

IN THE MATTER OF
UNIQUE NOVELTIES, INC.

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

Docket 3108. Complaint, Apr. 20, 1937—Decision, June 25, 1937

Where a corporation engaged in sale and distribution of candy, candy products, and chewing gum, including certain assortments so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which included (1) large number of individually wrapped penny caramels of uniform size and shape, of which a relatively few were red or red-centered, and of which a still smaller number were green or green-centered, together with a number of small pennants to be given free, and in accordance with explanatory display card for retailer's use included with assortment, to chance purchasers of aforesaid red or red-centered caramels, and with a number of larger pennants to be thus given to such purchasers of the green or green-centered caramels, and to be given, along with said display card, to which one of said larger pennants was attached, to purchaser of last caramel in assortment; and (2) a large number of individually wrapped penny sticks of chewing gum, together with number of small felt pennants to be given, without charge, to chance purchasers of said sticks, upon the inside of the wrapper of which were printed words "Home Run," and to be given also to purchaser of last stick in assortment, in accordance with explanatory display card supplied for retailer's use—

Sold, to wholesalers and jobbers and to retailers for display and resale, 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 and chewing gum so packed and assembled, or otherwise arranged and packed for sale to the purchasing public as to involve a game of chance, 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 results that consuming public was induced to purchase said caramels or gum because of chance of obtaining free, one of pennants contained in said assortments, and with capacity and tendency to induce purchasers to buy its said products in preference to those offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by said methods and manner of packing such products 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 those offered and sold by said competitors who do not use such or

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equivalent methods, and with tendency and capacity, by reason thereof, 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 unwilling to, and who 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 competitors as use same or equivalent methods, 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 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.

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

Mr. Charles W. Jablon, of New York City, 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 Unique Novelties, 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, 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 and doing business under the laws of the State of New York, with its principal office and place of business located at 35-37 Claver Place, in the city of Brooklyn, State of New York. Respondent is now, and for several months last past has been, engaged in the sale and distribution of candy, candy products, and chewing gum to wholesale dealers and jobbers and to retail dealers 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 Brooklyn, N. Y., to purchasers thereof in the State of New York and in other States of the United States at their respective places of business. There is now, and has been for several months last past, a course of trade and commerce by said respondent in such candy, candy products and chewing gum 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 individuals and partnerships engaged in the sale and distribution of candy, candy products, and chewing gum in commerce between and among the various States of the United States.

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PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers and jobbers and to retail dealers assortments of candy, candy products, and chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) One of said assortments is composed of 150 pieces of caramel candy of uniform size and shape, together with 20 small pennants and 11 larger pennants and a display card, hereinafter referred to, which has a still larger pennant fastened thereon. 120 of these caramels are yellow. 20 of said caramels are red or have red centers, and 10 of said caramels are green or have green centers. The said caramels are contained within non-transparent wrappers, and the color of said caramels, or the color of the center of said caramels, is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The said caramels retail for 1¢ each, and the purchaser procuring one of the red caramels, or one of the caramels having a red center, is entitled to receive and is to be given free of charge one of the small pennants contained in said assortment. The purchaser procuring one of the green caramels, or one of the caramels having a green center, is entitled to receive and is to be given free of charge one of the larger pennants contained in said assortment. The purchaser of the last caramel in said assortment is entitled to receive and is to be given free of charge the display card hereinbefore referred to, to which one of the large pennants is attached. The display card included with said assortment contains statements or legends informing the purchasers and prospective purchasers that the said assortment is being sold in accordance with the above described sales plan.

The said pennants are thus distributed to the purchasers of said caramel candies wholly by lot or chance, and the consuming public is induced to purchase said caramel candies because of the chance of obtaining one of the said pennants contained in said assortment.

