

Complaint

IN THE MATTER OF

QUAKER CITY CHOCOLATE & CONFECTIONERY
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1773. Complaint, Mar. 11, 1930—Decision, Apr. 3, 1934

Where a corporation engaged in the manufacture and sale of candies, including assortments composed of, (a) chocolate covered penny candies, of uniform size and shape, and (b) larger pieces or articles of merchandise, acquisition of which, as prizes, without further charge, was determined by ultimate purchaser's chance selection of one of a relatively few of said chocolate covered candies, the enclosed concealed centers of which differed in color from that of the majority,

Sold such assortment to jobbers and wholesalers, in competition with concerns who do not offer and place in the hands of others additional candy or merchandise, to be given to purchasers by lot or chance, and in competition with candies, a substantial amount of which is sold by retailers without any such immoral scheme or device connected therewith, and sale of which is adversely affected by that of the candy with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase its candies in preference to those of competitors because of the chance of securing certain pieces or other merchandise, free of charge, competitors who do not follow such a practice were put to a disadvantage, and trade was diverted from them to it and others using similar methods, gambling, and especially among children, was encouraged, a chance or lottery, instead of candy was merchandised, retailers were provided with the means of violating the laws and public policy of many of the States in selling and distributing candy by lot or chance, the industry was injured, and freedom of fair and legitimate competition therein was restrained and impaired:

Held, That such practices, under the circumstances set forth, were to the prejudice of competitors and the public, and constituted unfair methods of competition.

Mr. Henry C. Lank and Mr. G. Ed. Rowland for the Commission.

COMPLAINT

Acting in the public interest, pursuant to 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", the Federal Trade Commission charges that the Quaker City Chocolate & Confectionery Co., a corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of the said Act, and states its charges in that respect, as follows:

PARAGRAPH 1. The respondent is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business located at 2134-2160 Germantown Avenue in the city of Philadelphia, State of Pennsylvania. It is now and for more than five years last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and causes said products when so sold to be transported from its said principal place of business in the city of Philadelphia, State of Pennsylvania, into and through other States of the United States to said purchasers. In the course and conduct of its said business respondent is in competition with other individuals, partnerships and corporations engaged in the manufacture of candies and in the sale and distribution thereof in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent sells to wholesalers and jobbers certain packages or assortments of candies. The said assortments of candies are composed of a number of pieces of chocolate-covered candies of uniform size and shape together with a number of larger pieces of candy and/or certain other merchandise, which larger pieces of candy or articles of merchandise are to be given as prizes to purchasers of said chocolate-covered candies in the following manner:

The majority of the said chocolate covered candies in said assortments have the same colored centers, but a small number of said chocolate covered candies have centers of a different color. The pieces of candy of uniform size and shape in said assortment retail at the price of 1 cent each but the purchaser who procures one of said candies having a center of a different color than the majority of said candies is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to and/or one of the articles of merchandise heretofore referred to. The aforesaid purchaser of said candies who procures a candy having a center colored different from the majority of said pieces of candy is thus to

procure one of the said larger pieces of candy or one of the said articles of merchandise wholly by lot or chance.

PAR. 3. The aforesaid wholesale or jobber customers of respondent resell said assortments of candies to retail dealers in various States of the United States and said retail dealers expose said assortments for sale and sell said candies to the purchasing public according to the aforesaid plan or plans whereby the purchaser of said candies having a particular colored center procures and receives free of charge one of the said larger pieces of candy and/or articles of merchandise hereinbefore referred to. Respondent thus supplies to and places in the hands of others a means of conducting a lottery whereby said larger pieces of candy and/or articles of merchandise are distributed by said dealers to the purchasing public wholly by lot of chance in connection with respondent's said sales plan.

PAR. 4. Among the competitors of respondent referred to in paragraph 1 hereof are many who sell chocolate and other candies at wholesale, and who do not offer and place in the hands of others any additional candies or other merchandise to be given to purchasers by chance or otherwise. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase respondent's said candies in preference to the candies of respondent's said competitors because of the chance of obtaining certain pieces of candy or other merchandise free of charge. For about five years last past respondent has engaged in the acts and practices under the conditions and circumstances and with the results all hereinbefore set out.

