

Syllabus 7IN THE MATTER OF  
JOHNSON-FLUKER COMPANY<sup>1</sup>COMPLAINT, 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:

<sup>1</sup> 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.

## Complaint

18 F.T.C.

*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 provision 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 Johnson-Fluker Co., 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 Georgia, with its principal office and place of business located in the city of Atlanta, State of Georgia. 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 Atlanta, State of Georgia, 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 assortments of candy.

(a) Certain of said assortments of candy are composed of a number of bars of candy of uniform size, shape, and quality and each of said bars is contained within a wrapper. Also within each of said wrappers is a slip of paper which has printed thereon the retail price at which the said bars of candy are to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The prices printed on said slip are 1¢, 2¢, or 3¢, and these are the prices which the consumer pays the retail merchant. The ultimate consumers thus procure bars of candy of uniform size, shape and quality at a price of 1¢, 2¢, or 3¢, the same being determined wholly by lot or chance.

(b) Certain of said assortments of candy are composed of a number of bars of candy of uniform size, shape and quality and each of said bars of candy is contained within a wrapper. Also within each of said wrappers is a slip of paper which has printed thereon the retail price at which the said bars of candy are to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The prices printed on said slips are 1¢, 2¢, 3¢, 4¢, or 5¢, and these are the prices which the consumer pays the retail merchant. The ultimate consumers thus procure bars of candy of a uniform size, shape and quality at a price of 1¢, 2¢, 3¢, 4¢, or 5¢, the same being determined wholly by lot or chance.

(c) Certain of said assortments of candy are composed of a number of pieces of chocolate covered candies of uniform size, shape, and quality together with a number of larger pieces of candy and/or 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 said chocolate covered candies in said assortments have centers of the same color but a small number of said chocolate covered candies have centers of a different color. The said candies of uniform size, shape, and quality in said assortments retail at the price of 1 cent each, but the purchasers who procure one of said candies having a center of a different color than the majority of said candies are entitled to receive and are to be given free of charge one of the said larger pieces of candy and/or articles of merchandise hereinbefore referred to. The purchaser of the last piece of aforesaid chocolate covered candies 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 candy or articles of merchandise heretofore referred to. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy and the purchaser of the last piece of candy in said assortments are thus to procure one of the said larger pieces of candy or articles of merchandise wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with said assortments of candies display cards to be used by retailers in offering said candies for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candies are being sold in accordance with the sales plans above mentioned.

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 the aforesaid display cards and sell said candies to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the respondent's sales plans hereinabove set forth.

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 (a) the chance of obtaining one of said bars of candy at a price of 1¢ or 2¢ rather than at the maximum price of 3¢ or (b) the chance of obtaining one of said bars of candy at 1¢, 2¢, 3¢, or 4¢ rather than at the maximum price of 5¢, or, (c) the chance of obtaining certain pieces of candy 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, Johnson-Fluker 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. 1831, 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, Johnson-Fluker Co., is a corporation organized under the laws of the State of Georgia, with its principal office and place of business located in the city of Atlanta, State of Georgia. 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 Georgia 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 Georgia to purchasers thereof in the States of the United States other than the State of Georgia. 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 assortments of candy.

(a) Certain of said assortments of candy are composed of a number of bars of candy of uniform size, shape and quality and each of

said bars is contained within a wrapper. Also within each of said wrappers is a slip of paper which has printed thereon the retail price at which the said bars of candy are to be sold to the consuming public. Said printed slip is effectively concealed from the consumer until he has removed the said wrapper. The prices printed on said slip are 1¢, 2¢, or 3¢, and these are the prices which the consumer pays the retail merchant. The ultimate consumers thus procure bars of candy of uniform size, shape and quality at a price of 1¢, 2¢, or 3¢, the same being determined wholly by lot or chance.

(b) Certain of said assortments of candy are composed of a number of bars of candy of uniform size, shape and quality and each of said bars of candy is contained within a wrapper. Also within each of said wrappers is a slip of paper which has printed thereon the retail price at which the said bars of candy are to be sold to the consuming public. Said printed slip is effectively concealed from the consumer until he has removed the said wrapper. The prices printed on said slips are 1¢, 2¢, 3¢, 4¢, or 5¢, and these are the prices which the consumer pays the retail merchant. The ultimate consumers thus procure bars of candy of a uniform size, shape and quality at a price of 1¢, 2¢, 3¢, 4¢, or 5¢, the same being determined wholly by lot or chance.

