

IN THE MATTER OF
REINHART & NEWTON COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER
26, 1914

Docket 1304—April 13, 1926

SYLLABUS.

Where a corporation engaged in the manufacture of candy, and in the sale thereof to wholesale and retail dealers; advertised and sold assortments composed of a display card for the use of the retailer, and a large number of "marshmallow drops" to retail at one cent each, a few "five cent bars", and a base ball and glove, designed to be sold, and sold, at retail under a merchandising plan by which the chance selection and purchase by the ultimate consumer of one of a few pink center drops therein contained entitled him to a five cent bar, and the purchase of the last piece entitled him to the ball and glove, and by which the attention of the prospective purchaser was invited by the legend "PICK A PINK CENTER AND GET A FIVE CENT BAR OF CANDY FREE—THE LAST MARSHMALLOW DROP RECEIVES THE BASE BALL AND GLOVE—WAIT FOR THE FINISH", contained on the aforesaid card; with the result that the chance of winning one of the prizes thus offered induced many of the consuming public to purchase such "drops" to the prejudice of competitors who did not place in the hands of wholesale and retail dealers merchandise to be delivered to members of the general purchasing public, in addition to the candy sold them and without further charge, in accordance with a scheme or device of lot or chance:

Held, That such a practice, under the circumstances set forth, constituted an unfair method of competition.

Mr. William A. Sweet for the Commission.

Morrow, Dickerson & Kittering, of Cincinnati, Ohio, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Ohio corporation engaged in the manufacture of candies and sale thereof to wholesale and retail dealers, with principal office and place of business in Cincinnati, with using a lottery scheme in merchandising its product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in the following acts and practices:

Respondent, as alleged, for more than a year preceding the complaint supplied to its dealer vendees a package and assortment of

candies named and advertised by it as "Phoenix Brand Baseball and Glove Assortment," and described in the complaint as follows:

"Said assortment is packed in a box containing three compartments, and said assortment is composed of the following articles: First: In the first of said compartments, a number of pieces of candy of uniform size and shape and covered with a pink covering, which are intended to be sold at retail at the price of one cent each. Hidden from the view of the prospective purchaser beneath the pink covering of each said piece of candy is a filling which in most instances is white or cream colored. Said pieces of candy are hereinafter referred to as 'lottery blanks.' Here and there throughout said lottery blanks are placed certain of said pink covered pieces of candy the filling of which is pink in color, which said filling is likewise hidden from the view of the prospective purchaser by its aforesaid pink covering. Said last named pieces of candy are named and advertised by respondent as, and are hereinafter called, 'pink centers.' Said pink centers, until purchased and broken open, are not distinguishable from said lottery blanks. Second: A baseball and a baseball player's glove packed in the second of said compartments. Third: A number of bars of candy, each much larger in size than said lottery blanks and said pink centers, and packed in the third of said compartments. Said bars of candy equal in number the number of said pink centers packed in said assortment."

To retail dealers to whom respondent suggested and upon whom it relied in, the carrying out of said scheme and lottery, it furnished a card containing a "notice and advertisement inviting the reader to pick out and purchase one of said pink covered pieces of candy, and notifying the reader that in the event the piece of candy picked out by him is one of said pink centers he will be given a five cent bar of candy free of charge"; and likewise "a statement to the effect that the purchaser of the last aforesaid pink covered piece of candy will be given aforesaid baseball and glove free of charge."

The result, as alleged, of the foregoing was that many of the consuming public purchased respondent's candy in preference to that of competitors "who do not offer and place in the hands of others any additional candy or other merchandise to be given to purchasers as prizes won by chance or otherwise, * * *" and were "induced to purchase said pink covered candies from respondent's said assortment because of the chance of thereby winning aforesaid bars of candy and aforesaid baseball and glove as prizes," all to the prejudice of the public and of respondent's competitors.

