

IN THE MATTER OF
AMERICAN 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 1807. Complaint, Dec. 24, 1935¹—Decision, Oct. 19, 1936

Where a corporation engaged in manufacture and sale of so-called "break-and-take," "draw," or "deal" assortments, principal trade demand for which comes from the small retailers, with stores in many instances near schools and patronized by the school children, and sale and distribution of which, or similarly sold candy, offering opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, largest class by far of purchasers and consumers of such candy, who buy same in preference to so-called "straight" candy when displayed side by side, by reason of lottery or gambling feature connected with former, and sale of which in market of the other, i. e., the "straight" candy, sold exclusively by many manufacturers, has been followed by a marked decrease in sale of such "straight" candy due to the gambling or lottery feature of so-called "break-and-take," "draw," or "deal" candy—

Sold to wholesale and retail dealers, together with explanatory display cards for latter's use, or "push cards," as the case might be, (1) assortments of penny candies, in which the procuring of one of the larger pieces, or bars, included as prizes along with majority of uniform pieces making up assortments, was contingent upon chance selection of one of such pieces, concealed color of which differed from that of the majority, and in which purchaser of last piece in assortment also received such a prize, and, (2) assortments in which the fortunate five-cent push from card secured such chance selector a box of candy, in addition to bars received by the others; so packed and assembled that such various assortments could be displayed and offered, and with knowledge and intent that such assortments would and could be sold, without alteration, addition, or rearrangement, to public by lot or chance by such retail dealers therein; in violation of public policy, and in competition with many who regard such methods of sale and distribution as morally bad and as encouraging gambling, and especially among children, as injurious to the industry in question through resulting in the merchandising of a chance or lottery instead of candy, and as providing retail merchants with the means of violating the laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed and assembled that it can thus be sold;

With result that competitors refusing, as aforesaid, to sell candy so packed and assembled that it could be sold to the public by lot or chance, and who could compete on even terms only by giving the same or similar devices to retailers, were put to a disadvantage and their sales of "straight" candy showed a continued decrease, some competitors began the sale and distribution of candy for resale to the public by lot or chance, to meet the competition of those who sold and distributed candy resold by such

¹ Amended and supplemental.

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methods in response to demand therefor, public and competitors were prejudiced and injured, and trade was diverted to it from its said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in industry in question:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Beach, Fathchild & Scofield, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, the Federal Trade Commission did heretofore, to wit on May 1, 1930, issue its complaint herein charging and alleging that respondent herein is and has been guilty of 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, and

Whereas, this Commission having reason to believe that respondent herein has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, other than and in addition to those in relation to which the Commission issued its complaint as aforesaid, and it appearing to said Commission that a further proceeding by it in respect thereof would be in the public interest:

Now, therefore, acting in the public interest, pursuant to the provisions of the Act of September 26, 1914, aforesaid, the Federal Trade Commission charges that the American Candy Company has been and now is using unfair methods of competition in commerce, as "commerce" is defined in 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 Milwaukee, State of Wisconsin. It is now, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States, and causes said product, when so sold, to be transported from its place of business in the city of Milwaukee, State of Wisconsin, to purchasers thereof in other States of the United States at their respective places of business, and there is now, and has been

for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business respondent is in competition with other corporations, and with partnerships and individuals engaged in the sale and distribution of candy and candy products 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, respondent sells and has sold to wholesale and retail dealers various packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all-inclusive of the various packages, nor does it include all of the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of said assortments is composed of a number of pieces of chocolate-covered candy of uniform size, shape, and quality, together with a number of larger pieces of candy, and one still larger piece of candy. These larger pieces of candy are to be given as prizes to purchasers of said chocolate-covered candy of a uniform size, shape, and quality in the following manner:

The majority of the said chocolate-covered candies contained in the said assortment have centers of the same color, and a small number of said chocolate-covered candies have centers of a different color. Said pieces of candy of a uniform size, shape, and quality in said assortment retail at the price of 1¢ each, but the purchasers who procure one of the said pieces of candy 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. The purchaser of the last piece of the aforesaid chocolate-covered candies of a uniform size, shape, and quality in said assortment is entitled to receive and is to be given free of charge the said largest piece of candy heretofore referred to. The color of the center of said pieces of candy of uniform size, shape and quality is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy selected broken open. The aforesaid purchasers of said candies who procure a piece of 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, thus procure one of the said larger pieces of candy wholly by lot or chance.

