

IN THE MATTER OF
MISS MORRIS CANDIES, INC.

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

Docket 3132. Complaint, May 15, 1937—Decision, June 30, 1937

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve, or which were designed to or might involve, use of a lottery scheme when sold and distributed to ultimate consumers thereof, and which included such assortments as a number of packages of candy of varying size, together with a punchboard, for sale to the consuming public under a plan, and in accordance with said board's explanatory legend, by which those punching by chance certain numbers received specified package of candy, and person making last punch in each of sections into which board was divided received specified package, and others received nothing for their five cents other than privilege of making a punch—

Sold, to wholesalers and jobbers, such assortments for display and resale to purchasing public by retail dealers therein in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others the means of conducting a lottery in the sale of its said 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 offer or sell candy so packed and assembled, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance, refrain therefrom;

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

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 Miss Morris Candies, 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, Miss Morris Candies, Inc., is a corporation organized and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 517-19 Third Street North, in the city of Minneapolis, State of Minnesota. 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 dealers and jobbers located at points in the State of Minnesota and in the States of Wisconsin and Iowa. Respondent causes and has caused its said products when sold to be transported from its principal place of business in the city of Minneapolis, State of Minnesota, to purchasers thereof in the States of Minnesota, Wisconsin, and Iowa 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 candy between and among the States of the United States above named. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers and jobbers various assortments of candy 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 packages of candy of varying sizes, together with a device commonly called a "punchboard." The said packages of candy are sold and distributed to the consuming public by means of said punchboard in the following manner:

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The said boards have a number of holes within which are secreted slips of paper bearing a printed number, and the area of the boards in which the said holes are placed is divided into sections. Sales are 5¢ each, and each purchaser is entitled to one punch from said board. When a punch is made, the slip of paper bearing a printed number and secreted in said hole is disclosed. The numbers begin with one and continue to the number of holes there are on the board, but the numbers are not arranged in numerical sequence. The board bears statements informing purchasers and prospective purchasers that certain numbers receive a specified package of candy, and that the last punch in each section receives a specified package of candy. Persons who do not qualify by punching one of the specified numbers from the board, or by punching the last punch from one of the sections, receive nothing for their money other than the privilege of punching a number from said board. The slips bearing the printed numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular punch separated from the board. The fact as to whether a purchaser receives one of the packages of candy, or nothing other than the privilege of punching a number from said board, for the payment of 5¢, is thus determined wholly by lot or chance.

Respondent manufactures, sells, and distributes several assortments of candy involving the use of a punchboard in the sale and distribution thereof to the consuming public, but all of the said assortments involve the same principle as set forth above, and vary only in detail.

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

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure packages of candy. The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long

deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the candy 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 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 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. 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, 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 May 15, 1937, issued and on May 17, 1937, served its complaint in this proceeding upon the respondent, Miss Morris Candies, 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 thereto, 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 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. The respondent, Miss Morris Candies, Inc., is a corporation organized and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 517-19 Third Street North, in the city of Minneapolis, State of Minnesota. 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 dealers and jobbers located at points in the State of Minnesota and in the States of Wisconsin and Iowa. Respondent causes and has caused its said products when sold to be transported from its principal places of business in the city of Minneapolis, State of Minnesota, to purchasers thereof in the States of Minnesota, Wisconsin, and Iowa 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 candy between and among the States of the United States above named. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and

distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers and jobbers various assortments of candy 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 packages of candy of varying sizes, together with a device commonly called a "punchboard." The said packages of candy are sold and distributed to the consuming public by means of said punchboard in the following manner:

The said boards have a number of holes within which are secreted slips of paper bearing a printed number, and the area of the boards in which the said holes are placed is divided into sections. Sales are 5c each, and each purchaser is entitled to one punch from said board. When a punch is made, the slip of paper bearing a printed number and secreted in said hole is disclosed. The numbers begin with one and continue to the number of holes there are on the board but the numbers are not arranged in numerical sequence. The board bears statements informing purchasers and prospective purchasers that certain numbers receive a specified package of candy, and that the last punch in each section receives a specified package of candy. Persons who do not qualify by punching one of the specified numbers from the board, or by punching the last punch from one of the sections, receive nothing for their money other than the privilege of punching a number from said board. The slips bearing the printed numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular punch separated from the board. The fact as to whether a purchaser receives one of the packages of candy, or nothing other than the privilege of punching a number from said board, for the payment of 5c, is thus determined wholly by lot or chance.

Respondent manufactures, sells, and distributes several assortments of candy involving the use of a punchboard in the sale and distribution thereof to the consuming public, but all of the said assortments involve the same principle as set forth above, and vary only in detail.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers expose said assortments for sale and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of

conducting lotteries in the sale of its product in accordance with the sales plan hereinabove set forth; and said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure packages of candy. The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the candy 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 candy in competition with the 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, 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 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 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 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.

CONCLUSION

The aforesaid acts and practices of the respondent, Miss Morris Candies, Inc., a corporation, 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 proceedings having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent, dated June 18, 1937, 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, Miss Morris Candies, 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 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 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 wholesale dealers and jobbers assortments of candy, together with a device commonly called a "punchboard" for use, or which may be used, in distributing or selling said candy to the public at retail.