PAR. 5. Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

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, Quaker City Chocolate & Confectionery Co., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

The respondent entered its appearance herein and entered into a stipulation with the chief counsel of the Federal Trade Commission

whereby it was admitted that the facts set forth in the said complaint, Docket No. 1773, as to respondent's methods of competition in the sale and distribution of candy were true, and whereby it was agreed that immediately upon the affirmance by a United States Circuit Court of Appeals, or the Supreme Court of the United States, of an order to cease and desist, issued by the Commission against a respondent in a contested proceeding, involving practices or methods of sale of candy identical with or similar to those used by the respondent herein, the Federal Trade Commission might, without further proceedings of any kind, or notice to respondent, make and issue its findings as to the facts and conclusion, declaring the methods of sale and distribution as used by respondent herein to be unfair methods of competition, and issue its order requiring said respondent to cease and desist from such unfair methods of competition; and said respondent agreed to be bound by and obey said order to cease and desist. It was further agreed that said respondent admitted the facts alleged in paragraphs 1, 2, and 3 of said complaint to be true and that said stipulation might be accepted as an answer on behalf of the respondent to the charges of said complaint in lieu of any other answer to be filed by said respondent. Thereafter the Supreme Court of the United States on February 5, 1934, reviewed an order to cease and desist issued by this Commission against R. F. Keppel & Brother, Inc., and therein the said Supreme Court of the United States held methods of sale identical with or similar to those used by respondent herein to be unfair methods of competition. [291 U. S. 304; this volume, p. 684, et seq.]

Thereupon this proceeding came on for final hearing on the complaint and stipulation above referred to, and the Commission having duly considered the record and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Quaker City Chocolate & Confectionery Co., is a corporation organized under the laws of the State of Pennsylvania with its principal office and place of business in the city of Philadelphia, State of Pennsylvania. Respondent is now, and for more than eight years last past, has been engaged in the manufacture of candy in said city and State and in the sale and distribution of said candy to wholesalers and jobbers in the State of Pennsylvania and other States of the United States. It causes the said candy, when sold, to be shipped or transported from its prin-

cipal place of business in the State of Pennsylvania to purchasers thereof in the States of the United States other than the State of Pennsylvania. In so carrying on said business respondent is and has been engaged in interstate commerce, and is and has been in active competition with other corporations, partnerships, and individuals engaged in the manufacture of candy, and in the sale and distribution of the same, in interstate commerce.

PAR. 2. In the course and conduct of its business as described in paragraph 1 above, the respondent has been selling to wholesalers and jobbers certain packages or assortments of candies. The said assortments of candy are composed of a number of pieces of chocolate-covered candy of uniform size and shape, together with a number of larger pieces of candy, or certain other articles of merchandise, which larger pieces of candy or articles of merchandise are to be given as prizes to purchasers of said chocolate-covered candies in the following manner:

The majority of the said chocolate-covered candies in said assortments have the same colored centers, but a small number of said chocolate-covered candies have centers of a different color. The pieces of candy of uniform size and shape in said assortment retail at the price of one cent each, but the purchaser who procures one of said candies having a center of a different color than the majority of said candies, is entitled to receive, and is to be given free of charge, one of the said larger pieces of candy heretofore referred to, or one of the articles of merchandise heretofore referred to. The aforesaid purchaser of said candies who procures a candy having a center colored different from the majority of said pieces of candy thus procures one of the said larger pieces of candy, or one of the said articles of merchandise, wholly by lot or chance.

PAR. 3. The aforesaid wholesale or jobber customers of respondent resell said assortments of candies to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale and sell said candies to the purchasing public according to the aforesaid plan or plans, whereby the purchaser of said candies having a particular colored center procures and receives free of charge one of the said larger pieces of candy or articles of merchandise hereinbefore referred to. Respondent thus supplies to and places in the hands of others a means of conducting a lottery whereby said larger pieces of candy, or articles of merchandise, are distributed by said dealers to the purchasing public wholly by lot or chance in connection with respondent's said sales plan.

PAR. 4. Among the competitors of respondent referred to in paragraph 1 hereof are many who sell chocolate and other candies at

Conclusion

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wholesale, and who do not offer and place in the hands of others any additional candies or other merchandise to be given to purchasers by lot or chance or otherwise. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase respondent's said candies in preference to the candies of respondent's said competitors because of the chance of obtaining certain pieces of candy, or other merchandise, free of charge. For about eight years last past respondent has engaged in the acts and practices under the conditions and circumstances, and with the results all hereinbefore set out.

