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HOUSE RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO MAKE A COMPARATIVE STUDY OF STATE LEGISLATION WITH RESPECT TO TRADING STAMPS AND THEIR ADMINISTRATIVE EXPERIENCE.

WHEREAS, the trading stamp business has become a significant part of our retail commerce in Hawaii; and

WHEREAS, there is the possibility that if trading stamp companies become insolvent or abscond, consumers who hold unredeemed trading stamps will suffer losses; and

WHEREAS, it may be necessary and proper to enact legislation relating to trading stamps for the purpose of consumer protection; and

WHEREAS, a study of the legislation of other states and their administrative experience would be extremely valuable in determining the need and appropriateness of such legislation; now, therefore,

BE IT RESOLVED by the House of Representatives of the Third Legislature of the State of Hawaii, Budget Session of 1966, that the Legislative Reference Bureau be, and hereby is requested, to make a comparative study of state legislation on trading stamps and their administrative experience; and

BE IT FURTHER RESOLVED that a duly authenticated copy of this resolution be sent the Director of the Legislative Reference Bureau.

TRADING

STAMP

LEGISLATION

CHARLES K. MARK
Assistant Researcher

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LEGISLATIVE REFERENCE BUREAU

UNIVERSITY OF HAWAII
Honolulu, Hawaii 96822

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FOREWORD

House Resolution 76 of the 1966 Budget Session directed the Legislative Reference Bureau "to make a comparative study of state legislation on trading stamps and their administrative experience." A substantial portion of this report is devoted to the review and examination of state laws regulating trading stamp operations with special attention being directed to the consumer protection aspects of such laws.

This study is not intended to encompass all aspects of the trading stamp systems and operations but rather to present in logical form, the more pertinent issues and factors which may be necessary for informed deliberation and decision-making. It does not attempt to formulate any conclusions as to the need for legislative action nor does it make any specific recommendation regarding the methods of regulating trading stamp companies. It leaves such decisions to the individual legislator.

The execution of this report would not have been possible without the cooperation and assistance of the various states. We are indebted to the representatives of the various trading stamp companies, labor unions, and other governmental agencies who gave so generously of their time in reviewing and commenting on the preliminary draft of the report. We are also indebted to Hanako Kobayashi for editing and ordering the footnote material and to Jane Tsuchiyama for assisting in reviewing and compiling the data presented in the tables.

Herman S. Doi
Director

February 1967

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INTRODUCTION

House Resolution 76 of the 1966 Budget Session directed the Legislative Reference Bureau "to make a comparative study of state legislation on trading stamps and their administrative experience." H. R. 76, which is reprinted on the inside front cover of this report, expresses concern primarily with the consumer protection aspect of trading stamp legislation. A substantial part of this report is devoted to the review and examination of state laws regulating trading stamp operations, with special attention provided to the more common consumer protection features encountered in such laws. Most of the state laws with extensive consumer protection features have been enacted since 1959.

During the initial stages of preparing this report, we found that we had a substantial amount of material on trading stamp laws and practices prior to 1964 but very little on this subject since then. We, therefore, requested each state to provide us with material or information developed since January, 1964, on trading stamp legislation, studies or reports, and administrative practices. We received replies from thirty-two states. The statutes of the seventeen states which did not reply were reviewed along with the latest reports or studies containing information on the status of trading stamp legislation in these states. This report is based on information derived from the above two sources.

This report attempts to: (1) provide the reader with a concise presentation of the current status of trading stamp legislation; (2) examine and analyze the more significant regulatory provisions of existing statutes and legal aspects involved in the regulation of trading stamps; and (3) present some of the pertinent factors involved in the controversy over the need for trading stamp regulation. It does not, however, attempt to cover fully the economic implications and controversies involved in trading stamp operations. The report is divided accordingly as follows:

Chapter I provides a brief treatment of certain features of trading stamp operations and a discussion on public policy considerations involving trading stamp operations.

Chapter II reviews and compares the trading stamp statutes of various states and attempts to analyze the more significant provisions of these statutes.

TRADING STAMP LEGISLATION

Chapter III presents some other legal aspects involving trading stamp operations which are pertinent to the subject of trading stamp legislation.

SUMMARY

A number of states regulate trading stamps through various types of statutory control. The most significant types of control are those requiring trading stamp companies to: register with the state; furnish a bond, usually between certain minimum and maximum limits; and to disclose certain information, limited in extent, about the organization and financial status of the companies. Other types of controls require printing of the cash value on the face of stamps; redemption in cash or merchandise at the option of the stamp holder; and redemption of stamps in cash upon presentation of a stipulated minimum amount. The last requirement gains added importance in the event of redemption default by a trading stamp company. Certain procedural requirements governing the cessation of business and redemption of stamps in the event of redemption default are also usually included in the controls established by state statutes.

The adequacy of present state statutes requiring bonding appear to be of doubtful value if complete financial protection of the stamp saving public is the objective of legislation. If such is desired, it would seem advisable to seek more adequate alternatives which provide a greater degree of protection. The issue of whether complete or more adequate financial protection should be provided the public is discussed, but not resolved, leaving the determination, as a policy matter, to the individual legislator. Similarly, no conclusions have been drawn regarding the desirability of incorporating any of the regulatory controls applied to trading stamps by other states into a trading stamp statute for Hawaii. However, the pertinent issues involved are presented and discussed. Also discussed are some issues regarding other basic considerations involved in the enactment of any trading stamp legislation.

There is ample precedent for statutory regulation to insure financial responsibility of trading stamp companies. Prior to the mid-fifties, the views of most state courts generally were that state legislatures could not impose irrational or unnecessary restrictions, or cause arbitrary interference with businesses. Since 1958, however, some of the courts appear to have expanded their concept of the state police power and have seemingly taken a more favorable attitude toward a certain amount of trading stamp regulation by states. Although some courts have increased the scope of coverage of the state police power, there is still some doubt as to whether the courts would declare, as constitutional, drastic legislation having the effect of crippling or seriously hindering the normal activities of the trading stamp companies.

TRADING STAMP LEGISLATION

A number of federal agencies have, from time to time, reviewed or investigated the use of trading stamps as a business device. These agencies, to date, have found nothing illegal or otherwise singularly offensive in stamp plans.

The Supreme Court of the United States, in 1916, ruled that under the federal constitution, the use of trading stamps may be prohibited under the police power of states. However, except in a few instances, most state courts have refused to follow the invitation of the federal courts and have generally invalidated prohibitive or discriminatory legislation aimed at trading stamps.

Statutory restrictions which appear to severely limit the use of trading stamps have been enacted and upheld by state courts in Kansas, Washington, Wisconsin and Wyoming. With the possible exception of Wyoming, these state courts have generally held to the minority view, stemming probably from their involvement in the small handful of cases adverse to trading stamps which were decided as a result of, or immediately subsequent to, the United States Supreme Court ruling in 1916.

The majority of court decisions since 1919 involving trading stamps have generally held that:

1. The use of stamps does not involve gambling, lottery or chance and therefore is not illegal under gaming laws.
2. Gift enterprise, tax, license and like statutes designed to prohibit trading stamps are unconstitutional because they violated the due process or equal protection clauses of the state's constitution, or because they provided for classifications which were unreasonable or purely arbitrary.
3. Trading stamps do not contravene fair trade laws, unfair sales practices laws and motor fuel sales acts.
4. Escheat of unredeemed trading stamps, under existing general escheat laws, is not legally valid.

Specific proposals to escheat unredeemed trading stamps appear to be of questionable validity and certain impracticability. At present, there are no state laws providing for specific escheat of unredeemed stamps.

SUMMARY

In Hawaii, a "gift enterprise" type statute specifically prohibiting trading stamps was enacted in 1905. It was declared to be unconstitutional by the courts in 1907. As a result, all references to trading stamps were subsequently deleted from the Act. The remaining portion of the Act may be found in Chapter 310, Revised Laws of Hawaii 1955.

What attitude the Hawaii courts would take today in regard to specific state regulation of trading stamps is not known. The answer would be dependent, to a large extent, upon whether or not the courts are now of the opinion that the state's police power extends beyond the old concept of protection of public health, safety or morals to include, within certain limits, the good order, comfort or general welfare of the community.

Chapter I

PERTINENT FEATURES OF TRADING STAMP OPERATIONS

TYPES OF TRADING STAMP ORGANIZATIONS

There are several types of organizations involved in the conduct of trading stamp operations. They may be classified into the following categories:

- (1) Independent stamp companies;
- (2) Individual merchant plans;
- (3) Retailer-controlled stamp companies; and
- (4) Cooperative stamp companies.

The independent company is an organization which sells its services to the retailer. It does not issue stamps to the public itself but licenses their use to retailers who in turn distribute them to customers. The company normally furnishes stamp books and promotional materials to retailers and assumes responsibility, in most cases, for redemption of the stamps. This is the most common and most popular type of organization. In Hawaii Gold Bond and Royal Stamp companies are examples of independent stamp companies.

Individual merchant plans may have a number of variations, but essentially they are owned and operated by a merchant or other retailer who provides and issues the stamps to his own customers and who is responsible for their redemption. Variations include:

- (1) A merchant distributes stamps printed for his own exclusive use, distributes them only to his customers and redeems them from his general stock of merchandise at a stipulated value. A grocery store, for example, may establish a value of \$2.00 for a filled stamp book and reduce a customer's purchase by that amount when presented with a filled book. In Hawaii, there are a few small grocery stores, bakeries, and at least one clothing store with this type of plan.
- (2) Cash register tapes are a subclassification of this category. Instead of saving stamps, a customer retains the

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store's cash register tapes until they amount to a certain stipulated sum whereupon they may be redeemed from the general stock of the merchant, or for special premium merchandise. There were a few stores employing this type of plan in Hawaii at one time, but it is not known whether this practice is still carried on at present. It is probable that a few small neighborhood stores may still utilize this type of plan from time to time.

- (3) Another variation is one in which one retailer has stamps printed for his use which he issues to customers. However, he also acts somewhat like an independent stamp company by licensing the use of stamps to other retailers (generally non-competitive merchants) in the general vicinity and assuming responsibility for redemption. In Hawaii, Lin's Windward Stamp Company appears to be an example of this type of organization.

A retailer-controlled stamp company operates in precisely the same manner as an independent stamp company except that it is organized, owned and controlled by one or a group of retailers who use the plan. It differs from the above individual merchant plan in that the trading stamp company is independent, that it is organized as a separate entity, and that stamps are always made available to retailers other than the owners of the stamp company. This type of plan is not evident in the State.

A cooperative stamp company is organized, controlled and operated by several merchants as an independent stamp company except that any profits derived from the operation are paid to the members of the cooperative who are the merchants distributing the stamp. An example of this type of cooperative stamp company is the Hawaiian Grocery Stores which uses United Super Stamps.

The various types of trading stamp operations are briefly described to indicate that legislation to regulate independent type operations may affect the other smaller type operations in a number of ways, possibly making it impractical for the smaller operators to continue with stamps. For example, a large independent stamp company may easily post a \$100,000 bond, but a small retailer issuing and redeeming his own stamps may find posting of even a minimum bond of \$10,000 to be a prohibitive cost. Whether legislation should apply to trading stamps per se, or to how stamps are used and who uses them, are matters worthy of consideration. Consideration should

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also be given to whether trading stamp companies should be classified, and if so, whether certain classes are to be exempt from regulation.

INCOME OF STAMP COMPANIES

Payments by retailers for the use of stamps is the single major source of revenue of a trading stamp company. From this revenue, the stamp company must pay for various operating costs such as printing, stocking, and selling of the stamps; purchasing and warehousing merchandise, and operating redemption centers; advertising and promoting the stamps; and other general and administrative business expenses.

The trading stamp company has a number of ways in which it can utilize the revenue from stamp sales to provide funds for operating expenses and for profit. It may:

- (1) Set redemption value of the stamp below its sale price;
- (2) Obtain the normal retailer's markup on merchandise by buying in wholesale quantities at wholesale prices and providing for merchandise redemption at manufacturer's list prices or prevailing retail prices; and
- (3) Invest cash reserves to augment company income. Sizable cash reserves may be built up during the time it takes consumers to accumulate sufficient stamps for redemption of premiums.

The company may also receive some revenue from the payments made for the use of stamps which are never redeemed, although what the exact amount of revenue a trading stamp company derives from unredeemed stamps is difficult to determine during the period that the company remains in business. The issue of profits being derived from unredeemed stamps is one that is quite controversial and is treated at greater length in this report under the subject of escheat.

LIMITATIONS ON STAMP SAVERS

Trading stamp companies impose certain conditions on the use of their stamps by consumers, most of which are expressly outlined in

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the saver books in which stamps are pasted. A summary of conditions which may be imposed upon stamp savers by trading stamp companies is as follows:

- (1) Use of stamps is subject to the terms of the contract between the company and the distributing merchants.
- (2) Title to the stamps is retained by the company. The merchant obtains only a license to use the stamps for which he pays a stated price and the saver obtains only the rights provided in the contract.
- (3) The only right obtained by the saver is to present the stamps for redemption.
- (4) Stamps are transferable only with the consent of the company.
- (5) Trading stamps must be pasted into stamp books which in turn must be filled before they are redeemed.
- (6) A right to change the terms of redemption is reserved by some companies.
- (7) The redemption value of premiums offered may be changed at will by the companies. Trading stamp companies maintain that their right to change the redemption value is similar to the right of any retailer to change the prices of his merchandise.

These limitations may vary in some states which have statutes establishing certain rights in the stamp savers.

Typical of the listed limitations are those contained in the stamp saver books presently issued by Royal Stamps and Gold Bond Stamps--the two more popular trading stamps in Hawaii. These limitations, as printed on saver books, are as follows:

ROYAL STAMP'S LIMITATIONS

We reserve the right to discontinue, without notice, any or all articles listed in our catalog; or increase or decrease the redemption value of any and all such articles, also the right to collect any and all taxes, revenue, etc.,

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which may be levied, assessed or required to be collected and paid on any or all such articles or value thereof.

Federal Excise Tax collectible on any articles must be paid in cash at the time of redemption.

4% Gross Income Tax collectible on any or all articles must be paid in cash at the time of redemption. The taxable amount of each redeemable saver book affixed with Royal Saving Stamps is equal to the following cash payments:

4% Gross Income Tax
12¢ Tax per Full Saver Book
9¢ Tax per 3/4 Saver Book
6¢ Tax per 1/2 Saver Book
3¢ Tax per 1/4 Saver Book

We will redeem for merchandise only, except when issued in any state or locality where redemption in merchandise is prohibited or requires payment of a tax or license not required for cash redemption. In such instances, said stamps will be redeemed in cash only. The said stamps are void wherever prohibited.

GOLD BOND'S LIMITATIONS

Gold Bond Stamps are subject to the provisions of the contracts between the companies and the merchants who issue them, and to the following rights and conditions, which are expressly reserved in the companies, which the persons acquiring them expressly accept, and which are a part of all contracts between the companies and our merchants and are binding on the merchants' customers.

Neither the stamps nor the books are sold to merchants, collectors or any other persons, at all times the title thereto being expressly reserved in the companies, and the right to possession thereof is reserved to the companies, subject to the rights of the merchants and their customers under the contracts with the companies. The stamps are issued to you as evidence of cash payment to the merchants issuing them. The only right you acquire in the stamps is to paste them in books like this and present

PERTINENT FEATURES OF TRADING STAMP OPERATIONS

them to us for redemption. We will in every case, where application is made to us give you permission to turn over your stamps to any other bona fide collector of Gold Bond Stamps; but if the stamps or the books are transferred without our consent, we reserve the right to restrain their use by, or take them, from other parties. It is to your interest that you fill the book and personally derive the benefits and advantages of redeeming it.

Except where otherwise required by law, only filled Savers Books will be redeemed for cash.

