

IN THE MATTER OF
CHASE CANDY COMPANY

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

Docket 2562. Complaint, Sept. 27, 1935—Decision, Nov. 7, 1936

Where a corporation, engaged in manufacture and sale of candy, including both "straight goods" and "draw" or "deal" assortments, in which, as case might be, (1) number disclosed by chance on push card included, by penny purchaser, decided whether such purchaser received for his penny one of the small pieces of candy in the assortment, one of the larger pieces, or a still larger piece or bar; and (2) number thus disclosed on a push card, likewise included with such second assortment, by 5¢ purchaser, by chance, determined whether such purchaser received for his 5¢ one, two, three, four, or five bars; with last purchase in case of both assortments receiving a further piece or package, respectively, without charge;

Sold said assortments, with cards, to retailers, wholesalers, and jobbers in certain States, knowingly assembled and packed for resale, without alteration, addition, or rearrangement, to the consuming, purchasing public, by lot or chance by retailers, which, as sellers of its said candy, included grocery and candy stores, stores in vicinity of schools, and drug stores, and stores of which, in case of small establishments, are frequently near schools and attract trade of school children, substantial proportion of whom constitute the consumers of the lottery or prize package candy, and who, given choice, purchase same in preference to "straight" goods because of lottery or gambling feature connected therewith, and chance of becoming a winner, and sale of which "straight" goods candy showed a marked decrease whenever and wherever lottery or prize candy appeared in its markets by reason of said gambling feature connected therewith;

With result that many competitors dealing in "straight goods" candy only, and who regard sale and distribution of other as morally bad and as encouraging gambling, and especially among children, its largest class, by far, of consumer-purchasers, and as injurious to the industry in merchandising, instead of candy, a chance or lottery, and as providing retail merchants with means of violating the laws of the States, and refuse to sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage, retailers bought from it and others employing similar methods of sale as enabling them to sell more candy, and trade was diverted to it and such others from aforesaid competitors dealing in "straight goods," and able to compete on even terms only by giving same or similar devices to retailers, sale of such refusing competitors' "straight goods" candy showed continued decrease, some competitors began sale and distribution of candy to public by lot or chance to meet constant demand for candy thus sold, public and competitors

Complaint

were prejudiced and injured, and there was a restraint upon and a detriment to the freedom of fair competition in said industry, and violation of public policy:

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.

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 Chase Candy Company, a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the 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 under the laws of the State of Missouri, with its principal office and place of business located in the city of St. Joseph, State of Missouri. It is now, and for several years last past has been, engaged in the manufacture of candy and in the sale thereof and distribution to wholesale and retail dealers located at points in the various States of the United States, and causes the said products, when so sold, to be transported from its place of business in the city of St. Joseph, Mo., 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 the said business, respondent is in 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. 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. Certain of said packages are hereafter described for the purpose of illustrating the methods used by respondent, but this list is not all in-

Complaint

23 F. T. C.

clusive of the various sales plans or the details of sales plans which respondent has been or is using to distribute candy by lot or chance.

Among such assortments is one which the respondent designates as "Gold Nugget Draw". This assortment is composed of a number of small chocolate-covered vanilla cream patty candies, 17 chocolate-covered nougat bars which are larger than the cream patties, 1 large chocolate-covered triple nougat bar, and a device commonly called a push card, containing 150 pushes. Sales are one cent each, and when a push is made from said card a number is disclosed. There are 150 numbers on said card, but they are not arranged consecutively. The card bears a statement or statements informing the prospective customers as to which numbers receive the chocolate-covered vanilla cream patties and which numbers receive the chocolate-covered nougat bars. The last purchase on said card receives the chocolate-covered triple nougat bar. The numbers on said card are effectively concealed from the purchasers or proposed purchasers until a push or selection has been made and the particular push separated from the card. The fact as to whether the customer receives one of the small chocolate-covered cream patties or one of the chocolate-covered nougat bars is thus determined wholly by lot or chance.