PAR. 5. The sale and distribution of candy by the retailers by the methods described herein is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device. A substantial amount of candy is sold by retailers without any feature of lot or chance and not as a lottery or gaming device, and the sale of candy by lot or chance, as used by the respondent, is in direct competition with candy which is sold without any lot or chance feature, and the sale of candy without a lottery or gaming feature in connection therewith is adversely affected by the sale of candy with the lottery or gaming feature.

PAR. 6. The Commission finds that the method of selling and distributing candy as above described is morally bad and encourages gambling, especially among children; is injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy; and provides retail merchants with the means of violating the laws of the several States. As stated above, many competitors of respondent do not sell candy so packed and assembled that it can be resold to the public by lot or chance. The Commission finds that these competitors are therefore put to a disadvantage in competing, and that trade is diverted to respondent and others using similar methods, from said competitors. The use of such methods by respondent in the sale and distribution of candy is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 7. The sale and distribution of candy by lot or chance is against the public policy of many of the several States of the United States, and some of said States have laws making lotteries and gaming devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondent, Quaker City Chocolate & Confectionery Co., under the conditions and circum-

stances set forth in the foregoing findings of facts, are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce, and constitute a violation of Section 5 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."

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission upon the complaint of the Commission, the stipulation entered into between the respondent and the chief counsel for the Federal Trade Commission, and the Commission having made its findings as to the facts and conclusion drawn therefrom 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, Quaker City Chocolate & Confectionery Co., its officers, agents, representatives, and employees, in the manufacture, sale, and distribution in interstate commerce of candy and candy products do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages or assortments of candy which are used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of chocolate-covered candy of uniform size, shape and quality, having centers of different colors, together with larger pieces of candy or articles of merchandise, which said larger pieces of candy, or articles of merchandise, are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(4) Furnishing to wholesale dealers, jobbers and retail dealers display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend, or legends, or statements, informing the purchaser that the candy or candy products are being

sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(5) Furnishing to wholesale dealers, jobbers and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public that upon the obtaining by the ultimate purchaser of a piece of candy having a particular colored center that a larger piece of candy, or other article of merchandise, will be given free to said purchaser.

It is further ordered, That the respondent above-named within 30 days after the service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

MEMORANDA

The Commission as of the same date made 47 other findings and/or orders in the candy lottery cases, including in this number three cases involving sale of chewing gum by this method.

Twenty of these involve the use of the same scheme set forth in *Quaker City Chocolate* findings above, namely, sale of assortments in which the chance selection of a certain piece differing in color from that of the majority, entitles the purchaser to a prize in the form of a larger piece, or article of merchandise, and in which the purchaser of the last piece in the assortment is also, in some cases, awarded such a prize.

Ten of the cases involve the use of a scheme in which there is concealed within the individual wrappers enclosing the separate bars or other pieces of candy making up the assortment, a slip containing the figure 1¢, 2¢, 3¢ (and also, in the case of some, 4¢, or 5¢) as the price to be paid by the consumer to the retailer, depending on the former's chance selection. These are reported in the case of *Minter Brothers*, Docket 1785, and following memoranda, 18 F. T. C. 287, 295, et seq.

Four of the cases involve the use of a scheme in which a relatively few of the individually wrapped pieces or bars making up the assortment, contain a concealed slip advising the purchaser in so many words, or through the presence of some particular legend thereon, as preannounced, that he is entitled to a prize in the shape of additional candy in some form or other, as arranged in the case of the particular assortment, or in some cases, to some article of merchandise included with the assortment. Some of the assortments also provide that the purchaser of the last of the original units making up the assortment is likewise to receive a prize in the form of candy

or merchandise. They are reported in the case of *Advance Candy Co., Inc.*, Docket 1792, and accompanying memoranda, 18 F. T. C. 298, 305, et seq.

Three of the cases involve the sale of chewing gum through the use of concealed colors, similar to the schemes set forth and described in the *Quaker City Chocolate case*, *supra*, and following memoranda at pages 269 and 278, et seq. They are reported in *International Gum Corp.*, Docket 1799 and following memoranda, 18 F. T. C. 308, 316.

Four of the cases involve the sale of two or more types of assortments, based on different schemes above outlined. They are reported in the case of *Johnson-Fluker Co.*, Docket 1831, and following memoranda, 18 F. T. C. 317, 326, et seq.

