

Complaint

23 F. T. C.

IN THE MATTER OF
JEROME C. CLAEYS, TRADING AS J. C. CLAEYS

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

Docket 2920. Complaint, Sept. 14, 1936—Decision, Nov. 27, 1936

Where a corporation engaged in the manufacture and sale of candy, including assortments of candy bars and push cards, under plan or arrangement by which purchaser received for his five cents one, two, three, or four bars, in accordance with particular number pushed by chance, as announced by cards' explanatory legends, and last push secured box of candy—

Sold, to wholesalers and jobbers and to retailers direct, for resale to purchasing public in accordance with aforesaid sales plan, said assortments, and thereby supplied to and placed in hands of others the means of conducting lotteries in the sale of its said product, in accordance with such plan, and contrary to public policy long recognized by the common law and criminal statutes, and to the established public policy of the United States Government, and in competition with many who, unwilling to offer or sell their candy so packed and assembled or otherwise arranged and packed to the purchasing public, as to involve a game of chance, refrain therefrom;

With result that many dealers and ultimate purchasers of candy were attracted by said method and manner of packing said product and by element of chance involved in sale thereof as aforesaid, and were thereby induced to purchase such candy, thus packed and sold by him, in preference to that offered and sold by competitors who do not use same or equivalent methods, and with tendency and capacity to induce such preferential purchase and to divert to him trade and custom from his said competitors, who do not use such methods, exclude from said trade all competitors who are unwilling to and do not use such a practice because unlawful, lessen competition therein and tend to create a monopoly thereof in him and such other distributors as do make use thereof, deprive purchasing public of benefit of free competition in trade involved, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not use such or an equivalent practice:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Henry C. Lanck 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 Jerome C. Claeys, an individual trading under the firm name and style of J. C. Claeys, hereinafter referred to as respondent, has been and is using unfair

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methods of competition in commerce, as "commerce" is defined in said act of Congress, 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. The respondent, Jerome C. Claeys, is an individual and trades under the firm name and style of J. C. Claeys, and has his principal office and place of business located at 510 Leland Avenue, South Bend, Ind. The respondent is now and for more than one year last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers, located at points in the various States of the United States, and causes and has caused his said products, when so sold, to be transported from his principal place of business in the city of South Bend, Ind., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for more than one year last past, a course of trade and commerce by said respondent in such candies between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with 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 his business as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers assortments of candy, so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the ultimate consumers thereof.

Such assortments are composed of a number of bars of candy and a small box of candy together with a device commonly called a "push card." The said bars of candy and the small box of candy are sold and distributed to the consuming public by means of said "push card" in the following manner: Sales are 5¢ each, and each purchaser is entitled to one push from said card. When a push is made from said "push card" a number is disclosed. The numbers begin with one and continue to the number of pushes there are on the card, but the numbers are not arranged in numerical sequence. The card bears statements informing purchasers and prospective purchasers as follows:

YOU BUY A FIVE CENT CLAEYS QUALITY BAR AND GET ONE PUSH FREE
If you push out one of the Following Numbers or Last Push you can exchange
(without extra cost) the 5¢ CLAEYS QUALITY BAR for the MERCHANDISE
INDICATED

No. 44, Four 5¢ CLAEYS QUALITY BARS No. 33, Three 5¢ CLAEYS QUALITY BARS

Numbers 5-10-20-25-30-40-50-60 Two 5¢ CLAEYS QUALITY BARS
LAST PUSH, LARGE BOX CLAEYS QUALITY CANDY.

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The numbers on said card are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular push separated from the card. The fact as to whether a purchaser receives one, two, three or four bars of candy, or the small box of candy, for the price of 5¢, is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers, to whom respondent sells his 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 plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his product in accordance with the sales plan hereinabove set forth, and said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by his 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 extra bars or a box of candy.

The use by respondent of said method in the sale of candy, and the sale of candy 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.

