

IN THE MATTER OF  
WOODY CANDY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 2697. Complaint, Jan. 31, 1936—Decision, June 19, 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 included assortments such as (1) number of small candy bars, number of medium-sized bars, and number of larger bars, together with push cards, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for five cents paid, one of the majority of small bars, one of the medium-sized, or one of the large bars, in accordance with particular number pushed by chance, and purchaser of last push was entitled, without charge, to one of said large pieces; and (2) number of pieces of candy, number of bars of candy, and one still larger bar, together with push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for penny paid, one of the small pieces composing majority of said assortment, or one of the large bars, in accordance with particular number pushed by chance, and purchaser of last push was entitled to receive, without charge, the still larger bar—

Sold, to wholesalers and retailers for display and resale to purchasing public by the retailer-vendee, 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 said products, in accordance with such plans, contrary to the established public policy of the several States and of the United States Government, and contrary, in many States, to local criminal statutes, and in competition with many who, unwilling to offer and sell candy so packed and assembled, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance or sale therewith of a chance to procure larger pieces, refrain therefrom, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win by chance, as contrary to public policy or criminal statutes as aforesaid, or as detrimental to public morals and to morals of the purchasers of such products;

With result that many dealers in and ultimate purchasers of candy were attracted by said methods and manner of packing such product, and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase same, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use such or equivalent methods, many dealers were induced to purchase the candy thus offered and sold by it in preference to all others, by reason of preference given thereto by ultimate purchaser on account of such game of chance involved therein, and with tendency and capacity, because of said game of chance alone, unfairly to divert to it trade and custom from its said competitors

## Complaint

who do not use same or equivalent methods, exclude from such trade all competitors who are unwilling to and do not use such or equivalent practices or methods, lessen competition therein and tend to create a monopoly thereof in it and such other distributors as use same or equivalent methods, deprive purchasing public of benefits 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 equivalent methods, as contrary to public policy and criminal statutes:

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

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

*Mr. P. C. Kolinski* and *Mr. Henry C. Lank* 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 Woody 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 is a corporation, organized under the laws of the State of Oklahoma, with its principal place of business in the city of Oklahoma City, State of Oklahoma. Respondent is now and for several years last past has been engaged in the manufacture of candy and the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States, and causes said products when so sold, to be transported from its place of business in Oklahoma City, State of Oklahoma, 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 individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers, various packages or assortments of candy, so packed

## Complaint

25 F. T. C.

and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages, nor does it include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of said assortments is composed of a number of small candy bars, a number of medium sized candy bars, and a number of larger candy bars, together with a device commonly called a push card. The 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 five cents each and the majority of the numbers entitle the purchaser to one of the small bars of candy. A few of the numbers entitle the purchaser to one of the medium sized bars of candy and three of the numbers entitle the purchaser to one of the large bars of candy, and the purchaser of the last push on the card is entitled to one of the large bars of candy. The card bears statements informing customers and prospective customers as to which numbers receive the small bars, which numbers receive the medium bars, and which numbers receive the large bars, and that the purchaser of the last push on said card is entitled to one of the large bars. 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 fact as to whether a purchaser receives one of the small candy bars, one of the medium candy bars, or one of the large sized candy bars for the price of five cents is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by respondent is composed of a number of pieces of candy, a number of bars of candy, and one still larger bar of candy, together with a device commonly called a push card. The 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 one cent each, and the majority of the numbers entitle the purchaser to one of the small pieces of candy, but a few of the numbers entitle the purchaser to one of the large bars of candy, and the purchaser of the last push is entitled to receive the still larger bar of candy. The push card bears statements informing customers and prospective customers as to which numbers receive the small pieces of candy, which numbers receive the larger bars of candy, and stating that the purchaser of the last push is entitled to receive the still larger bar of candy. 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 fact as to whether a purchaser receives one of the small pieces of candy, one of the larger bars of candy, or the still

## Complaint

larger bar of candy for the price of one cent is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, and sell said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public as above alleged involves a game of chance or the sale of a chance to procure larger pieces or bars of candy in the manner alleged.

Such sales of candy, along with the sale of such chances to procure additional bars of candy or packages of candy or other articles of merchandise 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. 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.

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 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, or the sale with such candy of a chance to procure additional bars of candy or packages of candy or other articles of merchandise 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 candy offered for sale and sold by said competitors of respondent who do

## Findings

25 F. T. C.

not use the same or equivalent methods. Many dealers in candy are induced to purchase said candy so offered for sale and sold by respondent, in preference to all others, because said ultimate purchasers give preference to respondent's said candy on account of the said game of chance involved therein. 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 benefits of free competition in said candy trade. The use of said methods by the respondent has the tendency and capacity unfairly to eliminate from said candy trade all actual competitors, and to exclude 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.

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, because such methods are contrary to the 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 said 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, 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 January 31, 1936 issued, and on February 3, 1936 served, its complaint in this proceeding upon respondent Woody Candy Company, a corporation, charging it with the

use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, respondent filed its answer dated August 31, 1936, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, briefs and oral arguments of counsel having been waived; 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 Oklahoma, with its principal place of business located in the city of Oklahoma City, State of Oklahoma. Respondent is now, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States. It causes said products when sold, to be transported from its place of business in Oklahoma City, State of Oklahoma, to purchasers thereof in other States of the United States at their respective places of business. 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 individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers various packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages and it does not include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance.

