

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

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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 or use such or equivalent methods:

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.

Mr. D. G. Johnson, of Oklahoma City, Okla., for respondent.

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 Fine-Reding Candy Mfg. Co. Inc., 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 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

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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 pieces of candy, a number of larger pieces or bars of candy, and one still larger piece 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 card bears statements informing customers and prospective customers that certain specified numbers receive one of the small pieces of candy, that certain other specified numbers receive one of the larger pieces or bars of candy, and that the purchaser of the last push from said card receives 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 a small piece of candy, a larger piece of candy, or the still larger bar of candy for the price of one cent is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by the respondent is composed of a number of small bars of candy, a number of medium sized bars of candy, and a number of still larger bars 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 candy contained in said assortment is distributed to purchasers in a similar manner to that shown by the sales plan described in subparagraph (a) except that sales are five cents each instead of one cent each and the pieces or bars of candy are larger than the corresponding pieces or bars of candy in the assortment referred to in subparagraph (a).

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

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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 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 benefit 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.

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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, Fine-Reding Candy Manufacturing Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, 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

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 pieces of candy, a number of larger pieces or bars of candy, and one still larger piece of candy, together with a device commonly called a push card. The candy contained in said assortments 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 card bears statements informing customers and prospective customers that certain specified numbers receive one of the small pieces of candy, that certain other specified numbers receive one of the larger pieces or bars of candy, and that the purchaser of the last push from said card receives 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 a small piece of candy, a larger piece of candy, or the still larger bar of candy for the price of one cent is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by the respondent is composed of a number of small bars of candy, a num-

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ber of medium sized bars of candy, and a number of still larger bars 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 candy contained in said assortment is distributed to purchasers in a similar manner to that shown by the sales plan described in subparagraph (a) except that sales are five cents each instead of one cent each and the pieces or bars of candy are larger than the corresponding pieces or bars of candy in the assortment referred to in subparagraph (a).

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 such 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 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

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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 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 benefit of free competition in said candy trade. The use of said methods by respondent has the tendency and capacity unfairly to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

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 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.

CONCLUSION

The aforesaid acts and practices of the respondent, Fine-Reding Candy Manufacturing Company, Inc., 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 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

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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, Fine-Reding Candy Manufacturing Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of candy in interstate commerce, do forthwith 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 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 assortments of candy which are used, or which may 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 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 candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "push card," either with 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, Fine-Reding Candy Manufacturing Company, Inc., 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.

Syllabus

IN THE MATTER OF
WILLIAMS-CRAHAN COMPANY

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

Docket 2704. 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 penny pieces of candy of uniform size and shape, the enclosed concealed centers of majority of which were cream, together with a number of larger pieces to be given as prizes to chance purchasers of aforesaid penny pieces of uniform size, etc., enclosed concealed centers of which were, instead, red cinnamon, and also to those purchasers of last one of said uniform penny pieces in each of the two trays into which assortment was divided, without further charge, and together with, also, explanatory display card for retailer's use; (2) number of small pieces of candy, together with number of larger pieces and two still larger pieces, and punchboard or push card, 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 small or one of the larger pieces, in accordance with particular number pushed by chance, and maker of last push in each of the two sections into which cards were divided received one of the still larger pieces; and (3) number of bars of candy of uniform size, together with push card or punchboard, for sale under a plan, and in accordance with explanatory legend on said card or board, pursuant to which purchaser paid amount ranging from one cent to five cents for uniform size pieces thus sold, in accordance with particular number pushed by chance—

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 public policy as long recognized in the common law and criminal statutes, and contrary 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 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, or other method contrary to public policy;

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

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methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors, to exclude from such trade all competitors who are unwilling to and do not use such or equivalent practices or methods as unlawful, 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:

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 Williams-Crahan 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 office and 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 in 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 the city of 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 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 pieces of candy of uniform size, shape, and quality, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said pieces of candy of uniform size, shape, and quality, in the following manner:

The majority of the said pieces of candy of uniform size, shape, and quality, have cream centers, but a small number of said pieces of candy have centers containing red cinnamon. The said pieces of candy of uniform size, shape, and quality, retail at the price of one cent each, but the purchaser who procures one of the said pieces of candy having a center of red cinnamon, is entitled to receive, and is to be given free of charge, one of the said larger pieces of candy heretofore referred to. The assortment is packed in two trays, and the purchaser of the last piece of candy of uniform size, shape, and quality in each tray, is entitled to receive, and is to be given free of charge, one of the larger pieces of candy heretofore referred to. The fact as to whether the pieces of candy of uniform size, shape, and quality are of whipped cream throughout, or contain red cinnamon, is effectively concealed from the purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. The aforesaid purchasers procuring a candy having red cinnamon in the center thus procure one of the said larger pieces of candy wholly by lot or chance, and the purchaser of the last piece of candy of uniform size, shape, and quality, in each of said trays, also procures one of the larger pieces of candy wholly by lot or chance.

The respondent furnishes to said wholesale and retail dealers, with said assortment, a display card to be used by the retail dealer in offering said candy to the public. The display card bears a legend or statement informing the prospective purchaser that the said candy is being sold in accordance with the above described sales plan.

(b) Another assortment manufactured and distributed by respondent is composed of a number of small pieces of candy, together with a number of larger pieces of candy, and two still larger pieces of candy, and a device commonly known as a punchboard or 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. The discs on said card are divided into two sections and sales are 5¢ each. The

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card bears statements or legends informing customers and prospective customers that certain numbers indicated receive one of the small pieces of candy, that other numbers receive one of the larger pieces of candy, and that the last push in each section receives one of the still larger bars of candy. The legends 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 bars of candy, or one of the still larger bars of candy in said assortment, is thus determined wholly by lot or chance.

(c) Another assortment manufactured and distributed by respondent is composed of a number of bars of candy of uniform size, together with a device commonly known as a push card or punch-board. 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. The numbers of said discs are 1¢, 2¢, 3¢, 4¢, or 5¢, and the customer pays the price marked on said disc. The numbers on said discs are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the disc separated from the card. The fact as to whether a purchaser pays 1¢, 2¢, 3¢, 4¢, or 5¢ for a bar of candy 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 in the manner above alleged involves a game of chance or the sale of a chance to procure (a) and (b) larger pieces of candy; or (c) bars of candy at a price less than 5¢.

The use by respondent of the said methods of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said methods 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 methods 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 equivalent or similar element of chance or lottery scheme.

Wherefore, 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 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, Williams-Crahan 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 office and 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 the city of 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 pieces of candy of uniform size, shape, and quality, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said pieces of candy of uniform size, shape, and quality, in the following manner: The majority of the said pieces of candy of uniform size, shape, and quality have cream centers, but a small number of said pieces of candy have centers containing red cinnamon. The said pieces of candy of uniform size, shape and quality retail at the price of 1¢ each, but the purchaser who procures one of the said pieces of candy having a center of red cinnamon is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to. The assortment is packed in two trays, and the purchaser of the last piece of candy of uniform size, shape, and quality in each tray is entitled to receive and is to be given free of charge one of the larger pieces of candy heretofore referred to. The fact as to whether the pieces of candy of uniform size, shape, and quality are of whipped cream throughout, or contain red cinnamon, is effectively concealed from the purchasers and prospective purchasers until a selection has been made and the piece of candy selected broken open. The aforesaid purchasers procuring a candy having red cinnamon in the center thus procure one of the said larger pieces of candy wholly by lot or chance, and the purchaser of the last piece of candy of uniform size, shape, and quality in each of said trays also procures one of the larger pieces of candy wholly by lot or chance. Respondent furnishes to said wholesale and retail dealers with said assortment a display card to be used by the retail dealer in offering said candy to the public. The display card bears a statement or legend informing the prospective purchaser that the said candy is being sold in accordance with the above described plan.