Among such assortments is another assortment designated by respondent as "Good and Lucky Assortment". This assortment consists of a number of bars of candy and one package of assorted chocolates, together with a device commonly called a push card, containing 60 pushes. Sales are 5¢ each and when a push is made from said card a number is disclosed. There are 60 numbers on said card, but they are not arranged consecutively. All purchasers receive a bar of candy but a small number of the purchasers received additional bars without additional cost and the card bears a statement or statements informing the prospective customer as to which numbers receive additional bars of candy. The purchaser of the last push on the card receives the package of assorted chocolates. The numbers on said card are effectively concealed from the purchasers or prospective purchasers until a push or selection has been made and the particular push separated from the card. The additional bars of candy in said assortment are thus distributed to purchasers wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell the same to retail dealers, and the said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale, in connection with the aforesaid push cards, 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 hereinbefore set forth as a means of inducing purchasers thereof to purchase respondent's said products in preference to candies offered for sale and sold by its competitors.

PAR. 4. The sale of said candies to the purchasing public, as above alleged, involves a game of chance or sale of a chance to procure larger or additional pieces of candy in the manner alleged. Such games of chance, and the sale, along with the sale of such candy, of such chance to procure such larger or additional pieces of candy in the manner alleged, are contrary to the established public policy of the several States of the United States and of the Government of the United States, and in many of the States of the United States are contrary to local criminal statutes.

By reason of said facts, many persons, firms, and corporations who make and sell candy in competition with respondent, as above alleged, are unwilling to offer for sale or sell candies 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 or a sale with such candies of a chance to procure larger or additional pieces of candy by chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, candy are attracted by respondent's said methods 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 candies offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. Many dealers in candies are induced to purchase said candies so offered for sale and sold by respondents in preference to all others, because said ultimate purchasers thereof give preference to respondent's said candies on account of said game of chance so involved in the sale thereof.

PAR. 6. The use of said methods by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods; to exclude from said candy trade all competitors who are unwilling to, and who do not, use the same or equivalent methods; 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 equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods by respondent has the tendency and capacity unfairly to eliminate from said candy trade all actual competitors and to exclude

Findings

23 F. T. C.

therefrom all potential competitors who do not adopt and use said methods or equivalent methods that are contrary to public policy and to criminal statutes as above alleged. Many of said competitors of respondent are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance, because such methods are contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such methods are detrimental to public morals and to the morals of the purchasers of said candy, or because of any or all of such reasons.

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, MODIFIED 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 September 27, 1935, issued and served a complaint upon the respondent, Chase Candy Company, charging that the respondent had been and was using unfair methods of competition in commerce as "commerce" is defined in said act of Congress.

After the issuance of the complaint, the respondent having failed to file answer thereto, 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 of the Commission, theretofore duly designated by it, and said testimony and evidence were duly recorded and filed in the office of the Commission. No testimony was offered on behalf of the respondent, although an opportunity was afforded it so to do. Thereafter, the proceeding came regularly on for final hearing before the Commission on said complaint and the testimony and evidence and brief in support of the complaint (respondent having failed to file any brief and no request having been made to orally argue the matter) and the Commission having duly considered the same 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

1 PARAGRAPH 1. Respondent, Chase Candy Company, is a corporation organized under the laws of the State of Missouri, with its principal office and place of business located in the city of St. Joseph, Mo. Respondent is now and for several years last past has been engaged in the manufacture of candy in St. Joseph, Mo., and in the sale and distribution of said candy to retail dealers, wholesale dealers and jobbers located in Missouri, Kansas, Oklahoma, Illinois, Nebraska, Iowa, and Arkansas. It causes said candy when sold to be shipped and transported from its principal place of business in Missouri to its customers in the above named States. 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 between and among the various States of the United States.