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 methods by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from his 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 method, acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged. Said method, 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 September 14, 1936, issued and served its complaint upon the respondent, Jerome C. Claeys, an individual trading under the firm name and style of J. C. Claeys, hereinafter referred to as respondent, charging him with the use of unfair methods of competition in commerce, as "commerce" is defined in said act of Congress. Respondent filed answer to said complaint on or about October 26, 1936, in which answer respondent admits all the material allegations of the complaint to be true and consents that the Commission may, without further evidence and without other intervening procedure, make, enter, issue, and serve upon him its findings as to the facts and conclusion based thereon and an order to cease

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and desist from the methods of competition alleged in the complaint. This proceeding thereafter having regularly come on for final hearing on said complaint and on the said answer of the respondent, and the Commission having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the public interest, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Jerome C. Claeys, is an individual and trades under the firm name and style of J. C. Claeys, and has his principal office and place of business located at 510 Leland Avenue, South Bend, Ind. The respondent is now and for more than one year last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers, located at points in the various States of the United States, and causes and has caused his said products, when so sold, to be transported from his principal place of business in the city of South Bend, Ind., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for more than one year last past, a course of trade and commerce by said respondent in such candies between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with 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 his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers assortments of candy, so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the ultimate consumers thereof.

Such assortments are composed of a number of bars of candy and a small box of candy together with a device commonly called a "push card." The said bars of candy and the small box of candy are sold and distributed to the consuming public by means of said "push card" in the following manner: Sales are 5¢ each, and each purchaser is entitled to one push from said card. When a push is made from said "push card" a number is disclosed. The numbers begin with one and continue to the number of pushes there are on the card, but the num-

bers are not arranged in numerical sequence. The card bears statements informing purchasers and prospective purchasers as follows:

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The numbers on said card are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular push separated from the card. The fact as to whether a purchaser receives one, two, three or four bars of candy, or the small box of candy, for the price of 5¢, is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers, to whom respondent sells his 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 plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his product in accordance with the sales plan hereinabove set forth, and said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by his 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 extra bars or a box of candy.

The use by respondent of said method in the sale of candy, and the sale of candy 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.

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 his 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 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 aforesaid acts and practices of respondent, Jerome C. Claeys, an individual trading under the firm name and style of J. C. Claeys, are 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, approved September 26, 1914, 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 complaint of the Commission issued and served

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Order

on September 14, 1936, and the answer of the respondent filed on or about October 26, 1936, admitting all the material allegations of the complaint to be true 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, Jerome C. Claeys, an individual trading under the firm name and style of J. C. Claeys, his 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 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 may be made, by means of a lottery, gaming device, or gift enterprise;

(2) Supplying to, or placing in the hands of, retail dealers and wholesale dealers and jobbers packages or assortments of candy which are used, or may be used, without alternation 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 candy or candy products contained in said assortments to the public;

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

(4) Furnishing to retail dealers and to wholesale dealers and jobbers a device commonly called a "push card" or "punchboard," either with packages or assortments of candy 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.

It is further ordered, That the respondent, Jerome C. Claeys, an individual trading under the firm name and style of J. C. Claeys, within 30 days after the service upon him of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
QUAKER CITY CHOCOLATE & CONFECTIONERY
COMPANY

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

Docket 1773. Complaint, May 12, 1936¹—Decision, Nov. 28, 1936

Where a corporation engaged in the manufacture and sale of candy, including assortments which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, and which consisted of a number of penny pieces of uniform size and shape, together with a number of larger pieces to be given as prizes to those purchasers of said uniform pieces who secured, by chance, pieces, the enclosed colored centers of which differed in color from those of the majority, and also together with a box of candy given without charge to purchaser of the last one of said uniform pieces—

Sold to wholesalers and jobbers said assortments, for resale to retail dealers, by whom they were exposed for sale and sold to the purchasing public in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its said products, in accordance with such plan, contrary to public policy long recognized by the common law and criminal statutes and to the established public policy of the United States Government, and in competition with many who, unwilling to offer or sell their candy so packed and assembled, or otherwise arranged and packed for sale to the purchasing public, as to involve a game of chance, refrain therefrom;

With capacity and tendency to induce purchasers of its said candy to buy the same in preference to that offered and sold by competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by its said method and manner of packing the same, and by the element of chance involved in the sale thereof as aforesaid, and were thereby induced to buy its said candy, thus packed and sold by it, in preference to that offered and sold by competitors who do not use same or equivalent methods, and with tendency and capacity to divert trade and custom from its said competitors who do not use such practices, exclude from said trade all competitors who are unwilling to and do not use such a practice as unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other candy distributors as do make use thereof, and deprive the purchasing public of the benefit of free competition in trade involved, and eliminate from said trade all actual and exclude therefrom all potential competitors who do not adopt and use such or an equivalent practice:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

¹ Amended and supplemental complaint. Original findings and order in this matter on April 3, 1934 (18 F. T. C. 269), were vacated by order reopening, etc., on May 12, 1936 See 22 F. T. C. 911.