain the manner in which the said

device is to be used or may be used in the sale or distribution of the various specified articles of merchandise. The prices of the sales of punches on said punchboards vary in accordance with the individual device. Each purchase entitles the purchaser to one punch from the board and when a punch is made a printed slip is separated from the punchboard and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the punch completed. Certain specified numbers entitle the purchaser thereof to receive a designated article of merchandise. Persons punching a lucky or winning number receive an article of merchandise at a price much less than the normal retail price of said article. Persons who do not punch a lucky or winning number receive nothing for their money other than the privilege of making a punch from said board. The articles of merchandise are thus distributed to the consuming or purchasing public solely by lot or chance.

Respondents have sold and distributed numerous assortments of merchandise and punchboards, all of which are distributed by the dealer to the purchasing public, as above described, and such assortments vary only in detail as to the individual items of merchandise, the number of punches on the board and the price of each punch, the plans of all of said boards and assortments being similar to the one hereinabove described.

PAR 3. Retail dealers who purchase respondents' punchboards and merchandise assortments, directly or indirectly, expose and sell merchandise to the purchasing public in accordance with the sales plans above described. Respondents thus supply and place in the hands of others the means of conducting lotteries or games of chance in the sale of their products in accordance with the sales plans hereinabove set forth. The use by respondents of said sales plan or method in the sale of his merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondents and the element of chance involved therein and thereby are induced to buy and sell respondents' merchandise.

The use by respondents of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise

is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 23, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereinabove charging them with the use of unfair acts and practices in commerce in violation of the provisions of that Act. After the filing by respondents of their joint answer to the complaint, a hearing was held before a hearing examiner of the Commission, theretofore designated by it, at which a stipulation theretofore executed by counsel supporting the complaint and counsel for respondents was introduced into evidence, together with certain exhibits, and such stipulation and exhibits were duly recorded and filed in the office of the Commission. On April 14, 1952, the hearing examiner filed his initial decision.

The Commission, having reason to believe that the initial decision did not constitute an appropriate disposition of the proceeding, placed this case on the Commission's own docket for review and, on July 24, 1952, it issued and thereafter served upon the parties its order affording the respondents an opportunity to show cause why the initial decision should not be altered in the manner and to the extent shown in the tentative decision attached to said order. Respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration by the Commission upon the record herein on review; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents J. M. Trotter and H. K. Cade are individuals and copartners trading under the name T. & C. Sales Company, with their office and principal place of business located at 811 Hardin Avenue, Jacksonville, Illinois. Respondents are engaged in the sale

and distribution of devices commonly known as punchboards and push cards, such devices being sold to dealers in various other articles of merchandise. Respondents are also engaged in the sale of various articles of merchandise in addition to such devices, and in the course of their business sell assortments or deals consisting of a punchboard and other merchandise. All of respondents' products are sold to purchasers located in various States of the United States, the products, when sold, being shipped by respondents from their place of business in the States of Illinois to such purchasers located in other States.

PAR. 2. Many of respondents' punchboards and push cards have printed thereon certain legends or instructions which explain the manner in which the devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The price paid for a punch or push on such devices varies in accordance with the individual device. Each purchaser is entitled to one punch or push from the punchboard or push card. When a punch or push is made, a disc or printed slip is separated from the board or card and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the punch or push completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons obtaining lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of such articles. Those persons who do not obtain such lucky or winning numbers receive nothing for their money other than the privilege of making a punch or push from the board or card. The articles of merchandise are thus distributed to the consuming public wholly by lot or chance.

Others of respondents' punchboards and push cards have no instructions or legends thereon but have blank spaces provided therefor. On these punchboards and push cards the purchasers thereof place instructions or legends similar to those placed by respondents on the boards and cards described above.

PAR. 3. Some of the purchasers of respondents' punchboards and push cards are themselves dealers in various other articles of merchandise in interstate commerce, and such purchasers make up assortments consisting of a punchboard or push card and other articles and sell such assortments to retail dealers. Other purchasers are retailers who purchase punchboards and push cards from respondents direct and make up their own assortments. In either event the retail dealer sells or distributes merchandise to the public by means of respondents' devices in accordance with the sales method described above.