Limitations on the use of stamps by savers, as stated on stamp books, are governed in most cases by the terms of agreement between the stamp company and the merchant. The essential provisions of a typical contract are:

(1) The company agrees:

- (a) To license and authorize the use of its stamps at specified locations.
- (b) To furnish stamps for distribution to customers at specified rates and with specified minimum quantities.
- (c) To redeem the stamps from the savers by giving them in exchange, at the option of the licensor (company) or as required by law, cash or goods, wares or merchandise of their own selection from the company's stock of premiums.
- (d) To furnish advertising signs, other promotional material, savers books, and directory listings without further charge.

(2) The merchant agrees:

- (a) To use the stamps (and advertise their use) by offering his customers one stamp for each 10-cent purchase.
- (b) To pay the company for their use at rates and in minimum quantities specified.

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- (c) Not to procure, use or dispose of such stamps except as provided by the agreement.
- (3) Both parties agree:
 - (a) That title in the stamps remains in the company.
 - (b) That the agreement shall be operative for a period specified, automatically renewable for similar periods unless cancelled at the close of any such period by 30 days notice, but that the company at its option may cancel at any time if the merchant changes his place or line of business, violates the agreement, goes into bankruptcy or receivership, or if the business changes ownership.
 - (c) That upon termination of the agreement the merchant shall return all signs or other promotional material, and all unissued stamps for which he shall be reimbursed at the same rate as for purchase.
 - (d) That the agreement is made for the benefit of the merchant's customers as well as the merchant and company.

An inference is frequently made that the consumer "pays" for the stamp instead of receiving it free; that the stamp is an article which is, in essence, similar to cash or, at least, that trading stamp practices have represented it, expressly or impliedly, to the public as such; and that therefore the stamp itself has an intrinsic value. This inference is contrary to the limitations made by the trading stamp company. The strict interpretation of the limitations imposed on the use of trading stamps by trading stamp companies poses an interesting question. Should the State attempt to protect the general public in all cases where the possibility exists for the misunderstanding of contractual relations or obligations by the public or, stated in the alternative, should the state attempt to protect the general public in all cases where representations made are understood by some of the public to have a different meaning than that actually set forth? Analogous to the above question is the question of whether a trading stamp company, as such, should be

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considered as one standing apart from other like businesses and be made subject to special legislation.

HOW STAMP COSTS ARE PAID

A pad of 5,000 trading stamps usually costs a merchant between \$10 to \$15, depending on the volume purchased. Normally, he provides the customer with one stamp for every 10¢ in purchases. On this basis, the merchant needs one pad for each \$500 of sales. A pad costing \$15 will be equal to 3% of his sales ($\$15.00 \div \$500 = 3\%$). Thus, a merchant purchases trading stamps at an average cost of from 2 to 3 per cent of his sales and in turn issues them to customers without any separate charge for the stamps. The question frequently asked is "How are the costs of these stamps paid?"

An Indiana University study on trading stamps, in commenting on the statement that the merchant's customers pay for the stamps, stated that, "This is so obviously true as to be meaningless. If a firm is successful, its customers must pay all of its costs, including a net profit for the firm."¹ Commenting further on the statement that a supermarket raises food prices by at least enough to cover the cost of stamps, it stated:

The first problem is to establish a positive difference in food prices between the food outlet with stamps and the one that does not use stamps. When this is attempted, it is necessary to make the assumptions that:

(1) Both stores offer to customers identical combinations of merchandise lines, identical qualities in each line, and identical sets of services.

(2) These combinations remain the same over the period of time during which price comparisons are made.

(3) Both stores have identical purchase costs with respect to all products (identical delivered costs).

(4) All store expenses are basically variable costs or that increased volume does not lower costs in ratio to sales.

(5) Each store uses cost-plus pricing, marking up each item of merchandise to yield the same gross margin,

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thus ignoring competition in its pricing.

All of these assumptions are necessary before one can test logically the hypothesis that the addition of any one service by one store must result in an increase in prices by that store and that therefore, any difference in prices between stores can be attributed solely to the one difference in service. Any study of current food store operating practices will indicate that each and every one of the above assumptions is partially or totally invalid.²

Thus, it is extremely difficult to prove that a price increase is due solely to the cost of stamps. Other factors influencing prices are very often easily overlooked in the attack on trading stamps.

Although recognizing the inherent difficulties in making price comparisons between stamp and non-stamp stores, several attempts have been made to measure the differences between food prices at stamp and non-stamp food stores.

The United States Agricultural Marketing Service found that in 21 cities, average food prices in trading stamp stores increased by about 0.6 per cent more than such prices in non-stamp stores. It noted that the difference may have been caused by non-stamp stores cutting prices to meet stamp competition. It also stated that "on the average in the 21 cities studied, consumers who save and redeem stamps can more than recoup the relative price difference between stamp and non-stamp stores." It concluded "the cost of stamps was covered in part by reduced costs resulting from increased volume, in part by higher prices, and in part by a decline in profit per dollar of sales."³

The Indiana University trading stamp study by Haring and Yoder also included a detailed analysis and survey of food prices in 28 stores in Indianapolis which concluded:

"In view of the wide differences in buying power known to exist between retail food organizations, the unappraisable differences in quality and the variation in services known to exist among retail food organizations, conclusions must be tentative. This pilot study found no significant tendency for prices at stamp-giving stores to be higher or lower than average in Indianapolis."⁴

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Verne A. Bunn in another report involving the study of trading stamps and retail food prices in cities of five western states between early 1960 and mid-1962 concluded that "While the factors affecting the price structure of a retail food store are many and varied, there is no indication that the use of trading stamps, viewed independently, causes food prices to rise." Quite to the contrary, strange as it may seem, food prices in Wichita, Kansas, where trading stamps are prohibited by law, were found to be slightly higher than in Tulsa, Oklahoma, a similar market area that permits use of trading stamps. The same condition was also found, in another similar market area, for non-stamp stores in Topeka and Kansas City, Kansas and stamp stores in Kansas City, Missouri.⁵

A subsequent study of food prices in the same cities in the Kansas and Missouri market areas mentioned above, using the same procedures of earlier studies and the same stores of the most recent study (June 1962), was conducted by Verne A. Bunn on March 30, 1965. The summary of the study stated:

"As in prior studies, no evidence could be found to substantiate the claim that stores using trading stamps have higher prices than stores not using stamps. In fact, there is an indication that stores without stamps tend to have slightly higher average prices than stores with stamps.
* * * On the average, stamp stores had prices 0.24% lower than non-stamp stores. This is particularly noticeable in comparing prices within a chain or affiliated group.

The conclusion to be drawn from these figures is that the prices in stores with trading stamps are no higher than those of stores without stamps."⁶

It has thus been found that it is exceedingly difficult to ascertain whether trading stamps do or do not increase food prices. Some price studies indicate that trading stamps do not raise prices while other reports indicate that even when price increases are apparent, factors other than stamps may have an equal or greater influence in causing the price increase. At any rate, the numerous variables which must be taken into account make such price studies extremely complex and such studies eventually result only in rough approximations.

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PUBLIC POLICY CONSIDERATIONS

The Constitution of the United States permits each business the freedom to compete with other similar enterprises. Actually, competition is encouraged by both the Constitution and the statutes of this country. It should prevail in both the fabrication and marketing of merchandise. Under these circumstances, a technique to increase the competitive effectiveness of a company or an industry has a presumption of lawfulness. Such was the original status of the trading stamp. In the absence of statutes, a specific practice may be limited or voided by court decisions, or by what is known as common law. Under common law, as far as is known, devices such as trading stamps have been quite regularly approved. Thus legal attacks on trading stamps must be based on statutes passed by Congress or state legislatures. These may be either laws regulating trade practices or specific statutes aimed at trading stamps.⁷

Caution should be exercised by legislative bodies when enacting statutes regulating trading stamp operations. The majority of court decisions involving trading stamps have clearly held that not only may trading stamp companies carry on their business but also that there shall be no unreasonable interference with their operations. This type of holding may be exemplified by quoting from Sperry and Hutchinson Co. v. Director of the Division on the Necessaries of Life, 307 Mass. 408. (1940):

The circumstances that a business is affected with a public interest does not make legally possible every legislative regulation. All such regulations must be reasonable in their nature, directed to the prevention of real evils and adapted to the accomplishment of their avowed purpose. Under the guise of protecting the general welfare there cannot be arbitrary interference with business or irrational or unnecessary restriction.

Of interest to this subject is the discussion of trading stamps and police power presented in a report on trading stamps by the Massachusetts Legislative Research Council which stated in part:

State courts in general are not disposed to give legislatures unconditional power to regulate economic conditions; they insist that regard must be had for the degree of public interest affected or the injury done to private rights. Massachusetts courts test economic and other legislation

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against the constitutional guarantees of due process, freedom of contract and property rights. There is no right to be free from fair competition. Only last year the Massachusetts Supreme Judicial Court reaffirmed that the state may exercise its fundamental power to establish regulations necessary to secure the health, safety, good order, comfort, or general welfare of the community, but defined with some strictness, so as not to include statutes based on mere expediency.

If use of the police power extends beyond the protection of public health, safety, or morals, to include the good order, comfort and general welfare of the community (defined with some strictness) that doctrine can put proposals aimed at trading stamps on a different footing.

Their doubtful validity under yesterday's narrow concept of the police power as was the case with the early stamp decisions is not necessarily the case today. * * * *
It is reasonable to assume, however, that any legislation designed solely to cripple the normal activities of the trading stamp business would be declared unconstitutional * * *.⁸

Thus, legislators must determine (1) whether the stamp saver is entitled to a greater degree of financial security than he is in his normal dealings with other businesses and (2) whether attempting to insure financial responsibility in trading stamp transactions is a matter of concern of government, or one subject to regulation by government, to a greater degree than other business transactions. There is no common ground upon which to base such a determination as evidenced by the fact that thirty states do not regulate trading stamps while twenty states have enacted trading stamp legislation. Even among the twenty states with trading stamp legislation, the divergence of existing statutes provides no ready determination as to the extent regulation is required.

Essential to the above determination is a conceptualization of what a trading stamp represents and the rights vested in the possessor of the stamp. One of the leading stamp companies, Sperry & Hutchinson Company, in defending against an escheat proceeding, advanced the arguments that: (1) no debtor and creditor relationship is established between stamp company and stamp saver; (2) the stamp itself is not a fixed and definite debt; and (3) once the company has

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delivered the stamps to the retailer with a promise to redeem, its contract is fully executed with the retailer. It argued that in practical effect, the consumer who ultimately receives the stamps in connection with his purchase becomes a third party beneficiary to the contract. As such, he does not initially possess a direct right against the company, but rather a right residing in the stamp itself which ripens only upon presentation of a requisite number of stamps to the company for redemption. As additional evidence that no debt is owing to the consumer, the stamp company pointed out that its initial obligation to the consumer, expressly stipulated in the company-retailer contract, is not definite. By its terms, the company reserves the right to alter the redemption value of the stamp at any time prior to redemption.

On the other hand, those in favor of statutory regulation argue that trading stamp companies have made representations to the consumer, expressly or impliedly, which are understood by the consumer to give him a property interest in the assets of the company, evidence of which is the trading stamp. The consumer feels that he has paid for the stamps and that he has a right to expect that they will be redeemed upon presentation.

Trading stamps are also often commonly regarded as a cash discount or a form of deferred rebate, both of which are long established sales promotion devices used by various types of firms and accepted in business as a common, legitimate practice. Accordingly, the consumer receiving a trading stamp is receiving a cash discount or deferred rebate represented in the form of a trading stamp. The trading stamp company assumes an obligation to convert the trading stamp into the equivalent of a cash discount or rebate under certain stipulated conditions. What distinguishes the trading stamp from other forms of commonly accepted deferred rebates, however, is the significant banking aspect of trading stamp operations which critics claim can lead to fraud and is therefore against the public interest. Therefore, it is further claimed, protective legislation is necessary because funds are received from retailers and held by a stamp company long before stamps are redeemed by consumers, and there is the potential danger that the trading stamp company may be unable to meet its commitments if adequate reserves are not maintained.

Trading stamp companies reply that they are not alone among private businesses in receiving payments in advance for goods to be delivered or for services to be performed in the future. They cite a number of examples of other businesses receiving payments in advance

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of the performance of obligations and claim that there is no reason why trading stamp companies, alone among such businesses, should be subject to special legislation. They point out that the percentage of bankruptcies in the trading stamp industry is no greater than those of other businesses. They further point out that, as a matter of equity, there is no basis for regulating only the trading stamp business and not the many other types of businesses receiving payments in advance whose practices may also be claimed to be potentially dangerous and may lead to fraud.

All these arguments as to what a trading stamp represents may be reduced essentially to two opposing views. One view holds that stamps are a promotional device valid only under certain stipulated conditions covered by a contractual arrangement between the retailer and the stamp company. The stamp saver does not pay for the stamps but is rather a third party beneficiary. The potential "loss", if any, to the stamp saver is negligible, involving no out-of-pocket cost. In the matter of ensuring financial responsibility, it is pointed out that the trading stamp business is conducted in the same manner as many other similar businesses which are not regulated by the state. The opposing view holds that the stamp company has led the consumer to believe that trading stamps constitute a definite claim against the assets of the companies. Also that the stamp saver does, in effect, pay for the stamps; that he believes that they are as good as cash and that he has every right to expect that they will be redeemed upon presentation. Therefore, the state should insure that stamps will be redeemed by the company.

It is evident that the opposing views are based upon different interpretations of what a trading stamp represents. This conflict of views casts a nebulous shadow over any attempt to ascertain the exact status of the trading stamp, embroiling such attempt in endless controversy. It appears then, that the determination of the rights of the stamp saver must be a matter for individual determination by the legislator in accordance with his belief as to what public policy should be.

Chapter II

ANALYSES OF TRADING STAMP STATUTES

STATUTES OF OTHER STATES

There are twenty-eight states with some form of specific trading stamp statute at present. The statutes of eight of such states do not regulate trading stamp operations but are privilege license tax measures enacted solely for the purpose of raising revenue. Table 1 presents the limited extent of the statutes of the eight states.

Table 1

STATES WITH TRADING STAMP STATUTES WHICH ARE PRIMARILY FOR THE RAISING OF REVENUE

State	State License Required	County or Municipal License Required	Tickets, Vouchers, or Coupons of Mfr. or Packer Exempted
Alabama	x ¹	x ¹	X
Arkansas		x ²	
Mississippi		x ³	
N. Carolina	x ⁴	x ⁴	X
Pennsylvania		x ⁵	
Tennessee		x ⁶	X
Virginia	x ⁷		
W. Virginia		x ⁸	

ANALYSES OF TRADING STAMP STATUTES

Table 1 (Continued)

1. Statewide privilege license tax of \$1,000 on trading stamp companies. The county in which a stamp company conducts business is also entitled to collect a privilege license tax of one-half of the amount of the state license, or \$500. Companies which maintain two or more places of business in the state must pay \$1,500 for each "place of business."
2. Cities may levy a tax or license fee not to exceed \$1,000 per year upon each gift enterprise (which is defined to include trading stamp enterprises) and a tax or license fee not to exceed \$500 per year upon each person, firm or corporation aiding, abetting or patronizing such gift enterprises. (Very little use is made of this authority by cities.)
3. Cities and towns authorized to levy a license tax of \$250 on trading stamp companies.
4. State license tax of \$200. Counties, cities and towns may also levy a license tax not in excess of that levied by the state.
5. Cities of 10,000 or more population may levy a license tax of not more than \$100 annually on certain types of business, including trading stamp or premium companies or dealers.
6. License tax of \$600 for each county in which a trading stamp company does business.
7. License tax based on the value of the premium stamps sold. The tax is \$50 on the first \$10,000 or less, and 25 cents per \$100 upon all sales in excess of \$10,000.
8. License fee of \$175 for each county in which distributors of trading stamps operate.