(b) An assortment of chewing gum being sold and distributed by respondent is composed of 100 sticks of chewing gum contained within individual wrappers, together with a number of small felt pennants and a display card to which has been attached one of said pennants. The majority of the wrappers within which said sticks of chewing gum are contained have no printing on the inside, but a small number of said wrappers have the words "Home Run" printed on the inside thereof. The fact as to whether the inside of the wrapper is blank or has the words "Home Run" thereon is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The said sticks of chewing gum retail at 1¢ each, and the purchaser procuring a stick of chewing gum contained within a wrapper bearing the words "Home Run" is entitled to receive and is to be given free of charge one of the said felt pennants contained in said assortment. The purchaser of the last stick of chewing gum in said assortment is entitled to receive and is to be given free of charge the display card to which a pennant is attached. The display card included with said assortment contains statements or legends informing the purchasers and prospective purchasers that the said assortment is being sold in accordance with the above described sales plan. The said small felt pennants

are thus distributed to purchasers of sticks of chewing gum from said assortment wholly by lot or chance, and the consuming public is induced to purchase said chewing gum because of the chance of obtaining one of the said small felt pennants.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments of candy and chewing gum resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale and sell the same 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. Such sales plans have the capacity and tendency of inducing purchasers thereof to purchase respondent's said products in preference to candy or chewing gum offered for sale and sold by its competitors.

PAR. 4. The sale of candy and chewing gum to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a pennant.

The use by respondent of said methods in the sale of candy and chewing gum, and the sale of candy and chewing gum 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 competitors of respondent 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 or chewing gum in competition with respondent, as above alleged, are unwilling to offer for sale or sell candy or chewing gum 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 or chewing gum are attracted by respondent's said methods and manner of packing said candy and chewing gum and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy and chewing gum so packed and sold by respondent in preference to candy or chewing gum 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 and chewing gum 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 and chewing gum trade and to tend to create a monopoly of said candy and chewing gum trade in respondent and in such other competitors of respondent as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said candy and chewing gum trade. The use of said methods by respondent has the tendency and capacity to eliminate from said candy and chewing gum trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

PAR. 6. The aforementioned methods, acts and practices of 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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 April 20, 1937, issued and on April, 22, 1937, served its complaint in this proceeding upon the respondent, Unique Novelties, 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, the respondent filed answer thereto 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 argument 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 and doing business under the laws of the State of New York, with its principal office and place of business located at 35-37 Claver Place, in the city of Brooklyn, State of New York. Respondent is now, and for several months last past, has been engaged in the sale and distribution of candy, candy products, and chewing gum to wholesale dealers and jobbers and to retail dealers 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 Brooklyn, N. Y., to purchasers thereof in the State of New York and in other States of the United States at their respective places of business. There is now, and has been for several months last past, a course of trade and commerce by said respondent in such candy, candy products and chewing gum 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 individuals and partnerships engaged in the sale and distribution of candy, candy products, and chewing gum 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 and to retail dealers assortments of candy, candy products and chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) One of said assortments is composed of 150 pieces of caramel candy of uniform size and shape, together with 20 small pennants and 11 larger pennants and a display card, hereinafter referred to, which has a still larger pennant fastened thereon. 120 of these caramels are yellow, 20 of said caramels are red or have red centers, and 10 of said caramels are green or have green centers. The said caramels are contained within nontransparent wrappers, and the color of said caramels, or the color of the center of said caramels, is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The said caramels retail for 1¢ each, and the purchaser procuring one of the red caramels, or one of the caramels having a red center, is entitled to receive and is to be given free of charge one of the small pennants contained in said assortment. The purchaser procuring one of the green caramels, or one of the caramels having a green center, is

entitled to receive and is to be given free of charge one of the larger pennants contained in said assortment. The purchaser of the last caramel in said assortment is entitled to receive and is to be given free of charge the display card hereinbefore referred to, to which one of the large pennants is attached. The display card included with said assortment contains statements or legends informing the purchasers and prospective purchasers that the said assortment is being sold in accordance with the above described sales plan.

The said pennants are thus distributed to the purchasers of said caramel candies wholly by lot or chance, and the consuming public is induced to purchase said caramel candies because of the chance of obtaining one of the said pennants contained in said assortment.

