

IN THE MATTER OF
MAPLE CITY 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 2916. Complaint, Aug. 28, 1936—Decision, Apr. 17, 1937

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which consisted of a number of candy bars and a box of candy, together with push card, for sale under a plan and in accordance with said card's explanatory legend, pursuant to which purchaser received, for 5¢ paid, one, two, three, or four bars of candy, in accordance with particular number pushed by chance therefrom, and purchaser of last disk was entitled to receive, without charge, in addition to bars secured, aforesaid box of candy—

Sold, to wholesalers and jobbers for display and resale to purchasing public by their retailer-vendees, in accordance with aforesaid plan, such assortments and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its said product in accordance with such plan, contrary to public policy, long recognized by the common law and criminal statute, and to an established public policy of the United States Government, and in competition with many who, unwilling to offer and sell candy so packed and assembled or otherwise arranged and packed for sale to the purchasing public as to involve a game of chance, or to adopt and use any method involving such a game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, refrain therefrom;

With result that many dealers in 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 above set forth, and thereby induced to purchase such candy, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to it trade from its competitors as aforesaid, exclude from such trade all competitors who are unwilling to and do not use such or an equivalent practice or method as unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other distributors as use same or an equivalent method, 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 adopt and use such or an equivalent method:

Held, That such acts and practices 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.

1038

Complaint

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 Maple City Candy Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act 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. Respondent, Maple City Candy Company, is a corporation organized and operating under the laws of the State of Indiana, with its principal office and place of business located at 405 Tyler Street, La Porte, Ind. Respondent is now, and for six months 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 and has caused its said products, when so sold, to be transported from its principal place of business in La Porte, 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 six months 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 an assortment of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Said assortment manufactured and distributed by respondent is composed of a number of candy bars and a box of candy, together with a device commonly called a push card. Candy contained in said assortment is distributed to purchasers 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 informing customers and prospective customers that certain specified numbers entitle the customer to one bar of candy, that certain other specified

Complaint

24 F. T. C.

numbers entitle the customer to two bars of candy, that certain other specified numbers entitle the customer to three bars, and that certain other specified numbers entitle the customer to four bars of candy. The purchaser of the last disc on said push card is entitled to receive, and is to be given free of charge, in addition to one of said bars of candy, the box of candy heretofore referred to. The numbers on the discs or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disc separated from the card. The number of bars of candy which a customer receives for the price of 5¢ is thus determined 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 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 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 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 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 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 August 28, 1936, issued and served its complaint in this proceeding upon the respondent, Maple City Candy Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On April 2, 1937, respondent filed its answer dated March 31, 1937, 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 said complaint and consented that, without further evidence or

Findings

24 F. T. C.

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 proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto; and the Commissioner, 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, Maple City Candy Company, is a corporation organized and operating under the laws of the State of Indiana, with its principal office and place of business located at 405 Tyler Street, La Porte, Ind. Respondent is now, and for six months 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. Respondent causes and has caused its said products when sold to be transported from its principal place of business in La Porte, Ind., to purchasers thereof in other States of the United States at their respective places of business. There is now, and has been for six months 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 an assortment of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Said assortment manufactured and distributed by respondent is composed of a number of candy bars and a box of candy, together with a device commonly called a push card. Candy contained in said assortment is distributed to purchasers in the following manner:

The pushcard 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 informing customers and prospective customers that certain specified numbers entitle the customer to one bar of candy; that certain other specified

numbers entitle the customer to two bars of candy; that certain other specified numbers entitle the customer to three bars; and that certain other specified numbers entitle the customer to four bars of candy. The purchaser of the last disc on said pushcard is entitled to receive, and is to be given free of charge, in addition to one of said bars of candy, the box of candy heretofore referred to. The numbers on the discs or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disc separated from the card. The number of bars of candy which a customer receives for the price of 5¢ is thus determined 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. 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 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 box of candy, or additional bars 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 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 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

Order

24 F. T. C.

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 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, Maple City Candy Company, are all 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 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

Memorandum

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 respondent, Maple City Candy Company, its officers, representatives, agents, and employees, in the offering for sale, sale, and distribution in interstate commerce of candy, do cease and desist from:

1. Selling and distributing to wholesale dealers and jobbers 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 wholesale dealers and jobbers assortments of candy which are used, or which are designed to be used, without alteration or rearrangement of the contents of such 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. Supplying to or placing in the hands of wholesale dealers and jobbers a device commonly called a "pushcard," either with assortments of candy or separately, for use, or which is designed to be used, in the sale and distribution of said candy to the purchasing public.

It is further ordered, That the respondent herein shall, within 30 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

MEMORANDUM

The Commission, as of April 20, 1937, made substantially similar findings and order in the case of WINIFRED SORENSON AND EDWARD BEALES, TRADING AS SORENSON-BEALES CANDY COMPANY, Docket 3056, in which complaint issued as of Feb. 12, 1937, and in which said respondents, as found, sold to their wholesale dealer and jobber customers two push card assortments for resale by said wholesalers' and jobbers' retail dealer-vendees by game of chance, as set forth in the principal case, namely (a) plan under which purchaser received, in addition to the bar of candy for his 5¢, additional or larger

Memorandum

24 F. T. C.

bars, depending upon chance selection of certain specified numbers, while purchaser of last push in each of the two sections into which board was divided was further entitled to one of the packages of loaf candy included therewith; and (b) plan under which purchaser paid from 1¢ to 5¢, depending upon number pushed by chance, for candy purchased from the assortment of bars of uniform size, shape and quality.

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

Complaint

IN THE MATTER OF

ZION HOLY SPIRITUAL MISSION, AND EUSTACE N. FRENCH, DOING BUSINESS THROUGH ZION HOLY SPIRITUAL MISSION AND UNDER TRADE NAME OF ZION HOLY SPIRITUAL MISSION LABORATORIES

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

Docket 2963. Complaint, Oct. 31, 1936—Decision, Apr. 21, 1937

Where a corporation and an individual, who did business through it and under a trade name including corporate name of the other and word "Laboratories," engaged in sale of medicines under trade name "Bry-O-Lyn"—

Represented, in labels upon their said products and other advertising matter published and distributed in the various States, that they operated a laboratory or laboratories in which the medicines offered for sale and sold by them were manufactured, and that said medicines were made by them, facts being that they did not own any such laboratory or laboratories or any interest in any manufacturing establishment from which their products were obtained, but medicines offered and sold by them under the aforesaid trade name were made and compounded by pharmaceutical laboratories in which they had no interest whatsoever, and were sold to them in regular course of trade;

With tendency and capacity to deceive and mislead substantial portions of purchasing public into the erroneous belief that such representations were true, and with result that consuming public, as a direct consequence of such mistaken and erroneous beliefs, thus engendered, was persuaded to purchase a substantial volume of its said products, and trade was unfairly diverted to them from competitors engaged in selling commodities of the same kind and nature, and who truthfully advertise and represent the character, quality and source of their said products; to the substantial injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. John Darsey for the Commission.

Mr. Blaine G. Alston of Ellis & Westbrooks, of Chicago, Ill., for respondents.

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 Zion Holy Spiritual Mission, an Illinois corporation, and Eustace N. French, an individual, doing business through the Zion Holy Spiritual Mission