

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.

ate a Federal Trade Commission, to define its powers and duties, and for other purposes"; the Federal Trade Commission charges that International Gum Corporation, 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 in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized under the laws of the State of Massachusetts, with its principal office and place of business located in the city of Watertown, State of Massachusetts. Respondent is engaged in the manufacture of chewing gum 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 product when so sold to be transported from its said principal place of business in the city of Watertown, State of Massachusetts, 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 chewing gum 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 chewing gum. The said assortments of chewing gum are composed of a number of pieces of chewing gum of uniform size, shape, and quality together with a number of larger pieces of chewing gum, and/or articles of merchandise, which larger pieces of chewing gum or articles of merchandise are to be given as prizes to purchasers of said pieces of chewing gum in the following manner:

The majority of the said pieces of chewing gum in said assortments are of the same color, but a small number of said pieces of chewing gum are of a different color. All of the said pieces of chewing gum are contained within a wrapper which effectually conceals their color from the prospective purchaser. The said pieces of chewing gum of uniform size, shape, and quality in said assortment retail at the price of 1 cent each, but the purchasers who procure one of said pieces of chewing gum of a different color than the majority of said pieces of chewing gum are entitled to receive and are to be given free of charge one of the said larger pieces of chewing gum and/or articles of merchandise hereinbefore referred to. The purchaser of the last piece of aforesaid chewing gum of a uniform size, shape, and quality in each of said assortments is entitled to receive

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and is to be given free of charge one of the larger pieces of chewing gum or articles of merchandise heretofore referred to. The aforesaid purchasers of said chewing gum who procure a piece of chewing gum of a different color than the majority of said pieces of chewing gum and the purchaser of the last piece of chewing gum in said assortments are thus to procure one of the said larger pieces of chewing gum or articles of merchandise wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with each of said packages or assortments of chewing gum heretofore referred to a display card to be used by the retailer in offering said chewing gum for sale to the public, which display card bears a legend or statement informing the prospective purchaser which color of the said colored pieces of chewing gum contained in said assortments entitle the purchaser to a prize, and that by purchasing the last piece of chewing gum in said assortments the purchaser will receive one of said larger pieces of chewing gum and/or articles of merchandise free of charge.

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 chewing gum to the purchasing public according to aforesaid plan whereby the purchaser of said chewing gum of a different color than the majority of said pieces of chewing gum contained in said assortments and the purchaser of the last piece of chewing gum in said assortments procure and receive free of charge one of the said larger pieces of chewing gum or articles of merchandise 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 chewing gum or articles of merchandise are distributed to the purchasing public wholly by lot or chance in connection with respondents' 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 chewing gum in preference to the chewing gum of respondent's said competitors because of the chance of obtaining certain pieces of chewing gum and/or articles of merchandise free of charge.

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, International Gum Corporation, 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. 1799, as to respondent's methods of competition in the sale and distribution of chewing gum 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 competition 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, International Gum Corporation, is a corporation organized under the laws of the State of Massachusetts

with its principal office and place of business in the city of Watertown, State of Massachusetts. Respondent is now, and for more than five years last past, has been engaged in the manufacture of chewing gum in said city and State and in the sale and distribution of said chewing gum to wholesalers and jobbers in the State of Massachusetts and other States of the United States. It causes the said chewing gum, when sold, to be shipped or transported from its principal place of business in the State of Massachusetts to purchasers thereof in the States of the United States other than the State of Massachusetts. 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 chewing gum, 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 chewing gum. The said assortments of chewing gum are composed of a number of pieces of chewing gum of uniform size, shape, and quality, together with a number of larger pieces of chewing gum, or articles of merchandise, which larger pieces of chewing gum or articles of merchandise are to be given as prizes to purchasers of said pieces of chewing gum in the following manner:

The majority of the said pieces of chewing gum in said assortments are of the same color, but a small number of said pieces of chewing gum are of a different color. All of the said pieces of chewing gum are contained within a wrapper which effectively conceals their color from the prospective purchaser. The said pieces of chewing gum of uniform size, shape, and quality in said assortment retail at the price of 1 cent each, but the purchasers who procure one of said pieces of chewing gum of a different color than the majority of said pieces of chewing gum are entitled to receive and are to be given free of charge one of the said larger pieces of chewing gum or articles of merchandise hereinbefore referred to. The purchaser of the last piece of aforesaid chewing gum of a uniform size, shape, and quality in each of said assortments is entitled to receive and is to be given free of charge one of the larger pieces of chewing gum or articles of merchandise heretofore referred to. The aforesaid purchasers of said chewing gum who procure a piece of chewing gum of a different color than the majority of said pieces of chewing gum and the purchaser of the last piece of chewing gum in said assortments are thus to procure one of the said larger pieces of chewing gum or articles of merchandise wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with each of said packages or assortments of chewing gum heretofore referred to a display card to be used by the retailer in offering said chewing gum for sale to the public, which display card bears a legend or statement informing the prospective purchaser which color of the said colored pieces of chewing gum contained in said assortments entitle the purchaser to a prize, and that by purchasing the last piece of chewing gum in said assortments, the purchaser will receive one of said larger pieces of chewing gum or article of merchandise free of charge.