Four of the cases involve the sale of assortments in which a few of the individually wrapped bars, or pieces of candy making up the same, contain an enclosed concealed slip advising the chance purchaser that the particular piece, or bar, is free. They are reported in the case of *Curtiss Candy Co. et al.*, Docket 1853, and following memoranda, 18 F. T. C. 329, 337, et seq.

Two of the cases involve the sale of candy making up the assortments, with punch boards, in which the color of the ball punched, or number of the ticket or slip, decides the kind of candy, or article, if any, the purchaser is to receive for his punch. They are reported in the case of *Rittenhouse Candy Co.*, Docket 2071 and following memorandum, 18 F. T. C. 339, 346, et seq.

Of the twenty cases which were referred to as involving the use of the same scheme as that set forth in the *Quaker City Chocolate case* above, five involve findings and orders based upon respondent's stipulations similar to that set forth in the paragraph of the *Quaker City Chocolate case*, *supra*, on pages 271, 272, and fifteen involve consent orders, the orders in both groups being similar except as required to take care of variations in the exact nature of the assortment, and the presence or absence of explanatory display cards.¹

¹ Thus the order in the case of *Elmer Candy Co.*, Docket 1788, the first of the group, requires that respondent, its agents, etc., in the manufacture, sale and distribution in interstate commerce of candy and candy products do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages or assortments of candy which are used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of chocolate-covered candy of uniform size, shape and quality,

Notes of the five findings and orders referred to, together with dates on which complaints issued, follow:

Elmer Candy Co., Docket 1788—Complaint, April 28, 1930.—Respondent manufacturer, with principal office and place of business in New Orleans, sells to wholesalers and jobbers, packages or assortments of chocolate-covered penny candies of uniform size, shape and quality, together with a number of larger pieces, or articles of merchandise, given as prizes to the chance purchaser procuring a piece with a different colored center from that of the majority. Explanatory display cards, for retailer's use in offering the candies to the public, are furnished by respondent "to said wholesale and retail dealers and jobbers with each of said packages or assortments".

Pasquale Margarella, Docket 1790—Complaint, April 29, 1930.—Respondent manufacturer, with principal office and place of business in New York City, sells to wholesalers and jobbers, packages or assortments of chocolate covered penny candies, for sale under a plan similar to that described in the *Elmer Candy case* above, except that the purchaser of the last of said chocolate covered candies is also to receive one of the larger pieces of candy, or articles of merchandise, included with the assortment. Respondent also furnishes explanatory display cards, as above set forth.

Metro Chocolate Co., Inc., Docket 1808—Complaint, May 1, 1930.—Respondent manufacturer, with principal office and place of business in New York City, sells to wholesalers and jobbers, certain packages or assortments of two types, namely, (1) assortments composed of a number of individually wrapped, small, penny pieces of hard candy of uniform quality, size and shape, together with a number of larger pieces, and (2) chocolate covered penny candies of uniform size, etc., together with a number of larger pieces, or articles of merchandise, which pieces or articles of merchandise, as the case may be, are given to the chance purchaser of a piece of hard candy flavored or colored differently from the majority thereof, or of a chocolate

having centers of different color, together with larger pieces of candy, or articles of merchandise, which said larger pieces of candy, or articles of merchandise, are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(4) Furnishing to wholesale dealers, jobbers and retail dealers display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend, or legends, or statements, informing the purchaser that the candy or candy products are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(5) Furnishing to wholesale dealers, jobbers and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public:

(a) That upon the obtaining by the ultimate purchaser of a piece of candy having a particular colored center that a larger piece of candy, or other article of merchandise will be given free to said purchaser.

covered penny candy having a concealed center which differs from that of the majority, or to the purchaser of the last piece or unit in the respective assortments. Explanatory display cards are supplied for retailer's use in offering such candies for sale.

Chris Baruxes et al., doing business as *Brux Candy Co.* and *C. Baruxes & Sons*, Docket 1892—Complaint, January 9, 1931.—Respondent partners, manufacturers, with principal office and place of business in Newark, Ohio, sell to wholesale and retail dealers and jobbers, packages or assortments of chocolate-covered penny candies for sale under a merchandising scheme similar to that above described.

