

Complaint

IN THE MATTER OF
LAUER & SUTER 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 1370—June 1, 1926

SYLLABUS.

Where a corporation engaged in the manufacture of candy, and in the sale thereof to wholesale dealers and jobbers, advertised and sold certain assortments, which were composed of (1) a display card for the use of the retailer, (2) a large number of chocolate eggs of uniform size and shape to retail at one cent each, and (3) a few chocolate Easter eggs of larger sizes designated as 3 cent, 5 cent, and 10 cent, eggs, and were designated 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, lemon, or white, center pieces therein contained entitled him without further charge to a 3 cent, 5 cent, or 10 cent, egg, respectively, by which the purchase of the last piece similarly entitled him to a 10 cent egg, and by which the attention of the prospective purchaser was invited to the chances thus offered him by a legend setting forth the information upon the display cards above referred to; with the result that the chance of winning one of the prizes thus offered induced the purchasing public to buy the candy in question, to the prejudice of competitors who did not place in the hands of dealers candy or other merchandise to be delivered to consumer purchasers, 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.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Maryland corporation engaged in the manufacture of candies and sale thereof to wholesale dealers, with principal office and place of business in Baltimore, 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:

Findings

10 F. T. C.

Respondent, as alleged, for about two years preceding the complaint, sold to its dealer customers a package or assortment of candies named or denominated by it "Beauty Package" and composed of a number of chocolate covered pieces of candy of uniform size and shape sold at retail at 1 cent each and containing, in the case of some, colored centers, chance selection and purchase of which entitled the buyer, without further charge, to one of a number of larger pieces of candy included in the assortment; respondent furnishing therewith a display card for the retailer's use, with a statement informing the reader of the chance thus offered him.

Respondent, as charged, thereby supplies to and places "in the hands of others the means of conducting a lottery wherein said larger pieces of candy are distributed and given to the purchasing public wholly by lottery chance," and thus tends to induce and induces many of the consuming public to purchase its said candies, by reason of the chance of obtaining certain pieces free of charge, in preference to candies of its competitors, many of whom sell the same at wholesale at reasonable prices, without offering and placing in the hands of others additional candy or other merchandise to be given to purchasers by chance or otherwise; all to the prejudice of the public and respondent's competitors.

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 Maryland, and with its principal office and place of business in the city of Baltimore, 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Respondent is and for more than two years prior to March 9, 1926, was a corporation organized and doing business under the laws of the State of Maryland, having its principal place of business in the city of Baltimore in said State. Respondent is and has been during the times aforesaid, engaged in the business of manufacturing candy, and of selling and distributing such candy to wholesale dealers and jobbers located throughout the United States and States other than the State of Maryland, who in turn sell to retail dealers for resale to the consuming public throughout the several States. 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 Baltimore, Md., into and through other States of the United States to 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 commerce.

Respondent, in the sale and distribution of certain of its candy products, during the time aforesaid, has packed certain assortments of its candy in packages which it brands and advertises as "Beauty Easter Package" and "Beauty Package." Said packages each contain 150 pieces of chocolate coated candy designated by respondents as chocolate eggs, each piece being of a uniform size and shape and intended to be sold at retail at 1 cent each. Three of such pieces of candy have pink centers, three have lemon centers and three have white centers. The pieces of candy having respectively pink, lemon, and white centers, until purchased and broken open, are not distinguishable from the other pieces of candy of the same uniform size and shape. In addition to the aforesaid 150 pieces of candy, each of said packages contains four chocolate Easter eggs larger in size than the 150 pieces, which are designated 3-cent eggs, three chocolate Easter eggs of a still larger size designated 5-cent Easter eggs, and three chocolate Easter eggs of a still larger size, designated 10-cent eggs. Respondent sold and delivered with each of said packages, to be used by retail dealers offering for sale and selling the contents of

such packages to the purchasing public, a display card upon which was printed the following:

**BEAUTY
PACKAGE**
Pink Center entitles
holder to 3¢ Egg
Lemon Center entitles
holder to 5¢ Egg
White Center entitles
holder to 10¢ Egg
Last purchaser also gets 10¢ Egg
The Lauer & Suter Co.
Baltimore, Md.

Retail dealers purchasing the aforesaid packages of candy from respondent, or from respondent's wholesale distributors displayed the contents of said packages, together with said cards furnished by respondent, and have offered for sale and sold to the purchasing public the said 150 pieces of candy first 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 of the said 150 pieces in said package, such purchaser not having previous knowledge as to whether the pieces so chosen or picked have either pink centers, lemon centers or white centers.

Said retail dealer, under the aforesaid plan of respondent, delivered to the purchasers of the nine pieces of candy having colored centers described as aforesaid, the 3-cent egg, the 5-cent egg, and the 10-cent egg, respectively, in accordance with the representation on said display card, and to the purchaser of the last piece of the 150 pieces of candy of uniform size and shape, a 10-cent egg.

During the times aforesaid, members of the general purchasing public have purchased the said 150 pieces of chocolate candy of uniform size and shape, and those purchasers choosing or picking the said pieces of candy containing pink centers have received with the candy so purchased, as a prize without additional cost, a 3-cent Easter egg; those purchasers choosing or picking the said pieces of candy containing lemon centers have received with each such piece so purchased, as a prize and without additional cost, a 5-cent Easter egg; and those purchasers choosing or picking the said pieces of candy having white centers have received with each such piece, as a prize and without additional cost, a 10-cent egg; and purchasers of the last piece of the 150 pieces of candy have received with each such last piece so purchased, as a prize and without additional cost, a 10-cent egg, all in the manner herein described and in accordance

with the offers and advertisements contained in the display card herein referred to.