PAR. 2. Among the candies manufactured and distributed by respondent is an assortment containing a number of small pieces of candy, a number of larger pieces of candy, and one still larger piece or bar of candy, together with a device commonly known as a "push card". The candy in said assortment is distributed to the ultimate consumer by means of said push card in the following manner:

Said push card has a number of partially perforated disks, and when a disk is pushed or separated from the card a number is disclosed. These numbers are effectively concealed from customers and prospective customers until a disk is pushed or separated from the card. The push card bears legends or statements as follows:

1¢ GOLD NUGGET DRAW 1¢
 Per Per
 Sale Sale
 EVERY NUMBER WINS
 Number 5-10-15-20-25-40-45-50-
 55-60-65-70-75-90-95-100-110-
 receives a Chocolate Covered Nougat Bar.
 Other numbers receive a Chocolate
 Covered Vanilla Cream Patty. Last purchase on card receives the GRAND prize,
 a Chocolate Covered Triple Nougat Bar.

Push	Push	Push	Push	Push	Push
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Etc.

The candy contained in said assortment is distributed to the consuming public in accordance with the legends at the top of said push card,

Findings

23 F. T. C.

and the fact as to whether a purchaser receives one of the small pieces of candy, one of the larger pieces of candy, or still larger piece or bar of candy for the price of 1¢ is thus determined wholly by lot or chance.

PAR. 3. Another assortment manufactured and distributed by respondent consists of a number of bars of candy, a package of assorted chocolates, and a device commonly called a "push card". The said push card has at the top thereof the following legends:

5¢	GOOD AND LUCKY	5¢
Per	ASSORTMENT	Per
Sale		Sale

Number 50 receives Five Bars
 Numbers 1-20 receive Four Bars.
 Numbers 30-40-60 receive Three Bars.
 Numbers 5-7-15-17-25-27-35-37-45-47
 receive Two bars.
 Other numbers receive One Bar.
 Last purchase on card receives the cellophane
 wrapped package of Assorted Chocolates.

Push	Push	Push	Push	Push	Push	Push	Push
							Etc.

The candy in said assortment is distributed to the consuming public in accordance with the legends shown on said push card, and the said push card is similar in principle to the push card described in paragraph 2 above. The fact as to whether a purchaser receives more than one bar of candy or receives the package of respondent's chocolates for the price of 5¢ is thus determined wholly by lot or chance.

PAR. 4. The lottery or prize assortments as described in paragraphs 2 and 3 above are generally referred to in the candy trade or industry as "draw" or "deal" assortments, and assortments of candy without the gaming device or lottery 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 describe these respective types of candy.

PAR. 5. Numerous retail dealers purchase the assortments described in paragraphs 2 and 3 above direct from respondent or from wholesale dealers or jobbers who in turn have purchased said packages from respondent, and such retail dealers, display said packages for sale to the public as packed by the respondent, and the candy contained in said packages is sold and distributed to the consuming public in the manner described.

PAR. 6. All sales made by respondent, whether to wholesale dealers and jobbers or to retail dealers, are absolute sales and respondent

retains no control in any manner over the goods after they are delivered to the wholesale dealer or jobber or retail dealer. The assortments are assembled and packed in such a manner that they are sold or may be sold by the retail dealers to the purchasing public in the manner described without alteration or rearrangement.

The respondent has knowledge that 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 without alteration, addition, or rearrangement it may be resold to the public by lot or chance by said retail dealers.

PAR. 7. The sale and distribution of candy by retail dealers by the methods described in paragraphs 2 and 3 above is a sale and distribution of candy by lottery or chance and constitutes a lottery or gaming device.

Respondent's candy is sold to the consuming public in grocery stores, candy stores, school stores, delicatessen stores, and drug stores.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact, that many competitors 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 resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. Certain retailers who find that they can dispose of more candy by the "draw" or "deal" methods buy respondent's products and the products of others employing the same methods of sale and thereby trade is diverted to respondent and others using similar methods from said competitors. 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 goods" 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 sold 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 to respondent's competitors and has resulted in the diversion of trade to respondent from its said com-

petitors and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 8. One of the principal demands in the trade for the "draw" or "deal" 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 package candy are principally children and because of the lottery or gambling feature connected with the "draw" or "deal" package and the possibility of becoming a winner, children purchase candy from such packages in preference to the "straight goods" candy, when the two types of assortments are displayed side by side. The sale and distribution of "draw" or "deal" packages 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. 9. 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 goods" candy in interstate commerce in competition with the "draw" or "deal" candy, and manufacturers of the "straight goods" type of candy have noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight goods" candy is principally due to the gambling or lottery features connected with the "draw" or "deal" candy.

