

Syllabus

IN THE MATTER OF
CURTISS CANDY COMPANY AND KIDD PRODUCTS
CORPORATION ¹

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.

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.

Complaint

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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 Curtiss Candy Company and Kidd Products Corporation, hereinafter called respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Curtiss Candy Co. is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located in the city of Chicago. Respondent Kidd Products Corporation is a corporation organized under the laws of the State of Illinois with its principal office and place of business located in the city of Chicago, State of Illinois. Respondents Curtiss Candy Co. and Kidd Products Corporation have officers and directors common to each other, the said respondents are operating under a common control and managership, and maintain a joint office, and subsequently all of the shares of stock of respondent Kidd Products Corporation are owned by the respondent Curtiss Candy Co. Respondents are engaged in the manufacture of candies and in the sale and distribution thereof to wholesale and retail dealers, and to jobbers located at points in the various States of the United States, and cause said products, when so sold, to be transported from their principal place of business in the city of Chicago, State of Illinois, to and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of such business respondents are 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 their business as described in paragraph 1 hereof the respondents and each of them sell, to retailers, wholesalers and jobbers, certain packages or assortments of candies.

(a) One of said assortments of candies consists of a number of candy bars of uniform size, shape and quality, and each of said candy 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 said candy bar is to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The retail prices printed on said

slips are 1¢, 2¢ or 3¢, and these prices are those which the consumer pays the retail merchant. The ultimate consumers thus procure candy bars at a price of 1¢, 2¢ or 3¢, the said price being determined wholly by lot or chance.

(b) Another of said assortments of candy consists of a number of candy bars of uniform size, shape and quality, and each of said candy bars is contained within a wrapper. The said candy bars retail at the price of 5 cents each, but a small number of said bars have within the wrapper a printed slip of paper advising the purchaser thereof that the said bar is free. The said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The aforesaid purchasers of said candy bars who procure a candy bar containing one of the said printed slips thus procure the same free of charge rather than at the regular retail price of 5 cents each. The fact of whether the purchasers of said bars of candy in said assortments procure the same free of charge, or pay the regular price of 5 cents each therefor, is thus determined wholly by lot or chance.

Respondents furnish to said wholesale and retail dealers and jobbers with each of said packages or assortments of candy heretofore referred to, 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 plan above mentioned.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondents resell said candy assortments to retail dealers in various States of the United States, and said retail dealers and the retail dealers to whom respondents sell direct expose said assortments for sale together with the aforesaid display cards, and sell said candies to the purchasing public in accordance with the aforesaid sales plan. 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 respondents' sales plans hereinabove set forth.

PAR. 4. Respondents' aforesaid practices thus tend to, and do induce many of the consuming public to purchase respondents' said candies in preference to candies of respondents' said competitors because of (a) the chance of obtaining one of said pieces of candy at a price of 1 cent or 2 cents rather than at the maximum price of 3 cents, or (b) the chance of obtaining one of said pieces of candy free of charge rather than at the regular price of 5 cents.

PAR. 5. The above alleged acts and practices of respondents are all to the prejudice of the public and respondents' competitors and con-

stitute 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 respondents, Curtiss Candy Co. and Kidd Products Corporation, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

The respondents entered their appearance and filed an answer to said complaint, and thereafter 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. 1853, as to respondents' 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 respondents herein, the Federal Trade Commission might, without further proceedings of any kind, or notice to respondents, make and issue its findings as to the facts and conclusion, declaring the methods of sale and distribution as used by respondents herein to be unfair methods of competition, and issue its order requiring said respondents to cease and desist from such unfair methods of competition, and said respondents agreed to be bound by and obey said order to cease and desist.

