

IN THE MATTER OF
WOLVERINE GUM, INC.

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

Docket 3145. Complaint, June 4, 1937—Decision, June 29, 1937

Where a corporation engaged in manufacture, sale, and distribution of chewing gum including assortments which were so packed and assembled as to involve, or which might involve, use of a lottery scheme when sold and distributed to ultimate consumers thereof, and which consisted of a number of individually wrapped penny sticks of gum, of which a relatively few of the individual wrappers differed from that of the majority, together with a number of other articles of merchandise, to be given as prizes to chance purchasers of individual sticks, wrappers of which, upon opening, were thus found to differ as aforesaid—

Sold, to wholesalers and jobbers for display and resale by retailer-customers to purchasing public, in accordance with said sales plan, said assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products in accordance with such plan, contrary to public policy long recognized by the common law and criminal statutes, and to an established public policy of the United States Government, and in competition with many who, unwilling to sell gum or other confections so packed and assembled, or otherwise arranged and packed for sale to purchasing public as to involve a game of chance, refrain therefrom;

With result that many dealers in and ultimate purchasers of chewing gum or other confections were attracted by said method and manner of packing said gum and by element of chance involved in sale thereof as aforesaid, and were thereby induced to purchase such gum, thus packed and sold by it, in preference to gum or other confections offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors who do not use same or equivalent practice or method, exclude from trade involved all competitors who are unwilling to and do not use same or equivalent method as unlawful, lessen competition in said trade, and tend to create a monopoly thereof in it and in such other distributors of such products as do use same or equivalent practice or method, deprive purchasing public of benefit of free competition in said chewing gum trade, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or an equivalent method:

Held, That such acts and practices were 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.

Complaint

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Wolverine Gum, 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. The respondent, Wolverine Gum, Inc., is a corporation organized and doing business under the laws of the State of Michigan, with its principal office and place of business located at 5625 Lauderdale Avenue, in the city of Detroit, State of Michigan. Respondent is now, and for several years last past has been, engaged in the manufacture of chewing gum and in the sale and distribution thereof to wholesale dealers, jobbers, and 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 the city of Detroit, State of Michigan, to purchasers thereof in Michigan and in other States of the United States and the District of Columbia at their respective points of location. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such 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 partnerships and individuals engaged in the manufacture of chewing gum and other confections and in the sale and distribution thereof in commerce between and among the various States of the United States and the District of Columbia.

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 assortments of chewing gum so packed and assembled as to involve, or which are designed to or may involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof. Such assortments are composed of a number of sticks of chewing gum and a number of other articles of merchandise, which said other articles of merchandise are to be given as prizes to purchasers of individual sticks of chewing gum in the following manner: The said sticks of chewing gum in said assortments are wrapped in individual wrappers, and the majority of the said wrappers are

identical but a small number of said wrappers are different from the majority of the wrappers. The individual sticks of chewing gum retail at the price of 1¢ each, and the purchaser who procures a stick of chewing gum contained within a wrapper different from the majority is entitled to receive free of charge and is to be given as a prize one of the other articles of merchandise in said assortments. The fact as to which wrappers are different from the majority is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The articles of merchandise other than chewing gum contained in said assortments are thus distributed to purchasers of chewing gum from said assortments wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers 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 chewing gum to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth; and said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondent's said products in preference to chewing gum or other confections offered for sale and sold by its competitors.

PAR. 4. The sale of said chewing gum to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure other articles of merchandise. The use by respondent of said method in the sale of chewing gum, and the sale of chewing gum by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the chewing gum trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell chewing gum or other confections in competition with respondent, as above alleged, are unwilling to offer for sale or sell chewing gum or other confections 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 chewing gum or other confections are attracted by respondent's said method and manner of packing said 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 chewing gum so packed and sold by respondent in preference to chewing gum or other confections offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. 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 chewing gum 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 chewing gum trade and to tend to create a monopoly of said chewing gum trade in respondent and in such other distributors of chewing gum or other confections as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said chewing gum trade. The use of said method by respondent has the tendency and capacity to eliminate from said chewing gum 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. The aforementioned method, acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged. Said method, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, 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 June 4, 1937, issued and on June 7, 1937, served its complaint in this proceeding upon respondent, Wolverine Gum, 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 hearing on the charges set forth in said complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the said complaint and

answer thereto; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Wolverine Gum, Inc., is a corporation organized and doing business under the laws of the State of Michigan, with its principal office and place of business located at 5625 Lauderdale Avenue, in the city of Detroit, State of Michigan. Respondent is now, and for several years last past has been engaged in the manufacture of chewing gum and in the sale and distribution thereof to wholesale dealers, jobbers, and 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 the city of Detroit, State of Michigan, to purchasers thereof in Michigan and in other States of the United States and the District of Columbia at their respective points of location. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such 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 partnerships and individuals engaged in the manufacture of chewing gum and other confections and in the sale and distribution thereof in commerce between and among the various States of the United States and the District of Columbia.

