

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.

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Mr. Henry C. Lank for the Commission.

Mr. Earl Jay Gratz, of Philadelphia, Pa., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, the Federal Trade Commission did heretofore, towit on March 11, 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 meaning and intent 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 Quaker City Chocolate & Confectionery 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 Pennsylvania, with its principal office and place of business located at 2134 Germantown Avenue, in the city of Philadelphia, State of Pennsylvania. It is now and for several years last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States and causes the said products, when so sold, to be transported from its principal place of business in the city of Philadelphia, Pa., 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 manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

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PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers and jobbers 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;

One of said assortments consist of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy and a box of candy, which larger pieces of candy and the box of candy are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner: The majority of the said pieces of candy of uniform size and shape have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size and shape in said assortment, retail at the price of 1¢ each, but the purchaser who procures one of said candies having a center colored differently from the majority is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of candy of uniform size and shape in said assortment, is entitled to receive and is to be given free of charge the box of candy also contained in said assortment. The color of the centers of said pieces of candy of uniform size and shape is effectively concealed from the purchaser and prospective purchaser until a selection has been made and the piece of candy broken up. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy of uniform size and shape in said assortment, thus procure one of the said larger pieces of candy or box of candy wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers, to whom respondent sells its assortment, resell said assortment to retail dealers, and said retail dealers expose said assortment 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 its product in accordance with the sales plan hereinabove set forth, and with the capacity and tendency of inducing purchasers thereof to purchase respondent's said product 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 larger pieces of candy 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 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 method, acts and practices of the respondent are all to the prejudice of the public and of respondent's

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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 March 11, 1930, issued and served its complaint in this proceeding upon the respondent, Quaker City Chocolate & Confectionery Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, on May 12, 1936, the Commission issued and served its amended and supplemental complaint on the respondent, charging it with the use of unfair methods of competition in commerce other than and in addition to those in relation to which the Commission issued its complaint on March 11, 1930, as aforesaid. On June 3, 1936, the respondent filed its answer dated June 1, 1936, in which answer it admitted all the material allegations of the complaint to be true and stated that it waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now 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. Respondent is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business located at 2134 Germantown Avenue, in the city of Philadelphia, State of Pennsylvania. It is now and for several years last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States and causes the said products, when so sold, to be transported from its principal place

of business in the city of Philadelphia, Pa., 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 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 dealers and jobbers 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;

One of said assortments consists of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy and a box of candy, which larger pieces of candy and the box of candy are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner: The majority of the said pieces of candy of uniform size and shape have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size and shape in said assortment, retail at the price of 1¢ each, but the purchaser who procures one of said candies having a center colored differently from the majority is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of candy of uniform size and shape in said assortment, is entitled to receive and is to be given free of charge the box of candy also contained in said assortment. The color of the centers of said pieces of candy of uniform size and shape is effectively concealed from the purchaser and prospective purchaser until a selection has been made and the piece of candy broken up. 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 of uniform size and shape in said assortment, thus procure one of the said larger pieces of candy or box of candy wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers, to whom respondent sells its assortment, resell said assortment to retail dealers, and said retail dealers expose said assortment 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 its product in accordance

with the sales plan hereinabove set forth, and with the capacity and tendency of inducing purchasers thereof to purchase respondent's said product 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 larger pieces of candy 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 the 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 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

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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 the respondent, Quaker City Chocolate & Confectionery Company, are to the prejudice of the public and of 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 amended and supplemental complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated 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."

It is ordered, That the respondent, Quaker City Chocolate & Confectionery Company, its officers, representatives, agents, 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 retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to

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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) Packing or assembling in the same package or assortment, for sale to the public at retail, pieces of candy of uniform size and shape having centers of a different color, together with a number of larger pieces of candy and a box of candy, which said larger pieces of candy and box of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

It is further ordered, That the respondent, 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
 AVERY SALT COMPANY ¹

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

Docket 2248. Complaint, Nov. 13, 1934—Decision, Nov. 28, 1936

Where a corporation engaged in manufacture and sale of a product which consisted of salt, treated with pyroligneous liquor or acid, secured through destructive distillation of wood in the absence of air, with the addition of pepper, saltpeter, and sugar, and of caramel or burnt sugar, to simulate the appearance of a product actually treated with natural wood smoke, produce a merchantable commodity, and satisfy the expectations of the trade and consuming public—

- (a) Described said product as "Smoke Salt" or as "Avery Sugar Curing Smoke Salt," and displayed and featured such name, together with word, in small letters, "Evaporated," on the containers of its said product, together with depiction of a dish and portion and slices of ham thereon; and,
- (b) Included with its directions for curing and flavoring meat, in small letters, the words "This time-saving and sure method of curing meat has been made possible by the scientific blending of the best meat salt with sugar cure, spices and concentrated smoke produced from hard wood. Avery Sugar Curing Smoke Salt (appearing in large letters) does the complete job of curing and smoking meat. When used according to the following directions, it will produce meat that is properly cured with a delicious smoke taste";

Notwithstanding fact that its said "Smoke Salt" had not been, as signified to consuming public from use of such a word, smoked with natural wood smoke, nor subjected directly or at all to such smoke, and had not derived from such smoke and did not have either its qualities and properties for, or its efficacy in, curing, preserving, smoking, or flavoring meats as in the conventional smoke house or as in the operation or course of similar or equivalent processes, and could not, by virtue of the nature thereof, do the complete job of curing meats nor the curing and smoking of meats in one operation;

With capacity and tendency to mislead and deceive retail dealers into the belief that so-called "Smoke Salt" was a product subjected directly to the action and effect of, or impregnated or treated with, the smoke of burning wood during the process or course of its combustion, and that it could do the complete job of curing and smoking meat in one operation, and into pur-

¹Through subsequent Commission action, effective date for report of compliance with order in the instant matter was extended until such time as the Commission rendered its final decisions in *Smoke Salt Products Co., et al.*, Docket 2783, and *Pennsylvania Salt Manufacturing Co., et al.*, Docket 2784, subject, however, to amendments or revocation at any time if such action appeared warranted in the discretion of the Commission, and through later Commission action relating to its aforesaid stay order, it was directed that the matter "remain in fieri without prejudice to the right of the Commission forthwith to enter such final order as seems just at or after the Commission's final decision in the matter" of the aforesaid two cases.