

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.

the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent sells to wholesalers and jobbers certain packages or assortments of candy.

(a) One of said assortments of candies is 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 a 3-ounce package of candy, which larger pieces of candy, and 3-ounce package of candy, are to be given as prizes to purchasers of said chocolate covered candies in the following manner:

The majority of the 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 pieces of candy 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 larger pieces of candy hereinbefore referred to. The purchaser of the last piece of aforesaid chocolate-covered candies of uniform size, shape, and quality in each of said assortments, is entitled to receive, and is to be given free of charge the 3-ounce package of candy 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 the 3-ounce package of candy wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with each of said assortments of candy heretofore referred to, a display card to be used by the retailer in offering said candies for sale to the public, which display card bears a legend or statement, informing the prospective purchaser which color of the said colored center candies contained in said assortment entitle the purchaser to a prize, and that the purchaser of the last piece of candy in said assortment will receive the 3-ounce package of candy free of charge.

(b) Another of said assortments of candies is composed of a number of pieces of candy of uniform size, shape, and quality, together with a number of small packages of candy and a 1-pound box of candy, which small packages of candy and 1-pound box of candy, are to be given as prizes to purchasers of said candies of uniform size, shape, and quality, in the following manner:

The said pieces of candy of uniform size, shape, and quality, have hollow centers in which are placed one or two pea-shaped green can-

dies. The majority of the said pieces of candy of uniform size, shape and quality having hollow centers, contain one pea-shaped green candy, but a small number of the said candies contain two pea-shaped green candies. The said pieces of candy of a uniform size, shape and quality in said assortment retail at the price of 1 cent each, but the purchasers who procure one of the said candies containing two pea-shaped green candies in the hollow center, are entitled to receive and are to be given free of charge, one of the small packages of candy hereinbefore referred to. The purchaser of the last piece of aforesaid 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, the 1-pound box of candy heretofore referred to. The aforesaid purchasers of said candies, who procure a candy containing two pea-shaped green candies in the hollow center, and the purchaser of the last piece of candy in said assortment, are thus to procure one of the said small packages of candy, or the 1-pound box of candy wholly by lot or chance.

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 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 candies of respondent's said competitors because of (a) the chance of obtaining said larger pieces of candies or the 3-ounce package of candy, free of charge, or, (b) the chance of obtaining said small packages of candy or the 1-pound box of candy, 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 the 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 18th day of August, 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 September 15, 1930, the respondent filed its answer to said complaint. Respondent has now offered for filing a substituted answer, dated April 3, 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, Elbee Chocolate Co., Inc., 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 chocolate-covered candy of uniform size, shape, and quality, having centers of different color, together with larger pieces of candy or small packages of candy, which said larger pieces of candy or small packages of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color or procuring the last piece of candy in said assortment.

(4) 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, having hollow centers in which are placed one or two pea-shaped green candies, together with small packages of candy and 1-pound boxes of candy, which said small packages of

candy or 1-pound boxes of candy are to be given as prizes to the purchaser procuring a piece of candy having two pea-shaped green candies in the center or procuring the last piece of candy in said assortment.

(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 upon the obtaining by the ultimate purchaser of a piece of candy, with a particular colored center, a larger piece of candy or small package of candy will be given free to said purchaser.

(b) That, upon the obtaining by the ultimate purchaser of a piece of candy with a hollow center containing two pea-shaped green pieces of candy, a small package of candy will be given free to said purchaser.

(c) That, upon the purchase of the last piece of candy in the package or assortment, a larger piece of candy or a small package of candy or a 1-pound box of candy will be given as a prize.

It is further ordered, That the respondent, Elbee Chocolate Co., Inc., 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

IN THE MATTER OF

W. W. NUSS, DOING BUSINESS AS THE NUSS RESEARCH
LABORATORY

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

Docket 2148. Complaint, Jan. 15, 1934—Decision, Apr. 11, 1934

Where an individual engaged in the sale of certain medicinal preparations designated and described by him as "Master Hormones",

- (a) Advertised said preparations as constituting an effective preventive of and competent and adequate remedy for all ailments of the body, including chronic diseases such as tuberculosis, carcinoma, undulant fever, etc., and represented that said "Master Hormones" constituted "the most rapid and positive method in the treatment of diminished resistance and the resulting diseases thereof", the facts being they did not constitute such a preventive or competent and adequate treatment for all diseases, nor for tuberculosis and other diseases named by him; and
- (b) Used a trade name, which included the words "Research Laboratory" on his letterheads, labels, and other literature and as a signature to letters, circulars, etc., sent out to prospective customers, notwithstanding fact that he neither owned nor operated a laboratory at any time, as usually understood by the term;

With capacity and tendency to confuse, mislead and deceive members of the public in the aforesaid respects, and to induce them to buy and use his said preparations because of the erroneous beliefs thereby engendered, and to divert trade to him from competitors engaged in the sale of medicines and preparations adapted to and used for the prevention and treatment of the various diseases and ailments for which his said "Master Hormones" were offered, without in any wise misrepresenting the therapeutic effects of their products, and with result of so diverting business, to the substantial injury of competitors and the public:

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

Mr. Harry D. Michael for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the sale and distribution of certain medicinal preparations which he designated and described as "Master Hormones", with advertising falsely or misleadingly as to qualities or properties of product, and with using