Benjamin Weisberg, doing business as *D. Arnould Co.*—Docket 1907—Complaint, January 23, 1931.—Respondent manufacturer, with principal office and place of business in New York City, sells to wholesale dealers and jobbers, a certain package or assortment of candies known and designated by it as "Lady Luck", and composed and sold, as described in the findings, as follows:

The said assortment of candies is composed of 150 small chocolate-covered candy wafers of uniform size, shape and quality, together with 10 larger pieces of candy and two small boxes each containing 10 pieces of chocolate-covered candy, which larger pieces of candy and small boxes of candy are to be given as prizes to purchasers of said chocolate-covered wafers in the following manner:

One hundred and thirty-eight of the said chocolate-covered candy wafers of uniform size, shape and quality in said assortment have white centers; 10 of the said chocolate-covered candy wafers have pink centers; and 2 of the said chocolate-covered candy wafers have brown centers. The color of the centers of the said chocolate-covered candy wafers are effectively concealed from the prospective purchaser. The said chocolate-covered wafers of uniform size, shape and quality in said assortment retail at the price of one cent each but the purchaser who procures one of the said chocolate-covered candy wafers having a pink center is entitled to receive and is to be given free of charge one of the larger pieces of candy heretofore referred to, and the purchaser who procures one of the said chocolate-covered wafers having a brown center is entitled to receive and is to be given free of charge one of the boxes containing 10 pieces of chocolate-covered candy heretofore referred to. The afore-said purchasers of said chocolate-covered candy wafers who procure a candy having a pink center or a brown center are thus to procure one of the said larger pieces of candy or one of the said boxes containing 10 pieces of candy wholly by lot or chance.

Notes of the fifteen consent orders above referred to, together with dates on which complaints issued, follow:

Voneiff-Drayer Co., Docket 1724—Complaint, November 21, 1929.—Respondent manufacturer, with principal office and place of business in Baltimore, sells to wholesale dealers, certain packages or assortments of chocolate-covered candies, which it names and designates as “Vee-dee” and which are described in paragraphs 2 and 3 of the complaint, as follows:

Said packages or assortments of candies are composed of three assortments, called respectively, “Bar Assortment”, “Package Assortment”, and “Blank Assortment.” Each of said assortments of candies are composed of a number of chocolate-covered pieces of candy, of uniform size and shape, which are sold at retail at the uniform price of 1 cent each, together with a number of larger pieces of candy known as “Bars” or “Patties”, which are to be given as prizes to purchasers of said chocolate-covered candies, in the following manner:

Among aforesaid chocolate-covered candies are a number having colored centers, and when said packages of candies are displayed for sale to the consuming public every purchaser of aforesaid chocolate-covered candies at the price of 1 cent each who procures one of said candies having a colored center is entitled to receive, and is to be given free of charge, one of the “Bars” or “Patties” heretofore referred to. Also included in the assortments known as “Bar Assortment” and “Package Assortment” is a larger piece of candy known as a “Bar” or “Patty”, and a 4-ounce box of chocolates, respectively. The purchaser of the last piece of aforesaid chocolate covered candies at the price of 1 cent each in each of said assortments of candies, respectively, is entitled to receive, and is to be given free of charge, said “Bar” or “Patty”, or said 4-ounce box of chocolates. Aforesaid purchasers of said candies who procure candies having a colored center, or who purchase the last piece of candy in each of said assortments, are thus to procure one of said larger pieces of candy, or a box of 4-ounce chocolates, wholly by lot or chance.

The package or assortment of candies known as “Blank Assortment” contains a number of pieces having a colored center, as in the other two assortments aforesaid, but the larger pieces of candy which are to be given as prizes to purchasers of the candy having colored centers, are not supplied by respondent but are supplied to the retailer by the wholesale dealer to whom respondent sells the assortment, and such larger pieces of candy or prizes are wholly within the discretion of said wholesale dealer.

Respondent furnishes with each of said packages or assortments of candies called "Bar Assortment" and "Package Assortment", a display card to be used by the retailer in offering said candies for sale, which display card bears a legend and statement informing the reader that persons purchasing said candies having a colored center, and purchasing the last piece of candy in each of said assortments, will receive one of said larger pieces of candy free of charge.

Aforesaid wholesale dealers of respondent resell said "Vee-Dee" Assortments to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale in connection with aforesaid explanatory card and sell said candies to the purchasing public according to aforesaid plan, whereby the purchaser of said candies having colored centers and the purchaser of the last piece of candy in said assortments procure and receive free of charge one of said larger pieces of candy, or a 4-ounce box of chocolates, hereinbefore referred to. Respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said larger pieces of candy and 4-ounce boxes of chocolates are distributed and given to the purchasing public wholly by lot or chance.