(a) One of said assortments is composed of a number of small candy bars, a number of medium sized candy bars, and a number of

larger candy bars, together with a device commonly called a "push card." The 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 majority of the numbers entitle the purchaser to one of the small bars of candy. A few of the numbers entitle the purchaser to one of the medium sized bars of candy, and three of the numbers entitle the purchaser to one of the large bars of candy. The purchaser of the last push on the card is entitled to one of the large bars of candy. The card bears statements informing customers and prospective customers as to which numbers receive the small bars, which numbers receive the medium bars, and which numbers receive the large bars, and that the purchaser of the last push on said card is entitled to one of the large bars. 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 fact as to whether a purchaser receives one of the small candy bars, one of the medium sized candy bars, or one of the large candy bars, for the price of 5¢, is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by respondent is composed of a number of pieces of candy, a number of bars of candy, and one still larger bar of candy, together with a device commonly called a "push card." The 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 1¢ each, and the majority of the numbers entitle the purchaser to one of the small pieces of candy, but a few of the numbers entitle the purchaser to one of the large bars of candy, and the purchaser of the last push is entitled to receive the still larger bar of candy. The push card bears statements informing customers and prospective customers as to which numbers receive the small pieces of candy, which numbers receive the larger bars of candy, and stating that the purchaser of the last push is entitled to receive the still larger bar of candy. The numbers on 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 fact as to whether a purchaser receives one of the small pieces of candy, one of the larger bars of candy, or the still larger bar of candy, for the price of 1¢, is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers

and the retail dealers to whom respondent sells direct expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public, as above found, involves a game of chance or the sale of a chance to procure larger pieces or bars of candy in the manner described. Such sales of candy, together with the sale of chances to procure larger pieces or bars of candy in the manner described, 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. The use by respondent of said methods 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 methods or equivalent or similar methods involving the same or an equivalent or similar element of chance or lottery scheme. By reason of said facts, many persons, firms, and corporations who make and sell candy in competition with respondent are unwilling to offer for sale or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or the sale with such candy of a chance to procure larger pieces or bars of candy, 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. Many dealers in candy are induced to purchase said candy so offered for sale and sold by respondent in preference to all others because said ultimate purchasers give preference to respondent's said candy on account of the said game of chance involved therein. The use of said methods by respondent has the tendency and capacity, because of said game of chance alone, unfairly to divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods; to exclude from said

Order

25 F. T. C.

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 benefits 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 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.

PAR. 6. 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 said reasons.

#### CONCLUSION

The aforesaid acts and practices of the respondent, Woody Candy Company, a corporation, 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 complaint of the Commission and the answer of respondent dated August 31, 1936, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its 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, Woody Candy Company, a corporation, its officers, representatives, agents, and employees, in con-

## Order

nection with the offering for sale, sale and distribution of candy in interstate commerce, do cease and desist from:

1. Selling and distributing to wholesale dealers and jobbers, for resale to retail dealers and to retail dealers direct, candy so packed and assembled that sales of said 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 and wholesale dealers and jobbers 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 contained in said assortments 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 distributing or selling said candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "push card," either with packages or assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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, Woody Candy Company, a corporation, 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF  
FINE-REDING CANDY MANUFACTURING COMPANY, INC.

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

*Docket 2699. Complaint, Jan. 31, 1936—Decision, June 19, 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 included assortments such as (1) number of small pieces of candy, number of larger pieces or bars thereof, and one still larger piece, together with push cards, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for penny paid, one of the small pieces, or one of the larger pieces or bars, in accordance with particular number pushed by chance, and purchaser of last push was entitled, without charge, to the aforesaid still larger bar; and (2) number of small bars of candy, number of medium-sized bars, and number of still larger bars, together with push card, for sale under a similar plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for five cents paid, one of the aforesaid pieces of varying size—

Sold, to wholesalers and retailers for display and resale to purchasing public by the retailer-vendee, 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 said products, in accordance with such plan, contrary to the established public policy of the several States and of the United States Government, and contrary, in many States, to local criminal statutes, and in competition with many who, unwilling to offer and sell candy so packed and assembled, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance or sale thereof with of a chance to procure larger pieces, refrain therefrom, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win by chance, as contrary to public policy or criminal statutes as aforesaid, or as detrimental to public morals and to morals of the purchasers of such products;

With result that many dealers in and ultimate purchasers of candy were attracted by said methods and manner of packing such product, and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase same, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use such or equivalent methods, many dealers were induced to purchase the candy thus offered and sold by it, in preference to all others, because of the game of chance involved therein, and with tendency and capacity, because of said game of chance alone, unfairly to divert to it trade and custom from its said competitors who do not use same or equivalent methods, exclude from such trade all competitors who are unwilling to and do not use such or equivalent practices or methods, lessen competition therein and tend to create a monopoly thereof in it and such other distributors as use same