The remaining twenty states have statutes which either regulate, restrict or prohibit trading stamp operations in certain respects. A comparative presentation of the regulatory provisions of the trading stamp statutes of these states is provided in Table 2.

TRADING STAMP LEGISLATION

Table 2
STATES WITH STATUTES REGULATING TRADING STAMPS OPERATIONS

State	Bond	State License	Special Restrictions	Mfr. or Packer Exempt	Minimum Cash Redemption Amount	Registration and Reports	Other Features	Principal State Agency Administering Act
California	X ²	X ³	X ¹	X	\$1.00	X ^a		Comm. of Corp.
Connecticut	X ⁴	X ³	X ¹	X	.25	X ^a		Sec. of State
Florida	X ⁵	X ⁶	X ¹	X	.25	X ^a		Comptroller
Indiana					.05		X ^b	None
Kansas			X ¹⁸	X				None
Maine		X ⁷	X ¹	X	.25	X ^a		Sec. of State
Maryland	X ⁴	X ⁸	X ¹	X	.25	X ^a		Sec. of State
Massachusetts	X ⁴	X ⁹	X ¹	X	.25	X ^a		State Treas.
Nebraska				X	no minimum		X ^b	None
New Hampshire	X ⁵	X ⁶	X ¹	X	.50	X ^a		Sec. of State
New Jersey	X ¹⁰	X ⁹	X ¹	X	1.00	X ^a		Sec. of State
New Mexico	X ¹¹	X ⁷	X ¹	X	.25	X ^a		Sec. of State
North Dakota	*		X ¹²	X	no minimum		X ^c	Sec. of State
Ohio				X	.05		X ^b	None
South Dakota	*	X ¹³	X ¹²	X	1.00			Dept. of Rev.
Utah	X ¹⁴				no minimum		X ^b	Sec. of State
Vermont	X ⁴	X ¹⁵	X ¹	X	.25	X ^a		Sec. of State
Washington			X ¹⁶	X	no minimum		X ^b	County Auditor County Treas.
Wisconsin			X ¹⁷	X	.25			None
Wyoming			X ¹⁷	X	no minimum			None
Totals	10	11	16	18	19	10	6	20

* Discretionary authority provided - See Note 12 of Table

1. Trading stamp company may not cease or suspend redemption of stamps without giving at least 90 days prior written notice to the appropriate state agency and concurrently giving written notice to each merchant which has at any time within one year issued the company's stamps.
2. Bond amount of \$15,000 required for each \$100,000, or fraction thereof, of gross income in last fiscal year. If the company has not previously done business in the state, or if its gross income was less than \$65,000 during its last fiscal year, bond required is \$10,000. Maximum bond required is \$150,000. Other specified securities in lieu of surety bond acceptable if deposited with state treasurer.
3. License fee is 1% of principal sum of bond required.
4. If a company has not previously done business in the state or if its gross income during its last fiscal year was not more than \$250,000, bond required is \$25,000; between \$250,000 and \$500,000, \$50,000; between \$500,000 and \$750,000, \$75,000; over \$750,000, \$100,000. (In Connecticut, if the amount of surety bond is not sufficient to satisfy all valid claims in full, the Secretary of State may bring action in court against the defaulting company to recover the difference between the aggregate value of such claims, including administrative expenses, and the amount of the surety.)

ANALYSES OF TRADING STAMP STATUTES

Table 2 (Continued)

5. \$10,000 bond required for each \$100,000 of gross income. Minimum bond, \$10,000; maximum bond, \$100,000.
6. Registration fee is 1/2 of 1% of the face amount of the bond required but not to exceed \$250.
7. Gross income less than \$100,000 - \$100 registration fee; between \$100,000 and \$250,000 - \$250; between \$250,000 and \$500,000 - \$500; between \$500,000 and \$750,000 - \$750; over \$750,000 - \$1,000.
8. \$25 registration fee.
9. \$100 registration fee.
10. \$10,000 bond for each \$100,000 gross income. Minimum bond \$10,000 - maximum bond \$150,000.
11. Gross profit of \$100,000 or less - \$10,000 bond; between \$100,000 and \$250,000 - \$25,000; between \$250,000 and \$500,000 - \$50,000; between \$500,000 and \$750,000 - \$75,000; over \$750,000 - \$100,000.
12. In North Dakota, a trading stamp company shall not discontinue the redemption of stamps without first notifying the state. Upon receiving such notice, the state directs that all funds set aside for the redemption of stamps and such additional funds as may be deemed necessary by the state be retained for a period of six months after discontinuing operation for the purpose of redeeming outstanding stamps. State may also require the filing of an acceptable surety bond conditioned upon the redemption of outstanding trading stamps.

South Dakota has essentially the same provision except that discretionary authority is provided for requiring a bond not to exceed \$20,000 in conjunction with licensing.
13. Annual license fee of \$50. May also require filing of a surety bond of not more than \$20,000 as a condition of licensing.
14. Bond of \$20,000 required. Trading stamp company must establish an office in the state where all books of account relating to the sale, issue, transfer or delivery of trading stamps in the state shall be kept.
15. \$250 license fee.
16. The issuance of trading stamps redeemable in merchandise has been subject to a prohibitive license tax which does not apply to stamps redeemable in cash only. All who use, furnish, or sell trading stamps must purchase an annual license at a cost of \$6,000 for each store or place of business, use of which is limited to the county or city in which the stamps are sold or furnished.
17. Generally prohibits the issuance of trading stamps redeemable in merchandise or the issuance of trading stamps by stamp companies. However, with certain specific exemptions, stamps redeemable in cash only may be issued by merchants.
18. Issuance of stamps with the sale of merchandise prohibited. However, stamps may be issued in connection with the sale of services.
 - a. No trading stamp company shall distribute or redeem trading stamps until it has filed with the state a statement of registration accompanied by representative samples of its stamps, stamp collection books, stamp redemption catalogues, and stamp distribution and redemption agreement forms currently used. Each such statement shall provide the following information:
 1. the name and principal address of the company;
 2. the state of its incorporation or origin;
 3. the names and addresses of its principal officers, partners or proprietors;

TRADING STAMP LEGISLATION

Table 2 (Continued)

4. the address of its principal office in the state;
 5. the name and address of its principal officer, employee or agent therein;
 6. the addresses of its places of business within the state where stamps are redeemable;
 7. a short form of its balance sheet, as at the end of its last fiscal year prior to such filing, certified by an independent public accountant; and
 8. unless the principal sum of the bond to be filed by the company is the maximum amount hereinafter required, a statement of its gross income from its business in the state during such last fiscal year, certified by an independent public accountant.
- b. Merchant who issues the stamps must redeem them if the trading stamp company fails to do so.
- c. Holder of trading stamp has option to redeem stamps for cash at any office or agency of the trading stamp company or at any business establishment furnishing such stamps with the sale of merchandise.

ANALYSES OF TRADING STAMP STATUTES

Nine states with statutes which appear to have stronger regulatory features, such as a significant bonding provision and a mandatory ninety-day notification period to a state agency prior to cessation of operations, have all enacted such statutes since 1958.¹

Three other states have modest bonding provisions. Utah (1935) requires a bond of \$20,000 while North Dakota (1957) provides discretionary authority for requiring an acceptable surety bond upon receiving notification of cessation of business and South Dakota (1965) provides discretionary authority for requiring a bond not to exceed \$20,000 in conjunction with licensing. Eleven states² require trading stamp companies to file and pay a fee for a state license, with ten³ of these states requiring trading stamp companies to register and file some form of financial report in conjunction with licensing. Nineteen states⁴ require that the cash value of each stamp be printed thereon and that such stamps be redeemable in cash or merchandise at the option of the holder. Eighteen states⁵ exempt a manufacturer or packer which issues and redeems his own stamps. Five states⁶ require that a merchant who issues trading stamps redeem them if the trading stamp company fails to do so and one state⁷ provides that the retailer must redeem the trading stamps if the holder so demands.

Four states have what may be considered as anti-trading stamp statutes because of the comparatively extreme statutory limitations which they have placed on trading stamp operations. Two of these states, Wisconsin and Wyoming, permit the issuance of stamps redeemable in cash but not redeemable in merchandise. Washington accomplishes the same result by a heavy license tax on stores that issue stamps redeemable in merchandise--a \$6,000 county tax for each place of business. The only state that prohibits the issuance of stamps with the sale of merchandise is Kansas. However, stamps may be issued in connection with the sale of services.

BASIC PROVISIONS OF REGULATORY STATUTES

Many states regulate trading stamps through various types of statutory control. Those states which in recent years have attempted to provide some degree of "consumer protection" to trading stamp savers have adopted basically similar statutes, patterned after the Massachusetts trading stamp statute. These statutes seek to protect the public from redemption default by attempting to prevent the operation of financially irresponsible companies. They generally require every trading stamp company to register its business with the state and to disclose certain basic organizational and financial informa-

TRADING STAMP LEGISLATION

tion. To operate within the state, a trading stamp company must be bonded to insure stamp redemption and if the company fails, the bond is forfeited to satisfy redemption claims. All trading stamps must have their cash value imprinted thereon and, at the option of the holder, be redeemable in cash upon presentation of a stipulated minimum amount. The language of these statutes vary somewhat but their principal provisions are essentially as follows:

Trading stamps are legally defined; e. g., as any stamp or similar device used in connection with the retail sale of merchandise or services as a cash discount, or for any other marketing purposes, which entitles the rightful holder upon due presentation to receive merchandise, service or cash. Any redeemable device used by the manufacturer or packer of an article in advertising or selling it, or any redeemable device issued and redeemed by a newspaper, magazine or other publication is specifically excluded.

A trading stamp company is legally defined; e.g., as any person engaged in distributing trading stamps for retail issuance by others, or in redeeming trading stamps for retailers, in any way or under any guise.

A trading stamp company is required to legibly print upon the face of each stamp, in cents or any fraction of cents, a cash value as determined by the company, and redeem the stamps in cash at the option of the rightful holder when duly presented for redemption in a number having a stipulated aggregate cash value.

Trading stamp companies are required to register with a state official and submit samples of their stamps, stamp books, redemption catalogs and licensing agreements. In addition they must supply the name and address of the company; the state of its incorporation or origin; the names and addresses of its principal officers or partners or proprietors; address of its principal office in the state; the names of its principal officers, agents, or employees in the state; the addresses of the places at which stamps are redeemable in the state; a short form of its balance sheet, and, under certain conditions, a statement of its gross income from its operations.

Trading stamp companies must submit a bond payable to the state which is conditioned upon the performance of its

ANALYSES OF TRADING STAMP STATUTES

redemption obligations. The amount of the bond varies from \$10,000 to \$150,000, depending upon the amount of business done in the state.

In the event of a default the holders of trading stamps or merchants in possession of such stamps are entitled to make a claim against the bond. Claims must be filed within three months of default with the appropriate state official and upon determination of a default by such official, notice is given to the company. If such a default is not corrected, the state official accepts proofs of claim and makes an equitable distribution, after expenses, of the amount available from the bond. In a few states he may also sue for any excess liability over and above the amount of the bond for the benefit of those who have made claims.

Usually a small registration or license fee is required at the time of filing.

These statutes also usually provide that no trading stamp company shall cease or suspend the redemption of trading stamps in the state without filing with the appropriate state official at least 90 days' prior written notice of its intention to do so and concurrently mailing a copy of such notice to each retailer which has at any time during the prior year issued the company's trading stamps.

Penalties are set forth for violation of any provisions of the statute.

Four states - California, Connecticut, Indiana and New Jersey - have, in addition, a provision that makes it illegal for any person to willfully issue or redeem any trading stamps without the consent of the trading stamp company which has distributed such stamps. Two of these states, California and New Jersey, provide that the legislature shall retain control over trading stamps by forbidding any other agency or municipality to regulate them.

Six other states⁸ with somewhat older statutes require that the cash value be printed on the face of stamps; that stamps be redeemable in cash or merchandise at the option of the stamp holder; and that the issuing merchant redeem the stamps if the stamp company defaults.

TRADING STAMP LEGISLATION

Thus far, only an overview of the various statutory requirements of the states under which trading stamps are regulated has been presented. The following sections will attempt to focus on the more significant provisions of the statutes and the variety of issues pertinent to those provisions.

BOND REQUIREMENT

The bond requirement would evidently provide a measure of protection to the stamp saving public in the event of bankruptcy or other failure of the trading stamp company. How much protection it provides and its value as a protective device in relation to its cost to the stamp saving public are matters which should be explored.

Ideally, the bond amount should be at that level which gives reasonable security against nonredemption due to business failure and yet not be exorbitant or prohibitive. To ensure that the stamp saver is guaranteed the full value of the stamps he saved would require that the trading stamp company post a bond equal in value to the value of all stamps issued and unredeemed, plus the administrative expenses of the state in distributing the proceeds of the bond. Such a bonding requirement would be impractical for it would impose a prohibitive premium cost on trading stamp companies. For example, assuming that the number of unredeemed stamps of a trading stamp company with gross stamp sales of \$2,000,000 a year would be equal to the number issued by the company in one year, the cost of bonding at the usual bonding cost of \$1 for each \$100 face amount of bond would be \$20,000 per year. This large and wholly unproductive cost would have to be passed on to the consumer, for it is highly unlikely that a trading stamp company would or could absorb it.

The alternative which has been used by states with bonding provisions in their trading stamp statutes is to group trading stamp companies according to their income, and to graduate the bond to conform to such income.⁹ Bonds required range from a minimum of \$10,000 to a maximum of \$150,000 for gross income from \$65,000 or less to \$1,000,000 or more. The maximum amount of bond required by any state is 15 per cent of gross income. Such income may be considered to consist, for the most part, of receipts from retailers using stamps. Unless the number of stamps outstanding at any given time can be said to approximate only 15 per cent of annual receipts from retailers, it is evident that such bonding provisions do not provide the stamp saving public with any great degree of protection. Of interest in this regard is the following information on trading stamp insolvency

ANALYSES OF TRADING STAMP STATUTES

extracted from the testimony of Mr. Jerald S. Schutzbank, Chief Deputy Commissioner of Corporations, in the "Transcript of Hearing on Trading Stamps", California State Legislature Assembly Interim Committee on Finance and Insurance, December 9, 1965.

Two cases of insolvency of a trading stamp company have been experienced in California since enactment of the 1959 Trading Stamp Act of that state. One was that of the Blue and Gold Stamps in Southern California in 1961 and the other is that of C.A.S.H. Inc., in San Jose in 1965.

The Blue and Gold Company had a \$75,000 bond at the time of bankruptcy. The funds of the company which were available finally for redemption of stamps amounted to approximately \$2,600. Out of this total of \$77,600 (bond of \$75,000 plus \$2,600 in assets of the bankrupt) only \$52,000 was available for redemption after the expenses of liquidation were paid. This \$52,000 represented approximately one-third of the claims which had been filed with the Commissioner. Whether a return of one-third upon insolvency is an adequate recovery is not the entire question for the total amount of unfilled claims was not known. The number of claims which will be presented to a company which is operating is obviously much greater than those that will be presented to the company upon insolvency. People with a minimal number of stamps are not willing to go through the time and effort of filing claims although they do feel that they have been hurt.

In the case of the C.A.S.H. insolvency in 1965, the outstanding redemption liability at the time that the company went into insolvency was estimated at \$150,000. The claims filed within the period stipulated for doing so, or the total of all the claims that were filed, amounted to approximately \$41,000. The amount represented between one-third and one-fourth of the claims outstanding. With only one-third to one-fourth of the claimants outstanding having filed claims totaling \$41,000, an estimated amount of something less than \$20,000, including a \$10,000 bond, was available for distribution. It was estimated that the net recovery would be something substantially less than 50 per cent on the dollar and if all of the claims had been filed by all those holding stamps, it would then be fair to say that instead of a 50 per cent return, it would probably have resulted in each claimant receiving a return of 10 per cent or less.