Respondent furnishes to said wholesale and retail dealers with said assortment of candy a display card to be used by the retail dealer in offering said candy for sale to the public. The display card bears a legend or statement informing the prospective purchaser which color of the said colored-center candies contained in said assortment entitles the purchaser to one of the larger pieces of candy, and a legend or statement advising that the purchaser of the last piece of candy will receive the largest piece of candy free of charge.

(b) Another assortment manufactured and distributed by the respondent is described as "Play Ball". This assortment consists of a number of candy marbles, together with a number of bars of candy. These bars of candy are to be given as prizes to purchasers of the candy marbles in the following manner:

The majority of said candy marbles contained in said assortment are of one color, but a small number are of a different color. Said candy marbles in said assortment retail at the price of 1¢ each, but the purchasers who procure one of the candy marbles colored differently from the majority are entitled to receive and are to be given free of charge one of the said bars of candy heretofore referred to. The candy marbles are concealed in a compartment at the bottom of the box within which the entire assortment is packed and the prize candy bars are placed in the upper compartment of the box. There is a small opening at one corner of the box leading into the lower compartment. Inserted in this opening is a wooden plunger which, when operated, withdraws one of the candy marbles. The opening and the plunger are so arranged that it is impossible to perceive the color of the marble which the purchaser is about to receive until the plunger has been withdrawn. The aforesaid purchasers of said candy marbles who procure one colored differently from the majority thus procure one of the said bars of candy wholly by lot or chance.

(c) Another assortment manufactured and distributed by the respondent is composed of a number of candy bars and a number of boxes of candy together with a device commonly called a push card. The bars of candy vary in weight from $1\frac{1}{4}$ ounces to $2\frac{1}{8}$ ounces. The boxes of candy are of varying weights from 4 ounces to 15 ounces. The candy in said assortment is to be distributed in the following manner:

The push card has a number of partially perforated discs and when a push is made and the disc separated from the card, a number is disclosed. Sales are 5¢ each and the card bears statements or legends informing the customer and prospective customer as to which numbers entitle the purchaser to one of the boxes of candy. All other numbers receive a bar of candy. The last push or punch receives the largest

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box of candy. The numbers on the discs are effectively concealed from customers and prospective customers until a selection has been made and the push separated from the card. The fact as to whether a customer receives one of the bars of candy or one of the boxes of candy for the price of 5¢ is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale and sell said candy 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 sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure (a) larger pieces of candy; (b) additional bars of candy; or (c) packages or boxes of candy.

The use by respondent of said method of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said method and manner of packing said candy, and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent, in preference to candy offered for sale and sold by said competitors of respondent who do

not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or an equivalent method.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, acts, and practices 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 May 1, 1930, issued and served its complaint upon the respondent, American Candy Company, a corporation, charging that the respondent had been and was using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress. Respondent filed answer thereto on June 6, 1930, and thereafter on March 28, 1934, filed a substitute answer, dated February 28, 1934, consenting that the Commission might make, enter, issue, and serve an order to cease and desist from the practices complained of, after first having obtained leave to withdraw its answer filed on June 6, 1930. Subsequent thereto, on April 3, 1934, the Commission entered an order to cease and desist against respondent from the practices complained of in said complaint.

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On September 14, 1935, the Commission entered and served its order vacating and setting aside the aforesaid order to cease and desist theretofore entered on April 3, 1934, and thereafter on December 24, 1935, the Commission issued and served on the respondent an amended and supplemental complaint, charging that the respondent had been and was using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress. Respondent filed answer thereto, and testimony and evidence in support of the allegations of the complaint were introduced by Henry C. Lank and P. C. Kolinski, attorneys for the Commission, before Miles J. Furnas, an examiner for the Commission, theretofore duly designated by it. Respondent was represented by Irving H. Fathchild, Esq., and while no witnesses were called to testify in opposition to the charges in the complaint, it was stipulated formally on the record by and between counsel for the Commission and for the respondent that the testimony and evidence taken and filed with the Federal Trade Commission in the matter of Walter H. Johnson Candy Company, Docket No. 1817, beginning with page 105 of the original transcript of the testimony and continuing to the end thereof, might and should be considered as testimony on behalf of the Commission and of the respondent, respectively, in the instant proceeding. All the said testimony and evidence hereinabove referred to including the said stipulated testimony and evidence were duly recorded and filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended and supplemental complaint, the testimony and evidence duly recorded and filed in the office of the Commission, including the said stipulated testimony and evidence and brief in support of the complaint, respondent through its counsel having indicated that it did not desire to file any brief nor to orally argue the matter, and the Commission having duly considered the foregoing 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, American Candy Company, 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 Milwaukee, State of Wisconsin. Respondent is now and for several years last past has been engaged in the manufacture of candy in Milwaukee, Wis., and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States,

and causes said candy when so sold to be shipped or transported from its principal place of business in Milwaukee, Wis., to purchasers thereof in other States of the United States, at their respective places of business. In so carrying on said business, respondent is and has been engaged in interstate commerce and is and has been in active competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. Among the candy manufactured and sold by respondent is an assortment composed of a number of pieces of chocolate covered candy of uniform size, shape, and quality together with a number of larger pieces of candy and one still larger piece of candy. These larger pieces of candy are given as prizes to purchasers of said chocolate covered candy of uniform size, shape, and quality in the following manner:

The majority of the said chocolate covered candies contained in said assortment have centers of the same color, but a small number of said chocolate covered candies have centers of a different color. Said pieces of candy of uniform size, shape, and quality retail at the price of 1¢ each, but the purchasers who procure one of the said pieces of candy having a center of a different color than the majority of said candies are entitled to receive, and are given free of charge, one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of the aforesaid chocolate covered candies of uniform size, shape, and quality is entitled to receive, and is given free of charge, the said largest piece of candy heretofore referred to. The color of the center of said pieces of candy of uniform size, shape, and quality is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy selected broken open. The aforesaid purchasers of said candy who procure a piece of 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 assortment, thus procure one of the said larger pieces of candy wholly by lot or chance.

Respondent furnishes to said wholesale and retail dealers a display card to be used by the retail dealer in offering said candy for sale to the public. The display card bears a legend or statement informing the prospective purchaser which color of the said colored centered candies contained in said assortment entitles the purchaser to one of the larger pieces of candy, and a legend or statement advising that the purchaser of the last piece of candy will receive the largest piece of candy free of charge.

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PAR. 3. Another assortment manufactured and distributed by the respondent is designated as "Play Ball". This assortment is composed of a number of red and black candy marbles together with a number of bars of candy. These bars of candy are given as prizes to purchasers of the candy marbles in the following manner:

The majority of the said candy marbles contained in said assortment are red, but a small number are black. Said candy marbles retail at the price of 1¢ each but the purchasers who procure one of the black candy marbles is entitled to receive, and is given free of charge, one of the said bars of candy heretofore referred to. The purchaser who procures one of the red candy marbles receives only that particular marble. The candy marbles are concealed in a compartment at the bottom of the box within which the entire assortment is packed, and the prize candy bars are placed in the upper compartment of the box. There is a small opening at one corner of the box leading into the lower compartment. Inserted in this opening is a wooden plunger which when operated withdraws one of the candy marbles. The opening and the plunger are so arranged that it is impossible to perceive the color of the marble which the purchaser is about to receive until the plunger has been withdrawn. The aforesaid purchasers of said candy marbles who procure one of the black marbles thus procure one of the said bars of candy wholly by lot or chance.

Respondent furnishes to wholesale and retail dealers a display card to be used by the retail dealer in offering said candy for sale to the public. The display card bears a legend, or statement, or statements, informing the prospective purchasers that the candy contained in said assortment is being distributed in accordance with the above described sales plan or method.

PAR. 4. Another assortment manufactured and distributed by the respondent is composed of a number of candy bars and a number of boxes of candy together with a device commonly called a "push card". The candy in said assortment is distributed in the following manner:

The "push card" has a number of partially perforated disks, and when a push is made and the disk separated from the card, a number is disclosed. Sales are 5¢ each and the card bears statements or legends, informing customers and prospective customers as to which numbers entitle the purchasers to one of the boxes of candy. All other numbers receive a bar of candy. The numbers on the disks are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular disk separated from the card. The fact as to whether a purchaser receives one of

the bars of candy or one of the boxes of candy for the price of 5¢ is thus determined wholly by lot or chance.