It was further agreed that said respondents 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 respondents to the charges of said complaint in lieu of any other answer to be filed by said respondents. 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 respondents 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, Curtiss Candy Company, is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located in the city of Chicago. Respondent, Kidd Products Corporation is a corporation organized under the laws of the State of Delaware, with its principal office and place of business located in the city of Chicago, State of Illinois. Respondents, Curtiss Candy Co. and Kidd Products Corporation, have officers and directors common to each other. The said respondents are operating under a common control and managership, and maintain a joint office and substantially all of the shares of stock of the respondent, Kidd Products Corporation, are owned by the respondent, Curtiss Candy Co. Respondents are engaged in the manufacture of candies and in the sale and distribution thereof to wholesale and retail dealers and to jobbers located at points in the various States of the United States, and cause said products, when so sold, to be transported from their principal place of business in the city of Chicago, State of Illinois, to and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of such business respondents are 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 their business as described in paragraph 1 hereof the respondents and each of them sell, to retailers, wholesalers and jobbers, certain packages or assortments of candies.

(a) One of said assortments of candies consists of a number of candy bars of uniform size, shape and quality, and each of said candy 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 said candy bar is to be sold to the consuming public. Said printed slip is effectively concealed from the consumer until he has removed the said wrapper. The retail prices printed on said slips are 1¢, 2¢, and 3¢, and these prices are those which the consumer pays the retail merchant. The ultimate consumers thus procure candy bars at a price of 1¢, 2¢, or 3¢, the said price being determined wholly by lot or chance.

Findings

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(b) Another of said assortments of candy consists of a number of candy bars of uniform size, shape, and quality, and each of said candy bars is contained within a wrapper. The said candy bars retail at the price of 5 cents each, but a small number of said bars have within the wrapper a printed slip of paper advising the purchaser thereof that the said bar is free. The said printed slip is effectively concealed from the consumer until he has removed the said wrapper. The aforesaid purchasers of said candy bars who procure a candy bar containing one of the said printed slips thus procure the same free of charge rather than at the regular retail price of 5 cents each. The fact of whether the purchasers of said bars of candy in said assortments procure the same free of charge, or pay the regular price of 5 cents each therefor, is thus determined wholly by lot or chance.

Respondents furnish to said wholesale and retail dealers and jobbers, with each of said packages or assortments of candy heretofore referred to, 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 plan above mentioned.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondents resell said candy assortments to retail dealers in various States of the United States, and said retail dealers and the retail dealers to whom respondents sell direct expose said assortments for sale, together with the aforesaid display cards, and sell said candies to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the respondents' sales plans hereinabove set forth.

PAR. 4. Among the competitors of the respondents referred to in paragraph 1 hereof 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. Respondents' aforesaid practices tend to and do induce many of the consuming public to purchase respondents' said candies in preference to candies of respondents' said competitors because of (a) the chance of obtaining one of said pieces of candy at a price of 1 cent or 2 cents rather than at the maximum price of 3 cents, or (b) the chance of obtaining one of said pieces of candy free of charge rather than at the regular price of 5 cents.

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 respondents, 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 respondents 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 respondents and others using similar methods from said competitors. The use of such methods by respondents in the sale and distribution of candy is prejudicial and injurious to the public and their competitors, and has resulted in the diversion of trade to respondents from their 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 respondents, Curtiss Candy Co. and Kidd Products Corporation, under the conditions and circumstances set forth in the foregoing findings of facts, are all to the prejudice of the public and respondents' 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 respondents 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 respondents have 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 respondents, Curtiss Candy Co. and Kidd Products Corporation, their 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 bearing different prices, or bearing the word "free" or phrases containing said word.

(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 certain bars of candy of uniform size, shape, and quality may be obtained for a price of 1 cent, 2 cents, or 3 cents, depending upon the price tag enclosed in the wrapper of the piece of candy selected by the purchaser, or (b) that certain bars of candy of uniform size, shape and quality may be obtained free of charge or for a price of 5 cents, depending upon the price tag enclosed in the wrapper of the piece of candy selected by the purchaser.

Memoranda

It is further ordered, That the respondents above named within 30 days after the service upon them 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 orders involving the use of the same sort of scheme set forth in the Curtiss Candy case above, namely, the use of a slip concealed within the individual wrapper of the piece of candy advising that the particular piece is free, or containing some legend, which, as pre-announced, has the same import, or, in one case, the use of a concealed colored center for the same purpose. Notes of such orders, together with the dates on which complaints issued in said cases, follow:

Schutter-Johnson Candy Co., Docket 1805. Complaint, May 1 1930. Respondent manufacturer, with principal office and place of business in Chicago, sells to wholesalers and jobbers, together with explanatory display cards for retailer's use in offering said candies to the public, packages or assortments composed of 40 5-cent candy bars, of uniform quality, size and shape, within the individual wrappers of ten of which there is a printed slip of paper advising that the particular bar is free.

