

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, APRIL 24, 1934, TO DECEMBER 2, 1934

IN THE MATTER OF

DEWITT P. HENRY COMPANY ¹

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

Docket 1818. Complaint, May 3, 1930—Order, Apr. 24, 1934

Consent order requiring respondent, its officers, etc., in connection with the manufacture of candy and candy products, and sale of certain assortments thereof in interstate commerce, to cease and desist from selling the same, together with explanatory display cards for retailers' use, through certain lottery schemes, under which (1) ultimate chance purchaser of one of the chocolate-covered penny candies making up one of said assortments, or of the last piece therein, receives, without charge, a larger piece or article of merchandise, (2) purchaser of certain individually wrapped bars of candy pays from 1 cent to 3 cents, depending upon the price tag enclosed with the particular bar making up such assortment, and, (3) purchaser of one of the 5-cent, individually wrapped bars making up the third assortment, receives a larger piece or box of candy, depending upon his selection of a bar with which there is enclosed a printed slip, or purchase of the last piece in such assortment.

Mr. Henry C. Lank for the Commission.

Mr. W. Parker Jones of Washington, D. C., 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

¹ See 18 F. T. C. 269, 276 et seq. for description of the large group of candy lottery findings and/or orders made by the Commission as of April 3, 1934, in which the Commission found, among other things, that the use of such lottery schemes induced many of the consuming public to purchase the products of those using such plans, in preference to the products of competitors, because of the chance of securing candy or other merchandise free of charge or at a particularly favorable price, put competitors who did not use such practices to a disadvantage and diverted trade from them to those using such methods, encouraged gambling, especially among children, resulted in the merchandising of a chance instead of candy, provided retailers with the means of violating the laws and public policy of many of the States in selling and distributing candy through such methods, injured the industry, and restrained and impaired freedom of fair and legitimate competition therein.

Complaint

19 F.T.C.

create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that DeWitt P. Henry Company, 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 Pennsylvania, 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 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 Philadelphia, 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 the said business respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture of candies and in the sale and distribution thereof in commerce between and among the various States of the United States.

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

(a) Certain of said assortments of candies are composed of a number of pieces of chocolate-covered candies of uniform size, shape, and quality together with a number of larger pieces of candy, and/or articles of merchandise, which larger pieces of candy or article of merchandise 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 said larger pieces of candy and/or articles of merchandise hereinbefore referred to. The purchaser of the last piece of aforesaid chocolate-covered candies of a uniform size, shape, and quality in each of said assortments is entitled to receive and is to be given free of charge one of the larger pieces of candy or articles of merchandise heretofore referred to. The afore-

said purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy and the purchaser of the last piece of candy in said assortments are thus to procure one of the said larger pieces of candy or articles of merchandise wholly by lot or chance.

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

(c) Certain of said assortments of candy are composed of a number of bars of candy of a uniform size, shape, and quality together with a number of larger pieces of candy and/or boxes of candy, which larger pieces of candy and/or boxes of candy are to be given as prizes to the purchasers of said bars of candy in the following manner:

Each of said bars of candy is contained within a wrapper and within the wrapper of a small number of these bars of candy are slips of paper which have printed thereon the prize to which the purchaser of that particular bar is entitled. The said bars of candy of uniform size, shape, and quality in said assortments retail at the price of 5 cents each, but the purchasers who procure one of said candy bars containing a printed slip are entitled to receive and are to be given free of charge one of the said larger pieces of candy and/or boxes of candy hereinbefore referred to. The purchaser of the last bar of said candies of a uniform size, shape, and quality in each of said assortments is entitled to receive and is to be given free of charge one of the said larger pieces of candy or boxes of candy heretofore referred to. The aforesaid purchasers of said candy who procure a bar containing a printed slip and the purchaser of the last bar of candy in said assortments are thus to procure one of the said larger pieces of candy or boxes of candy wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with said assortments of candies display cards to be used by retailers in offering said candies for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assort-

ments of candies are being sold in accordance with the sales plans above mentioned.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in various States of the United States and said retail dealers expose said assortments for sale in connection with the aforesaid display cards and sell said candies to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the respondent's sales plans hereinabove set forth.

