

Complaint

IN THE MATTER OF
GORDON HOWARD COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2212. Complaint, July 20, 1934—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 concessionaries, 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.

Mr. H. R. Brandt, of Kansas City, Mo., and *Moses, Kennedy, Stein & Bachrach*, of Chicago, Ill., for respondent.

COMPLAINT

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, having reason to believe that Gordon

Complaint

20 F. T. C.

Howard Company has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation, organized and existing under the laws of the State of Missouri, with its principal office and place of business in the City of Kansas City, State of Missouri, where it is now, and has been for more than two years last past, engaged in the business of packing and assembling candy into assortments, and selling and distributing such assortments of candy to concessionaires who sell such candy at carnivals, medicine shows, circuses, fairs, tent repertoire shows, and burlesque theatres, and to wholesale and retail candy dealers. Such purchasers are located at various points in the several States of the United States, and respondent causes said products when so sold to be transported from its principal place of business in the City of Kansas City, State of Missouri, 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 active competition with other individuals, partnerships and corporations engaged in the sale and distribution of candy 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 herein, respondent sells to concessionaires who sell candy at carnivals, medicine shows, circuses, fairs, tent repertoire shows and burlesque theatres, and to wholesale and retail dealers, certain packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when distributed to the consumers thereof.

One of the said assortments of candies is composed of a number of small packages of candy which said packages retail at the price of 10 cents each. Each of said small packages of candy contains, 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 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 10 cents. The articles of merchandise or prizes or printed coupon entitling the holder thereof to a prize are concealed from the consuming or purchasing public, within the package 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 to be 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 10 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 10 cents thus procure the article of merchandise or prize wholly by lot or chance.

The respondent distributes numerous assortments of candy, some of which retail at 25 cents per package, others at 15 cents per package, and others at 10 cents per package as described above, all of which assortments are distributed by methods similar to that described herein.

PAR. 3. Aforesaid concessionaires selling respondent's candy, and retail dealers purchasing respondent's candy, expose said assortments for sale and sell said assortments to the purchasing public in accordance with the above-described sales plan. 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 sales plan hereinabove set forth.

PAR. 4. Respondent's aforesaid practices 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. Aforesaid practices 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 lot or chance, and trade is diverted to this respondent from its said competitors.

PAR. 6. The use by respondent of said practice tends to lessen competition between respondent and those of its said competitors who do not use the same or a similar sales policy. Certain of respondent's said competitors in the sale of candy do not use the same or a similar sales policy, and the use of said practice by respondent tends to create monopoly by excluding said competitors from such competitive trade, and making it impossible for potential competitors to enter said competitive trade or business, unless they shall adopt and use the same or a similar unfair practice or method of competition in commerce.

Order

20 F. T. C.

PAR. 7. 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

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission and respondent's answer thereto in which answer respondent consented that as approved by paragraph 2 of Rule III of the Commission's Rules of Practice, that 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, Gordon Howard 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 package 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 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,

Memorandum

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, Gordon Howard 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.

MEMORANDUM

UNION CONCESSION Co. (Docket 2188.) The Commission, as of June 4, 1935, made a similar consent order in the case of the aforesaid respondent (against which respondent complaint identical, or substantially identical, with that in the principal case, except for the inclusion in the latter of the allegation covered by paragraph 6, was made on May 23, 1934), it appearing that respondent is an Illinois corporation, with principal office and place of business in Chicago, for more than five years last past engaged in the business of packing and assembling candy into assortments, and in the sale and distribution of such assortments to concessionaires who sell the same at carnivals, etc., as alleged against the respondent in the principal case. The Commission was represented in the matter by *Mr. Henry C. Lank*. Respondent was represented by *Moses, Kennedy, Stein & Bachrach*, of Chicago, Ill.

IN THE MATTER OF
HAIR-TEX CORPORATION

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

Docket 2271. Complaint, Dec. 20, 1934—Order, June 11, 1935

Consent order requiring respondent corporation, in connection with the manufacture and sale of upholstery fillings in interstate commerce, to cease and desist from directly or indirectly using or causing to be used the word "Hair" either alone or in connection or conjunction with the letters "Tex" or with any other letters, word or words, or in any way in its advertisements, advertising matter, on its labels or any of its printed matter or in any other place so as to import or imply or which may have the capacity and tendency to confuse, mislead or deceive purchasers or prospective purchasers into the belief that said product is composed of hair, when such is not the fact, provided, however, that nothing herein contained shall prohibit the respondent from using the word "Hair-Tex" if in conjunction therewith the words "Made from Tampico Fibre" appear in its advertisements, labels, and in every other place in conspicuous type.

Mr. Morton Nesmith for the Commission.

Seidman & Seidman and *Mr. Percy H. Moore*, of Cleveland, Ohio, 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 the Hair-Tex Corporation has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint.

PARAGRAPH 1. Respondent, Hair-Tex Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio and having its principal place of business at Cleveland, in the State of Ohio.

Respondent corporation for more than one year last past has been, and is now, engaged in the business of manufacturing, offering for sale and selling upholstery fillings in commerce between and among the several States of the United States. Respondent has caused and still causes its upholstery fillings, when so sold, to be transported from its place of business in the City of Cleveland, State of Ohio,