

IN THE MATTER OF
FRANK H. FLEER CORPORATION

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

Docket 1832. Complaint, May 12, 1930—Order, Apr. 11, 1934

Consent order requiring respondent, its officers, etc., in connection with the manufacture and sale of chewing gum in interstate commerce, to cease and desist from the sale thereof through lottery schemes, under which (1) the chance purchaser of a piece of gum having a certain color will receive one or two additional pieces, or a small package, free, and (2) chance purchasers of pieces of gum within the individual wrappers of which there are concealed depictions of parts of certain articles of merchandise, receive said different articles upon securing wrappers bearing depictions of all the component parts making up such article; and from supplying to wholesalers, jobbers and retailers explanatory display cards for retailers' use in selling gum under aforesaid plans.

Mr. Henry C. Lank and Mr. G. Ed. Rowland for the Commission.
Mr. Horace M. Barba, of Philadelphia, Pa., for respondent.

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 Frank H. Fleer 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 Delaware, with its principal office and place of business located in the city of Philadelphia, State of Pennsylvania. It is now and for more than five years last past has been 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 products when so sold to be transported from its said principal place of business in the city of Philadelphia, State of Pennsylvania, into and through other States of the Union to said purchasers at their respective points of location. In the course and conduct of 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 assortments of chewing gum.

(a) Certain of said assortments of chewing gum, known and designated by respondent as "Fleer's Treasure Hunt", are composed of a number of single pieces of chewing gum of uniform size, shape and quality, together with certain packages of chewing gum containing five pieces each. The said single pieces of chewing gum of uniform size, shape and quality are each contained within a wrapper, on which wrapper, but concealed from the prospective purchaser thereof, is printed the picture of an article of merchandise, and on the inside of said wrapper, but concealed from the prospective purchaser thereof until he has opened said wrapper, is printed the picture of a part of said article of merchandise. The aforesaid purchasers of said single pieces of chewing gum who procure the necessary wrappers, which when put together form a complete picture of a particular article of merchandise, are entitled to receive that article of merchandise free of charge as a prize when said wrappers are pasted on a sheet of paper and mailed to the respondent herein. The obtaining of the necessary wrappers so as to complete the picture of an article of merchandise, and thus the obtaining of such articles of merchandise, is determined wholly by lot or chance.

The majority of said single pieces of chewing gum in said assortments of a uniform size, shape, and quality, retailing at the price of one cent each, are of the same color, but a small number of said single pieces of chewing gum are of a different color. The color of all of said single pieces of chewing gum is effectually concealed from the consuming purchaser until he has removed the said wrapper. The purchasers who procure one of the said single 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 packages containing five pieces of chewing gum, hereinbefore referred to. This last mentioned prize or package of chewing gum is in addition to the prize or article of merchandise to be secured by obtaining the necessary wrappers in order to form a complete picture, as hereinbefore set forth. The aforesaid purchasers who procure a single piece of chewing gum of a different color than the majority of said pieces of chewing gum are

thus to procure one of the said packages containing five pieces of chewing gum wholly by lot or chance.

Other assortments of chewing gum also known and designated as "Fleer Treasure Hunt" are composed of five-cent packages, each containing five penny sticks of chewing gum. On the inside of each wrapper placed around a piece of the chewing gum is printed a picture of a part of a prize or article of merchandise, and on the inside of the outer wrapper of the five-cent package is a picture of a part of a prize or article of merchandise, and the purchasers who procure wrappers which, when put together, form a complete picture of a particular prize or article of merchandise are entitled to receive the said article of merchandise by pasting said wrappers on a sheet of paper and mailing them to the said respondent.

(b) Certain of said assortments of chewing gum, known and designated by the respondent as "Fleer Red, White, and Blue Package", are composed of a number of single pieces of chewing gum of uniform size, shape and quality, together with a number of packages of chewing gum named and designated by respondent as "Blimps", and a number of packages of chewing gum known and designated by respondent as "Three Cheers", which packages of chewing gum are to be given as prizes to purchasers of said pieces of chewing gum in the following manner:

The majority of said single pieces of chewing gum of uniform size, shape, and quality in said assortments are white, but a small number of said single pieces are pink, and a small number are black. All of the single pieces of chewing gum of a uniform size, shape, and quality are contained within a wrapper which effectually conceals their colors from the prospective purchaser. The said single pieces of chewing gum of a uniform size, shape, and quality in said assortments retail at the price of one cent each, but the purchasers who procure one of said pink pieces of chewing gum are entitled to receive, and are to be given free of charge, one of the five-cent packages of "Blimp" chewing gum; and the purchasers who procure one of the said black pieces of chewing gum are entitled to receive, and are to be given free of charge, one of the penny packages of "Three Cheers" chewing gum. The aforesaid purchasers of said chewing gum who procure a pink piece of the chewing gum, or a black piece, are thus to procure one of the five-cent packages of "Blimp" chewing gum or one of the one-cent packages "Three Cheers" chewing gum wholly by lot or chance.