(b) Another assortment manufactured and distributed by respondent is composed of a number of small pieces of candy, together with a number of larger pieces of candy and two still larger pieces of candy, and a device commonly known as a "punchboard" or "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. The discs on said

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card are divided into two sections, and sales are 5¢ each. The card bears statements or legends informing customers and prospective customers that certain numbers indicated receive one of the small pieces of candy, that other numbers receive one of the larger pieces of candy, and that the last push in each section receives one of the still larger pieces of candy. The legends 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 pieces of candy, or one of the still larger pieces of candy in said assortment, is thus determined wholly by lot or chance.

(c) Another assortment manufactured and distributed by respondent is composed of a number of bars of candy of uniform size, together with a device commonly known as a "push card" or "punch-board." 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. The numbers on said discs are 1¢, 2¢, 3¢, 4¢, or 5¢, and the customer pays the price marked on said disc. The numbers on said discs are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the disc separated from the card. The fact as to whether a purchaser pays 1¢, 2¢, 3¢, 4¢, or 5¢, for a bar of candy 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 in the manner above described involves a game of chance or the sale of a chance to procure (a) and (b) larger pieces of candy, or (c) bars of candy at a price less than 5¢. The use by respondent of the said methods in the sale of candies, and the sale of candies by and through the use thereof and by the aid of said methods, 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 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. Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above found, 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, 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. 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 equivalent methods; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are 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 equivalent methods; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods 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 methods or equivalent methods.

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, or any other method that is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Williams-Crahan Company, a corporation, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competi-

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tion 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, Williams-Crahan Company, a corporation, its officers, representatives, agents, and employees, in connection 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. Packing or assembling in the same package or assortment of candy for sale to the public at retail pieces of candy of uniform size and shape having centers of a different color, together with larger pieces of candy, which larger pieces of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

4. 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" or a "punchboard," for use or which may be used in distributing or selling said candy to the public at retail.

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5. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "push card" or a "punchboard," 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 Williams-Crahan 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
STARTUP 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 2705. Complaint, Jan. 31, 1936—Decision, June 19, 1937

Where a corporation engaged in manufacture and sale of "straight" goods candy, and also of so-called "break and take," "draw," or "deal" assortments, sale and distribution of which type candy, in constant demand and affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, and providing an easy means of disposing of such products, teaches and encourages gambling among children, comprising, by far, majority of purchasers and consumers of such type, and sale and distribution of which in the markets of many manufacturers who sell their "straight" goods in interstate commerce in competition with the other, has been followed by a marked decrease in sales of such "straight" goods due to gambling or lottery feature connected with said "break and take," "draw," or "deal" candy, preferred by consumers because of gambling feature connected therewith, and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy—

Sold, to wholesalers, jobbers, and retailers, certain packages or assortments of candy which were so packed and assembled as to involve, or which were designed to or might involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof, and several of which were composed of (a) number of penny pieces of uniform size and shape, together with explanatory display card for retailer's use, and number of larger pieces or bars of candy, to be given as prizes to purchasers by chance of a relatively few of said uniform penny pieces, concealed colored centers of which differed from those of the majority, and also together with small package of candy, to be given free of charge to purchaser of last uniform piece in assortment, (b) number of small pieces of candy, number of larger pieces and bars of candy, and number of small packages of candy, together with push card, for sale and distribution to consuming public under a plan, and in accordance with said board's explanatory legend, by which purchaser received, for penny paid, one of small pieces, one of larger pieces, one of bars, or one of small packages, in accordance with number pushed by chance, and purchaser of last push or punch was entitled also to one of such packages, and (c) of number of candy bars, together with push card, for distribution to consuming public under a plan, and in accordance with said card's explanatory legend, by which purchaser received, for five cents paid, one, two, three, four, or five bars, dependent upon legend disclosed by chance by push, and purchaser of last push received six; so assembled and packed that they were designed to be, and were, displayed and used by retail dealer purchasers thereof for distribution and resale to purchasing public in accordance with such sales plans, by lot or chance, without alteration or rearrangement, and with knowledge and intent that such candy should