PAR. 10. In addition to the assortments described in paragraph 2 and 3 herein the respondent manufactures candy which it sells to retail dealers, wholesale dealers and jobbers without any lottery or chance feature. An officer of the respondent corporation testified that the annual sales of respondent amounts approximately to \$1,200,000.00. This figure includes both the "straight" merchandise and the "draw" or "deal" assortments, and while the exact proportions of each is not disclosed, yet the testimony shows, and the Commission finds, that the respondent has been and is distributing numerous assortments involving the sales plans or principles described in paragraphs 2 and 3 hereof.

PAR. 11. The Commission further finds that the sale and distribution in interstate commerce of assortments 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, Chase Candy Company, a corporation, under the conditions and circumstances set forth in the foregoing findings as to the facts 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 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

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and other evidence in support of the charges of the complaint taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, no answer having been filed by the respondent and no testimony having been offered in opposition to the complaint, and the Commission having made its findings as to the facts and its conclusion that said 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, Chase Candy Company, a corporation, 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. Selling and distributing to jobbers and wholesale dealers for resale to retailers, or to retail dealers direct, 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 gift enterprise.

2. Supplying to, or placing in the hands of wholesale dealers and jobbers or retail dealers, 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. 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 may be used in distribution of said candy to the public at retail.

4. Furnishing to wholesale dealers and jobbers and retail dealers a device commonly called a "push card", either with assortments of

Order

23 F. T. C.

candy, or separately, and bearing a legend or legends or statements informing the purchaser that the candy is 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.

It is further ordered, That the respondent, Chase 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

JEFFERSON EDUCATIONAL COMPANY, TRADING AS
BOYD BUSINESS UNIVERSITY

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

Docket 2631. Complaint, Nov. 15, 1935—Decision, Nov. 10, 1936

Where a corporation engaged in conducting a business school in the District of Columbia, and in advertising and offering for sale and selling courses of instruction in accountancy, secretarial work, bookkeeping, stenographic courses, commercial law, and other related branches, and in advertising, offering, and selling to the purchasing public certain text books, including "Boyd's Shorthand System"—

(a) Adopted and used a trade name, including words "Business University," and featured said trade name in radio broadcasts, newspapers, booklets, circulars, and other advertising media having circulation in the aforesaid District and in many of the States, and displayed said name, together with the words "Washington, D. C.," on the back of a catalog widely distributed by it in said District, to students and prospective students;

The facts being its courses of instruction were limited and confined to business subjects, as above indicated, and it did not offer instruction in any of the higher branches of learning, and was not empowered to confer, and did not confer degrees, its instructors were not all graduates of colleges or universities, and its organization did not constitute a university as understood by scholastic people and the public generally;

(b) Included in its aforesaid catalogs, on the back of which appeared, as above set forth, its trade name of "Boyd Business University," a facsimile of a purported diploma given to students finishing their courses at its said institution, and bearing the signature of "Robt. Boyd, President," and a paragraph describing the Boyd Shorthand System, together with a picture of the aforesaid individual;

The facts being that said individual, who conducted and maintained a business school in Chicago, originated in 1901 the aforesaid popular and esteemed system, used to a substantial extent and taught in universities, high schools, and other educational institutions throughout the United States and in many foreign countries, and published and sold in the United States certain shorthand books and dictionaries embodying the principles of his said system, was not the president of said "Boyd Business University"; and

(c) Included and linked its said name with that of F. P. Baker & Company, London, England, on the title page of a shorthand textbook offered and sold by it, through the words "Boyd Shorthand System * * * by Robt. Boyd, B. A., published by Boyd Press, Chicago, Illinois—Sidney, Australia, Boyd Business University, Washington, D. C., F. P. Baker & Company, London, England";

Notwithstanding fact that there was no connection between it and said Baker & Company, and it was not the exclusive American representative of said textbook;