

Complaint

20 F. T. C.

IN THE MATTER OF
ROCK-OLA MANUFACTURING CORPORATION

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

Docket 2350. Complaint, Mar. 30, 1935—Order, May 31, 1935

Consent order requiring respondent corporation, its officers, etc., in connection with the offer and sale of coin amusement machines of the pin-ball type, to cease and desist from—

- (1) Entering into contracts, agreements, or understandings with jobbers, or any of them, that respondent's products are to be resold by such jobbers at prices specified or fixed by respondent;
- (2) Procuring, either directly or indirectly, from its jobbers, promises or assurances that the prices fixed by respondent will be observed by such jobbers; and
- (3) Requesting its jobbers to report the names of other jobbers who do not maintain respondent's resale prices.

Mr. Astor Hogg for the Commission.

Mr. Charles R. Pollard, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission having reason to believe that Rock-Ola Manufacturing Corporation, a corporation hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest states its charges in that respect as follows:

PARAGRAPH 1. Respondent is and at all times hereinafter mentioned was a corporation organized, created and existing under and by virtue of the laws of the State of Illinois, having its main office and principal place of business in the city of Chicago, in said State. It is and for more than two years last past has been engaged in the business of manufacturing and selling coin amusement machines of the pin-ball game type. Its sales are confined principally to jobbers and retailers located throughout the United States and in the District of Columbia and pursuant to such sales shipments are made from respondent's place of business in Chicago, State of Illinois, into and through various States of the United States other than the State or point of origin of such shipments and in the District of

Columbia. There are in the United States other persons, firms and corporations engaged in the business of manufacturing and selling amusement machines of the pin-ball type who pursuant to such sales, ship their products into and through the various States of the United States other than the State or point of origin of such shipments and with such other persons, firms and corporations respondent is and at all times hereinafter mentioned has been in active and substantial competition.

PAR. 2. In the course and conduct of its business as aforesaid, respondent adopted and for years employed a merchandising plan or policy for its amusement machines by which it established a system of resale prices for said products, which prices respondent required and still requires its various distributors to whom it sells its said products to observe as the minimum prices to be charged by them in reselling said products to purchasers thereof in their respective localities.

PAR 3. In order to carry out the said plan or policy and to secure the cooperation therein of dealers generally the respondent adopted and employed and still employs the following, among other means, by which it and those cooperating with it have undertaken to prevent and have prevented other dealers from selling said product at prices less than the said minimum resale prices so established by respondent:

(a) It issues resale price lists to the trade in which lists the various minimum resale prices for its said products are set forth and explained;

(b) It makes it generally known to the trade by letters, circulars, and other means that it expects and requires jobbers handling its products to maintain and enforce said minimum resale prices;

(c) It enters into informal agreements, understandings, and arrangements with jobbers for the maintenance of said minimum resale prices in their respective localities as a condition of handling their supply of its products;

(d) It invites and procures from jobbers handling its products reports as to the failure of other jobbers to observe and maintain said minimum resale prices;

(e) It uses information received through its distributors to induce and coerce such jobbers as have failed to observe said prices to maintain same in the future by exacting promises and assurances from them to that effect, and by threatening that if such prices are not maintained, further machines will not be supplied to them by respondent;

(f) It favors jobbers who maintain said prices by discriminating against competing jobbers who fail to observe the same;

(g) It refuses to supply such jobbers with further machines until they have given satisfactory assurances for the maintenance of such prices in the future;

(h) It seeks and secures the cooperation of its distributors generally in preventing other distributors from obtaining respondent's said products by reason of failure to maintain said resale prices;

(i) It has used and now uses other equivalent cooperative means and methods for the enforcement of said system of minimum resale prices; all with the result that its said prices have been and are generally observed and maintained by distributors handling said products.

PAR. 4. The above acts and practices of respondent have had and still have the capacity and tendency to constrain all jobbers handling said products to sell the same at or above the minimum resale prices fixed by respondent, as aforesaid, and prevents such jobbers from selling such products at such prices as they might or may deem to be warranted by their respective cost and efficiency and hence to hinder and suppress all price competition in the resale of such products in the various localities in which the same are sold; thus tending to obstruct the free and natural flow of commerce in such products and the freedom of competition in this channel of interstate trade.

PAR. 5. The above acts and practices of the 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

Respondent, Rock-Ola Manufacturing Corporation, having filed its answer to the complaint in this proceeding and having subsequently filed with this Commission its motion that it be permitted to withdraw its said answer and that it be permitted to file, in lieu thereof, as a substitute answer, the draft of proposed substitute answer annexed to the said motion, and the Commission having duly considered the said motion:

It is hereby ordered, That the said motion be and the same is hereby granted; that the said answer be and the same is hereby withdrawn; and that the said proposed substitute answer be and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondents, in and by their said substituted answer, have waived hearing on the charges set forth in the complaint in this proceeding, and having stated in their said substituted answer that they do not contest the proceedings, and having consented

in the said substituted answer that the Commission, without trial, without evidence and without findings as to the facts or other intervening proceedings might make, enter, issue and serve upon the said respondent an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises:

It is hereby further ordered, That respondent, its officers, agents, servants and employees, forthwith, in connection with the sale or offer for sale of its products, cease and desist from—

(1) Entering into contracts, agreements or understandings with jobbers, or any of them, that respondent's products are to be resold by such jobbers at prices specified or fixed by respondent;

(2) Procuring, either directly or indirectly, from its jobbers, promises or assurances that the prices fixed by respondent will be observed by such jobbers;

(3) Requesting its jobbers to report the names of other jobbers who do not maintain respondent's resale prices.

It is further ordered, That the respondent, Rock-Ola Manufacturing Corporation, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Complaint

20 F. T. C.

IN THE MATTER OF
UNIVERSAL THEATRE CONCESSION COMPANY

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

Docket 1950. Complaint, May 9, 1931—Order, June 3, 1935

Consent order requiring respondent, its officers, directors, etc., in the sale and distribution in interstate commerce of candy and candy products, to cease and desist from—

- (a) Selling and distributing to concessionaires with, and to operators, managers and proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals and other such places of amusement, candy so packed and assembled that sales thereof to the general public are to be made, or may be made, by means of a lottery, gaming device or gift enterprise;
- (b) Supplying to or placing in the hands of such concessionaires, operators, managers and proprietors, packages or assortments of candy which are or may be used, without alteration or rearrangement of the contents thereof, to conduct a lottery, gaming device or gift enterprise in the sale or distribution of the candy and candy products therein contained to the public;
- (c) Packing or assembling in the assortment, packages or small boxes of candy, for ultimate sale to the public, which are of uniform appearance but contain articles of merchandise or coupons entitling the purchaser thereof to the articles of merchandise, of varying value; and
- (d) Furnishing to such concessionaires, operators, managers and proprietors assortments of candy consisting of individual packages or small boxes thereof, for resale to the public, of uniform appearance, but containing articles of merchandise, or coupons calling for such articles, of varying value.

Mr. Henry C. Lank for the Commission.

Moses, Kennedy, Stein & Bachrach, of Chicago, Ill., 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 Universal Theatre Concession Company, a corporation, hereinafter referred to as respondent, has been and is 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: