

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.

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 an unfair method of competition.

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

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Sol Block and Sidney Blumenthal, individually, and as copartners trading under the name and style of Rittenhouse Candy Co., hereinafter referred to as 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. The respondents are copartners trading under the name and style of Rittenhouse Candy Co. with their principal office and place of business located in the city of Philadelphia, State of Pennsylvania. Respondents are engaged in the manufacture, sale, and distribution of candy and in the sale and distribution of candy specialties and punch board devices for use in the sale of their candy products. Respondents sell their products to wholesale dealers and jobbers and to retail dealers located at points in the various States of the United States and cause said products when so sold to be transported from their said principal places of business in the city of Philadelphia in the State of Pennsylvania into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business, respondents are in competition with other individuals, partnerships, and corporations engaged in the manufacture of candies and in the selling and distribution thereof in interstate 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 sell to wholesale dealers and jobbers and to retail dealers a certain package or assortment of candies consisting of 20 small packages of candy which usually retail at the price of 5 cents each, and 8 large bars of candy, and furnishes with said package or assortment a punch board containing 150 holes and divided into 8 sections, 2 sections containing 15 holes each, and 6 sections containing 20 holes each. Into each of the holes has been inserted a small colored ball so placed and secreted in said punch board that the colored balls cannot be seen by the

customer except when they are punched from the board. One hundred thirty of the said balls are white and 20 of the said balls are pink. The said punch board bears the following legends: "Smart Money", "One Cent", "Pink Ball Receives 5¢ Package", "Last Punch in Each Section Receives Large Bar." Every customer pays 1 cent for each punch from the board and the purchasers of punches who receive one of the said pink balls are entitled to receive and are to be given free of charge one of the 5-cent packages of candy heretofore referred to. The purchasers of the last punch in each section of the board are entitled to receive and are to be given free of charge one of the large bars of candy. The purchasers receiving one of the small white balls receive only the said ball for their money. The purchasing public are thus induced and persuaded into purchasing punches from the said board in the hope that they may obtain one of the pink prize winning balls above referred to and thus obtain one of the 5-cent packages of candy as a prize. The 5-cent packages of candy and the large bars of candy contained in said assortment are thus distributed to the purchasers of punches from the board wholly by lot or chance.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondents resell said packages to retail dealers in various States of the United States and the said retail dealers, and the retail dealers to whom respondents sell direct, expose said candies in connection with the aforesaid punch board and sell punches to the purchasing public in accordance with the aforesaid plan, whereby the said packages and bars of candy are distributed to the purchasers of punches from said board wholly by lot or chance. Respondents thus supply to and place in the hands of others the means of conducting a lottery in the sale of their products in accordance with the respondents' sales plan hereinbefore 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 the candies of respondents' said competitors because of the lottery feature connected therewith and because of the chance of obtaining said packages of candy or bars of candy at less than the regular retail price thereof.

PAR. 5. The above alleged acts and practices of respondents are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in interstate 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued its complaint against the respondents, Sol Block and Sidney Blumenthal, individually and as copartners trading under the name and style of Rittenhouse Candy Co., charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

Pursuant to the provisions of said act the Commission served its complaint upon the respondents on October 25, 1932, with notice of hearing on December 2, 1930, on the charges set forth in the complaint, together with a copy of the rules of practice adopted by the Commission providing for the time within which answer is required to be made by a respondent after service of a complaint, and for failure of respondent to appear or to file answer thereto. At the time of serving the complaint on the respondents the Commission notified the said respondents that the matter had been placed on the suspense calendar, and that they would not be required to file answer thereto or appear for hearing until further action by the Commission. Thereafter, on February 13, 1934, an order was entered by the Commission wherein it was ordered that the complaint be removed from the suspense calendar and it was further ordered that the respondents file their answer to the complaint herein on or before March 14, 1934, otherwise the matter would be proceeded with as in default. A copy of this order was served on the respondents on February 15, 1934.