In view of this type of deficiency, why is the amount of the

TRADING STAMP LEGISLATION

bond related to the gross receipts of a trading stamp company rather than to the amount of stamps outstanding? Perhaps, it may be due to the difficulty in determining the amount of stamps outstanding.

One alternative to bonding, suggested by Mr. Schutzbank's testimony, may be the establishment of some relationship between the number of stamps outstanding and the maintenance of reserve requirements for redemption liability. It appears that the number of stamps outstanding would be a better measure of the outstanding liability on the part of the company than would its gross receipts. The reserve requirement need not be based on a direct relationship but could be based on a ratio relationship to the value of the stamps outstanding. The company should then have, over and above the capital necessary to pay its other liabilities, a net capital which is some reasonable ratio to the value of the number of stamps outstanding. The amount derived could be deposited with the state in the form of cash, bonds, securities, or other negotiable instruments of the type stipulated by the state. The deposit or withdrawal of such securities and bonds, in accordance with changes in the value of unredeemed stamps, may be made under conditions stipulated by the state. Interest or other income derived from securities so deposited should accrue to the trading stamp company and the state would merely act as a depository for trust purposes. A variation of this alternative would be to also include the average cost value of the stock of premium merchandise carried over a stipulated period, say, each quarter, and require submission of a statement attesting to the value so declared by the principal officer of the company. In both cases, submission of financial statements certified by an independent public accountant would be required annually. It is believed that this method of insuring some degree of financial security to the public will not require incurrence of any significant cost to trading stamp companies.

It is possible to devise a method where bonds alone could serve the function of protection if a bond requirement is thought to be essential. Another possible approach, may be to combine net capital requirements and bonding requirements to provide a more realistic type of protection than that presently found in existing statutes. Most bond companies issue such bonds only when they are fully secured by collateral so that the burden on the stamp company is not lessened if it is required to put up a bond instead of capital. The trading stamp company, at any rate, will include the bond cost as part of the cost of doing business and this will subsequently be passed on to the consumer. Requiring trading stamp companies to post a large enough bond to overcome present bonding deficiencies does not appear to be

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the answer.

It should be understood that establishing specified net capital requirements would be more complex, and requires a greater degree of supervision and administration over trading stamp companies. This approach is strongly opposed by trading stamp companies as not being appropriate to their type of operations.

Advocates of trading stamp legislation generally deem bonding to be necessary to protect consumers against the banking aspect of a stamp company's operation. Since money is received from retailers long before stamps are redeemed by the consumer for merchandise, there is the consequent danger that if inadequate reserves have been put aside, the trading stamp company may be unable to meet its redemption commitments. Bonding then is said to be necessary to protect the public against possible fraud and redemption default.

Arguments advanced by stamp companies against bonding include the following:

1. The cost of bonds will not keep an irresponsible company or one intent upon perpetuating fraud from going into business.
2. There are only two general types of businesses which typically are subjected to bonding provisions. They are, first, those businesses such as banks and insurance companies which are specifically affected with a public interest and where the obligations of such companies to individual claimants are such that a default by them would have disastrous consequences for the claimants. The second type of businesses usually subjected to bonding requirements are those such as pawnbrokers, actioneers, and transient merchants, where experience has demonstrated a need for such bonding because the danger of their default is greater than average, and, moreover, is coupled with the possibility of potentially large losses to individuals or other parties dealing or contracting with such businesses.

Trading stamp companies fall into neither of the above categories. The accumulation of the trading stamps on the part of the stamp saver involves no actual out-of-pocket expense. Moreover, the potential "loss"

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per stamp saver is relatively small. Surveys have shown that stamp savers on the average have in their possession three and one-half books representing a premium redemption value of about \$10.50. This it is maintained hardly constitutes a pressing need to protect consumers against such a negligible loss.

3. Trading stamp companies are not alone among private businesses in receiving payments for services to be performed in the future or goods to be delivered in the future. Theatres selling tickets in advance, retailers receiving payments for gift certificates and lay-away plans, merchants selling dinnerware, silverware, and other articles at premium prices on the basis of lifetime guarantees and replacement, and schools and dance studios receiving payment in advance are but a few of the many businesses which perform their obligations subsequent to the receipt of payment therefor. Thus, trading stamp companies maintain that there is no legitimate reason why they alone among such businesses should be bonded.

An interesting argument against the need for bonding and regulation of stamp companies is presented by Christina Fulop, an economist and analyst of retailing practices in Britain, in her report, "The Role of Trading Stamps in Retail Competition".¹⁰ After pointing out that it is only reasonable to expect a percentage of bankruptcies--neither significantly more nor significantly less--to occur as they do among all other retail and merchandising businesses, she goes on to say:

Nevertheless, the possibility exists of a stamp company becoming insolvent, leaving the retailer with large stocks of stamps for which he has already paid, and his customers with completed or partially-filled books. There is, however, no comparison between the loss suffered by the consumer, which is insignificant, with that suffered by the retailer. For him two adverse reactions are likely to follow. First, ill-will may be felt by his customers because stamps are no longer available with purchases. Secondly, the retailer will be left with stocks of valueless stamps. In comparison, the consumer's stake in the financial standing of a stamp company, and hence any subsequent loss, is infinitesimal, because if prices have not risen the consumer has simply not

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received a potential discount on her purchases. She may justifiably be annoyed, but she has only 'paid' for the stamps by concentrating her purchases with particular retailers. Furthermore, since the majority of 'gifts' are exchanged for one, two or three books of stamps, few consumers will have many books outstanding. It may well be asked whether in fact consumers are running as much risk as that of obtaining imperfect goods when they go shopping.

This closer examination of the banking operation of a stamp company hardly reveals an urgent case for protecting consumers against such a negligible loss. It certainly would not appear to warrant the same degree of control as the Board of Trade exercises over a building society or unit trust in which a whole life's savings may have been invested. (Perhaps ironically, a private member's Bill to control fraudulent estate agents who might abscond with the 10 per cent deposit of potential house purchasers, which might easily amount to £300 to £600, was recently rejected by the House of Commons.)

The issue that remains is the extent to which retailers are entitled to legal protection if they have chosen an unsuccessful stamp company. It has never been seriously suggested before that they should have similar protection against poor judgement in making a bad purchase and being left with unsaleable stock. Perhaps there is some justification for the charge that they need protection against being 'bludgeoned' reluctantly into using stamps by the aggressive selling techniques of the companies' representatives. But even this is a familiar enough phenomenon to most retailers, accustomed as they are to a daily stream of callers urging them, for instance, to modernise their premises, install new lighting, or eulogising the advantages of mechanical labour-saving devices. Not unnaturally the representatives of such firms stress the benefits to retailers of gaining an initial advantage over their competitors. Moreover, retailers can always get advice and help from their trade associations and also from the Distributive Trades Alliance, formed precisely to warn retailers of the potential dangers of stamp trading. In addition to retailers' own business acumen, these bodies should offer sufficient protection.¹¹

The above argument is presented here because it is quite appli-

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cable to the examination of the role of trading stamps in Hawaii, especially in regard to frequent statements that trading stamps are a burden imposed upon merchants.

Most of the same arguments advanced against bonding are also made in opposition to suggestions that trading stamp companies be obliged to conform with certain specified capital requirements which, in turn, might be related to their outstanding stamps. Trading stamp companies maintain that this type of statutory requirement is appropriate only to businesses engaged in banking or insurance, which are directly affected with a public interest and where a default by such companies would have disastrous consequences to the depositors and insured persons, respectively.

Arguments for bonding of trading stamp companies are emotionally compelling and thus enjoy a distinctive advantage. However, policy makers in making a decision about regulating trading stamps should also consider the matter of equity in the legislative treatment of businesses and the fact that legislative restriction of the type usually considered appropriate for trading stamps may logically have to be extended to embrace other forms of promotional devices and deferred rebates.

STATUTORY CLASSIFICATION OF TRADING STAMP OPERATIONS

Coupons, tickets and other redeemable devices used by manufacturers and packers of an article, in selling or advertising it, and redeemable devices issued and redeemed by newspapers, magazines or other publications are exempted from the provisions of trading stamp statutes in eighteen states. Most of the statutes regulate but do not prohibit trading stamps and this exemption has, in several cases, been accepted. Trading stamp companies have not made much of an issue of it except in those states where the trading stamp statutes severely restrict or prohibit their operations as in Kansas and Wyoming. In such instances, the state courts have generally upheld the validity of the separate classification and exemption of manufacturers.

Kansas	Exception in favor of manufacturers and packers valid and not unlawfully discriminatory; act valid. <u>Cushenberry v. Shanahan</u> , 190 K. 720, 721, 722, 724, 725, 378 P. 2d 66. (1963)
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Wyoming	This section (mfr. exemption) is neither arbitrary
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nor capricious and it has a reasonable relation to the evil sought to be suppressed.

Steffey v. Casper (Wyo.), 358 P. 2d 951 (1961).

California That California statute differentiates between concerns which issue their own trading stamps and those which use stamps of trading companies does not give rise to constitutional infirmity.

Blue & Gold Stamp - U-Save Premium Co. v. Sobieski (D. C. 1961), 190F. Supp. 133.

However, such a classification was declared unconstitutional as violating the equal protection clause in Sperry and Hutchinson Co. v. State of Indiana, 188 Ind. 173, 122 N.E. 584 (1919), and in several other cases statutes which contained exemptions in favor of manufacturers' coupons were declared unconstitutional on other grounds.

Another classification in which there has been much litigation is one which allows a merchant to issue and redeem his own stamps yet prohibits a third party stamp company from doing so. Though not included in the data presented in Table II, there are two states, Wyoming and California, which exempt a retailer who issues and redeems his own stamps. In California, the exemption of retailers who issue and redeem their own stamps from a regulatory, but not prohibitive, statute governing trading stamps was held to be valid in the same Blue & Gold Stamp Case cited above on the same grounds that manufacturers' devices were exempted. In Wyoming, the exemption was upheld in the case of Steffey v. Casper (Wyo.) 358P 2d 951 (1961), wherein the court declared that:

Where a merchant issues and redeems his own stamps, it amounts to nothing more than giving a discount on purchases from him, and this in itself makes a distinction between trading stamps being sold to the merchant by a trading stamp company and a merchant issuing and redeeming his own stamps from his own stock or in cash. Therefore, the legislature made a reasonable and proper classification when it excepted subsection (b) of this section (exempting merchants) from the operation of the statute.

The cases cited above, however, are by courts holding the minority view.

The majority of state courts have held that such classification

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is discriminatory class legislation. The main concern of these state courts was the equal protection of the law and they, for the most part, invalidated state laws that allowed a merchant to issue and redeem his own stamps yet prohibited a third party stamp company from doing so on the grounds that such action was arbitrary and capricious. There is a substantial body of decisions in support of this view. In the Iowa case of Sperry & Hutchinson Co. v. Hoegh, 246 Iowa 9, 65 N.W. 2d 410 (1954), the prohibition of the issuance of trading stamps redeemable by a stamp company instead of by the retailer himself was held to be unconstitutional by the Supreme Court of Iowa, because the act, in the court's opinion, violated the state constitutional provision requiring that a law must operate "alike upon all within a reasonable classification." In regard to the trading stamp company prohibition, the court stated:

The avowed purpose, to protect the public morals and general welfare by prohibiting the so-called trade stamp evil, will not support legislation based on who redeems the stamps. If it be bad for the public for a merchant to give stamps with retail purchases which can be redeemed for goods, it is just as deleterious to the public, no matter who is the redemptioner. The legislature has no general power to pass laws dispensing with a 'middle-man'.

The court then set out at some length to cite a number of cases supporting this view, some of which are extracted and cited below.

In State v. Dalton, 22 R.I. 77, 46 A. 234, 237, 48 L.R.A. 775, the statute was somewhat like ours in that it recognized the right of the merchant to give away an article as an inducement to a sale but provided the merchant must give the article himself and not through a third person. In holding the statute unconstitutional the court stated:

"This is equivalent to declaring that it is illegal for a man to give away one article as a premium to the buyer for having purchased another; for * * * it can make no possible difference that the article given away with the sale is delivered to the purchaser by a third person, instead of the seller himself."

In People ex rel. Madden v. Dycker, 72 App. Div. 308, 76 N.Y.S. 111, 115, the statute was like ours and in holding it unconstitutional and the conviction of a violator

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void the court cited earlier New York decisions and quoted from State v. Dalton, supra, and stated:

"The prohibitive part of section 384p aims at the practice of issuing trading stamps that are to be redeemed by any person other than the merchant who distributes them * * *. Just what there is in the thing prohibited differing from the thing expressly authorized that makes it inimical to the public welfare and general safety does not appear."

A later New York decision, People ex rel. Appel v. Zimmerman, 102 App. Div. 103, 92 N.Y.S. 497, 502, struck down a similar law, stating:

"There is another infirmity in the statute, which we apprehend renders it invalid * * *. The vice, it seems, is not in alluring one to buy by promise of a gift, but in permitting the promise to be fulfilled by another than the seller. It is a narrow ledge for the distinction to rest upon, when in one instance the transaction is subject to legislative control to the extent of confiscation, while in the other it goes without let or hindrance. If the seller, by arrangement with a responsible company, secures the performance of the agreement, and the arrangement is satisfactory to the buyer, it would seem that such a plan ought not to be made a crime, while redemption by the merchant is deemed an honest transaction. The statute is not founded on the moral plane pretended, but belongs to that class of legislation designed to drive out of business a successful competitor."

In State v. Holtgreve, 58 Utah 563, 200 P. 894, 898, 26 A.L.R. 696, the law imposed a tax upon the use of trading stamps purchased from others, while permitting him to issue them without tax when he furnished them himself. In holding the law unconstitutional on the ground it was discriminatory and an improper classification, the opinion cites and quotes extensively from a number of opinions, and holds:

"If, now, we apply the doctrine of classification to the stipulated facts in this case, how can

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it reasonably be contended that there is a basis for classification in the use of trading stamps between a merchant who furnishes, uses, and redeems his own stamps and the merchant engaged in the same business who obtains his trading stamps from another who has agreed to redeem them upon the order of the latter merchant? The only difference between the transactions is that the merchant first named redeems the stamps issued by him by delivering to his customers the agreed value thereof as a discount for cash purchases, while the merchant last named enters into an agreement with another that such other shall redeem the stamps upon his order by paying the customer the agreed cash value thereof or by delivering to him some article or articles of merchandise of his own choosing which is of the value represented by the stamps. In either case the legal and moral effect of the transaction is precisely the same. In both cases the customer receives the discount that the merchant agreed to allow him for cash purchases, nothing more, nothing less. There is, therefore, no basis for a distinction or classification, but the classification, if one be made, is purely fanciful, capricious, and artificial."

It appears that the great weight of authority is against the validity of such classification. The general rule stated in 16A Corpus Juris Secundum, Constitutional Law, Section 511h, page 358, is:

Equal protection of the laws is denied by statutes forbidding the use of trading stamps or the issuance thereof except by manufacturers or merchants redeeming them, but not by statutes prohibiting the use of trading stamps except those having a stated cash value.

Wisconsin and Wyoming have statutes which permit the issuance of stamps redeemable in cash but not redeemable in merchandise. Washington achieves the same effect by imposing a heavy license tax on stores issuing stamps redeemable in merchandise but not on those redeemable for cash. A point of interest here is that the courts of these states have generally held to the minority view, and followed

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the reasoning of the 1916 United States Supreme Court cases that a state may exercise its police powers to prohibit or to severely restrict the use of trading stamps. These 1916 Supreme Court cases are discussed in more detail later in this report under a section on prohibition of trading stamps.