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Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, a corporation, organized under the laws of the State of Ohio, and with its principal office and place of business in the city of Cincinnati in said State, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer herein and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by the respondent and Bayard T. Hainer, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case in lieu of testimony and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein, thereupon this proceeding came on for decision and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

Respondent is, and for more than two years prior to April 9, 1925, was a corporation organized and doing business under the laws of the State of Ohio, having its principal place of business in the city of Cincinnati, in said State. Respondent is, and has been during the times aforesaid, engaged in the business of manufacturing candy and of selling such candy at wholesale to jobbers and retail dealers therein located in various States of the United States other than the State of Ohio and engaged therein in the business of selling such candy at wholesale and retail respectively to retail dealers and the general public. Respondent caused, during the times aforesaid, and still causes said candy when so sold by it to be transported from its place of business in Cincinnati, Ohio, into and through other States of the United States to the purchasers thereof at their respective locations in said other States, and is in competition with other individuals, partnerships and corporations also engaged in the manufacture and sale of candy and similar products, in interstate commerce. Respondent employs salesmen who travel throughout the States of Indiana, Michigan, Illinois, Iowa, Kansas, Florida, and other

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States, and solicit from jobbers and retail dealers orders for respondent's products.

Respondent in the sale and distribution of certain of its candy products, during the times aforesaid, has packed and still continues to pack certain assortments of its candy in packages or boxes which it brands and advertises as "Phoenix Brand Base Ball and Glove Assortment." Said packages or boxes contain three compartments and the assortments packed therein consist of the following articles:

In the first compartment are 150 pieces of candy of uniform size and shape and covered with a pink coating, 140 of which pieces have white centers and 10 of which have pink centers designated respectively as "White Centers" and "Pink Centers." Each of these pieces of candy is intended to be sold at retail at the price of one cent. The pieces of candy having pink centers, until purchased and broken open, are not distinguishable from the pieces of candy having white centers.

The second compartment contains a baseball and a baseball player's glove.

The third compartment contains 10 pieces or bars of candy separately wrapped in paper and labeled "BY HECK FIVE CENTS."

In each of said packages of candy packed by it as aforesaid respondent placed and still continues to place a display card upon which is printed the following:

PHOENIX

BRAND

PICK A
PINK CENTER
AND GET A
FIVE CENT BAR OF CANDY
FREE

THE LAST MARSHMALLOW
DROP RECEIVES THE
BASE BALL AND GLOVE

WAIT FOR THE FINISH

Said display cards are sold by respondent, to be used by retail dealers offering for sale and selling said assortment of candy to the purchasing public, and said dealers display said assortment, together with said cards furnished by respondent, and said retail dealer-

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vendees of respondent and retail dealers who purchased respondent's said assortment from respondent's wholesale dealer-vendees have offered for sale and sold and continue to offer for sale and sell to the purchasing public the said 150 pieces of candy above described in accordance with the terms and conditions of said advertisement, giving to each purchaser the privilege of choosing or picking one or more pieces from the whole number of pieces in the first compartment of said assortment, such purchaser not having previous knowledge as to whether the pieces so chosen or picked are "White Centers" or "Pink Centers."

The retail dealer-vendees, under the aforesaid plan of respondent, delivered and continues to deliver to the purchasers of the 10 pieces of candy designated as "pink centers" the 10 pieces or bars of candy labelled "BY HECK FIVE CENTS" as prizes won wholly by lot or chance, and delivered and continues to deliver to the purchaser of the last piece of candy of the 150 pieces contained in the first compartment of said assortments, whether a so-called "white center" or "pink center," the baseballs and baseball player's gloves as prizes.

In connection with the sale and distribution of said packages or boxes branded "Phoenix Base Ball and Glove Assortment" respondent caused to be inserted in the Confectioners' Review, a trade paper, in the July, 1924, issue, an advertisement containing an illustration of said package or box and in addition to said illustration the following:

Phoenix Baseball and Glove

Assortment

(Reproduction of Package)

140 Red Pan Marshmallow Drops

(White Centers)

10 Red Pan Marshmallow Drops

(Pink Centers)

10 By Heck Bars

1 Baseball

1 Baseball Glove

A Summer Specialty That Repeats.

THE REINHART & NEWTON Co.

Cincinnati, Ohio.