(c) Certain of said assortments of candy are composed of a number of pieces of chocolate-covered candies of uniform size, shape, and quality together with a number of larger pieces of candy or 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 said chocolate-covered candies in said assortments have centers of the same color but a small number of said chocolate-covered candies have centers of a different color. The said candies of uniform size, shape, and quality in said assortments retail at the price of 1 cent each, but the purchasers who procure one of said candies having a center of a different color than the majority of said candies are entitled to receive and are to be given free of charge one of the said larger pieces of candy or articles of merchandise hereinbefore referred to. The purchaser of the last piece of aforesaid chocolate-covered candies 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 candy or articles of merchandise heretofore referred to. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy and the purchaser of the

last piece of candy in said assortments are thus to procure one of the said larger pieces of candy or articles of merchandise wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with said assortments of candies display cards to be used by retailers in offering said candies for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candies are being sold in accordance with the sales plans above mentioned.

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 the aforesaid display cards and sell said candies to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the respondent's sales plans hereinabove set forth.

PAR. 4. Among the competitors of respondent referred to in paragraph 1 are many who sell candies at wholesale and 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. Respondent's aforesaid practices tend to and do induce the consuming public to purchase respondent's said candies in preference to the candies of respondent's said competitors because of (a) the chance of obtaining one of said bars of candy at a price of 1¢ or 2¢ rather than at the maximum price of 3¢ or (b) the chance of obtaining one of said bars of candy at 1¢, 2¢, 3¢, or 4¢ rather than at the maximum price of 5¢, or, (c) the chance of obtaining certain pieces of candy or articles of merchandise free of charge.

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 in-

dustry 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, Johnson-Fluker Co., 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 on 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, Johnson-Fluker 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 candy of uniform size, shape and quality, containing within their wrappers tickets or slips of paper bearing different prices.

(4) 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 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.

(5) 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.

(6) 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 certain bars of candy of uniform size, shape and quality may be obtained for a price of 1¢, 2¢, or 3¢, depending upon the price tag enclosed in the wrapper of the piece of candy selected by the purchaser.

(b) That certain bars of candy of uniform size, shape and quality may be obtained for the price of 1¢, 2¢, 3¢, 4¢, or 5¢, depending upon the price tag enclosed in the wrapper of the piece of candy selected by the purchaser.

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

## Memoranda

18 F.T.C.

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

*It is further ordered,* That the respondent above mentioned 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 other consent orders in cases similar to that in the *Johnson-Fluker case* above, in that they involve combinations of two or more types of schemes like those described in the cases of *Quaker City Chocolate Co.*, Docket 1773, 18 F. T. C. 269, 276, et seq., *Minter Brothers*, Docket 1785, 18 F. T. C. 287, 295, et seq., and *Advance Candy Co., Inc.*, Docket 1792, 18 F. T. C. 298, 305, et seq. Notes of such cases follow, together with the dates on which complaints issued in the respective cases:

*R. E. Rodda Candy Co.*, Docket 1725. Complaint, November 21, 1929. Respondent manufacturer, with principal office and place of business in Lancaster, Pa., sells to wholesale dealers, together with explanatory display cards for retailer's use in offering said candies, various types of assortments, named and denominated by it—"Penny Easter Egg" and "Penny Piggy Pick", "'One to Five' M. M. Eggs", and "'101' Easter Rabbit Assortment" and "'100' Easter Rabbit Assortment." The composition and sale of said assortments are described in the complaint as follows:

"Penny Easter Egg Assortment" and "Penny Piggy Pick"—Said assortments of candies are composed of a number of chocolate covered pieces of candies of uniform size and shape, which are sold at retail at the uniform price of one cent each, together with a number of larger pieces of candy which are to be given as prizes to purchasers of said chocolate covered candies, in the following manner:

Among the aforesaid chocolate covered candies are a number having colored centers, and when said package of candies is displayed for sale to the consuming public every purchaser of aforesaid chocolate covered candies at the price of one 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 said larger pieces of candy heretofore referred to. Each of said assortments of candies also contains one piece of candy which is larger than any of the others

contained in said assortments, and the purchaser of the last piece of aforesaid chocolate covered candies in each of said assortments, respectively, is entitled to receive, and is to be given free of charge, said largest piece of candy heretofore referred to. Aforesaid purchasers of said candies who procure candies having a colored center, or who purchase the last piece of candy in said assortments, are thus to procure one of said larger pieces of candy wholly by lot or chance.