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 chewing gum to the purchasing public according to aforesaid plan whereby the purchaser of said chewing gum of a different color than the majority of said pieces of chewing gum contained in said assortments and the purchaser of the last piece of chewing gum in said assortments procure and receive free of charge one of the said larger pieces of chewing gum or articles of merchandise 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 chewing gum or articles of merchandise 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 chewing gum at wholesale, and 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 or chance or otherwise. Respondent's aforesaid practices thus tend to, and do, induce many of the consuming public to purchase respondent's said chewing gum in preference to the chewing gum of respondent's said competitors because of the chance of obtaining certain pieces of chewing gum 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. The sale and distribution of chewing gum by the retailers by the methods described herein is a sale and distribution of chewing gum by lot or chance and constitutes a lottery or gaming device. A substantial amount of chewing gum is sold by retailers without any feature of lot or chance and not as a lottery, or gaming device and the sale of chewing gum by lot or chance, as used by the re-

spondent, is in direct competition with chewing gum which is sold without any lot or chance feature, and the sale of chewing gum without a lottery or gaming feature in connection therewith is adversely affected by the sale of chewing gum with the lottery or gaming feature.

PAR. 6. The Commission finds that the method of selling and distributing chewing gum as above described is morally bad and encourages gambling, especially among children; is injurious to the chewing gum industry because it results in the merchandising of a chance or lottery instead of chewing gum; 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 chewing gum 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 chewing gum 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 chewing gum industry.

PAR. 7. The sale and distribution of chewing gum 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, International Gum Corporation, 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 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, International Gum Corporation, its officers, agents, representatives and employees, in the manufacture, sale and distribution in interstate commerce of chewing gum, do cease and desist from—

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, chewing gum so packed and assembled that sales of such chewing gum 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 chewing gum 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 chewing gum contained in said package or assortment to the public.

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

(4) Furnishing to wholesale dealers, jobbers and retail dealers display cards, either with packages or assortments of chewing gum, or separately, bearing a legend, or legends, or statements, informing the purchaser that the chewing gum is 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 chewing gum, which said advertising literature informs the purchasers and purchasing public:

(a) That upon the obtaining by the ultimate purchaser of a piece of chewing gum of a particular color that a larger piece of chewing gum, or other article of merchandise, will be given free to said purchaser.

(b) That upon purchasing the last piece of chewing gum in the package or assortment, a larger piece of chewing gum or an article of merchandise will be given as a prize.

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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 findings and orders, based on respondent's default under the provisions of Section 3, Rule III, of the Commission's Rules of Practice, in two other cases involving the use of the same sort of scheme as set forth in the *International Gum* case above, namely, use of concealed colored pieces, chance selection of which secures the purchaser a prize in the form of a larger piece of gum or article of merchandise. Notes of such findings and orders, together with dates on which complaints issued, follow:

Rudy Chewing Gum Co., Docket 1809—Complaint, May 1, 1930.—Respondent manufacturer, with principal office and place of business in Toledo, sells to wholesalers and jobbers, together with explanatory display cards for retailer's use in offering the same to the public, certain packages or assortments of chewing gum, together with certain articles of merchandise, secured as prizes through the chance selection of one of a small number of said individually wrapped pieces, the color of which differs from that of the majority of such pieces, or by the purchase of the last piece in the assortment.

Harry Gutman et al., doing business as *Gutman Bros., Elk Sales Co.*, and *Sally Mint Co.*, Docket 1871—Complaint, October 31, 1930.—Respondent partners, engaged in the sale and distribution of chewing gum to wholesale dealers and jobbers, and with principal office and place of business in New York City, sell to such wholesalers and jobbers, certain packages or assortments of gum, together with a number of larger pieces of gum, or other articles of merchandise, to be given as prizes to chance purchasers of individually wrapped or boxed pieces, the color of which differs from that of the majority, or to the chance purchaser of the last piece in the assortment, and furnish to said wholesale dealers and jobbers, explanatory display cards for retailer's use in offering said assortments to the public.

The appearances in the foregoing cases were as follows:

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

Mr. Morris B. Moskowitz, of New York City, for *Gutman Bros.*

Syllabus¹IN THE MATTER OF
JOHNSON-FLUKER COMPANY¹COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1831. Complaint, May 12, 1930—Decision, Apr. 3, 1934*

Where a corporation engaged in the manufacture and sale of candy, including three types of assortments composed of, (1) individually wrapped bars of uniform size, shape and quality, within the wrappers of which there were concealed slips containing the figure 1¢, 2¢, or 3¢, as the case might be, as the price to be paid by the consumer to the retailer, depending on former's chance selection, (2) bars similarly wrapped, the concealed slips of which contained the figures 1¢, 2¢, 3¢, 4¢, or 5¢, as the case might be, as the price to be paid, determined as above set forth, and (3) chocolate covered penny candies of uniform size, shape and quality, together with a number of larger pieces of candy or articles of merchandise, acquisition of which as prizes was determined by the purchaser's chance selection of one of a relatively few of said penny pieces, the color of the enclosed, concealed centers of which differed from that of the majority, or by his purchase of the last of said penny pieces in the assortment,

Sold said assortments, together with explanatory cards for retailers' use in advising prospective purchasers of the nature of the aforesaid various merchandising plans, to wholesalers and jobbers, in competition with those who do not offer and place in the hands of others any packages or assortments of candies which may be sold and distributed, without rearrangement, by lot or chance, 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 feature;

With result that many of the consuming public were induced to purchase its candy in preference to that of competitors because of the chance of obtaining a bar for less than three cents or five cents, or certain pieces of candy or articles of merchandise free of charge, as the case might be, many 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 to 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:

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.