LICENSE AND PRIVILEGE TAX

Many states have attempted to use their power to license and tax to discourage the trading stamp industry. Measures were passed which levied excessive license fees or taxes upon trading stamp companies and sometimes also upon the retail stores issuing them. Most of these measures were made applicable only to stamps supplied and redeemed by someone other than the issuing retailer. They frequently exempted stamps and coupons used by manufacturers to promote sale of their products and also stamps redeemed by issuing retailers. The majority of state courts have repeatedly held this to be discriminatory legislation based on an unreasonable and arbitrary classification.

In the case of Logan Super Market, Inc. v. Atkins, 304 SW 2d, 628 (1957), the Supreme Court of Tennessee held that an amendment increasing the amount of trading stamp tax levied by a valid existing statute was constitutional. However, the Court held that the provision for levying a gross receipts tax of 2 per cent upon merchants using the services of trading stamp companies for premium redemption and exempting from such gross receipts tax those merchants giving and redeeming their own stamps was arbitrary, capricious and unreasonable and in violation of constitutional prohibitions against discriminatory legislation.

In Garden Spot Market, Inc. v. Byrne, 378 P. 2d 220 (1963), a Montana state law enacted in 1961 which subjected merchants who use trading stamps to an annual license tax of \$100 plus 2 per cent of total gross sales during the preceding year was declared unconstitutional. In this case the court found:

1. In no instance was any evidence offered to the effect that any merchant who testified increased his retail prices because of the use of trading stamps.
2. There was no evidence that the use of trading stamps or other redeemable devices in connection with the retail sale of merchandise or services has any effect upon the

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retail price of merchandise, services or commodities in Montana.

The trial court also found that the use of trading stamps is a legitimate method of advertising and promoting sales, and is common to the conduct of legitimate business enterprises, and then added:

- (a) The Act is a revenue and not a regulatory measure.
- (b) Its excessive provisions prohibit legitimate business practices without such prohibition being necessary to protect the public.
- (c) License revenue so greatly exceeds administrative costs of the statute as to demonstrate that the intent of the Act was to prohibit the use of trading stamps in Montana.

The district court based its unconstitutionality decision on the following points of law:

1. The Act violates both the 14th Amendment of the U. S. Constitution and the terms of the Montana Constitution, by (a) depriving persons of liberty and property without due process of law, denying them equal protection of the law, and (b) imposing a tax unrelated to the purpose of the Act.
2. Furthermore the Act violates the Montana Constitution by (a) imposing an unreasonable and arbitrary discriminative tax, (b) by levying a tax for a private purpose and (c) by imposing an excessive fine.

In sustaining the decree of the lower court the Supreme Court of Montana observed that:

Here, the Legislature by purporting to license, has declared the use of trading stamps and devices as legitimate. Here the Act . . . is not a regulatory measure even in form. In form, other than the title, it is a tax but in fact, under the evidence in this case, the fee or tax imposed is so high that it constitutes an effective prohibition of the

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issuance of all redeemable devices governed by it.

. . . any act, purportedly passed under the police power of the state, must be reasonable and must not be arbitrary or discriminatory.

Our inquiry then is whether the use of redeemable devices to promote retail sales is a legitimate and useful business activity, or whether it is a practice which, in the interest of the general welfare of all the inhabitants of this state, could be condemned by the Legislature. Of course, we reiterate that in this most unusual piece of legislation the Legislature, by licensing, has seemingly declared it legitimate and useful, but by taxing as it did, condemns it.

The court went on to point out that with the exception of the 1961 Wyoming court decision (Steffey v. City of Casper, 357 P. 2d 456) no case has been decided since 1919 which has upheld the constitutionality of such legislation. In reaching its decision, the Supreme Court of Montana noted that a different state of facts existed. In Wyoming, the court found "coercion" by the stamp companies. Also the court in Wyoming dealt only with facts involving trading stamps and trading stamp companies, while in Montana many non-stamp redeemable devices were utilized. In Wyoming the statute did not prohibit the use of stamps redeemable with cash as would the Montana statute.

The court concluded that the Montana act "was properly found to be unconstitutional as an unreasonable exercise of the police power as related to the object sought to be obtained, that is, prohibition of legitimate business practice."¹²

The majority view notwithstanding, there are several states with special tax legislation which appear to have as their objective the indirect prohibition of trading stamps by taxing them out of existence. Kansas now has a statute which prohibits the issuance of trading stamps with the sale of merchandise. A previous Kansas statute, which was in effect from 1917 to 1958, established a range of fees from \$4,000 to \$7,000, based upon the population of the county, applicable to both trading stamp companies and retailers distribut-

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ing stamps. This prohibitive license tax was upheld by the Kansas Supreme Court in 1917 in the case of State v. Wilson, 101 Kan. 789, 168 P. 679 (1917). The Court found that the question of the harmfulness of trading stamps to the public should be decided by the legislature, and that its decision to eliminate any such harm was not unreasonable. It stated:

The amount of tax which may be imposed upon the right to engage in an ordinary, useful, harmless business is limited, and the power of the Legislature itself in that regard is sometimes said to be confined within very narrow bounds. * * * But in the case of an occupation which is injurious or offensive to the public these limitations do not apply. As such an occupation may be prohibited altogether, it may be allowed upon such terms as the law-making body sees fit to impose. It may be suffered to exist, on condition of the payment of a burdensome tax, designed to have a repressive effect. * * * or practical prohibition may be accomplished indirectly by imposing a tax so large as to prevent its being carried on except at a financial loss, thus taxing it out of existence.

The state of Washington also has a prohibitive license tax statute which requires all who use, furnish, or sell trading stamps to purchase an annual license at a cost of \$6,000. The use of the license is limited to the county or city in which the stamps are sold or furnished. This statute, however, does not apply to stamps redeemable in cash. This statute was held to be a valid exercise of police power in the case of Pitney v. Washington, 240 U.S. 387 (1916).

Thus, while some states do have special taxes which are applicable to trading stamps, many courts of other states have struck down special taxes on the basis of discrimination. It appears that a tax that is oppressive, discriminatory and unreasonable will most likely be invalidated by the courts of most states.

CASH REDEMPTION

Some trading stamps bear no indication of value on their face. A number of trading stamp companies print a monetary value, usually in terms of mills, on their stamps but still only redeem them in merchandise, while others permit optional cash or merchandise redemption. Where trading stamps are redeemable either in cash or trade,

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the option as to the manner of redemption rests with the company in the absence of a statute to the contrary. Nineteen states have statutes requiring optional cash redemption wherein the option as to the manner of redemption is given to the stamp saver. There appears to be ample precedent then for requiring cash redemption in any consideration of trading stamp legislation.

With the exception of Indiana, the statutes of all states providing for cash redemption require that a cash value, as determined by the trading stamp company, be printed on each stamp in cents or any fraction thereof and that stamps be redeemed in cash upon presentation of a stipulated minimum amount at the option of the holder. The right to redeem small numbers of stamps is of some significance in the event of withdrawal or cessation of business by a trading stamp company.

Indiana's statute, enacted in 1913, requires that the redemption value must be the same in cash or merchandise. Evidence of litigation involving this requirement has not been uncovered.

Stamp companies have not vigorously opposed cash redemption requirements, at least not in the courts. They do, however, object to the requirement that the cash value printed on each stamp be equal to merchandise redemption value. Since cash redemption value typically is set below merchandise redemption value, this requirement would eliminate the profit normally obtained by the companies from the markup on merchandise from wholesale to retail value.

For example, a company issuing stamps to a retailer at a price of \$3.00 per thousand might offer to redeem the same thousand stamps in merchandise worth \$3.00. The company then purchases merchandise at a wholesale price of, say, \$2.00 and offers it for redemption valued at its normal retail price of \$3.00. The \$1.00 markup provides their margin for operation and profit.

The company would appear to have no margin from which even to pay expenses if the stamps must also be valued at \$3.00 in cash.

While technically trading stamp companies could revalue their merchandise redemption value downward to provide a ratio under which they could operate, the result of such a revaluation would of necessity substantially reduce the merchandise value made available to the stamp saver. Accordingly, there would be little or no inducement for the stamp saver to redeem his stamps in merchandise rather than cash. Thus, while such a requirement would not necessarily put trading

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stamp companies out of business, the ultimate effect probably would be to reduce the attractiveness of trading stamps to such a degree that many merchants might no longer be interested in using them.

There is also a problem in determining the cash value which would be equivalent to merchandise redemption value. As in any retailing operation, merchandise is not marked up on a uniform, single percentage basis but according to the type of item offered. The large variety of items offered by trading stamp companies for redemption would make any such determination almost impossible, especially with changes from time to time in the quality, prices and variety of merchandise stocked.

Arguments for cash redemption include:

1. Trading stamp practices make it difficult for consumers to compare values.
2. Consumers choice as to receipt of cash or merchandise should not be restricted.
3. Redemption only in merchandise makes it difficult for consumers to change from one merchant to another without loss, while accumulating stamps to fill a book or while saving for a particular item.

Arguments against cash redemption include:

1. Little legal protection seems necessary since consumers are not being rushed into a financial transaction from which they cannot easily extricate themselves.
2. There is no demand for redemption in cash by the stamp saving public. In states requiring optional cash redemption, such redemption amounts to less than 1% of total redemptions.
3. All promotions which offer merchandise, credit or delivery without giving the consumer the alternative of a cash rebate imply a limitation of consumer choice. Until trading stamps appeared it was generally accepted that a retailer or manufacturer was free to organize his sales promotion policies in the manner most conducive to the profit of his business if cash redemption

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of trading stamps is required, the premiums attached to other items such as cigarettes, soaps, cereals, toothpaste, etc., should also be made redeemable in cash. Merchants engage in this and many other forms of promotion and it has never been suggested that they be required to provide customers an option to receive an equivalent value in cash. The principal of non-discrimination requires that if the cash option is required of trading stamps, then the same cash option should be required for all other types of premiums and coupons.

CO-LIABILITY OF MERCHANT

The statutes of five states establish a joint responsibility for the redemption of trading stamps by both the merchant issuing trading stamps and the trading stamp company. The average stamp saver, however, accumulates stamps from a number of different merchants. A merchant operating a drug store may possibly then be required to redeem not only the stamps he distributed but also those distributed by supermarkets, service stations and other merchants. The problem of identifying the stamps only he distributed would be extremely difficult and his liability for the stamps issued by others would certainly be questionable.

This joint responsibility provision does have some redeeming features if the view subscribed to is that trading stamps involve a contractual relationship between the trading stamp company and the merchant, with the stamp saver being a third party beneficiary having only certain limited rights. For example, there could possibly be evolved a requirement that the trading stamp company keep an annual and cumulative record of the amount of stamps sold or otherwise provided to each merchant. Some sort of relationship could be established between the amount of unredeemed stamps and the amount of stamps sold annually, and the liability of each merchant prorated in accordance with the amount of stamps purchased or otherwise obtained by him in the event of redemption default by the trading stamp company. In such a case, the giving of free trading stamps by the trading stamp company for promotional purposes must also be provided for by some specified means.

The above is only a brief, simple presentation of a possibility made without any thorough probing into the complexities which may be involved. However, such a requirement, if possible, would make the burden of ensuring redemption a matter of joint responsibility and

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liability between the two primary contracting parties, the stamp company and the merchant.

REGISTRATION, CESSATION OF BUSINESS, AND REDEMPTION DEFAULT PROVISIONS

Statutory requirements for trading stamp companies to register with the state and provide certain information; for companies to comply with certain procedures prior to the cessation of business; and for establishment of redemption default or bankruptcy procedures, have not been, as separate issues, the subject of litigation by the courts. A determination of the adequacy or inadequacy of these requirements, which are usually accompanied by a bonding requirement, may, perhaps, be best derived from the experience of California, a state having a statute embodying these requirements. The problems and administrative practices of state agencies involved in administering these requirements is presented below in the form of portions of testimony extracted from the "Transcript of Hearings on Trading Stamps", California State Legislature Assembly Interim Committee on Finance and Insurance, December 9, 1965.

Mr. Jerald S. Schutzbank, Chief Deputy Commissioner of Corporations, stated:

* * * It is true that in order to go into the (trading stamp) business in California today, it is necessary to obtain a license. There are, essentially, no discretionary powers with respect to the granting of that license. There are a few ministerial functions which the Commissioner must go through in receiving information. If that information is filed and if a bond in the statutory amount is filed, the Commissioner is required to issue a license. We are able to superimpose on this only a limited amount of discretion in terms of at least minimal financial responsibility, but as far as really assuring financial responsibility of these companies, this is not done at the present time.

We do have the authority when holders of stamps find that they are not able to get their stamps redeemed and when they file a claim with the Commissioner which informs us that they are not able to redeem, the Commissioner is then authorized to make a claim against the licensee and demand that he redeem his stamps. And if he doesn't redeem his stamps, the Commissioner holds a hearing to determine whether, in fact, he had not redeemed and if the Commissioner

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finds that, in fact, he has not redeemed, the Commissioner is then empowered to go to Court to seek, through injunctive or receivership actions, the ultimate recovery on behalf of the claimants.

There are all sorts of problems involving this procedure. Those are problems which we find most important, but ones which we will leave to be discussed a little later this morning by a representative of the office of the Attorney General, as the Attorney General has been involved in our behalf in the San Francisco example of this with C.A.S.H., Inc.

The bonding requirement under the existing statute is not a very substantial requirement either. There is a requirement that in order to go into business, if you have not done business before, you must put up a bond of \$10,000. Likewise, if during the preceding year your gross income from the trading stamp business did not exceed \$65,000, you maintain a bond of \$10,000. When your gross income exceeds that, you then file a bond which varies; a bond of \$15,000 for each \$100,000 of gross income during the preceding year with a maximum bond of \$150,000. This is, we think, of academic interest only because the bond has not proven to be the answer. It has not been sufficient and bonding requirements alone leave something to be desired as our regulatory tool.

The only thing that we have beyond that that you would call regulatory is our entitlement to receive a "short form" balance sheet once a year, which has minimal information on it. The use of that is also minimal. * * *13

Mr. Herbert Wenig, Assistant Attorney General, stated:

* * * The gross inadequacy of the bond procedure is illustrated by a summary of the procedure provided when a trading stamp company is unable to redeem its stamps. Now if a trading stamp company in a prior three-month period has not redeemed stamps, a person or persons may file a complaint with the Commissioner. A notice is then served on the company asking the company to redeem those stamps, those particular stamps represented by the complaint, within ten days. Now, presumably at this point the company

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could prevent further investigation or involvement by merely redeeming those stamps represented by those particular persons or complaints. If the trading stamp company then failed, however, to redeem within ten days, then the Commissioner must publish a notice of the fact in three newspapers advising that additional claims may be filed. Now this notice must be published over a period of three months. Then, after the completion of publication, the Commissioner, within 30 days, must hold a hearing to determine that the company has failed to redeem its stamps. This hearing cannot be held until 20 days have elapsed from the date the company is notified of the hearing. Then at the hearing the company may pay the claims which have been presented to the Commissioner. If the company does not pay, then the Commissioner, within ten days after the failure to comply with the demand of the Commissioner, files an action against the trading stamp company and its surety.

Now, under this statute, this represents an absolute minimum of 130 days from the date of the filing of the first complaint, and it is possible within the time allowed by the statute for 190 or more days to elapse before even the lawsuit is brought. Now, gentlemen, this brings the Commissioner up to a point where he then files a lawsuit. In one case, and this is the case of the Blue and Gold, one year and one month elapsed between the time of the filing of the first complaint and the receipt of payment by the Commissioner; there was no lawsuit involved there and in the same case, two years and 11 months passed by before stamp holders were paid. As Mr. Schutzbank pointed out, about 35% of the claims were paid. Now, in other words, this mountain of procedure groaned and brought forth a mouse of 35%. Expenses of that case used up about 25% of the bond money.