(c) Certain of said assortments of chewing gum, known and designated by respondent as "Fleer Advertising Package", are composed of a number of single pieces of chewing gum of uniform

size, shape, and quality, together with a number of penny packages of chewing gum, part of which are known as "Fruit Hearts", and part of which are known as "Bobs", and also a number of five-cent packages of chewing gum, part of which are known as "Fruit Hearts", and part of which are known as "Bobs", which packages of "Fruit Hearts" or "Bobs" are to be given as prizes to purchasers of the said pieces of chewing gum in the following manner:

The majority of said single pieces of chewing gum of a uniform size, shape and quality in said assortments are white, but a small number are pink, and a small number are black. All of said single pieces of chewing gum are contained within a wrapper which effectually conceals their color from the prospective purchaser. The said single pieces of chewing gum of uniform size, shape, and quality in said assortments retail at the price of one cent each, but the purchasers who procure one of the said pink pieces of chewing gum are entitled to receive, and are to be given free of charge, one of the five-cent packages of "Fruit Hearts" or "Bobs", and the purchasers who procure one of the said black pieces of chewing gum are entitled to receive, and are to be given free of charge, one of the one-cent packages of "Fruit Hearts" or "Bobs". The aforesaid purchasers of said chewing gum who procure a pink piece of chewing gum, or a black piece, are to receive one of the said packages of "Fruit Hearts" or "Bobs" wholly by lot or chance.

(d) Certain of said assortments of chewing gum, known and designated by the respondent as "Fleer's Spearmint", are composed of a number of single pieces of chewing gum of uniform size, shape and quality, together with a number of five-cent packages of "Bobs" chewing gum, and "Fruit Hearts" chewing gum, and a number of one-cent packages of "Bobs" chewing gum, and "Fruit Hearts" chewing gum, which packages of "Bobs" or "Fruit Hearts" are to be given as prizes to the purchasers of said pieces of chewing gum in the following manner:

The majority of said single pieces of chewing gum of a uniform size, shape, and quality, in said assortments are white, but a small number of said pieces of chewing gum are pink, and a small number are black. All of said single pieces of chewing gum of a uniform size, shape, and quality are contained in a wrapper which effectually conceals their color from the prospective purchaser. The said single pieces of chewing gum of uniform size, shape, and quality in said assortments retail at the price of one cent each, but the purchasers who procure one of the said pink pieces are entitled to receive, and are to be given free of charge, one of the five-cent packages of "Bobs" or "Fruit Hearts", heretofore referred to, and the pur-

chasers who procure one of the said black pieces of chewing gum are entitled to receive, and are to be given free of charge, one of the one-cent packages of "Bobs" or "Fruit Hearts" heretofore referred to. The purchaser of the last single piece of the aforesaid chewing gum of a uniform size, shape, and quality in each of the said assortments is entitled to receive, and is to be given free of charge, any gift left in the box. The aforesaid purchasers of said single pieces of chewing gum who procure pink pieces or black pieces, and the purchaser of the last piece of chewing gum in said assortments are thus to procure one of said five-cent packages of "Bobs" or "Fruit Hearts" or one of the one-cent packages of "Bobs" or "Fruit Hearts", wholly by lot or chance.

(e) Certain of said assortments of chewing gum, known and designated by the respondent as "One, Two, Three Package", are composed of 150 pieces of chewing gum of uniform size, shape and quality packed in two blue boxes, together with 150 pieces of chewing gum packed in a red box. The pieces of chewing gum in the red box are to be given as prizes to the purchasers of the pieces of chewing gum in the blue boxes in the following manner:

The pieces of chewing gum in the blue boxes are colored respectively, white, black, and red, and are packed in rotation as to the colors of said pieces of chewing gum. Said pieces of chewing gum are contained in 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 assortments retail at the price of one cent each. The purchasers who procure one of the said black pieces of chewing gum are entitled to receive, and are to be given free of charge, one extra piece of chewing gum from the red box, and the purchasers who procure one of the said red pieces of chewing gum are entitled to receive, and are to be given free of charge, two extra pieces of chewing gum from the red box. The aforesaid purchasers of said chewing gum who procure a black piece of chewing gum, or a red piece, are thus to procure, respectively, one or two of the said pieces of chewing gum contained in the red box wholly by lot or chance.

