

IN THE MATTER OF
ADVANCE CANDY COMPANY, INC.¹

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

Docket 1792. Complaint, Apr. 29, 1930—Decision, Apr. 3, 1934

Where a corporation engaged in the manufacture and sale of candy, including assortments composed of (a) a number of individually wrapped, penny pieces of hard candy of uniform quality, size and shape, and, (b) a small number of 5-cent packages of such candies, acquisition of which as prizes, and at no additional charge, was determined by the purchaser's chance selection of one of a relatively few of said penny pieces, included with the others, within the individual wrapper of which there was concealed a slip of paper so stating, and (c) a 10-cent package of such candies awarded as a prize, without additional charge, to the purchaser of the last one of the aforesaid penny pieces in the assortment,

Sold said assortments, together with explanatory display cards for retailer's use in advising prospective purchasers of the aforesaid merchandise plan, to wholesalers and jobbers in competition with concerns who do not offer and place in the hands of others additional candies or other merchandise to be given to purchasers by lot, chance or otherwise, and in competition with candy, 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 features;

With result that many of the consuming public were induced to purchase its said candies in preference to those of competitors because of the chance of obtaining as a prize a 5-cent package, or 10-cent package, of candy, 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 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 or 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.

¹For 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.

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 Advance Candy Co., Inc., a corporation, hereinafter referred to as 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 as follows:

PARAGRAPH 1. The respondent is a corporation organized under the laws of the State of New York, with its principal office and place of business located in the City of New York, State of New York. 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 New York, State of New York, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of the 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 the 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. Said assortments consist of a number of pieces of hard candy of a uniform quality, size, and shape, which pieces of candy retail at the price of 1 cent each. Each of said pieces of candy is contained within a wrapper, and a small number of said pieces of candy contain a slip of paper stating that the purchaser thereof is entitled to a 5-cent package of hard candies as a prize, and at no additional charge. The said printed slip is effectually concealed from the consumer until he has removed the wrapper. The purchaser of the last piece of candy of a uniform quality, size and shape at the price of 1 cent is entitled to receive a 10-cent package of hard candies as a prize, and at no additional charge. The aforesaid purchasers of said candies who procure a piece of candy containing a slip entitling them to a prize, or who purchase the last piece of candy in said assortments, are thus to procure one of the aforementioned prizes wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with each of said packages or assortments of candy heretofore referred to

a display card to be used by the retailer in offering said candies for sale to the public, which display card informs the prospective purchaser that the said candies are sold in accordance with the aforementioned sales plan of the respondent.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale in connection with aforesaid display card, and sell said candies to the purchasing public according to aforesaid plan whereby the purchaser of one of the said candies containing a slip entitling him to a prize, and the purchaser of the last piece of candy in said assortments, procure and receive free of charge one of the said prizes hereinbefore referred to. The respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said 5-cent and 10-cent packages of hard candies are distributed to the purchasing public wholly by lot or chance in connection with respondent's said sales plan.

PAR. 4. 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 as a prize one of the 5-cent packages of candy or the 10-cent package of candy.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's competitors, 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, Advance Candy Co., Inc., 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. 1792, 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.]

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, Advance Candy Co., Inc., is a corporation organized under the laws of the State of New York with its principal office and place of business in the City of New York, State of New York. 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 New York and other States of the United States. It causes the said candy, when sold, to be shipped or transported from its principal place of business in the State of New York to purchasers thereof in the States of the United States other than the State of New York. 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 hereof, the respondent sells to wholesalers and jobbers certain packages or assortments of candies. Said assortments consist of a number of pieces of hard candy of uniform quality, size, and shape, which pieces of candy retail at the price of 1 cent each. Each of said pieces of candy is contained within a wrapper, and a small number of said pieces of candy contain a slip of paper stating that the purchaser thereof is entitled to a 5-cent package of hard candies as a prize, and at no additional charge. The said printed slip is effectively concealed from the consumer until he has removed the wrapper. The purchaser of the last piece of candy of a uniform quality, size and shape at the price of 1 cent is entitled to receive a 10-cent package of hard candies as a prize, and at no additional charge. The aforesaid purchasers of said candies who procure a piece of candy containing a slip entitling them to a prize, or who purchase the last piece of candy in said assortments, are thus to procure one of the aforementioned prizes wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with each of said packages or assortments of candy heretofore referred to a display card to be used by the retailer in offering said candies for sale to the public, which display card informs the prospective purchaser that the said candies are sold in accordance with the aforementioned sales plan of the respondent.