In the other case, the C.A.S.H. case here in San Francisco, there are over \$40,000 in claims, yet a bond of only \$10,000 with a total outstanding stamps of \$147,000. Now, while this elaborate process is going on to determine whether the company can redeem its stamps and in an effort to reach the assets of the company, the owners of the company have the opportunity to remove or sequester remaining assets and destroy evidence of possible misappropriations or other irregularities which have led to the default.

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Because the gathering of the claims represents great time and effort, because approving and paying claims is disproportionately expensive, because many stamp holders though disappointed, do not file claims and because the bond will pay only a small percentage of claims, the approach to protecting stamp holders should be from an entirely different direction. It should be toward assuring at the outset that a company possesses adequate capital and reserves for its operation and that reserves will be commensurate with redemption liability. Because of widespread public interest and because homemakers are unable to spend time in investigating and checking various companies, the State should have some means of assuring trading stamp customers that they are being dealt with fairly and equitably.
* * *¹⁴

Mr. Wenig went on to recommend regulations permitting controls, including auditing, similar to those required in the case of banks, insurance companies and industrial loan companies.¹⁵

Mr. Burleigh Pattee, attorney for Sperry and Hutchinson Stamp Company, voiced strong opposition to this, stating among other things, that unlike public utilities, insurance companies, banks and related businesses of a public and financial nature, trading stamp companies are not engaged in a type of business which requires detailed financial supervision of a state administrative body without standards established in the Trading Stamp Act itself. Further, that other businesses operating along lines similar to trading stamp companies are not subject to the discretionary authority of administrative state bodies.¹⁶

The California experience suggests that the Massachusetts "Model Trading Stamp Statute" which has been accepted by a number of states since 1959 may not necessarily be the answer to the problem of insuring financial responsibility of trading stamp companies.

Chapter III

OTHER LEGAL ASPECTS

Chapter II dealt with the legal aspects of certain trading stamp operations as regulated by existing state trading stamp statutes. This chapter is concerned with other legal aspects derived from actions brought against trading stamp operations in an effort to prohibit or restrict the use of trading stamps as a business device and to escheat unredeemed stamps. Among the more important matters of legal interest are litigation involving (1) trading stamps and fair trade laws; (2) trading stamps and unfair sales practices laws; (3) escheat of unredeemed trading stamps; (4) general attempts at prohibition of trading stamps; (5) treatment of stamps by the federal government; and (6) trading stamp legislation in Hawaii.

FAIR TRADE LAWS

Numerous states, including Hawaii, have fair trade laws which generally permit resale price maintenance of trade-marked or branded merchandise of the same general class produced or distributed by others. A fair trade contract establishing a minimum resale price may be entered into between a manufacturer and a wholesaler or retailer, or in some cases between a wholesaler and retailer, but not between parties at the same level in merchandising. Many state statutes require that all distributors of the same level who receive notice of the making of such a contract establishing a minimum price for an item be bound by it even though they are non-signers. The non-signer provision was deleted from Hawaii's statute by a 1963 amendment. In addition, the fair trade laws of Hawaii and several other states include an "anti-concession" clause prohibiting the offering or making of any concession of any kind, including the giving of coupons or otherwise, in connection with any such sale.

The issue of whether the giving of trading stamps with sales of "fair trade" items at their minimum resale prices constitute an unlawful price reduction has frequently been brought before the courts. The predominant view is that issuance of trading stamps with purchases of fair-traded articles at minimum resale prices is not a violation of the fair trade laws. Courts so holding have concluded that the stamps represent a discount for the payment of cash and that such a discount is not a reduction in price;¹ or that they are merely a trade promotional device similar to advertising or the extension of credit and that the act is not intended to ban such devices;² or that the stamps, even if a violation, come within the principle of

OTHER LEGAL ASPECTS

maximum de minimis non curat lex.³ However, some cases reach the opposite result on the ground that, because the stamps may be redeemed for merchandise, they have value in themselves and, accordingly, constitute a reduction to that extent in the price of the article purchased.⁴ One recent decision⁵ suggested that the stamps may represent a quantity discount which, as opposed to a cash discount, is normally considered a reduction in price.⁶

In a more recent Massachusetts case, Colgate-Palmolive Co. v. Elm Farm Foods Co., 337 Mass. 221 (1958), the court, in ruling against the giving of trading stamps with a fair trade product, stated:

The defendants undoubtedly have a right to issue trading stamps with all their sales. But like all rights, this right cannot be exercised in such a way as to injure the right of others.

The fair trade law was enacted on the theory that manufacturers have a right to have their good-will protected, and that any form of price cutting tends to destroy that goodwill.

Our decision in this case . . . requires only that, when a fair traded article is sold, trading stamps should not be issued in such a way that the effective sale price is below the minimum resale price.

. . . the restriction of the use of trading stamps here is a reasonable restriction, necessary in order to protect the plaintiff's goodwill.

However, the decisions of the Massachusetts' courts in this and another case in which a similar issue had been litigated (see footnote 5) on this aspect of trading stamp use are representative of the minority view.

The more prevalent view, with some decisions to the contrary, would seem to be that the use of trading stamps does not violate the Fair Trade Laws of the states.⁷

UNFAIR SALES PRACTICES ACT

Many states, including Hawaii, also have "Unfair Sales Practices

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Acts" which generally prohibit retail sales below cost. Such acts generally declare it unlawful, with certain exceptions, to sell merchandise at prices below a theoretical "cost" determined according to specific formulae. Most acts require the presence of an element of intent to injure competitors or destroy competition before the sale below cost is unlawful. In addition some acts prohibit the giving away of any article with the intent or effect of destroying competition or injuring competitors and a few have "anti-concession" provisions similar to those found in fair trade acts. Three issues to be considered under this type of statute are whether the use of trading stamps constitute the giving of a gift, a concession, or a reduction in a sale at less than cost.

The courts which have been called upon to decide whether the issuance of trading stamps violate unfair sales acts have consistently ruled that it does not.⁸ In three separate court decisions, holding that trading stamps are a cash discount and hence did not violate the state's Unfair Sales Act, it was also held that trading stamps were not a gift (Food and Grocery Bureau v. Garfield, 20 Cal. 2d 228, 125 P. 2d 3 (1942)), that they were not a concession (Sperry & Hutchinson Co. v. Margetts, 15 N.J. 203, 104 A. 2d. 310 (1954)) and that they did not constitute a price cut or unfair competition (Safeway Store v. Oklahoma Retail Grocers Association, 322 P. 2d. 179 (1957), aff'd., 360 U.S. 334 (1959)). In Sperry & Hutchinson v. Margetts, *supra*, the court ruled that the issuance of trading stamps in connection with the retail sale of gasoline did not reduce the required posted price and thus did not violate that state's Motor Fuel Act.

Thus, as in the case of fair trade laws, the courts have generally held that the use of trading stamps does not violate the unfair sales acts of the states. Trading stamps have been prohibited, however, under specific state legislation regulating liquor whereby Liquor Control Boards or Commissions have issued regulations (pursuant to rule-making authority granted them by statute) prohibiting the giving of stamps in connection with the retail sale of liquor.

ESCHEAT

Many proposals to escheat the value of unredeemed trading stamps have been before the legislatures of several states. However, because such escheat is of questionable validity and certain impracticability, none of the states have enacted statutes subjecting unredeemed trading stamps to escheat.

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Proposals to escheat unredeemed stamps are usually based on the argument that trading stamp companies derive substantial "windfall" profits from unredeemed stamps which should escheat to the state because they represent rights to unclaimed property of the consuming public. This argument is countered by trading stamp companies with statements that experience indicates only a small percentage of stamps are not redeemed. The United States Internal Revenue Service permits a 95 per cent (or related figure) rate of redemption for income tax computation for trading stamp companies. Surveys and studies on this subject cite a general redemption rate of 90 to 95 per cent, with the larger companies usually having a higher redemption rate than smaller companies. The stamp companies further state that the fact that a certain percentage of stamps will never be redeemed is taken into account in determining the sale price of stamps and in setting merchandise redemption values. Therefore, any additional revenues from non-redemption of stamps are passed on to the public. This suggests that escheat will decrease premium redemption value.

Of interest here is the findings of a select committee of the Michigan Senate regarding unredeemed trading stamps:

The anti-stamp forces continue to assert that redemptions are low with resulting excessive profits inuring to the sole benefit of the trading stamp company. This committee has found a paucity of evidence, if any, in support of these charges. Evidence marshalled from the . . . (22 Michigan companies) . . . shows all of these companies, except two, reporting redemptions of 90% or more. It can be presumed that this evidence gives a minimum redemption rate since the Internal Revenue Service would impose a greater federal corporate income tax upon these companies if it could show a lower redemption rate.

There have been many published statements as to the redemption of trading stamps, but most of them have been based upon unsubstantiated and often non-objective estimates. The most reliable estimates have come from persons engaged in academic research. Harvey L. Vredenburg, Associate Professor, State University of Iowa, who studied the subject matter of trading stamp programs for over a year . . . has given an estimate of 95% redemption of trading stamps for the large stamp companies and 75% for small companies.

The difficulty in obtaining exact statistics on trad-

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ing stamp redemption is due to the fact that there are two classes of unredeemed stamps; those that are in process of collection and that will after some period be redeemed; and those that will never be redeemed because of being lost or destroyed. The trading stamp company with several years of experience can prove that the percentage of stamps that will never be redeemed is very small. But there is always at any given time a large number of stamps outstanding that will be redeemed. The number of these stamps that will never be redeemed cannot be known exactly because the average period during which a stamp is held by a collector before it is redeemed cannot be known precisely. It is therefore necessary to estimate ultimate redemption rates on the basis of experience, and the experience of the older companies is therefore persuasive.⁹

The evidence presented to the Michigan Committee indicates that a trading stamp company must have high redemptions in order to be successful in the long run, since the customer does not consider the stamps as valuable until they have been redeemed. Unless customers value these stamps, they will not have the intended beneficial promotional effect for the retailer who is the stamp company's customer. It is reasonable to conclude, the committee continued, that any trading stamp company that intends to prosper over the long run will make every effort to have a high rate of redemption of its stamps.¹⁰

A significant case in regard to escheat of unredeemed trading stamps under a general escheat statute is that of State of New Jersey v. Sperry & Hutchinson Co.¹¹ In this case, New Jersey alleged that 5% of the trading stamps would never be redeemed and sought to escheat the value of 5% of all of the trading stamps which had been issued throughout the country more than five years prior to the action, allegedly \$7,615,836.03, since it was the state of incorporation.

The state contended that the issued stamps is evidence of a fixed property right in the purchaser and that consequently each stamp, although intrinsically worthless, is "something for something". Relating trading stamps to other choses in action which represent immediate fixed obligations upon issuance, the state contended that S & H was bound to redeem every stamp. It also argued that the state need not present full books for redemption in order to escheat the funds.

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The court, in ruling against escheat by the state, stated:

The statute cannot create or revive obligations which never existed, and by statute, contract and practice, the cash or merchandise can only go to the collector of the stamps upon presentation of stamps as required thereby.

In this case all the state can show is that in the past the company has issued a certain number of stamps to its licensees who are presumed to have passed them on to their customers, and that approximately five per cent of those issued have not been redeemed.¹²

The court held that the escheat laws required the identification of specific debts or claims by known individuals and that the state was unable to show a fixed obligation residing in the stamp itself or the stamp company.

Proposals for specific legislation to escheat unredeemed stamps usually attempt to create a "debt" in the stamp company by requiring cash redemption and the printing of a cash value, date of issue and the name of the state on the face of the stamp and specifying a short escheat period.

Trading stamp companies, in defending against specific legislation to escheat trading stamps, have generally argued as follows:

The ownership and possession of escheat property must be known. In the case of stocks, dividends, bank deposits, and insurance policies, the evidence of the obligation shows the name and location of the owner. The state knows the property which is subject to escheat, and it knows that the state has jurisdiction over the property. Stamps do not have these characteristics. The state does not have the stamps to present for redemption (the stamp companies maintain a willingness to redeem such stamps if the state takes possession of and presents them) nor the knowledge that the stamps will not be later presented for redemption by personal holders. Also, the state cannot show that the stamps are held by persons residing within its jurisdiction. Several states might thus escheat unredeemed stamps, while the individual owner could later present the same stamps for redemption.

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Stamp companies would be severely handicapped if required to show place of issue, time of redemption, and the residence of owner for every stamp redeemed. To examine each stamp for these factors before redemption would be very expensive, in fact, almost economically impossible. Therefore, the requirement would operate to prohibit the stamp. This would violate the constitutional rights of the stamp companies as provided in the equal protection and due process clauses of the Constitution.

The basis on which unredeemed stamps would escheat to the state would appear to be discriminatory unless the following types of property are also escheated: unused amusement tickets, unused portions of service contracts, bottle deposits in excess of cost, unused transportation tickets, excess fees for unfinished educational courses, and many other forms of unused property.¹³

On the subject of specific escheat, the Connecticut Legislative Council in late 1960 stated:

The Council cannot overlook the recent court decisions throughout the country holding that unredeemed trading stamps are not subject to lawful forfeiture by escheat due to lack of ascertainable ownership. Moreover, unredeemed trading stamps do not constitute specifically identifiable property which could be subject to escheat and custody by the state. The right of the state in such trading stamps is extremely difficult to ascertain. (emphasis added)

The Council is also of the opinion that the dating of trading stamps to establish a cut-off date of redemption privilege and to ascertain the co-hate (sic) right of the state in the property probably would circumvent the escheat problem to the advantage of the state. However, the administrative problems involved in the regulation and control of such a stamp dating program would be tremendously complicated and practically unfeasible.¹⁴

In view of the above, it is unlikely that legislation to escheat unredeemed trading stamps would be upheld by the courts.

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ATTEMPTS AT PROHIBITION

Early attempts to prohibit trading stamps were made by some states under their "gift enterprise" acts which prohibited games of chance or the giving of articles of value as a part of a sale at retail. These acts often specifically prohibited the use of trading stamps. However, in almost all cases the courts have held that the trading stamp is not a lottery or gift enterprise. Stamps were at one time subjected to a gift enterprise statute in Washington, D. C. and in Maryland but, in these cases, Congress repealed the gift enterprise law in 1961 and the state legislature repealed the Maryland gift enterprise law in 1953. Prior to 1916, almost every court which considered anti-trading stamp legislation declared such legislation invalid.

In 1916, the United States Supreme Court, in three cases involving the trading stamp statutes of Florida (Rast v. Van Deman & Lewis Co., 240 U.S. 342) and Washington (Tanner v. Little, 240 U.S. 369 and Pitney v. Washington, 240 U.S. 387), held that a state may prohibit or regulate trading stamps under its police power and that this did not contravene the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution. The Supreme Court viewed trading stamp operations as causing potentially evil effects, stating in a passage from its opinion in the Rast case that:

. . . they tempt by a promise of a value greater than that article (sold) and apparently not represented in its price, and it hence may be thought that thus by an appeal to cupidity lure to improvidence. This may not be called in an exact sense a 'lottery'; may not be called 'gaming', it may, however, be considered as having the seduction and evil of such, and whether it has may be a matter of inquiry - a matter of inquiry and judgment that it is finally within the power of the legislature to make.¹⁵

Within three years of the Supreme Court's ruling, there were five decisions by the courts of three states which followed the reasoning of the Supreme Court.

State v. Wilson, 101 Kan. 789, 168 Pac. 679 (1917)
State v. Crosby Bros., 103 Kan. 733, 176 Pac. 321 (1918)
Sperry & Hutchinson v. Weigle, 166 Wisc. 613, 166 N.W. 54
(1918)
State v. Seney Co., 134 Md. 437, 107 Atl. 189 (1919)

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Sperry & Hutchinson v. Weigle, 169 Wisc. 562, 173 N.W. 315 (1919).

