

Complaint

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

Docket 1789. Complaint, Apr. 28, 1930—Decision, July 24, 1936.¹

Where a corporation, engaged in the manufacture and sale of candies, including assortments composed of chocolate covered penny candies of uniform size, shape, and quality, together with a number of larger pieces, and, in some instances, other articles of merchandise, acquisition of which, as prizes, without further charge, was determined by ultimate purchaser's chance selection of one of a relatively few of said chocolate covered candies, enclosed concealed centers of which differed in color from those of the majority, and by purchase of last piece of said covered candies included therein—

Sold said assortments, in competition with others engaged in manufacture, sale and distribution of candies in commerce among the various States, together with explanatory display cards for retailers' use in advising prospective purchasers of the nature of said merchandising plan, to wholesalers and jobbers, with result that said wholesalers' and jobbers' retail dealer-vendees exposed said assortments for sale in connection with such explanatory cards and sold such candies to purchasing public in accordance with said plan, whereby purchaser of candies with the different centers and purchaser of last piece in assortment procured and received, free of charge, one of the larger pieces or articles of merchandise included therewith, and with effect of thereby supplying to and placing in the hands of others a means of conducting a lottery wherein such larger pieces or articles were distributed to the purchasing public wholly by lot or chance, in connection with its said sales plan, and of thus inducing many of the consuming public to purchase its said candies in preference to those of its competitors because of the chance of obtaining such larger pieces or other articles free of charge, and with tendency so to do, and in violation of public policy:

Held, That such practices, under the conditions and circumstances described, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Henry C. Lank for the Commission.

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 Luden's Inc., a corporation, hereinafter referred to as respondent, has been

¹ Order published as modified as of Nov. 4, 1936.

A prior cease and desist order in this matter made as of April 3, 1934 (See 18 F. T. C. 282), was vacated and set aside, etc., by order of the Commission on July 24, 1936.

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 Reading, State of Pennsylvania. 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 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 Reading, 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 candies. The 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 certain other merchandise, which larger pieces of candy or articles 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 assortment retail at the price of 1¢ 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 heretofore referred to 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 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 pro-

cure one of the said larger pieces of candy or articles of merchandise wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with each of said packages or 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 by purchasing the last piece of candy in said assortment the purchaser will receive one of said larger pieces of candy and/or article of merchandise free of charge.

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 aforesaid explanatory card and sell said candies to the purchasing public according to aforesaid plan whereby the purchaser of said candies having colored centers different from the centers of the majority of the pieces of candy contained in said assortments and the purchaser of the last piece of candy in said assortments procure and receive free of charge one of the said larger pieces of candy or articles of merchandise hereinbefore referred to. Respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said larger pieces of candy or articles of merchandise are distributed to the purchasing public wholly by lot or chance in connection with respondent's said sales plan.

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 certain pieces of candy and/or articles of merchandise 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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 April 28, 1930, issued, and on April 29, 1930, served, its complaint in this proceeding upon the respondent,

Findings

23 F. T. C.

Luden's Inc., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. Respondent filed answer to said complaint on or about May 29, 1930, and thereafter, on or about February 28, 1934, the respondent moved to withdraw the answer theretofore filed on or about May 29, 1930, and offered for filing a substitute answer, which motion was granted and a substitute answer was received and filed on March 28, 1934. In accordance with the terms of said substitute answer the Commission issued its order directing the respondent to cease and desist from the unfair methods of competition charged in the said complaint. Thereafter, following a further investigation by the Commission, the respondent, Luden's, Inc., tendered a third answer, dated June 20, 1936, in which it states that it desires to, and hereby waives, hearing on the charges set forth in the complaint herein; that it admits all the material allegations of the complaint to be true; that it consents that the Commission, without hearing and without further evidence and without intervening procedure, may make, issue, and serve upon it its findings as to the facts and conclusion and an order to cease and desist from the methods of competition alleged in the complaint, and the Commission having issued its order in this matter nunc pro tunc as of June 19, 1936, vacating and setting aside the order to cease and desist heretofore issued in this proceeding on or about April 3, 1934, and this proceeding having regularly come on for final hearing on the said complaint and on the said answer of respondent dated June 20, 1936, and the Commission having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Luden's Inc., 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 Reading, State of Pennsylvania. It is now and for several 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 Reading, 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 corporations and with individuals and partnerships 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 and has sold to wholesalers and jobbers certain packages or assortments of candies. The said assortments of candies are composed of a number of pieces of chocolate covered candies of a uniform size, shape, and quality, together with a number of larger pieces of candy and in some instances certain other articles of merchandise, which larger pieces of candy or articles 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 of said assortment retail at a price of 1¢ each, but the purchasers who procure one of said candies having a center of 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 heretofore referred to or the other article 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 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 articles of merchandise wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with each of said packages or 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 by purchasing the last piece of candy in said assortment the purchaser will receive one of said larger pieces of candy or the other article of merchandise free of charge.