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

PAR. 3. Aforesaid wholesale dealers and jobbers of said 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 assortments to the 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 respondent's sales plans, hereinabove set forth.

PAR. 4. Respondent's aforesaid practices tend to and do induce many of the consuming public to purchase respondent's said chewing gum in preference to chewing gum of respondent's said competitors, because of (a) the chance of obtaining free of charge, by procuring the required wrappers, one of the pictured articles of merchandise, and/or the packages consisting of five pieces of chewing gum; or (b) the chance of obtaining free of charge one of the five-cent packages of "Blimp" chewing gum, or one of the one-cent "Three Cheers" chewing gum; or (c), (d), the chance of obtaining free of charge one of the five-cent packages of "Bobs" or "Fruit Hearts" chewing gum, or one of the one-cent packages of "Bobs" or "Fruit Hearts" chewing gum; or (e) the chance of obtaining free of charge one or two extra pieces of chewing gum.

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.

ORDER TO CEASE AND DESIST

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 on the 12th day of May, 1930, issued its complaint against the above-named respondent, in which complaint it is alleged that the respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

On May 22, 1930, the respondent filed its answer to said complaint. Respondent has now offered for filing a substituted answer dated March 29, 1934, wherein it moves to withdraw its previous answer and states that it does not desire to contest the proceeding, and consents that the Federal Trade Commission may make, enter and serve upon it an order to cease and desist from the violations of law alleged in the complaint, in accordance with the provisions of Section 2, Rule III, of the Rules of Practice of the Commission, and

the Commission hereby accepts this substituted answer in lieu of the former one heretofore filed, and being fully advised in the premises:

It is now ordered, That the respondent, Frank H. Fleer 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 pieces of chewing gum of uniform size, shape, and quality, but of different colors, together with additional pieces of chewing gum or small packages of chewing gum, which said additional pieces of chewing gum or small packages of chewing gum are to be given as prizes to the purchaser procuring a piece of chewing gum of a particular color.

(4) Packing or assembling in the same package or assortment of chewing gum for sale to the public at retail pieces of chewing gum of uniform size, shape, and quality, contained within a wrapper, which wrapper has printed thereon the picture of an article of merchandise and also the picture of a part of said article of merchandise, which said article of merchandise pictured on said wrappers is to be given to the ultimate purchaser procuring wrappers bearing pictures of all the parts of said articles of merchandise.

(5) 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.

(6) 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, one or two additional pieces of chewing gum or a small package of chewing gum will be given free to said purchaser.

(b) That the ultimate purchaser of pieces of chewing gum, each separate wrapper of each piece of which chewing gum bears the picture of a part of an article of merchandise, will, if he obtains wrappers bearing pictures of all the parts of said article of merchandise, receive said article of merchandise free of charge by forwarding said wrappers to the respondent.

It is further ordered, That the respondent, Frank H. Fleer Corporation, 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.

Complaint

18 F.T.C.

IN THE MATTER OF
ELBEE CHOCOLATE COMPANY, INC.¹

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

Docket 1864. Complaint, Aug. 18, 1930—Order, Apr. 11, 1934

Consent order requiring respondent, its officers, etc., in connection with the manufacture and sale in interstate commerce of candy and candy products, to cease and desist from selling the same through lottery schemes under which ultimate purchaser of, (1) a piece of the assortment, with a particular colored center, receives a larger piece or small package of candy, free; ultimate purchaser of, (2) a piece with a hollow center containing two pea-shaped green pieces, receives a small package, free; and, (3) ultimate purchaser of the last piece in the assortment, receives as a prize a larger piece, or a small package or one pound box of candy, free; and from supplying to wholesalers, jobbers and retailers explanatory display cards for retailers' use in selling candy under aforesaid plans.

Mr. Henry C. Lank and Mr. G. Ed. Rowland for the Commission.
Mr. Victor Warren Milch, of New York City, for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that the Elbee Chocolate Company, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of the said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized under the laws of the State of New York, with its principal office and place of business located in the City of New York, State of New York. It is now and for more than five years last past has been engaged in the manufacture of candies, and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and causes said products when so sold to be transported from its said principal place of business in the City of New York, State of New York, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of said business respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture of candies and in

¹ For descriptive summary of large group of candy lottery cases decided as of April 3, see *ante*, pp. 269, 276, 277.