Lewis Bros., Inc., Docket 1761—Complaint, February 17, 1930.—Respondent manufacturer, with principal office and place of business in Newark, N. J., sells to wholesalers and jobbers, certain packages or assortments of chocolate covered penny candies of three types (together with appropriate explanatory display cards for each), as follows: The "Winabar", composed of a number of boxes of chocolate covered candies, of uniform size, etc., together with a number of larger pieces in which the chance purchaser, for 1 cent, of one of a relatively few pink enclosed centers, is entitled to one of the larger pieces; the "New York to Paris", composed of a number of chocolate covered pieces of uniform size and shape, together with a number of larger pieces, and certain toy aeroplanes, sold under a plan by which the chance purchaser of 1 of 7 orange enclosed centers in the assortment, receives 1 of the larger pieces, and the chance purchasers of the 2 pieces which have green enclosed centers receive prizes; and the "Winanegg" package, composed of a number of chocolate covered pieces of uniform size, quality, etc., together with a number of larger pieces, and 2 large decorated candy eggs, and sold under a plan by which the chance purchaser, for a penny, of 1 of 8 orange enclosed centers receives 1 of the larger pieces, and the purchasers of the 2 green enclosed centers receive the candy eggs.

Heidelberg Confectionery Co., Docket 1772—Complaint, March 11, 1930.—Respondent manufacturer, with principal office and place

of business in Philadelphia, sells to wholesalers and jobbers, certain packages or assortments of chocolate-covered penny candies, together with a number of larger pieces and/or certain other merchandise given as prizes, to the chance purchaser of one of a relatively few pieces, the color of the enclosed concealed centers of which differs from that of the majority.

Hardie Bros. Co., Docket 1786—Complaint, April 28, 1930.—Respondent manufacturer, with principal office and place of business in Pittsburgh, sells to wholesalers and jobbers, certain packages or assortments of chocolate-covered penny candies, together with a number of larger pieces and/or articles of merchandise, to be given as prizes to change purchasers of one of a relatively few of said candies, the color of the concealed centers of which differs from that of the majority, or to the purchaser of the last of said chocolate-covered pieces in the assortment.

Luden's Inc., Docket 1789—Complaint, April 28, 1930.—Respondent manufacturer, with principal office and place of business in Reading, Pa., sells to wholesalers and jobbers, certain packages or assortment of chocolate-covered penny candies of uniform size, etc., together with a number of larger pieces and/or certain other merchandise, given as prizes to the change purchaser of one of a relatively few pieces having enclosed concealed centers of a different color from that of the majority, or to the purchaser of the last one of said chocolate-covered candies in the assortment, and furnishes to said wholesale dealers and jobbers, with each package or assortment, explanatory display cards for the retailer's use in offering the candies for sale.

National Candy Co., Docket 1802—Complaint, April 30, 1930.—Respondent manufacturer, with principal office and place of business in St. Louis, sells to wholesale and retail dealers and jobbers, certain packages or assortments of chocolate-covered, 2-for-a-cent candies, together with certain articles of merchandise given as prizes to the chance purchaser of one of said candies, the color of the enclosed concealed center of which differs from that of the majority of said candies, or to the purchaser of the last piece of said candies in the particular assortment, and furnishes to said wholesale and retail dealers and jobbers explanatory display cards for the retailer's use in offering the candies to the public.

American Candy Co., Docket 1807—Complaint, May 1, 1930.—Respondent manufacturer, with principal office and place of business in Milwaukee, sells to wholesalers and jobbers, certain packages or assortments of chocolate-covered penny candies of uniform size, etc., together with (1) a number of larger pieces of candy, to be

given as prizes to the chance purchaser of one of a small number of said chocolate-covered pieces, the color of the enclosed concealed center of which differs from that of the majority, and (2) one still larger piece of candy and/or article of merchandise to be given as a prize to the purchaser of the last piece of said chocolate-covered candies in the assortment, and furnishes to said wholesale dealers and jobbers with each package or assortment, explanatory display cards for retailer's use in offering such candies to the public.