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 aforesaid explanatory card and sell said candies to the purchasing public according to aforesaid plan whereby the pur-

Order

23 F. T. C.

chaser of said candies having colored centers different from the centers of the majority of the pieces of candy contained in said assortments and the purchaser of the last piece of candy in said assortments procure and receive free of charge one of the said larger pieces of candy or articles of merchandise hereinbefore referred to. Respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said larger pieces of candy or articles of merchandise are distributed to the purchasing public wholly by lot or chance in connection with respondent's said sales plan.

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 said larger pieces of candy or other articles of merchandise free of charge.

PAR. 5. The Commission further finds that the sale and distribution in interstate commerce of assortments of candy, as described in paragraph 2 hereof, are contrary to public policy.

CONCLUSION

The practices of said respondent under the conditions and circumstances hereinbefore described are to the prejudice of the public and respondent's competitors and are unfair methods of competition in interstate commerce and constitute a violation 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."

MODIFIED ORDER TO CEASE AND DESIST ¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission issued on April 28, 1930, and served on April 29, 1930, the answer of the respondent dated June 20, 1936, admitting the truth of the material allegations of the complaint and waiving all further proceedings herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated 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."

It is ordered, That the respondent, Luden's Inc., its officers, agents, representatives, and employees, in the offering for sale, sale and distribution in interstate commerce of candy and candy products, do cease and desist from:

¹ Published, as modified, as of November 4, 1936.

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, candy so packed and assembled that sales of such candy are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers packages or assortments of candy which are used or may be 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 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 candy of uniform size, shape, and quality having centers of a different color, together with larger pieces of candy or other articles of merchandise, which said larger pieces of candy or other 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) Furnishing to wholesale dealers and jobbers display cards, either with 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.

(5) Furnishing to wholesale dealers and jobbers 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 upon purchasing the last piece of candy in the package or assortment a larger piece of candy or other article of merchandise will be given as a prize.

It is further ordered, That the respondent, Luden's 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 and form in which it has complied with the order to cease and desist hereinabove set forth.

Complaint

23 F. T. C.

IN THE MATTER OF
WESTERN RESERVE DISTILLING COMPANY

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE
I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2418. Complaint, May 27, 1935—Order, July 27, 1936

Consent order requiring respondent corporation, its agents, etc., in connection with the offer for sale or sale in interstate commerce of whiskies, gins, and other spirituous beverages, forthwith to cease and desist from representing, through use of word "Distilling" in its corporate name, on stationery, advertising, or labels attached to bottles in which it ships and sells its said products or in any other way by word or words of like import, that (a) it is a distiller of whiskies, gins, and other such beverages, or (b) said whiskies, etc., were by it made through process of distillation, or (c) it owns, operates, or controls a place or places where such beverages are made by such process, unless and until it shall own, operate, or control a place or places where such whiskies, etc., are by it made, through process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until manufacture thereof is complete; and

Ordered further, that complaint be, and same is, dismissed as to count 2 (National Industrial Recovery Act count).

Mr. PGad B. Morehouse for the Commission.

Mr. R. E. Joyce, of Washington, D. C., 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 The Western Reserve Distilling Co., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and in violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act," and it appearing to the 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:

Count 1

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its office and principal place of business in the city of Cincinnati, in said

¹ Count 2 of the complaint, under the National Industrial Recovery Act, dismissed.