The time of the respondents to appear and file answer to the complaint in accordance with the order of the Commission expired on March 14, 1934, and the respondents having failed to file answer to the complaint, and no extension of time to answer having been requested or granted, and the respondents being in the default for want of appearance and answer, in accordance with the provisions of Section 3, Rule III, of the Rules of Practice of the Commission, 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. The respondents, Sol Block and Sidney Blumenthal, are copartners trading under the name and style of Rittenhouse

Candy Co. with their principal office and place of business in the city of Philadelphia, State of Pennsylvania. Respondents are now and for more than four years last past have been engaged in the manufacture of candy in said city and State, and in the sale and distribution of said candy to wholesalers and jobbers in the State of Pennsylvania and other States of the United States. They cause the said candy, when sold, to be shipped or transported from their principal place of business in the State of Pennsylvania to purchasers thereof in the States of the United States other than the State of Pennsylvania. In so carrying on said business respondents are and have been engaged in interstate commerce, and are and have 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 their business as described in paragraph 1 hereof, the respondents sell to wholesale dealers and jobbers and to retail dealers a certain package or assortment of candies consisting of 20 small packages of candy which usually retail at the price of 5 cents each, and 8 large bars of candy, and furnish with said package or assortment a punch board containing 150 holes and divided into 8 sections, 2 sections containing 15 holes each, and 6 sections containing 20 holes each. Into each of the holes has been inserted a small colored ball so placed and secreted in said punch board that the colored balls cannot be seen by the customer except when they are punched from the board. One hundred thirty of the said balls are white, and 20 of the said balls are pink. The said punch board bears the following legends: "Smart Money", "One Cent", "Pink Ball Receives 5¢ Package", "Last Punch in Each Section Receives Large Bar." Every customer pays 1 cent for each punch from the board, and the purchasers of punches who receive one of the said pink balls are entitled to receive and are to be given free of charge one of the 5-cent packages of candy heretofore referred to. The purchasers of the last punch in each section of the board are entitled to receive and are to be given free of charge one of the large bars of candy. The purchasers receiving one of the small white balls receive only the said ball for their money. The purchasing public are thus induced and persuaded into purchasing punches from the said board in the hope that they may obtain one of the pink prize winning balls above referred to and thus obtain one of the 5-cent packages of candy as a prize. The 5-cent packages of candy and the large bars of candy contained in said assortment are thus distributed to the purchasers of punches from the board wholly by lot or chance.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondents resell said packages to retail dealers in various States of the United States and the said retail dealers, and the retail dealers to whom respondents sell direct, expose said candies in connection with the aforesaid punch board and sell punches to the purchasing public in accordance with the aforesaid plan, whereby the said packages and bars of candy are distributed to the purchasers of punches from said board wholly by lot or chance. Respondents thus supply to and place in the hands of others the means of conducting a lottery in the sale of their products in accordance with the respondents' sales plan hereinbefore set forth.

PAR. 4. Among the competitors of respondents referred to in paragraph 1 hereof are many who sell candy at wholesale and who do not offer and place in the hands of others packages or assortments of candy which are to be distributed, or which may without rearrangement be distributed, 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 the candies of respondents' said competitors because of the lottery feature in connection therewith, and because of the chance of obtaining certain packages or bars of candy at less than the regular retail price thereof. For about four years last past the respondents have 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 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 dis-

advantage 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, Sol Block and Sidney Blumenthal, copartners trading under the name and style of Rittenhouse Candy Co., 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 heard and considered by the Federal Trade Commission upon the record, and the Commission having made its findings as to the facts and its conclusion 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 respondents, Sol Block and Sidney Blumenthal, individually and as copartners, trading under the name of Rittenhouse Candy Co., their 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 rearrangements 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 assortments of candy for sale to the public at retail, and including in said assortments punch boards, which said assortments of candy are so packed and arranged that the candies therein may be without rearrangement distributed by means of the said punch boards.

(4) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, punch boards to be used in connection with the sale of respondents' candy.

(5) Supplying to or placing in the hands of wholesale dealers, jobbers and retail dealers, punch boards, or other lottery or gaming devices, for the purpose of enabling retail dealers to resell respondents' candy to the consuming public by means of said punch boards, or other lottery or gaming devices.

(6) Furnishing to wholesale dealers, jobbers and retail dealers, punch boards or other printed matter for use in connection with the sale of their candy or candy products, which said punch boards or other advertising literature inform the purchasers and purchasing public that certain small packages of candy, or certain bars of candy, will be distributed to purchasers, depending upon the color of the ball received when operating the punch board.

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.

MEMORANDUM

The Commission as of the same date made a consent order involving the use of the same sort of a scheme set forth in the *Rittenhouse Candy* case above, namely, the use of a punch board for the sale of the particular assortment involved. Descriptive note of said case, together with the date on which complaint issued, follows:

Cosmopolitan Candy Co., Docket 1858. Complaint, July 11, 1930. Respondent manufacturer, with principal office and place of business in Chicago, as set forth in the complaint, "sells to wholesalers and jobbers a certain package or assortment of candies, consisting of 15 hand decorated M. M. eggs; 6 fruit and nut in cream chocolate half-pound eggs hand decorated; 4 fruit nut in cream chocolate 1-pound eggs, hand decorated; 1 large 3-pound hollow egg chocolate,

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Memorandum

hand decorated, and furnishes with said package or assortment a punch-board containing 200 holes, divided into 4 sections. Into each of the holes has been inserted a small slip of paper bearing a printed number. The printed slips bear numbers from 1 to 200 inclusive, and are so placed and secreted in said punch-board that they cannot be seen by the customer except when they are punched from the board."