(b) An assortment of chewing gum being sold and distributed by respondent is composed of 100 sticks of chewing gum contained within individual wrappers, together with a number of small felt pennants and a display card to which has been attached one of said pennants. The majority of the wrappers within which said sticks of chewing gum are contained have no printing on the inside, but a small number of said wrappers have the words "Home Run" printed on the inside thereof. The fact as to whether the inside of the wrapper is blank or has the words "Home Run" thereon is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The said sticks of chewing gum retail at 1¢ each, and the purchaser procuring a stick of chewing gum contained within a wrapper bearing the words "Home Run" is entitled to receive and is to be given free of charge one of the said felt pennants contained in said assortment. The purchaser of the last stick of chewing gum in said assortment is entitled to receive and is to be given free of charge the display card to which a pennant is attached. The display card included with said assortment contains statements or legends informing the purchasers and prospective purchasers that the said assortment is being sold in accordance with the above described sales plan. The said small felt pennants are thus distributed to purchasers of sticks of chewing gum from said assortment wholly by lot or chance, and the consuming public is induced to purchase said chewing gum because of the chance of obtaining one of the said small felt pennants.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments of candy and chewing gum resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale and sell the same to the purchasing public in accordance with the aforesaid sales

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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. Such sales plans have the capacity and tendency of inducing purchasers thereof to purchase respondent's said products in preference to candy or chewing gum offered for sale and sold by its competitors.

PAR. 4. The sale of candy and chewing gum to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a pennant. The use by respondent of said methods in the sale of candy and chewing gum, and the sale of candy and chewing gum 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 competitors of respondent 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 or chewing gum in competition with respondent, as above described, are unwilling to offer for sale or sell candy or chewing gum so packed and assembled, 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 or chewing gum are attracted by respondent's said methods and manner of packing said candy and chewing gum and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy and chewing gum so packed and sold by respondent in preference to candy or chewing gum 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 and chewing gum 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 and chewing gum trade, and to tend to create a monopoly of said candy and chewing gum trade in respondent and in such other competitors of respondent as use the same or equivalent methods; and to deprive

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

CONCLUSION

The aforesaid acts and practices of the respondent, Unique Novelties, Inc., 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 filed herein on May 22, 1937, by the respondent admitting all the material allegations of the complaint to be true, and the respondent by its counsel having waived filing of briefs and oral argument, 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, Unique Novelties, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of candy, candy products and chewing gum 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, candy products or chewing gum so packed and assembled that sales of such candy, candy products, or chewing gum 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, candy products, or chewing gum 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, candy products, or chewing gum 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, shape, and quality having centers of a different color, together with felt pennants or other articles of merchandise, which said felt pennants or other articles of merchandise are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

4. Packing or assembling in the same package or assortment of chewing gum for sale to the public at retail pieces of chewing gum enclosed in wrappers, some of which have no legends printed on the inside thereof and others of which have a legend printed on the inside thereof, together with felt pennants or other articles of merchandise, which said felt pennants or other articles of merchandise, are to be given as prizes to the purchaser procuring a piece of chewing gum having a legend on the inside of the wrapper thereof.

5. Furnishing to wholesale dealers, jobbers and retail dealers display cards, either separately or with packages or assortments of candy, candy products, or chewing gum, bearing a legend or legends or statements informing the purchasers that the candy, candy products, or chewing gum are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

It is further ordered, That the respondent, Unique Novelties, Inc., a corporation, shall, within 60 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
WINTHROP NOVELTY 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 3109. Complaint, Apr. 20, 1937—Decision, June 25, 1937

Where a corporation engaged in sale and distribution 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 such assortments as large number of wrapped penny caramels of uniform size and shape, majority of which were uniform throughout, together with a number of Radio Star Jig Saw puzzles, to be given, without charge, to those purchasing, by chance, one of a few red-centered caramels included in assortment in question—

(a) Sold, to wholesalers and jobbers, and to 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 its said products, in accordance with such plan, 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 the purchasing public, as to involve a game of chance, refrain therefrom;

With result that consuming public was induced to buy its said candies because of chance of obtaining one of said puzzles or prizes, and with capacity and tendency to induce purchasers to buy said products in preference to those offered and sold by competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by its said method or 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 its competitors who do not use such or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors who do not use same or equivalent methods, exclude from said trade all competitors who are unwilling to and do not use such or equivalent methods as unlawful, lessen competition in said trade and tend to create a monopoly thereof in it and in such other competitors as use same or equivalent methods, deprive purchasing public of benefit of free competition therein, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent methods; and

(b) Represented to customers and prospective customers, through use of words "manufacturers of novelty candy products," that it was the manufacturer of the candy or merchandise sold and distributed by it, notwithstanding fact it neither owned, controlled, nor operated any factory whatsoever, and did not make any of its candy or merchandise;