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4. Furnishing to wholesalers and jobbers a device commonly called a "punchboard," 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, Miss Morris Candies, 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.

Modified Order

IN THE MATTER OF
MID WEST MILLS, INC.

MODIFYING CEASE AND DESIST ORDER

Docket 2526. Order, July 2, 1937

Order modifying, pursuant to decision of United States Circuit Court of Appeals in *Federal Trade Commission v. Mid West Mills, Inc.*, 90 F. (2d) 723, Commission's prior order in *Midwest Mills, Inc.*, Docket 2526, 22 F. T. C. 566, 573, prohibiting, as there set forth, use of respondent's corporate or trade name "Mid West Mills, Inc.," so as to permit such use, if qualified, as below set forth, by words "Jobbers and Converters, Not Mill Owners or Mill Operators."

Before *Mr. William C. Reeves*, trial examiner.

Mr. George Foulkes for the Commission.

Kamfner, Halligan & Marks, of Chicago, Ill., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding, having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, 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," and having entered its order directing the respondent, its officers, agents, representatives, servants, and employees, to cease and desist from the unfair methods of competition set forth in its said findings as to the facts; and the Commission, having thereafter filed, in the United States Circuit Court of Appeals for the Seventh Circuit, an application for the enforcement of its said order to cease and desist; and thereafter, in said proceeding in said Court, such proceedings having been had that, on the 15th day of June 1937, said Court stated in its opinion that if respondent did not voluntarily strike the word "Mills" from its name, it should clearly inform its prospective customers of the true facts, and having denied the Commission's said application for enforcement, but without prejudice to an order being entered by the Commission directing the addition of appropriate words which will clearly convey to the public the fact that respondent neither owns nor operates a mill—

Modified Order

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It is ordered, That the respondent, Mid West Mills, Inc., a corporation, its officers, agents, representatives, servants, and employees, in connection with the offering for sale and sale of upholstering fabrics, wooden frames, padding, felt, springs, and all other such material, relative to the construction of furniture, in interstate commerce;

1. Cease and desist from the use of the corporate name Mid West Mills, Inc., or any other name of the same or familiar import, unless and until there be used, in type of the same size and equally conspicuous, in immediate connection and conjunction with said name, wherever used, whether on stationery, garment labels, tickets, invoices, or other written or printed matter, the words "Jobbers and Converters, Not Mill Owners or Mill Operators"—or

2. If respondent desires not to use the qualifying and modifying terms set forth in paragraph 1 hereinabove, that it cease and desist altogether from the use of the word "Mills" either standing alone, or in connection or conjunction with any other word or words, in its corporate name, and on stationery, garment labels, tickets, invoices, or other written or printed matter.

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

Syllabus

IN THE MATTER OF
VISCOSE COMPANY ET AL.

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

Docket 2161. Complaint, Feb. 1, 1934—Decision, July 3, 1937

Where ten corporations engaged in the manufacture of substantially all the viscose rayon yarn made in the United States, and in the sale and distribution thereof to rayon cloth knitters for manufacture into cloth, and subsequent sale, distribution, and use for making of articles of wear therefrom, and constituting sole source of supply of such rayon yarn for knitters, users of approximately forty-five percent of all such yarn used by all classes or kinds of purchasers, and also sole source of supply for other users of such yarn, and, prior to the acts below set forth, in competition as to price with one another in the sale thereof between and among States, Territories, and District of Columbia—

For the purpose of eliminating price competition among themselves, entered into an agreement, combination, understanding, and conspiracy among themselves to fix and maintain uniform prices to be exacted by them from their purchasers of rayon yarn, and thus to fix the price of said product entering into interstate commerce, and did, during a period, thus fix and maintain such uniform prices;

With effect of actually hindering and preventing price competition in the sale, among the various States, the Territories, and the District of Columbia, of such yarn, increasing prices therefor paid by users thereof, prices of cloth made therefrom, and prices of rayon articles of wear, and with dangerous tendency so to hinder and prevent such price competition:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Edward L. Smith and *Mr. Harry A. Babcock* for the Commission.

Mr. John G. Jackson and *Mr. Stephen P. Nash*, of Jackson, Fuller, Nash & Brophy, and *Mr. John W. Davis*, of Davis, Polk, Wardwell, Gardiner & Reed, of New York City, for Viscose Co.

Mr. J. Harry Covington, *Mr. Dean G. Acheson* and *Mr. H. Thomas Austern*, of Covington, Burling Rublee, Acheson & Shorb, of Washington, D. C., and *Mr. William S. Gregg*, of Wilmington, Del., for DuPont Rayon Co., Inc.

Mr. F. Sims McGrath and *Mr. Arthur L. Fisk*, of Cadwalader, Wickersham & Taft, of New York City, for Tubize Chatillon Corp. and American Enka Corp.

Mr. Leslie Nichols of Tolles, Hogsett & Ginn, of Cleveland, Ohio, for Industrial Rayon Corp.