The board bears the following legends: "5 cents per sale. Easter greeting. Decorated Easter eggs. Nos. 10, 20, 30, 40, 50, 60, 70, 80, 90, 100, 110, 120, 130, 140, 150 receive 15-cent M. M. egg. No. 160, 170, 175, 180, 190, 200 receive 50-cent chocolate egg. Last punch in each section receives \$1 chocolate egg. Last punch on board receives \$3 big egg."

Every customer pays 5 cents for each punch from the board and the purchasers of punches who receive numbers other than those above enumerated or who do not qualify by purchasing the last punch in each section or by purchasing the last punch on the board receive nothing for their money. The purchasing public are thus induced and persuaded into purchasing punches from the said board in the hope that they may obtain one of the prize winning numbers above referred to and thus obtain one of the prizes called for by the said numbers. The Easter eggs contained in said assortment are thus distributed to the purchasers of punches from the board wholly by lot or chance.

Aforesaid wholesale dealers of respondent resell said packages to retail dealers in various States of the United States, and said retail dealers expose said candies in connection with the aforesaid punch-board and sell punches to the purchasing public in accordance with the aforesaid plan, whereby the said candy Easter eggs are distributed to the purchasers of punches from said board wholly by lot or chance. Respondent thus supplies to and places in the hands of others the means of conducting a lottery in the sale of its products in accordance with the respondent's sales plan hereinabove set forth.

*Mr. Henry C. Lank and Mr. G. Ed. Rowland for the Commission.
Rappaport & Rappaport, of Chicago, Ill., for respondent.*

IN THE MATTER OF

BENJAMIN D. RITHOLZ, ET AL., AS INDIVIDUALS AND AS COPARTNERS, TRADING AS INTERNATIONAL OPTICAL CO., ETC.; DR. RITHOLZ AND SONS, INC., ALSO TRADING AS INTERNATIONAL OPTICAL CO., ETC.; AND MORRIS I. RITHOLZ, ET AL., AS INDIVIDUALS AND AS STOCKHOLDERS OF DR. RITHOLZ & SONS, INC., AND ALSO TRADING AS INTERNATIONAL OPTICAL CO., ETC.

COMPLAINT (SYNOPSIS), FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2069. Complaint, July 13, 1933¹—Decision, Apr. 6, 1934

Where a firm engaged under various trade names in the manufacture and sale of spectacles, spectacle frames and lenses for spectacles; the corporate successor of said firm (four of the five stockholders of which corporation were composed of former partners thereof), engaged both in its own corporate name and under various trade names in carrying on the business theretofore conducted by said firm; and the aforesaid stockholders, engaged in their individual capacity in carrying on under the trade names employed by said corporation, and under other trade names, the business of manufacturing and selling spectacles, spectacle frames and lenses for spectacles in commerce among the various States;

- (a) Variouslly represented through circulars and advertisements that they furnished their said spectacles free or without cost to purchasers and prospective purchasers, or free without a cent of cost, through statements advising prospective customers to write them for their "free offer", and setting forth that the company was "offering five thousand more sample pairs free" of their new kind of guaranteed spectacles and inviting the prospect to write in for their "free offer", the facts being they did not furnish their spectacles free to customers, as represented, but either required the purchaser wishing to take advantage of the supposed free offer, to make an initial payment, following which they sent the spectacles C. O. D., or required him to sell a certain number, with a pair for himself as compensation, and did not refund the purchase price to those dissatisfied, notwithstanding their guarantee so to do;
- (b) Variouslly represented through circulars and/or advertisements that their so-called "Marvel Eye Tester" for the use of customers and prospective customers for self-testing, had been "endorsed by the world's most famous eye specialists and eye hospitals", afforded tests, according to a "Washington scientist", "better than optometrists'", had been found "scientific and practical for testing eyes" by "one of the most leading professors of ophthalmology in the world", and had been endorsed by "the world's largest eye hospital", and that through use thereof "you will be able to furnish better glasses by mail than the average optometrist can in his own

¹ Supplemental and amended.