“ ‘One to Five’ M. M. Eggs ”—Said assortment of candies is composed of a number of chocolate covered pieces of candy of uniform size and shape, which are sold at retail at prices of one to five cents each depending upon the particular piece of candy chosen by the purchaser, as hereinafter described.

Each piece of candy in said assortment is contained in a wrapper, and printed on the inside of said wrapper, is the price of said piece of candy, ranging from one to five cents. The purchaser of a piece of said candy pays the price which is marked on the inside of the wrapper in which said piece of candy is contained, and the price which he pays is determined by lot or chance.

“ ‘101’ Easter Rabbit Assortment,” and “ ‘100’ Easter Rabbit Assortment ”—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 five cents each, together with a number of larger pieces of candy 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 package of candy is displayed for sale to the consuming public every purchaser of aforesaid chocolate covered candies at the price of five cents 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 said larger pieces of candy heretofore referred to. Each of said assortments of candies also contains one piece of candy which is larger than any of the others contained in said assortments, and the purchaser of the last piece of aforesaid chocolate covered candies in each of said assortments, respectively, is entitled to receive, and is to be given free of charge, said largest piece of candy heretofore referred to.

*D. Goldenberg, Inc.*, Docket 1810—Complaint, May 1, 1930.—Respondent manufacturer, with principal office and place of business in Philadelphia, sells to wholesalers and jobbers, together with explanatory display cards for retailer's use in offering said candies, two kinds of assortments, one of which is composed 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 one of a small number of said pieces, the color of the enclosed center of which differs from that of the majority, or to the purchaser of the last of said penny pieces in such assortment, and the other of which is composed of a number of bars of uniform size, etc., within the individual wrappers of which there are concealed slips containing the figure 1¢, 2¢, or 3¢, as the price to be paid by the consumer to the retailer, depending on his chance selection.

*Block Candy Co.*, Docket 1956—Complaint, June 5, 1931.—Respondent manufacturer, with principal office and place of business in Atlanta, sells to wholesale and retail dealers, together with explanatory display cards, two kinds of packages or assortments, one of which is composed of chocolate covered penny candies of uniform size, etc., together with a number of larger pieces and/or other articles of merchandise, acquisition of which is determined by the chance purchase of one of a relatively few of said penny candies, the color of the enclosed concealed center of which differs from that of the majority, or by the purchase of the last of said penny pieces in the particular assortment, and the other of which is composed of a number of candy bars of uniform size, etc., within the individual wrappers of which there are concealed slips containing the figure 1¢, 2¢, 3¢, 4¢, or 5¢, as the price to be paid by the consumer to the retail merchant, depending on his chance selection.

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

*Mr. Henry H. Snelling*, of Washington, D. C., for *R. E. Rodda Candy Co.*

*Mr. William Ginsburgh*, of Philadelphia, Pa., for *D. Goldenberg, Inc.*

## Syllabus

IN THE MATTER OF  
CURTISS CANDY COMPANY AND KIDD PRODUCTS  
CORPORATION <sup>1</sup>

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

*Docket 1853. Complaint, July 1, 1930—Decision, Apr. 3, 1934*

Where two corporations, operating under common control and managership, and engaged in the manufacture and sale of candy, including two 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 ultimate purchaser to the retailer depending on the former's chance selection, and, (2) individually wrapped 5-cent bars of uniform size, shape and quality, within the wrappers of a few of which there was concealed a printed slip of paper advising the purchaser thereof that the particular bar was free;

Sold said assortments, together with explanatory display cards for retailers' use in advising prospective purchasers of the nature of the aforesaid merchandising plans, to wholesalers and jobbers in competition with many who do not sell candy so packed and assembled that it can be resold to the public 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 candy sold with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase said corporation's candies in preference to those of competitors because of the change of obtaining a bar for less than 3 cents, or a 5-cent piece free, many competitors who do not sell candy packed and assembled as above set forth, were put to a disadvantage and trade was diverted from such competitors to said corporations 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:

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

*Mr. Henry C. Lank* and *Mr. G. Ed. Rowland* for the Commission.  
*Mr. Irwin N. Walker*, of Chicago, Ill., for Curtiss Candy Co.,  
et al.

<sup>1</sup> 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.