PAR. 4. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase respondent's said candies in preference to candies of respondent's said competitors because of (a) the chance of obtaining said larger pieces of candy or articles of merchandise free of charge, or, (b) 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, (c) the chance of obtaining one of the larger pieces of candy or boxes 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 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 3d 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 June 6, 1930, respondent filed its answer to said complaint. Respondent has now offered for filing a substituted answer dated April 14, 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 Sec-

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Order

tion 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, Dewitt P. Henry Company, 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 articles of merchandise, which said larger pieces of candy, or articles of merchandise, are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(4) Packing or assembling in the same package or assortment of candy, for sale to the public at retail, bars of candy of uniform size, shape, and quality, containing within their wrappers tickets bearing different prices.

(5) Packing or assembling in the same package or assortment of candy, for sale to the public at retail, bars of candy of uniform size, shape, and quality, containing tickets within the wrappers thereof, together with larger bars of candy, or boxes of candy, which said larger bars of candy, or boxes of candy, are to be given as prizes to the purchaser procuring a bar of candy containing within the wrapper a ticket calling for such prize.

(6) 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.

(7) 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, that a larger piece of candy, or other article of merchandise, will be given free to said purchaser.

(b) That certain bars of candy of uniform size, shape, and quality will be obtained for a price of 1 cent, 2 cents, or 3 cents, depending upon the price tag enclosed in the wrapper of the bar of candy selected by the purchaser.

(c) That upon the obtaining by the ultimate purchaser of a bar of candy containing a particular ticket within the wrapper thereof, that a larger bar of candy, or box of candy, will be given free to such purchaser.

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

It is further ordered, That the respondent, Dewitt P. Henry Company, within 20 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.

Syllabus

IN THE MATTER OF
THE ADAMS PAINT COMPANY

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

Docket 1961. Complaint, June 18, 1931—Order, Apr. 24, 1934

Consent order requiring respondent corporation, its officers, etc., in connection with the sale and distribution of paints and paint products in commerce, to cease and desist, as in such order specified and qualified, from directly or indirectly making or causing to be made any false representations, statements, or assertions, in its advertising or otherwise, to the effect that—

- (a) Its products contain no inert material or titanox, barium sulphate, siliceous matter, calcium carbonate, or asbestine but are composed wholly or principally of white lead, zinc oxide, or linseed oil and/or a secret ingredient not generally known to the trade or competitors, discovery of which by its chemists, after years, constituted one of the greatest discoveries of the twentieth century, and gave its said products superior qualities and advantages, not otherwise available, and its chemists test every gallon of paint and/or material used, and its said paints have stood up under the severest kinds of tests for years;
- (b) It manufactures its said products, or owns, operates, or controls factory or other equipment or facilities for so doing, and sells and distributes the same direct from the manufacturer, without the intervention of middlemen, at factory prices, which are less than those at which comparable products may be had or purchased from competitors or retail stores, or through other channels, with savings amounting to \$1 or \$2 a gallon, or 40 percent, accruing to purchasers, unless and until, as long as its products are made by a certain company, which directly or indirectly owns or controls its stock, it fully and prominently disclose such facts and relationship in conjunction with such representations, assertions and statements;
- (c) Its factory is a million-dollar one, or it is a million-dollar corporation, long engaged in the manufacture or sale of paints and paint products, with a million-dollar business, and that manufacturing equipment, or factory buildings depicted or referred to, belong to or are operated by it, or bear its name, and that it maintains and operates a chemical laboratory and staff, which tests every gallon, etc., as aforesaid, and it has facilities for purchasing and storing required raw materials in large quantities, and does so purchase and store; and
- (d) It has used and successfully tested the roof coating dealt in by it for many years, and such product is fireproof and will withstand 1,200 degrees of heat without having its serviceableness impaired or destroyed.

Mr. Henry Miller for the Commission.