Sam Altschuler, doing business as *Rosemary Candy Co.*, Docket 1881. Complaint, November 28, 1930. Respondent manufacturer, with principal office and place of business in San Francisco, sells to wholesale and retail dealers and jobbers, together with explanatory display cards for retailer's use in offering said candy, 40 candy bars of uniform quality, size and shape, upon the under sides of the individual wrappers of which there is printed the concealed figure, 0, 1¢, 2¢, 3¢, 4¢, or 5¢, as the price, if any, to be paid by the consumer to the retailer, depending upon his chance selection.

Shapiro Candy Manufacturing Co., Inc., Docket 1918. Complaint, February 25, 1931. 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, composed of a number of chocolate-covered candy wafers of uniform size, shape and quality, together with a number of larger pieces of candy and a toy article, the composition and sale of which assortments are described in the complaint, as follows:

The majority of the said chocolate-covered candy wafers have white centers, but a small number of said chocolate-covered candy wafers have cream-colored centers, and a small number of said

chocolate-covered candy wafers have pink centers; but the color of the center of each of the said chocolate-covered candy wafers of uniform size, shape and quality is concealed from the consuming public until after the said chocolate-covered candy wafer has been purchased and broken by the consuming public.

The said assortments are distributed to the ultimate consumer in the following manner: All of the chocolate-covered candy wafers retail at the price of 1 cent each, except those having the cream-colored center. The purchaser who procures one of the 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 hereinbefore referred to; the customer who procures one of the chocolate-covered candy wafers having a cream-colored center procures the said chocolate-covered candy wafer free of charge; and the purchaser of the last piece of the aforesaid chocolate-covered candy wafers is entitled to receive, and is to be given free of charge, the toy article hereinbefore referred to.

The aforesaid purchasers of said candies who procure a piece of candy having a pink center, and the purchasers who procure a piece of candy having a cream-colored center, and the purchaser of the last piece of candy in each of said assortments, are thus to procure one of the larger pieces of candy, or one of the chocolate-covered candy wafers, or the toy article, respectively, wholly by lot or chance.

The appearances in the foregoing group of cases were as follows: *Mr. Henry C. Lank* and *Mr. G. Ed. Rowland* for the Commission.

Syllabus

IN THE MATTER OF

SOL BLOCK AND SIDNEY BLUMENTHAL, INDIVIDUALLY AND AS COPARTNERS TRADING UNDER THE NAME AND STYLE OF RITTENHOUSE CANDY COMPANY¹

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

Docket 2071. Complaint, Oct. 24, 1932—Decision, Apr. 3, 1934

Where a firm engaged in the manufacture and sale of candy, including assortments composed of 20 small, 5-cent packages of candy, and 8 large bars, with which assortments there were furnished punch boards containing 150 holes, in 8 sections, for use in retailing said assortments under a plan by which the penny purchase of a punch resulting in acquisition of 1 of 20 colored balls concealed in the board, entitled the purchaser to 1 of the 5-cent packages, purchase of last punch in each of said 8 sections entitled purchaser to 1 of the 8 bars, and purchase of a punch resulting merely in acquisition of 1 of the 130 white balls secreted in the remaining holes, secured purchaser nothing further,

Sold said assortments, along with such boards upon which there were set forth the legends, "Smart money", "1 cent", "Pink ball receives 5 cent package", and "Last punch in each section receives large bar", to wholesale dealers, jobbers and retailers in competition with many who sell candy at wholesale and do not offer and place in the hands of others packages or assortments of candy to be distributed, or which may, without rearrangement, be distributed, 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 with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase said firm's candy in preference to that of competitors because of the lottery feature connected therewith, and the chance of obtaining certain packages or bars of candy at less than the regular retail price thereof, 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 said firm 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.