During the times aforesaid members of the general purchasing public have purchased and continue to purchase the said 140 pieces of candy known as "White Centers" and the said 10 pieces of candy known as "Pink Centers" in said assortments and those purchasers drawing or picking the said "pink centers" have received

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and continue to receive with each "pink center" so purchased, as a prize and without additional cost, a bar or piece of candy labelled "BY HECK FIVE CENTS" and the purchasers of the last piece of the 150 pieces of candy, either "white centers" or "pink centers" in said assortment have received and continue to receive with such last piece so purchased as a prize, and without additional cost, a baseball and baseball player's glove in the manner herein described and in accordance with the offers and advertisements herein referred to.

During the times aforesaid other individuals, partnerships, and corporations, competitors of respondent, have likewise been and are still engaged in selling candy and have caused and still cause such candy when sold by them to be transported to the purchasers thereof, wholesale and retail dealers therein, located in various States of the United States, other than the State of origin of such shipments and including States into and through which respondent has caused and still causes its candy when sold to be transported.

Among other such individuals, partnerships, and corporations are many who, during the times aforesaid, have offered and sold and continue to offer and sell such candy, and who do not, in connection with the sale thereof, sell to or place in the hands of wholesale and retail dealers, any other merchandise to be delivered to members of the general purchasing public in accordance with any system or device of lottery or chance.

Respondent's aforesaid practices tend to and do induce many of the consuming public to purchase respondent's said candy in prejudice to the respondent's competitors and tend to and do induce the purchasing public to purchase the said pink coated candy in the respondent's said assortments because of the chance of winning as a prize one of the bars of candy branded "BY HECK FIVE CENTS" and the aforesaid baseballs and baseball player's gloves as prizes.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondent's competitors and are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its power and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the re-

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spondent and the agreed statement of facts filed herein and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Reinhart & Newton Co., its agents, representatives, servants, and employees do cease and desist from directly or indirectly selling or delivering or offering to sell or deliver, to wholesale or retail dealer-vendees, with or in connection with the sale of candy, in interstate commerce, other articles of merchandise, either candy or other commodities in connection with any scheme or device of lot or chance whereby certain of the consumer purchasers of said candy from said dealer-vendees, determined by such scheme of lot or chance, receive said articles of merchandise in addition to said candy without further cost to such purchasers.

It is further ordered, That Reinhart & Newton Co. shall within sixty days after the service upon it of a copy of this order file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

AMEEN BARDWIL AND GEORGE BARDWIL, PARTNERS
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE BARDWIL BROTHERS

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER
26, 1914

Docket 1268—April 27, 1926

SYLLABUS.

Where it had long been considered that lace crocheted in Ireland was superior to laces crocheted elsewhere, and the word "Irish" as applied to or used in connection with the word "crochet" or the word "lace" had come to signify, and to be understood by the purchasing public as meaning, crocheted lace made in Ireland; and thereafter a firm engaged in the importation of lace made in China, and in the sale thereof for trimming to garment manufacturers and retailers, variously described the same by advertisements, invoices, and otherwise, as "Irish lace", "Irish crochet", "Chinese Irish and Fillet laces", "Chinese Fillet and Irish crochet"; with the result that garments trimmed with such lace were by the aforesaid manufacturers thereof and by their retail dealer customers described as trimmed with "Irish lace", and were by the latter extensively so advertised and sold to the consuming public, lace purchased from it directly by retail dealer customers was advertised, offered and sold to the consuming public as "Irish lace", a substantial portion of the purchasing public was misled and deceived in respect of the place of manufacture of the lace so dealt in by it, trade was diverted from others engaged in the sale of crocheted lace made in Ireland and truthfully denominated "Irish lace", sales and business of individuals and concerns engaged in the sale of lace under the name of the particular country in which made, were reduced and injuriously affected; and there was a capacity and tendency to induce the purchase from it of the aforesaid lace as and for the more valuable and highly reputed Irish lace:

Held, That such practices, under the circumstances above set forth, constituted unfair methods of competition.

Mr. L. B. Perkins for the Commission.

Mr. Robert P. Lewis, of New York City, for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, a New York City firm engaged in the importation of lace from China and sale thereof in interstate commerce to garment manufacturers and retail dealers, with naming or designating their product misleadingly, and advertising falsely or misleadingly in