

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:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois with its principal office and place of business located in the City of Chicago, State of Illinois. It is now and for more than two years last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale and retail 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 principal place of business in the City of Chicago, State of Illinois, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its 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 interstate commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of the business as described in paragraph 1 hereof, respondent sells to wholesale and retail dealers and jobbers certain assortments of candies.

(a) One of the said assortments of candies is composed of a number of small packages containing candy commonly termed "kisses", which said packages retail at a price of ten cents each. Each of said small packages of candy contain, in addition to the candy, an article of merchandise, or a prize, or, in the event that the article of merchandise or prize is too large to be packed within the package, a printed coupon or premium notice entitling the holder thereof to the larger article of merchandise or prize. The majority of these articles of merchandise or prizes contained within the said packages are of very little value, but a small number of the said articles of merchandise or prizes are of a value greater than ten cents. The articles of merchandise, or prizes, or printed coupons entitling the holder thereof to a prize, are concealed from the consuming or purchasing public within the packages of candy until after the packages have been purchased and broken open by the said purchasing or consuming public. The articles of merchandise or prizes thus obtained by the purchasing or consuming public are of unequal value. The candy contained in each of the said packages is not the equivalent in quantity or quality to candy that ordinarily retails for ten cents. The purchasers of the said small packages of candy containing an article of merchandise, or prize, or coupon entitling the holder to a prize, greater in value than ten cents thus procure the article of merchandise or prize wholly by lot or chance.

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(b) Another of the said assortments of candies is composed of a number of small packages containing candy commonly termed "kisses", which said packages retail at a price of twenty-five cents each. Each of said small packages of candy contain, in addition to the candy, an article of merchandise, or a prize, or, in the event that the article of merchandise or prize is too large to be packed within the package, a printed coupon or premium notice entitling the holder thereof to the larger article of merchandise or prize. The majority of these articles of merchandise or prizes contained within the said packages are of very little value, but a small number of the said articles of merchandise or prizes are of a value greater than twenty-five cents. The articles of merchandise, or prizes, or printed coupons entitling the holder thereof to a prize, are concealed from the consuming or purchasing public within the small packages of candy until after the packages have been purchased and broken open by the said purchasing or consuming public. The articles of merchandise or prizes thus obtained by the purchasing or consuming public are of unequal value. The candy contained in each of the said packages is not the equivalent in quantity or quality to candy that ordinarily retails for twenty-five cents. The purchasers of the said small packages of candy containing an article of merchandise, or prize, or coupon entitling the holder to a prize, greater in value than twenty-five cents thus procure the article of merchandise or prize wholly by lot or chance.

PAR. 3. The aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in the various States of the United States, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale and sell said candies to the purchasing public with the articles of merchandise or prizes contained within the packages in accordance with the sales plan of the respondent as described in paragraph 2 above. Respondent thus supplies to and places in the hands of others the means of conducting a lottery or lotteries in the sale of its products in accordance with respondent's said sales plan 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 the candies of respondent's said competitors because of the chance of obtaining the larger or more valuable articles of merchandise, or prizes, free of charge.

PAR. 5. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase the said packages in the hope that said purchasers will obtain an article of merchandise or prize of a greater value than the selling price of the particular

package. Respondent's candies are thus distributed to the consuming public by means of a lottery.

PAR. 6. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's 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.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission and respondent's substituted answer thereto, in which answer respondent consented that, as provided by paragraph 2 of Rule III of the Commission's Rules of Practice, the Commission might make, enter and serve upon respondent an order to cease and desist from the violations of law charged in the complaint, and the Commission being fully advised in the premises,

It is hereby ordered, That the respondent, Universal Theatre Concession Company, its officers, directors, agents, representatives and employees, in the sale and distribution in interstate commerce of candy and candy products, cease and desist from:

(1) 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 similar places of amusement, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device or a gift enterprise.

(2) Supplying to, or placing in the hands of, concessionaires with, and operators, managers and proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals and other similar places of amusement, packages or assortments of candy which are or may be used without alteration or rearrangement of the contents of such packages to conduct a lottery, gaming device or a gift enterprise in the sale or distribution of the candy or candy products contained in said packages or assortment to the public.

(3) Packing or assembling in the same assortment packages or small boxes of candy for ultimate sale to the public, which individual packages or small boxes of candy are of uniform appearance, but which contain other articles of merchandise or coupons entitling

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the purchaser thereof to other articles of merchandise, which articles of merchandise are of varying value.

(4) Furnishing to concessionaires with, or operators, managers or proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals and other similar places of amusement, assortments of candy consisting of individual packages or small boxes of candy for resale to the public, which individual or small boxes of candy are of uniform appearance, but which contain articles of merchandise or coupons calling for articles of merchandise of varying value.

It is further ordered, That the respondent, Universal Theatre Concession Company, 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 and form in which it has complied with the order to cease and desist, hereinabove set forth.

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Syllabus

IN THE MATTER OF
BOB HOFELLER, INDIVIDUALLY, AND TRADING AS BOB
HOFELLER CANDY COMPANY

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

Docket 2187. Complaint, May 23, 1934—Decision, June 3, 1935

Where an individual engaged in the sale and distribution of packaged or boxed assortments of "prize candy", for sale at retail at prices ranging from 5 cents to 25 cents, to concessionaires with, and to operators, managers, and proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals, within which boxes, bearing various brand names and containing assortments varying according to the wishes of the customers, there were enclosed and concealed, in addition to the pieces of candy therein contained, articles of merchandise or coupons representative thereof, as prizes, ranging in value from 1 cent to \$3, such as stick pins, transfer pictures, tops, blankets, bedspreads, etc.—

Sold said assortments or packages, so assembled and packed that they could be offered for sale by said customers to the consuming public as a lottery or gaming device, without alteration or rearrangement, and could not be resold to the public otherwise, without breaking open each package and rearranging the contents thereof, with knowledge and intent that said candy would and should thus be offered and sold to such concessionaires, operators, managers and proprietors, who found candy offered by said methods more salable, and purchased the products of said individual and of others employing the same, and displayed, offered and sold said packages to members of their audiences at their respective places of business, and thereby distributed said articles of prize merchandise wholly by lot or chance to the ultimate purchasers of said boxes of candy, in competition and potential competition with concerns which consider such a method of sale and distribution as morally bad and as encouraging gambling, and especially where children are involved, as injurious to the industry in the merchandising of a chance or lottery instead of candy, and as providing the vendors thereof with a means of violating the laws of the several States;

With the result that competitors and potential competitors who refused to sell their merchandise through such methods and who can compete on even terms only by giving the same or similar devices to their customers, were put to a disadvantage in competing and trade was diverted from them to said individual and others employing similar methods, other competitors opposed to the use of such methods for the reasons set forth were constrained to adopt the same in order to meet the competition of said