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 assortments of chewing gum so packed and assembled as to involve, or which are designed to or may involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof. Such assortments are composed of a number of sticks of chewing gum and a number of other articles of merchandise, which said other articles of merchandise are to be given as prizes to purchasers of individual sticks of chewing gum in the following manner: The said sticks of chewing gum in said assortments are wrapped in individual wrappers, and the majority of the said wrappers are identical, but a small number of said wrappers are different from the majority of the wrappers. The individual sticks of chewing gum retail at the price of 1¢ each, and the purchaser who procures a stick of chewing gum contained within a wrapper different from the ma-

jority is entitled to receive free of charge and is to be given as a prize one of the other articles of merchandise in said assortments. The fact as to which wrappers are different from the majority is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The articles of merchandise other than chewing gum contained in said assortments are thus distributed to purchasers of chewing gum from said assortments wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers 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 chewing gum to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth; and said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondent's said products in preference to chewing gum or other confections offered for sale and sold by its competitors.

PAR. 4. The sale of said chewing gum to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure other articles of merchandise. The use by respondent of said method in the sale of chewing gum, and the sale of chewing gum by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the chewing gum trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell chewing gum or other confections in competition with respondents are unwilling to offer for sale or sell chewing gum or other confections 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 chewing gum or other confections are attracted by respondent's said method and manner of packing said chewing gum and by the element of chance

Order

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involved in the sale thereof in the manner above described, and are thereby induced to purchase said chewing gum so packed and sold by respondent in preference to chewing gum or other confections offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. 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 chewing gum 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 chewing gum trade and to tend to create a monopoly of said chewing gum trade in respondent and in such other distributors of chewing gum or other confections as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said chewing gum trade. The use of said method by respondent has the tendency and capacity to eliminate from said chewing gum trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, Wolverine Gum, 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 June 10, 1937, by the respondent admitting all the material allegations of the complaint to be true and waiving hearing on the charges set forth in said complaint, 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, Wolverine Gum, Inc., a corporation its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of 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, chewing gum so packed and assembled that sales of such chewing gum to the general public are to be made, or are designed to be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of chewing gum which are used, or which are designed to be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the chewing gum contained in said assortments to the public.

3. Packing or assembling in the same package or assortment of chewing gum for sale to the public at retail pieces of chewing gum contained within individual wrappers of the same general design and appearance but differing in particular respects, together with other articles of merchandise, which other articles of merchandise are to be given as prizes to the purchaser procuring a piece of chewing gum contained within a wrapper of a particular design, pattern, or composition.

It is further ordered, That the respondent, Wolverine Gum, 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.

IN THE MATTER OF
CRYSTAL TONE RADIO CORPORATION AND SAMUEL
GLICK, INDIVIDUALLY, AND TRADING AS PONTIAC
RADIO COMPANY

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

Docket 2225. Complaint, Aug. 18, 1934—Decision, June 30, 1937

Where the names and symbols "Edison," "Victor," and "Brunswick," as names and designations of well-known, famous, or long-established individuals or companies and corporations, had long been extensively advertised and featured by the various owners thereof and had come to be standard brands and symbols when used as company, corporate, and trade names and as well-known marks and brands on radio sets, radio parts, and like products which, thus marked, had a fixed and stable value in the trade and industry generally throughout the United States and foreign countries, and were relied upon by purchasing public, when used on radio sets and like products, and in said industries as indicating high standard, reliable, and genuine products, and use thereof influenced purchase of such products and increased sales, value of which were increased by number of dealers in said products, and said names, letters, and symbols, attached to said products, had value to the thousands of dealers engaged in the sale and distribution of such standard brand products and were valuable to the owners thereof in their use and employment in commerce; and thereafter, a corporation and an individual, officer, and director thereof, engaged in the manufacture, sale, and distribution of radio sets, upon which they placed, and caused to be placed, escutcheons and name plates with names, letters, marks, brands, and symbols etched or stamped thereon, to designate the makers or brand names of said sets; in furtherance of a scheme to deceive the public and compete unfairly with other manufacturers of and dealers in such products—

Adopted and made use of names, marks, brands, and symbols of corporations and individuals well-known and long-established in the radio and like industries, without the authority of the legal owners and users thereof, and included among such names, marks, brands, and symbols, thus adopted and used by it, "Edison," "Victor," and "Brunswick," and such colorable imitations and simulations thereof as "Edison" with representation of a bell, "Victor International," and "Bronswick," and made, sold, and shipped in interstate commerce their said sets, upon which were placed escutcheons and name plates bearing such names, marks, brands, and symbols;

With result that public was led to believe that products thus sold, marked and identified were those of the well-known companies or interests referred to and identified, there was an appropriation by them of the good will of, and an unfair diversion of business from, such competitor companies and interests and from other competitors who do not resort to such practices, their said goods were given a salability which they would not otherwise have, and they, themselves, had an advantage over their competitors who