PAR. 5. The candy assortments involving the lot or chance feature as described in paragraphs 2, 3, and 4 above, are generally referred to in the candy trade or industry as "break and take", "draw", or "deal" assortments. Assortments of candy without the lot or chance feature, in connection with their resale to the public, are generally referred to in the candy trade or industry as "straight" goods. These terms will be used hereafter in these findings to designate these types of assortments.

PAR. 6. Numerous retail dealers purchase and have purchased the assortments described in paragraphs 2, 3, and 4 above, direct from respondent or from wholesale dealers and jobbers who in turn have purchased said assortments from the respondent. Such retail dealers display said assortments for sale to the public as packed and assembled by the respondent, and the candy contained in said assortments is sold and distributed to the consuming public as suggested by the respondent or by means of the "push card" furnished by the respondent, and in accordance with the legends printed on the display cards or on the "push card".

PAR. 7. The respondent sells its merchandise to retail dealers and wholesale dealers and jobbers in the north, south, and middle western parts of the United States; the greater bulk of its merchandise is sold between Colorado and western New York State. Respondent's merchandise, both "straight," and "break and take," or "draw," or "deal" assortments, is resold in practically all stores where candy is sold. It was stipulated at the hearing in this case that the 5¢ "push card" assortment, referred to in paragraph 4 hereof, has a substantial distribution among retail dealers where the consumers are predominantly but not exclusively adults, as distinguished from children. It was also stipulated at the hearing in this case that there are certain instances where the assortments described in paragraphs 2, 3, and 4 hereof have been purchased by dentists, or barbers, or in some cases by grocery stores where the proprietor of the office or store distributed the candy gratuitously among children of patrons or callers and gives them the prize piece or package if they select the prize winning smaller piece or number. It was further stipulated that this distribution was not extensive.

All sales made by the respondent are absolute sales, and the respondent retains no control over the goods after they are delivered to the retail dealers or to the wholesale dealers and jobbers. The assortments are packed in such manner that they can be displayed and offered for sale, and are designed to be displayed and offered

for sale without alteration, addition, or rearrangement to the consuming public by means of a lottery, gaming device, or gift enterprise.

The sale and distribution of candy by retail dealers by the methods described herein is the sale and distribution of candy by lot or chance and constitutes a lottery, gaming device, or gift enterprise.

In the sale and distribution to retail dealers and wholesale dealers and jobbers for resale to retail dealers of assortments of candy assembled and packed as described in paragraphs 2, 3, and 4 herein, respondent has knowledge that the majority of said assortments will be resold to the purchasing public by retail dealers by lot or chance and it packs and assembles such candy in the way and manner described so that it may, without alteration, addition, or rearrangement, be resold to the public by lot or chance by said retail dealers.

PAR. 8. Many competitors of respondent regard such methods of sale and distribution as morally bad and as encouraging gambling, especially among children; as injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy; and as providing retail merchants with the means of violating the laws of the several States. Because of these reasons, some competitors of respondent refuse to sell candy so packed and assembled that it can be sold to the public by lot or chance. These competitors are thereby put to disadvantage in competing. Said competitors can compete on even terms only by giving the same or similar devices to retailers. This they are unwilling to do and their sales of "straight" candy show a continued decrease.

There is a demand for candy which is sold by lot or chance and in order to meet the competition of manufacturers who sell and distribute candy which is resold by such methods some competitors of respondent have begun the sale and distribution of candy for resale to the public by lot or chance. The use of such methods by respondent in the sale and distribution of its candy is prejudicial and injurious to the public and respondent's competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 9. The principal demand in the trade for the "break and take," or "deal," or "draw" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of school children. The consumers or purchasers of the lottery or prize candy assortments are principally children and because of the lottery or gambling feature connected with the "break and take," or "draw," or "deal" assortments and the

possibility of becoming a winner, it has been observed that the children purchase them in preference to the "straight" candy when the two types of assortments are displayed side by side.

The children prefer to purchase the lottery or prize assortments of candy because of the gambling feature connected with its sale. The sale and distribution of "break and take," or "draw," or "deal" assortments of candy or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance teaches and encourages gambling among children who comprise by far the largest class of purchasers and consumers of this type of candy.