However, most state courts refused to follow the reasoning of the 1916 decisions of the Supreme Court, holding that state tribunals are the proper judges of the validity of state statutes in relation to the state constitution. It appears that with but a single recent exception in Wyoming in the case of Steffey v. City of Casper, 357 P. 2d 456 (Wyo. 1960), the state courts, since 1919, have rejected the federal view and invalidated prohibitive or discriminatory trading stamp legislation. Florida and Maryland have also since repealed the trading stamp acts which were the subject of the anti-stamp decisions noted above.

In numerous decisions since 1919, state courts have held that any attempt to prohibit or unduly restrict and control trading stamp operations violated their respective state constitutions. In the case of Sperry and Hutchinson v. Hoegh, the Iowa Supreme Court in commenting on the validity of anti-trading stamp legislation concluded that the weight of authority is that:

Anti-trading stamp laws constitute unnecessary restrictions on the right of contract; unwarranted interference with a natural right to attract customers; prohibit contractual relations which do not affect the public health or morals or welfare; and are not the proper exercise of police powers.¹⁶

Nevertheless, there are a few states with trading stamp statutes which act to prohibit or severely restrict trading stamp operations. Kansas prohibits issuance of trading stamps with the sale of merchandise, but permits issuance with the sale of services. Wisconsin and Wyoming permit trading stamps redeemable in cash only; and Washington applies a heavy license tax on trading stamps redeemable in merchandise but not on stamps redeemable in cash. The courts of Kansas, Washington and Wisconsin hold to the minority view and have generally followed the reasoning of the 1916 Supreme Court decisions. Washington's statute was one of those involved in the Supreme Court decision and Kansas and Wisconsin were two of the three states in which courts shortly thereafter followed the Supreme Court's decision.

In Wyoming, a recent state court decision in the case of Steffey v. City of Casper, 357 P. 2d 456 (1960), is of special interest since

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it is the first in more than 40 years to uphold anti-stamp arguments. The case involves an ordinance of the city of Casper prohibiting the use of trading stamps, with certain exceptions. The court noted the majority views of other state courts and agreed that the legislature may reasonably regulate but not prohibit business, but then continued:

. . . the legislature has not prohibited business. It has merely prohibited an incident to or a particular method in connection with business. That is merely regulation . . . regulation necessarily implies restriction in some respects and that means nothing more or less than a partial prohibition. So the question before us is as to whether or not the legislative regulation is reasonable, and we agree that if it subserves no good purpose but is merely arbitrary and capricious it should be held to be unconstitutional.

. . . when all of the merchants in the same line of business use these trading stamps, whatever benefit the use of stamps might have had is apt to be equalized, resulting in a burden to all the merchants in the same line of business, and is apt to have a further tendency to increase the price of goods in order to recoup the cost of the trading stamps and, furthermore, a tendency to compel some of the merchants to go out of business, thus decreasing competition, giving those merchants who are able to stay in business the power to raise the price of goods contrary to the public interest.

The Court quoted as follows from District of Columbia v. Kraft, 35 App. D.C. 253, (1910), at 269:

An entirely unnecessary middleman, for his own profit solely, has injected himself between the regular merchant on the one hand, and his customers on the other. He receives \$3.50 for every thousand stamps issued to the customers, and redeems such as may be presented, in goods or cash at \$2 per thousand. By this means the corporation . . . in the first year of its intervention received about \$12,000, which should have either been retained by the merchant or received by his customers.

Several other concerns being engaged in the same business, their profits are probably as great, if not greater.

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We have then this large sum of money annually taken from the merchant and his customers, and added to the gross cost of living of all of the people of the District, without return. Is it not for the public welfare, in the juridical sense of the term, to prohibit such an undertaking? We think that it is.

The court also quoted as follows from State v. Wilson, 101 Kan. 789, 168 p. 679 (1917):

The trading stamp device offers an inducement to make purchases from the merchant using them which is not connected with the merits of his goods, or with his customer's need of them. It lends itself readily to fostering a belief on the part of the buyer that the stamps cost him nothing - that they are given as lagniappe.

Another case referred to by the court is People v. Victor, 287 Mich. 506, 283 NW 666 (1939) in which the following language in the dissenting opinion was quoted:

The legislature could have believed that it was contrary to the public interest that citizens should be deceived by trade methods and stratagems into a mistaken belief that they received something for nothing; that the public was entitled to know the real price of the commodities it paid for, and that, in view of the foregoing, it was determined that such businesses were parasitical and should be eliminated, needless middlemen adding their profits to the costs of necessities, removed from the stream of trade, and dangers of price was averted by the enactment of such a statute.

The court then supplemented these opinions of other courts with its own opinion, as follows:

. . . the opinions as a whole lead us to believe that legislation which condemns the use of trading stamps can hardly be said to be arbitrary and capricious.

The lure of trading stamps is an evil . . . and the legislature has the right to suppress it. It is idle to say that the use of trading stamps has the same effect merely as advertising in the ordinary manner. There is a

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distinct difference. The former contains a lure. The other does not . . . the legislature has the right to reasonably equalize opportunities in the economic field . . .

. . . the legislative act under consideration herein is, in part at least, nothing less than a fair trade act . . .

Most of the cases decided before 1916, said the court, may be distinguished by reason of the fact that the scope of the police power was considered much more limited than it is today. In general, the court stated, the fundamental thought in cases holding anti-trade stamp legislation unconstitutional is that such business is legitimate and that the legislature has no right to interfere therewith. But, it went on:

. . . After reading the evidence in the Casper case which shows that merchant after merchant was practically coerced to buy trading stamps to meet competition, and after reading the many cases on the subject, we think that we cannot say that the legislation in question here . . . is arbitrary or capricious and has no reasonable relation to the evil sought to be suppressed.

. . . this court should not interpose its economic views when the people of the state through their legislature have made their choice. The rule is universal that a statute should not be construed as unconstitutional unless the unconstitutionality is clear and . . . beyond a reasonable doubt. We think that the unconstitutionality is not clear or beyond a reasonable doubt . . . Relief, if any, for trading stamp companies . . . must be sought at the hands of the legislature . . .17

Another case of interest, humorously perhaps, is the following:

In the District of Columbia v. Kraft, the opinion of the court was written by Mr. Chief Justice Shepard and he wrote in part:

"The trading stamp concerns are not engaged in the advertising business, or as agents for advertisers. * * * * * are not merchants engaged in business, as that term is commonly understood. They are

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not dealers in ordinary merchandise, engaged in a legitimate attempt to obtain purchasers for their goods by offering fair and lawful inducements to trade. Their business is the exploitation of nothing more or less than a cunning device. With no stock in trade, but that device and the necessary books and stamps and so-called premiums with which to operate it successfully, they have intervened in the legitimate business carried on in the District of Columbia, between seller and buyer, not for the advantage of either, but to prey upon both. They sell nothing to the person to whom they furnish the premiums. They pretend simply to act for his benefit and advantage by forcing their stamps upon a perhaps unwilling merchant. * * * * * The whole country is now agitated by the increased cost of living that has grown to alarming proportions, and legislative bodies are inquiring into its causes with a view, if possible, of providing remedies for the mischief. While there is difference of opinion as regards the chief source, all concur in the opinion that every introduction of superfluous middlemen, and consequent unnecessary charges between producer and consumer, undoubtedly contribute to swell the stream to overflowing. * * * * * Now, what are the conditions presented by the facts in this case? An entirely unnecessary middleman, for his own profit solely, has injected himself between the regular merchant on the one hand, and his customers on the other."

The strong and even harsh language relating to trading stamps, written by the Chief Justice, was in an opinion dated May 10, 1910, approximately forty-seven years ago. As can be readily observed, the problem of trading stamps even a half century ago was just as violent and turbulent as it is today. The opponents of trading stamps could use this same language which was written in 1910 without any changes and for their purposes it would be applicable to the current controversy.¹⁸

The decision rendered in this case, one of the few declaring trading stamps unlawful, in essence outlawed the use of trading

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stamps in Washington, D. C. However, in 1961 Congress repealed the law barring the use of trading stamps, thus removing all prohibitions against the use of trading stamps in the District of Columbia.¹⁹

TRADING STAMPS AND THE FEDERAL GOVERNMENT

There are no court decisions as to the legality or illegality of trading stamps under federal law and there are no federal statutes in the field. However, various federal agencies and departments have had occasion to consider the status of trading stamps as a competitive device.

The Federal Trade Commission conducted an investigation of the operations and business methods of trading stamp companies in 1957. The scope of its investigation was disclosed to be the "seeking of factual data as to whether trading stamp operations involve unfair methods of competition in commerce or unfair or deceptive acts or practices in commerce, in violation of Section 5 of the Federal Trade Commission Act; price or other discriminations, in violation of Section 2 of the Clayton Act; or exclusive dealings or tying arrangements, in violation of Section 3 of the Clayton Act." The results of this investigation were announced in a press release by the Commission on October 3, 1957, from which the following is quoted:

The Federal Trade Commission announced today that it did not consider trading stamp plans in themselves to be an unfair method of competition under the laws it administers, and concluded not to issue any complaints at this time prohibiting the use of trading stamps.

The commission's decision followed an investigation inquiring into the operations and business methods of certain trading stamp companies. It was launched following receipt by the commission of complaints from individuals and businessmen condemning the use of trading stamps as an unfair method of competition or as unfair or deceptive acts or practices in commerce. * * *

The matter of trading stamps has been formally before the commission on at least six occasions from 1917 to 1954. In each case, however, the commission's order was directed against certain acts, practices or representations of the 'promoter' which were found to be in violation of the general national policy against selling merchandise by lottery,

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or provisions against exclusive dealing or price discrimination. In no case did the commission hold that trading stamp plans in themselves were unlawful.

Although deciding not to take action as to stamp plans at this time, the commission emphasized that changing circumstances or methods may reveal that some plans may be operated in violation of specific provisions of law. For that reason, the commission intends to continue to study stamp plan operations and will take action where necessary to prevent deception of customers, price discrimination, illegal exclusive dealing, boycott, conspiracy, or any other conduct in violation of the Federal Trade Commission or Clayton Acts.²⁰

In 1958, the Securities and Exchange Commission issued a statement that trading stamps redeemable in cash or merchandise are not securities within the meaning of the Securities Act of 1933.²¹

In a fairly recent case involving the Sherman Act, United States v. Gasoline Retailers Association, 282 F. 2d 688 (7th Cir. 1961), it was held that an agreement between competing gasoline retailers and a labor union prohibiting, among other things, the giving of premiums, including trading stamps, in connection with retail gasoline sales was per se a violation of the Sherman Act.

The U. S. Departments of Agriculture, Commerce, and Labor have all conducted studies regarding the effects and costs of trading stamps for informational purpose. The 1958 study of trading stamps by the Department of Agriculture, "Trading Stamps and Their Impact on Food Prices" (Marketing Research Report No. 295), considered the controversial issue of who actually bears the cost of trading stamps. In its report, it concluded that:

Consumers are interested in trading stamps for other reasons than the effect on retail prices. They also are interested in what they can expect in return for accumulating stamps. In a previous publication by the Department, it was pointed out that the merchandise which the consumer receives by redeeming stamps is about 2.0 per cent of the purchase dollars required to fill a stamp book and may range from 1-2/3 to 2-1/2 per cent, depending on pricing policies of stores from which a similar article could be purchased. This study indicates that average prices paid

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by consumers in stamp stores increased 0.6 per cent more than in nonstamp stores - a difference equal to about 30 per cent of the average merchandise value of stamps.

The most recent study of the food industry was conducted by the National Commission on Food Marketing under authorization by Congress in 1964.²²

Prior to the publication of the Commission's report, a newspaper article²³ indicated that it would recommend that trading stamps be outlawed as "another layer of promotional costs". Shortly afterwards, another newspaper article²⁴ indicated that the recommendation to ban trading stamps had been dropped. The report itself, published in June, 1966, made no recommendations regarding the banning of stamps. Reference to trading stamps by the report was limited to the following:

Advertising expenditures of corporations marketing food increased from \$560 million in 1950 to \$2,172 million in 1964, or almost fourfold. Similar estimates are not available for various forms of sales promotion by food manufacturers and retailers. The costliest item in retailers' sales promotion is trading stamps. Stamps were little used by food retailers in 1950 but cost them about \$680 million in 1964.²⁵

* * *

Trading stamps have come to be the outstanding form of nonprice competition. Starting in the mid-1950's, more and more food retailers distributed trading stamps to customers. Now perhaps 50 per cent of retail food sales are made in stores using trading stamps. Some retailers have dropped trading stamps, but they still are an extremely significant factor in the promotion of retail food sales.

When stamps were first introduced, retailers giving them frequently attained sufficient additional volume to more than pay for the stamps. Consumers, therefore, did not have to pay higher prices for food but benefited from the stamps and the premiums they obtained for stamps. As more and more of the industry adopted stamps and competing forms of promotion, however, it was no longer possible for retailers as a whole to obtain additional volume by using

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trading stamp promotion. As a result the cost of the stamps represented an additional cost of retailing, and prices rose. All too often consumers buying food also were required, in effect, to make tie-in purchases of premiums being offered for trading stamps.

It should be noted, however, that trading stamps are used extensively in conjunction with sales of products other than food. Further, both general and specific statutes regulate the use of trading stamps in most States, and legislative action continues. Although 16 States require optional cash redemption of trading stamps, such cash redemptions, which are sometimes at nominal values, usually have been well below 2 percent of total redemptions.

SPECIALS AND LOSS LEADERS

Price remains an exciting, if not all-important, lure to consumers. Retailers offer temporary price cuts--not based on costs--to affect consumer choices. These temporary price cuts are called "specials".

Sometimes an item is priced below its cost to the retailer. This is called a "loss leader." Specials and loss leaders may give the appearance of more significant price competition than actually exists.

There are only a few items which, when sold at special prices, can strongly attract customers to a particular store. Thus, a particular group of products within a store, such as meat, may be featured more often than other items, such as produce. In this situation, loss leader merchandising in one department, for the promotion of the whole store, is subsidized by other departments. This establishes unrealistic prices for some products, at least for the period of the special.

Today's exchange of price cuts by competing retailers is neither so deep nor so long-lived as those of the old-fashioned price wars. Indeed, price specials are best understood as a form of promotion--not affecting the overall price level of the store--along with stamps, advertising, and other attention-getting devices.²⁶

OTHER LEGAL ASPECTS

* * *

The best measure of the performance of a retailer is his gross margin--the difference between what the retailer pays for merchandise and what he sells it for, expressed as a percentage of the price to the consumer. The gross margin covers the retailer's operating expenses and his profits, and represents what society has to pay for his services.

Between 1954 and 1964, retailers' margins increased from a range of 15 to 17 percent of sales to a range of 19 to 22 percent of sales, depending upon the firms examined and the services rendered. The margin itself thus increased by about 15 to 30 percent. * * *

Higher margins for retailers, in general, reflect the cost of trading stamps and other promotions, higher costs of renting or owning store facilities, increased labor costs, and advances in other expenses. * * * More services offered by retail stores add to the job to be done and account for some of the increase in costs.²⁷

* * *

ADVERTISING AND SALES PROMOTION

Advertising and sales promotion are a significant reason for the substantial spread between farm and retail prices. In 1964, food corporations spent \$2,172 million for advertising (\$1,400 million on domestically produced farm products), and retailers spent \$680 million for trading stamps. For the industry as a whole if not for each firm in it, these amounts were added to processing and distribution costs and became part of the food bill.

Amounts so added to the food bill were not entirely wasted. Consumers received premiums and other things of value for trading stamps and some other forms of sales promotion. Advertising helped to pay for television, newspapers, and magazines--and made publications costlier to produce. Whether this way of supporting the communications industry is good economic and social policy is outside the scope of a study of the food industry; but the costs added

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to the food bill are a reason for the size of the bill.

An unknown but substantial portion of advertising and sales promotion serves only to urge consumers to patronize firm A instead of B, or to buy brand C instead of D. It is highly unlikely that costs thus incurred add value to goods purchased by consumers. From the standpoint of the individual firm, however, the expenditures are warranted to hold or expand sales against competitors' similar efforts.