Bunte Brothers, Inc., Docket 1811—Complaint, May 1, 1930.—Respondent manufacturer, with principal office and place of business in Chicago, sells to wholesalers and jobbers, certain packages or assortments of chocolate-covered penny candies of uniform size, etc., together with larger pieces and/or articles of merchandise to be given as prizes to the chance purchaser of one of a small number of said candies, the color of the enclosed concealed centers of which differs from that of the majority, or to the purchaser of the last piece of said chocolate candies in the assortment, and furnishes to said wholesalers and jobbers with each package or assortment, an explanatory display card for the retailer's use in offering such candies to the public.

Charles F. Adams, Inc., Docket 1812—Complaint, May 2, 1930.—Respondent manufacturer, with principal office and place of business in Lancaster, Pa., sells to wholesalers and jobbers, packages or assortments of chocolate-covered penny candies, of uniform size, etc., together with (1) a number of larger, 5-cent pieces, to be given as prizes to the chance purchaser of one of a small number of said chocolate-covered penny pieces, the color of the enclosed concealed center of which differs from that of the majority, and (2) a still larger 25-cent piece of candy, to be given as a prize to the purchaser of the last of said chocolate-covered penny candies in the assortment and furnishes to said wholesalers and jobbers with each package or assortment, an explanatory display card for the retailer's use in offering said candies to the public.

Edgar P. Lewis & Sons, Inc., Docket 1813—Complaint, May 2, 1930.—Respondent manufacturer, with principal office and place of business in Boston, sells to wholesalers and jobbers, certain packages or assortments of chocolate-covered penny candies of uniform size, etc., together with a number of larger pieces, and/or certain other merchandise, to be given as prizes to the chance purchaser of one of a small number of said chocolate-covered candies, the color of the enclosed concealed center of which differs from that of the majority, or to the purchaser of the last piece of said chocolate-covered candies in the assortment, and furnishes to said wholesale

dealers and jobbers with each package or assortment, an explanatory display card for the retailer's use in offering said candies to the public.

A. Karcher Candy Co., Docket 1849—Complaint, June 20, 1930.—Respondent manufacturer, with principal office and place of business in Little Rock, sells to retailers, wholesalers and jobbers, certain packages or assortments of chocolate-covered penny candies of uniform size, etc., together with a number of larger pieces and/or articles of merchandise to be given as prizes to the chance purchaser of a different colored center, or of the last piece in the assortment, as hereinbefore explained, and furnishes to said wholesale and retail dealers and jobbers, explanatory display cards for the retailer's use in offering said candies to the public.

Dilling & Co., Docket 1867—Complaint, October 23, 1930.—Respondent manufacturer, with principal office and place of business in Indianapolis, sells to retail dealers, certain packages or assortments of chocolate-covered penny candies of uniform size, etc., together with a number of larger pieces to be given as prizes to the chance purchaser of one of a few different colored centers, or the last piece, as hereinbefore explained, and furnishes to said retail dealers explanatory display cards for their use in offering said candies to the public.

J. N. Collins Co., Docket 1875—Complaint, November 13, 1930.—Respondent manufacturer, with principal office and place of business in Philadelphia, sells to wholesale and retail dealers and jobbers, certain packages or assortments of caramels, together with explanatory display cards for the retailer's use in offering the same to the public. Said assortments, known and designated by respondent as "Nip 'N' Tuck, the Red Head Twins", are described in the complaint as follows:

The said assortment of candies is composed of 300 small pieces of caramel candy of uniform size, shape and quality, together with 16 larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said caramel candies in the following manner:

The said 300 pieces of caramel candy of uniform size, shape and quality are each contained within a wrapper; 285 of the said pieces of caramel candy of uniform size, shape and quality are colored red; 10 of the said pieces of caramel candy are colored white; 5 of the said pieces of caramel candy are colored pink. The color of said pieces of caramel candy, however, is effectually concealed from the prospective purchaser by the aforesaid wrapper. The said pieces of caramel candy of a uniform size, shape and quality

in said assortment retail at the price of two for 1 cent, but the purchaser who procures one of the said pieces of caramel candy colored white or colored pink is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of aforesaid caramel candy of a uniform size, shape, and quality in said assortment is entitled to receive, and is to be given free of charge, one of the larger pieces of candy heretofore referred to. The aforesaid purchasers of said caramel candies who procure a candy colored white or colored pink and the purchaser of the last piece of caramel candy in said assortment are thus to procure one of the said larger pieces of candy wholly by lot or chance.