PAR. 3. The aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale in connection with aforesaid display card, and sell said candies to the purchasing public according to aforesaid plan whereby the purchaser of one of the said candies containing a slip entitling him to a prize, and the purchaser of the last piece of candy in said assortments, procure and receive free of charge one of the said prizes hereinbefore referred to. The respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said 5-cent and 10-cent packages of hard candies are distributed 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 candies at wholesale and 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 as a prize one of the 5-cent packages of candy or the 10-cent package of candy. 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, Advance Candy Co., Inc., under the conditions and circumstances 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

Order

18 F.T.C.

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, Advance Candy Co., Inc., 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 candy of uniform size, shape and quality, some of which pieces of candy contain within their wrappers slips of paper or tickets stating that the purchaser thereof is entitled to a package or larger piece of candy as a prize.

(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

Memoranda

sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public:

(a) That certain pieces of candy in a package or assortment contain slips of paper or tickets entitling the purchaser to a package or larger piece of candy as a prize.

(b) That upon purchasing the last piece of candy in the package or assortment a package or larger piece of candy will be given as a prize.

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 three consent orders² involving the use of the same sort of scheme set forth in the *Advance Candy case* above, namely, sale of individually wrapped candies, with a concealed slip which entitles the chance purchaser to an additional piece of candy or article of merchandise, as a prize.

Notes of the cases referred to, together with dates on which complaints issued, follow:

Pecheur Lozenge Co., Docket 1798—Complaint, April 30, 1930.—Respondent manufacturer, with principal office and place of business in New York City, sells to wholesalers and jobbers, together with explanatory display cards for retailer's use in offering said candies, certain assortments described in the complaint as follows:

Said Assortments of candies are composed of a number of rolls of candy wafers of assorted flavors, together with a number of larger rolls of candy wafers of assorted flavors, the larger rolls of candy wafers to be given as prizes to purchasers of the smaller rolls of candy wafers in the following manner:

The small rolls of candy wafers are of a uniform quality and size, and are contained within a wrapper. The majority of said small rolls of candy wafers are composed wholly of wafers of solid colors, but a small number of said rolls contain a wafer having printed thereon "Luckee Fella." This "Luckee Fella" wafer is effectually concealed from the ultimate purchaser by the wrapper within which the wafers are contained. The small rolls of candy wafers of a uniform quality, size, and shape in said assortment retail at the price of 1 cent each, but the purchaser who procures one of said rolls of

² The first of said consent orders was predicated upon the reaching of a decision in a test case, as was done in the *Keppel case*, 291 U. S. 304, deciding that the sale of candy, by such lottery methods as herein involved, constitutes an unfair method of competition.

candy wafers having a "Luckee Fella" wafer therein is entitled to receive, and is to be given free of charge, one of the said larger rolls of candy wafers heretofore referred to. The purchaser of the last roll of small candy wafers in each of said assortments is entitled to receive, and is to be given free of charge, one of the said larger rolls of candy wafers. The aforesaid purchasers of said candies who procure a roll containing the "Luckee Fella" wafer, or who purchase the last small roll of wafers in said assortment, are thus to procure one of the said larger rolls of candy wafers wholly by lot or chance.