Respondent's wholesale dealer customers resold the said packages to retail dealers in the various States of the United States and said retail dealers displayed and sold the contents of said packages in the manner above described in accordance with the offers contained in said display card and pursuant to the aforesaid plan whereby the purchasers of said candies, who chose and picked those pieces of candy having colored centers, procured free of charge one of said larger pieces of candy hereinbefore described. Respondent thus supplied to and placed in the hands of said dealers a means of conducting a lottery wherein said larger pieces of candy were distributed and delivered to the purchasing public wholly by lot or chance.

During the times aforesaid, other individuals, partnerships and corporations, competitors of respondent, have likewise been, and still are, 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 the various States of the United States, other than the State of Maryland. Among such competitors are many who sell chocolate candy and chocolate-coated candy, and other candies, who do not offer and place in the hands of wholesale and retail dealers any additional candy or other merchandise to be delivered to the purchasing public in pursuance of any plan of lot or chance.

Respondent's aforesaid practices tend to and do induce the purchasing public to purchase respondent's candies because of the chance of thereby winning as prizes, free of charge, certain candy hereinbefore described, and tend to and do induce the sale of respondent's candy to the prejudice of competitors.

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 powers 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 respondent 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, Lauer & Suter 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 Lauer & Suter 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.

The Commission as of June 3, 1926, modified its findings and orders in a number of "commercial bribery" cases so as to make the same conform to the complaints and proof introduced in the respective cases.

The change consisted in the modification of such a finding as—

That for more than one year last past the respondent has given, and offered to give, employees of both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to influence their employers to purchase, or to contract to purchase, from the respondent varnish and kindred products, or to influence such employers to refrain from dealing, or contracting to deal, with competitors of the respondent, without other consideration therefor, large sums of money.

So as to read—

That for more than one year prior to August 22, 1918 [the date of the original findings and order], the respondent has secretly given and offered to give employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge or consent of their employers, as an inducement to influence their employers to purchase or to contract to purchase, from the respondent, varnish and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, large sums of money.

Together with an appropriate modification in the original order so as to cover the practice as stated in the modified findings, namely, requiring that—

Memoranda

The respondent, "its agents, representatives, servants and employees do cease and desist from directly or indirectly secretly giving, or offering to give, employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, without the knowledge or consent of their employers, as an inducement to cause their employers to purchase or contract to purchase, from the respondent, varnish and kindred products, or to influence such employers to refrain from dealing, or contracting to deal, with competitors of respondent, without other consideration therefor, money or anything of value."

The cases referred to follow:

MCCLOSKEY VARNISH Co. Docket 53. Complaint and original findings and order reported in 1 F. T. C. 104;

RELIANCE VARNISH WORKS. Docket 59. Complaint and original findings and order reported in 1 F. T. C. 98;

CHARLES R. LONG, JR., Co. Docket 78. (Paints and kindred products.) Complaint and original findings and order reported in 1 F. T. C. 103.

THE ACME WHITE LEAD & COLOR WORKS. Docket 146. (Paints and kindred products.) Complaint and original findings and order reported in 1 F. T. C. 104;

G. J. LIEBICH. Docket 151. (Paints, varnish and kindred products.) Complaint and original findings and order reported in 1 F. T. C. 104;

THE ROYAL VARNISH Co. Docket 152. Complaint and original findings and order reported in 1 F. T. C. 194;

THE WHEELER VARNISH WORKS. Docket 154. Complaint and original findings and order reported in 1 F. T. C. 104; and

TWIN CITY VARNISH Co. OF ILLINOIS. Docket 169. Complaint and original findings and order reported in 1 F. T. C. 190.

IN THE MATTER OF
MINNEAPOLIS WOOLEN MILLS COMPANY, INC.

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

Docket 1336—June 7, 1926

SYLLABUS.

Where a corporation engaged in the sale of blankets, sweaters, underwear, flannel shirts, suits and clothing to retail dealers and direct to consumers through traveling salesmen and advertisements, and neither owning, operating nor controlling any mill or factory, nor then manufacturing any of the merchandise sold by it, used as a corporate name a name which included the words "woolen mills," and featured the same in its newspaper advertising and in its circulars, price lists, letterheads, order blanks and other trade literature; with the effect of misleading and deceiving the trade and a substantial portion of the purchasing public and of inducing the purchase of said merchandise from it by them as from the manufacturer thereof, in the belief they were effecting a saving in cost by the elimination of the middleman's profit, and of thereby unfairly diverting trade from and prejudicing competitors engaged in the manufacture and sale of such merchandise to the consuming public, and competitors neither manufacturing the merchandise dealt in by them, nor representing themselves as so doing:

Held, That such misleading use of corporate name, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. O. R. Stites and Mr. Alfred M. Craven for the Commission.
Shearer, Byard & Trogner, of Minneapolis, Minn., 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, a Minnesota corporation engaged in the sale of hosiery, knit goods of various kinds, woolen blankets, wool and cotton underwear, leather vests, flannel shirts, overcoats and similar merchandise, direct to consumers and to retail dealers in various States, with principal office and place of business in Minneapolis, with using misleading corporate name, misrepresenting business status, and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent, neither owning, controlling, nor operating any woolen mill or other factory since 1922, when it discontinued manufacturing, but purchasing the garments sold by it, from the stock of manufacturers and others, used as its corporate name, the name "Minneapolis Woolen