Blue Hill Candy Co., Docket 1917—Complaint, February 24, 1931.—Respondent manufacturer, with principal office and place of business in St. Louis, sells to wholesale and retail dealers and jobbers, certain packages or assortments of chocolate covered penny candies of uniform size, etc., together with a number of larger pieces to be given as prizes to the chance purchaser of one of a small number of said chocolate candies, the color of the enclosed concealed center of which differs from that of the majority, or to the purchaser of the last piece in the assortment, and furnishes to said wholesale and retail dealers an explanatory display card for the retailer's use in offering said candies to the public.

Fishback Candies, Inc., Docket 1962—Complaint, June 20, 1931.—Respondent manufacturer, with principal office and place of business in Indianapolis, sells to wholesale and retail dealers and jobbers, certain assortments of chocolate covered penny candies of uniform size, etc., together with a number of larger pieces and/or a small package of candy, to be given as prizes to the chance purchaser of one of a small number of said chocolate covered candies, the color of the enclosed concealed center of which differs from that of the majority, or to the purchaser of the last one of said chocolate covered candies in the assortment, as hereinbefore explained, and furnishes to said wholesale and retail dealers and jobbers explanatory display cards for the retailer's use in offering said candies to the public.

The appearances in the foregoing twenty cases were as follows:

Mr. Henry C. Lank and *Mr. G. Ed. Rowland*, for the Commission.

Mr. Edward Clifford, of Washington, D. C., for *Brux Candy Co.* (also doing business as *C. Baruxes & Sons*).

Mr. W. Parker Jones, of Washington, D. C., for *Voneiff-Drayer Co.*, *Luden's, Inc.*, *American Candy Co.*, *Bunte Bros. Co.*, and *Edgar P. Lewis & Sons, Inc.*

Memoranda

18 F.T.C.

Bilder, Bilder & Kaufman, of Newark, N. J., for Lewis Brothers, Inc.

Gartner & Lemisch, of Philadelphia, Pa., for Heidelberger Confectionery Co.

Lowenhaupt & Waite, of St. Louis, Mo., for National Candy Co.

Windolph and Mueller, of Lancaster, Pa., for Charles F. Adams, Inc.

Mr. Oren S. Hack, of Indianapolis, Ind., for Dilling & Co.

Syllabus

IN THE MATTER OF

IRA W. MINTER AND CLAYTON A. MINTER, COPARTNERS,
DOING BUSINESS UNDER THE NAME AND
STYLE OF MINTER BROTHERS¹COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1785. Complaint, Apr. 28, 1930—Decision, Apr. 3, 1934*

Where a firm engaged in the manufacture and sale of candy, including two types of assortments composed of, (1) 40 bars of uniform quality, size and shape, within the individual wrappers of which there was concealed a slip containing thereon the figure 1¢, 2¢, 3¢, 4¢ or 5¢, as the case might be, as the price to be paid by the consumer to the retailer, depending on former's chance selection, and (2) 48 bars of uniform quality, size and shape, within the individual wrappers of which there were similarly concealed slips containing the figures 1¢, 2¢ or 3¢, as the price to be paid, as aforesaid,

Sold such assortments, together with explanatory display cards for retailer's use in advising ultimate consumer or purchaser of sales plan, under which he might procure a bar at a price ranging from 1 cent to 5 cents, or 1 cent to 3 cents, depending upon the particular assortment, and his chance selection, to wholesalers and jobbers in competition with concerns who do not offer and place in the hands of others packages or assortments of candy available for sale and distribution, without rearrangement, by lot or chance, and in competition with candy, a substantial amount of which is sold by retailers without any such immoral feature of lot or chance connected therewith, and sale of which is adversely affected by that of candy with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase the candies of said firm in preference to those of competitors due to chance of obtaining one of the pieces therein contained at less than the maximum price of 5 cents or 3 cents, as the case might be, competitors who do not sell candy so packed and assembled that it can be resold to the public by lot or chance were put to a disadvantage, and trade was diverted from them to said firm and others using similar methods, the industry was injured, gambling, and especially among children, was encouraged, a chance or lottery, instead of candy, was merchandised, retailers were provided with the means of violating the laws or public policy of the several states in selling and distributing candy by lot or chance, the industry was injured, and freedom of legitimate competition therein was restrained and impaired:

¹ For descriptive summary of the group of candy lottery findings and/or orders made by the Commission as of the same date, and including this case, see pp. 269, 276, 277.