American Caramel Co., Inc., Docket 1806—Complaint, May 1, 1930.—Respondent manufacturer, with principal office and place of business in Lancaster, Pa., sells to wholesalers and jobbers, together with explanatory display cards for retailer's use in offering said candies to the public, certain packages or assortments described in the complaint as follows:

The said assortments of candies are composed of a number of pieces of candy of a uniform quality, size, and shape together with certain articles of merchandise, which articles of merchandise are to be given as prizes to purchasers of said candies in the following manner:

The said pieces of candy of uniform quality, size, and shape in said assortment retail at the price of 5 cents each, and contained within the wrapper of a small number of the said pieces of candy in said assortment are printed slips which entitle the purchaser thereof to one of the articles of merchandise heretofore referred to. The purchaser of the last piece of the aforesaid candies in each of said assortments is entitled to receive and is to be given free of charge one of the said articles of merchandise hereinbefore referred to. The aforesaid purchasers of said candies who procure a candy containing a printed slip within the wrapper thereof and the purchaser of the last piece of candy in said assortments are thus to procure one of the said articles of merchandise wholly by lot or chance.

Mells Manufacturing Co., Docket 1870.—Complaint, October 30, 1930.—Respondent manufacturer, with principal office and place of business in New York City, sells to wholesale and retail dealers and jobbers, certain packages or assortments of candies, the nature and sale of which are described in the complaint as follows:

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

The said pieces of chocolate candies are each contained within a wrapper but the respondent furnishes with each of the aforementioned assortments, when requested, a small number of paper slips having the word "Lucky" printed thereon. These printed slips are to be inserted in the wrappers of a like number of chocolate candies and distributed among the remaining chocolate candies in the assortment and when the said slips are so inserted and distributed among the assortment they are effectually concealed from the prospective purchasers by the aforesaid wrapper. The said pieces of chocolate candy of a 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 candies containing one of the paper slips with the word "Lucky" printed thereon within the wrapper is entitled to receive and is to be given free of charge one of the said caramel candies heretofore referred to. The aforesaid purchaser of said candies who procures a candy containing within the wrapper thereof one of the paper slips with the word "Lucky" printed thereon is thus to procure one of the said pieces of caramel candy wholly by lot or chance.

Aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in the various States of the United States and said retail dealers and retail dealers to whom the respondent sells direct expose said assortments for sale and sell said candies to the purchasing public according to the aforesaid plan whereby the purchasers of said candies containing a paper slip with the word "Lucky" printed thereon within the wrapper procure and receive free of charge one of the said caramel candies hereinbefore referred to. Respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said pieces of caramel candy are distributed to the purchasing public wholly by lot or chance in accordance with respondent's said sales plan.

The appearances in the foregoing group of cases were as follows:

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

Mr. Henry H. Snelling, of Washington, D. C., for American Caramel Co., Inc.

Mr. Nathan Feldman, of New York City, for Mells Manufacturing Co.

IN THE MATTER OF
INTERNATIONAL GUM CORPORATION¹

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

Docket 1799. Complaint, Apr. 30, 1930—Decision, Apr. 3, 1934

Where a corporation engaged in the manufacture and sale of chewing gum, including assortments composed of (a) individually wrapped, penny pieces of uniform size, shape and quality, and (b) a number of larger pieces or articles of merchandise, acquisition of which larger pieces or articles as prizes was determined by the purchasers' chance selection of one of a relatively few of said penny pieces, the color of which differed from that of the majority of said pieces, or by his purchase of the last one of said penny pieces in the assortment,

Sold such assortments, together with explanatory display cards for retailer's use in advising prospective purchasers of the nature of such merchandising plan, to wholesalers and jobbers in competition with those who do not offer and place in the hands of others any additional chewing gum or other merchandise to be given to purchasers by lot, chance, or otherwise, and in competition with gum, a substantial amount of which is sold without any such immoral scheme or device connected therewith, and sale of which is adversely affected by that of gum with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase its said gum in preference to that of competitors because of the chance of obtaining certain pieces, or other merchandise, free of charge, competitors who do not sell gum 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 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 or public policy of many of the States in selling and distributing chewing gum by lot or chance, the industry was injured, 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 cre-

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.