One function of advertising is an appropriate charge to the food bill--dissemination of information about products and prices. Consumers benefit from knowing what products are available, where they are for sale, and at what prices. * * *28

From the foregoing, it appears that the various agencies of the federal government have, to date, seen nothing illegal or otherwise offensive in trading stamp plans.

TRADING STAMP LEGISLATION IN HAWAII

At present, Hawaii has no trading stamp statutes. Six bills relating to trading stamps have been introduced in the legislature since 1961. All six bills failed to pass, having been filed. The various means by which these bills sought to restrict or prohibit the use of trading stamps are described below. Trading stamps, as defined in all of the bills, excluded coupons, tickets, certificates, etc., of manufacturers or packers.

H.B. 46, H.B. 66 and S.B. 224 were introduced in 1966, 1965 and 1964, respectively, and were essentially identical bills which provided for (1) optional cash redemption; (2) surety bond to cover unredeemed trading stamps issued for the preceding two years; (3) notification to state of intention to discontinue redemption of stamps; (4) setting aside of adequate funds of the trading stamp company upon such notification for a two-year period for redemption purposes and continuation of bond during this period; (5) printing of date of issue and name of state on each stamp; (6) keeping of monthly records by stamp companies to determine amount of unredeemed stamps in a two-year period; and (7) escheat of unredeemed stamps to the state monthly.

H.B. 1451, introduced in 1963, provided for (1) the cash value and year of issue to be printed on the face of each stamp; (2) op-

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tional cash redemption; (3) surety bond to cover unredeemed stamps for the previous calendar quarter; (4) notification to state of intention to discontinue redemption of stamps; (5) setting aside of adequate funds to cover redemption of stamps for a period of six months and continuation of bond during this period; (6) escheat of unredeemed stamps to state at end of six months' period.

H.B. 1149, introduced in 1963, prohibited the use, issuance or distribution of trading stamps redeemable in cash or merchandise.

H.B. 1312, introduced in 1961, provided that (1) "every trading stamp company engaged in the sale or distribution of stamps within the State through its usual business channels, shall return to customers in gifts, merchandise or other valuable articles no less than 80 per cent of its gross income from the sale of stamps, less all expenses other than salaries"; (2) every company file financial reports as stipulated in the bill with the treasurer of the State; and (3) the treasurer may order a decrease in the price of stamps upon determination that it is impossible for a company to return 80 per cent of the gross income, less expenses, because of the loss or non-use of stamps by consumers.

A statute prohibiting the issuance of trading stamps redeemable by trading stamp companies was enacted in Hawaii in 1905. It is presented below in its entirety as a matter of information.

ACT 85

AN ACT

MAKING IT A MISDEMEANOR TO SELL OR EXCHANGE PROPERTY UNDER THE REPRESENTATION, ADVERTISEMENT, NOTICE OR INDUCEMENT THAT AN UNIDENTIFIED, UNKNOWN, UNSELECTED, OR CHANCE PRIZE, PREMIUM OR PREMIUM-GIFT, OR THAT A STAMP, TRADING STAMP, COUPON OR OTHER LIKE DEVICE ENTITLING THE HOLDER TO RECEIVE SUCH A PRIZE, PREMIUM OR PREMIUM-GIFT, OR THAT THE REDEMPTION OF SUCH A STAMP, TRADING STAMP, COUPON OR OTHER LIKE DEVICE SO GIVEN IS TO BE PART OF THE TRANSACTION, OR TO SELL OR EXCHANGE ANY TRADING STAMP, STAMP, COUPON OR OTHER LIKE DEVICE TO AID SUCH SALE OR EXCHANGE, AS AFORESAID AND PROVIDING A PENALTY THEREFOR.

TRADING STAMP LEGISLATION

Be it enacted by the Legislature of the Territory of Hawaii:

SECTION 1. Whoever sells or exchanges any property or offers or attempts so to do upon a representation, advertisement, notice or inducement that anything unidentified by or unselected by the purchaser at or before the time of the sale or exchange, or upon a representation, advertisement, notice or inducement that anything whose precise nature is not so known to the purchaser at the time of the sale or exchange as to be completely identified beyond the necessity of any further or other selection or upon a representation, notice, advertisement or inducement that any property whose selection will depend upon chance or hazard or in any manner whatsoever is or is to be delivered or received, or is in any way connected with or is a part of the transaction as a prize, premium or premium-gift; or whoever sells or exchanges any property or offers or attempts so to do upon a representation, advertisement, notice or inducement that a stamp, trading stamp, coupon or other device which entitles the purchaser to demand or receive either from the vendor or from any other person, company, association or corporation any other property unselected by or unidentified by the purchaser at or before the time of the said sale or exchange, or which entitles the purchaser to demand or receive either from the vendor or from any other person, corporation, association or company anything whose precise nature is not so known to the purchaser at the time of the said sale or exchange as to be completely identified beyond the necessity of any further or other selection, or which entitles the purchaser to receive or demand either from the vendor or from any other person, corporation, association or company any property whose selection will depend upon chance or hazard in any manner whatsoever, is to be delivered or received or is in any way connected with or is a part of the transaction as a prize, premium or premium-gift, or whoever sells or exchanges any trading stamp, stamp, coupon or other like device upon a contract to enable the purchaser to sell or exchange property, or attempt so to do, upon any representation, advertisement, notice or inducement of any kind hereinbefore mentioned; or whoever delivers any goods, wares or merchandise upon the presentation of any such stamp, coupon or other like device so given or caused to be given, shall for each offense be guilty of a misdemeanor and be

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punishable by a fine of not less than Twenty Dollars, or more than Five Hundred Dollars, provided, however, that the provisions of this Act shall not apply or extend in any manner to the redemption of any such stamp, trading stamp, coupon or other like device that may have been issued as a premium, prize, or premium-gift prior to the time this Act takes effect; and provided further, that the provisions of this Act shall not apply or extend to any sale or exchange of articles in bulk, heap or mass, or a part or portion thereof, which sale or exchange is not made, effected or induced by or upon any representation, advertisement, notice or inducement of any kind hereinbefore specified.

SECTION 2. This Act shall take effect and be in force from and after its passage.

Approved this 26th day of April, A.D. 1905.

G. R. CARTER,
Governor of the Territory of Hawaii.

The Supreme Court of the Territory declared the statute unconstitutional in the case of Territory of Hawaii v. Gust & Co., 18 Hawaii 196 (1907).

In the course of its opinion, the Court said:

The scheme carried on by defendant is a form of advertising. It is intended to attract new and retain old customers on the theory of making them believe that they are getting something for nothing. In reality, a concern can well afford to give away these premiums by virtue of the additional profits made by the larger sales. In this case the defendant has the undoubted right to sell the two cigars in question. To deny that it also had the right to give the purchaser some other property in addition which he could select would be to deny its right to do business as at all.

The legality of transactions of this kind has been before the courts frequently in the past few years, and has been so well considered by them that it will suffice to refer to the reasoning in some of the decided cases.

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The Court went on to quote with approval from the opinion of the California Supreme Court which had struck down an identical law in Ex Parte Drexel, 147 Cal. 768, 82 Pac. 429 (1905).

The Court further relied on several other decisions which held similar laws unconstitutional and void. Among these are People v. Gillson, 109 N.Y. 389, 17 N.E. 343 (1888) and State v. Dalton, 22 R.I. 77, 46 Atl. 234 (1900). From the Dalton case the Court quoted with approval, at p. 204:

"But it is further argued in support of the statute that the scheme aimed at is one which is demoralizing to legitimate business, and hence within the police power of the state to prohibit. *** In this connection it is pertinent to observe that it is not enough to warrant the state in absolutely prohibiting a given business that it is conducted by methods which do not meet with general approval. There must be something in the methods employed which renders it injurious to the public in some one of the ways before mentioned in order to warrant the state in interfering therewith. Nor is it enough to bring a given business within the prohibitory power of the state that it is so conducted as to seriously interfere with or even destroy the business of others. Take, for illustration, the great department stores in our large cities. By reason of the almost infinite variety of goods which they carry they furnish greater facilities to customers and can offer them greater inducements in the way of trade than can those stores which carry but a single line of goods. The result is, as everybody knows, that very many small traders have been crushed out and have been obliged to abandon their business entirely while the owners of the mammoth establishments which supply almost everything which we eat, drink, wear, use, need or desire, whether useful or ornamental, are prosperous and successful in a remarkable degree. But while the result of this method of doing business is injurious to those who employ the more primitive one, can it be said that a law prohibiting a department store would be a valid exercise of the police power? Clearly not."

Thus, the prohibition of trading stamps in Hawaii, at that time, was held not to be a valid exercise of the state's police power.

OTHER LEGAL ASPECTS

Whether the prohibition of trading stamps in Hawaii will be upheld or invalidated by the courts today is at best conjectural.

FOOTNOTES

Chapter I

1. Albert Haring and Wallace O. Yoder (ed.), Trading Stamp Practice and Pricing Policy, Indiana Business Report No. 27 (Bloomington, Ind.: Indiana University, Bureau of Business Research, 1958), p. 226.
2. Ibid.
3. U. S. Agricultural Marketing Service, Marketing Research Division, Trading Stamps and Their Impact on Food Prices, Marketing Research Report No. 295 (Washington: U. S. Government Printing Office, 1958), p. 27.
4. Haring and Yoder, p. 229.
5. Verne A. Bunn, "Trading Stamps and Retail Food Prices, a Report on Trading Stamps and Food Price Relationships in Kansas, Missouri, Oklahoma, Montana and Wyoming, as well as a Review of Other Trading Stamp Investigations" (Wichita, Kan., 1962?).
6. Verne A. Bunn, "Trading Stamps and Retail Food Prices, 1960 - 1965, a Summary of Studies on the Relationships Between Trading Stamps and Food Prices in Kansas, Missouri, Oklahoma, Montana and Wyoming" (Midwest Research Institute, Kansas City, Mo., 1966?), pp. 27-29.
7. Harvey L. Vredenburg, Trading Stamps, Indiana Business Report No. 21 (Bloomington, Ind.: Indiana University, Bureau of Business Research, 1956), p. 38.
8. Massachusetts, Legislative Council, Report Submitted by the Legislative Council Relative to Trading Stamps, Senate No. 912, April 29, 1964, pp. 59-60.

Chapter II

1. California, 1959; Connecticut, 1959; Florida, 1959; Maryland, 1959; Massachusetts, 1959; New Hampshire, 1960; New Jersey, 1964; New Mexico, 1959; and Vermont, 1959.
2. Cal., Conn., Fla., Me., Md., Mass., N.H., N.J., N.M., S.D., and Vt.
3. Cal., Conn., Fla., Me., Md., Mass., N.H., N.J., N.M., and Vt.
4. Of the 20 states, Kansas is the single exception since it generally prohibits stamps.
5. Indiana and Utah are the two exceptions among the 20 states.
6. Ind., Neb., Ohio, Utah, and Wash.
7. North Dakota.
8. Ind., Neb., N.D., Ohio, Utah and Wash.
9. California Trading Stamp Act of 1960 grouping various businesses engaged in sale of trading stamps according to their income, and graduating the bond to conform to such income, is not arbitrary.

Blue & Gold Stamps-U-Save Premium Co. v. Sobieski, 190 F. Supp. 133 (D. C. 1961).

10. Christina Fulop, The Role of Trading Stamps in Retail Competition, Eaton Paper 3 (London: Institute of Economic Affairs, 1964).
11. Ibid., pp. 60-61.
12. Massachusetts, Legislative Council, Report Submitted by the Legislative Council Relative to Trading Stamps, Senate No. 912, April 29, 1964, pp. 71-72.
13. California, Legislature, Assembly, Interim Committee on Finance and Insurance, Transcript of Hearings on Trading Stamps, December 9, 1965, San Francisco, pp. 6-8.
14. Ibid., pp. 25-27.
15. Ibid., pp. 27-28.
16. Ibid., pp. 30-55.

Chapter III

1. Weco Products Co. v. Mid-City Cut Rate Drug Stores, 55 Cal. App. 2d 684, 131 P. 2d 856 (1942); Benjamin v. Palan Drug Co., 144 Misc. 879, 88 N.Y.S. 2d 291 (Sup. Ct. 1948), aff'd, 275 App. Div. 1036, 92 N.Y.S. 2d 413 (1st Dep't 1949); Nechamkin v. Picker, 67 N.Y.S. 2d 60 (Sup. Ct. 1946).
2. Bristol-Myers Co. v. Lit Bros., Inc., 336 Pa. 81, 6 A. 2d 843 (1939); Geyer v. American Stores Co., 387 Pa. 206, 127 A. 2d 694 (1956).
3. "The law is not concerned with trifles." Bristol-Myers v. Lit Bros. Inc., supra note 2.
4. Bristol-Myers Co. v. Picker, 302 N.Y. 61, 96 N.E. 2d 177 (1950); Palmer v. Angert, 275 App. Div. 965, 90 N.Y.S. 2d 745 (2d Dep't), reversing 145 Misc. 36, 86 N.Y.S. 2d 529 (Sup. Ct. 1949).
5. Colgate-Palmolive Co. v. Max Dichter & Sons, Inc., 142 F. Supp. 545, 549 (D. Mass. 1956).
6. "Trading Stamps: A Challenge to Regulation of Price Competition," University of Pennsylvania Law Review, 105 (2) (December, 1956), p. 247.
7. For a collection of the reported case on the issue of trading stamps under fair trade acts see Annot., 22 ALR 2d 1212 (1952), ALR 2d Supp. Serv. 1933 (1960), ALR 2d Supp. Serv. 141 (1961).
8. For a collection of reported cases under unfair sales acts see Annot., 70 ALR 2d 1080 (1960).
9. Michigan, Senate Journal, No. 141, September 16, 1956, "Supplementary Report of Select Committee Studying Trading Stamps".
10. Massachusetts, Legislative Council, Report Submitted by the Legislative Research Council Relative to Trading Stamps, Senate No. 912, April 29, 1964, pp. 71-72.

tive to Trading Stamps, Senate No. 912, April 29, 1964, p. 86.

11. N. J. v. Sperry & Hutchinson Co., 23 N.J. 38, 127 A 2d 169 (1956), aff'd, 56 N.J. SUPER. 589, 153A. 2d 691 (1959), aff'd, 31 N.J. 385, 157 A. 2d 505 (1960).
12. Ibid.
13. Harvey L. Vredenburg, "Trading Stamps," Indiana Business Report No. 21 (Bloomington, Ind.: Indiana University, Bureau of Business Research, 1956), p. 42.
14. Ninth Biennial Report of the Connecticut Legislative Council (Hartford: 1960), p. 161.
15. Rast v. Van Deman & Lewis Co., 240 U. S. 342 (1916).
16. Sperry & Hutchinson v. Hoegh, 246 I. 19, 65 N.W. 2d 410 (1954).
17. Massachusetts Legislative Council, pp. 68-70.
18. Arizona, Legislative Council, Report on Trading Stamps (Phoenix: 1957), p. 8.
19. Act of Sept. 21, 1961, Pub. L. 87-267, 75 Stat. 565.
20. "FTC Issues Statement on Trading Stamps," Press Release, Federal Trade Commission, Office of Information, Oct. 3, 1957.
21. Release No. 3890 re Trading Stamps, Securities and Exchange Commission, Jan. 21, 1958.
22. U. S. National Commission on Food Marketing, Food From Farmer to Consumer Report (Washington: U. S. Government Printing Office, 1966), p. 14.
23. Honolulu Star Bulletin, March 16, 1966, p. F-2.
24. New York Times, March 20, 1966, p. F-3.
25. U. S., National Commission on Food Marketing, p. 14.
26. Ibid., p. 77.
27. Ibid., p. 78.
28. Ibid., p. 92.

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