PAR. 10. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize assortments of candy and who sell their "straight" candy in interstate commerce in competition with the "break and take," or "draw," or "deal" candy, and manufacturers of the "straight" type of candy have noted a marked decrease in the sales of their product whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight" candy is principally due to the gambling or lottery feature indicated with the "break and take," or "draw," or "deal" candy.

PAR. 11. The Commission further finds that the sale and distribution in interstate commerce of assortments or packages of candy so packed and assembled as to enable retail dealers without alteration, addition, or rearrangement to resell the same to the consuming public by lot or chance is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, American Candy Company, a corporation, under the conditions and circumstances set forth in the foregoing findings of fact are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce and constitute a violation 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, the answer of the respondent, the testimony and evidence taken and the testimony and evidence stipulated as a part of the record before Miles J. Furnas, an examiner of the Commission, there-

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tofore duly designated by it, 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, American Candy Company, a corporation, its officers, agents, representatives, and employees, in the offering for sale, and sale and distribution in interstate commerce of candy and candy products, do cease and desist from:

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

(2) Supplying to, or placing in the hands of retail and wholesale dealers and jobbers, packages or assortments of candy which are used, or are designed to 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 contained in said assortments 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, of different colors or having centers of a different color together with larger pieces of candy which said larger pieces of candy are to be given as prizes to the purchaser procuring a piece of candy of a particular color or with a center of a particular color;

(4) Supplying to, or placing in the hands of, retail and wholesale dealers and jobbers, assortments of candy together with a device commonly called a "push card" for use, or which is designed to be used, in the distribution of said candy to the public at retail;

(5) Furnishing to retail and wholesale dealers and jobbers a display card, or a device commonly called a "push card", either with assortments of candy or separately, bearing a legend or legends or statements informing the public that the candy is being sold by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise;

And it is further ordered, That the respondent, American Candy 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.

Syllabus

IN THE MATTER OF
DOMINION DISTILLERIES, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 2452. Complaint, June 21, 1935—Decision, Oct. 19, 1936*

Where a corporation, engaged as wholesaler and rectifier in purchasing, rectifying, blending, and bottling whiskies, gins, cordials, liqueurs, and other alcoholic beverages, and in the production of gins by process of rectification whereby alcohol, purchased but not produced by it, was redistilled over juniper berries and other aromatics through a still used by it for said purpose, and in the sale of its aforesaid products to wholesalers and retailers, in substantial competition with others engaged in the manufacture by true distillation of whiskies, gins, and other alcoholic beverages from mash, wort, or wash, and in the sale thereof; and also with those engaged in purchasing, rectifying, blending, and bottling whiskies, etc., in rectifying plants, and in selling same; and including, among its said competitors, those who, as manufacturers and distillers from mash, wort, or wash of whiskies, etc., sold by them, truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate name and on their stationery, catalogs, and labels, and also those engaged in purchasing, rectifying, etc. whiskies, etc. who do not thus use said words in their corporate, or trade names, nor on their stationery, catalogs, advertising, or on their labels—

Represented, through the use of word "Distilleries" in its corporate name, printed on its stationery, catalogs, and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, to its customers, and furnished said customers with the means of similarly representing to said customers' retail dealer vendees and to the ultimate consuming public, that it was a distiller and that the said whiskies, gins, cordials, liqueurs, and other alcoholic beverages contained in said bottles were by it made through the process of distillation from mash, wort, or wash;

The facts being it did not distill said whiskies, etc. thus bottled, labeled, and sold by it, and did not own, operate, or control any place or places where spirituous beverages are made by a process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until the manufacture is complete, as long definitely understood from word "distilleries" by liquor wholesalers and retailers and by the ultimate purchasing public; and did not "distill" in the sense commonly accepted and understood by those engaged in the liquor trade and the public, by virtue of its rectification of alcoholic spirits by redistillation over juniper berries and other aromatics through the use of a still operated by it, as aforesaid;

With effect of misleading and deceiving dealers and the purchasing public into the beliefs that it was a distiller, and that the whiskies, gins, and other spirituous beverages sold by it were made or distilled by it from mash,