

IN THE MATTER OF
**SAMUEL GOLDBERG, TRADING AS U. S. SPECIALTY &
MFG. CO.**

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

Docket 2722. Complaint, Feb. 17, 1936—Decision, Jan. 19, 1938

Where an individual engaged in sale and distribution of candy, including certain assortments, which, sold to jobbers, wholesalers, retailers, and schools, were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumer, were made up of penny candy inferior to that usually retailing for such amount, and were composed of a number of small penny packages within which were included and concealed, as prizes, along with candy, articles of, or coupons representative of, merchandise of unequal and, chiefly, of very little value, but, in case of small number thereof, greater than candy's penny cost—

- (a) Sold to wholesalers and retailers for display to purchasing public in accordance with aforesaid sales plan said assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of his products in accordance with aforesaid 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 as above described, or otherwise arranged and packed for sale to purchasing public so as to involve a game of chance or any other method of sale contrary to public policy, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing such product and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase said candy, thus packed and sold by him, in preference to that 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 him trade and custom from his said competitors as aforesaid, exclude from said candy trade all competitors who are unwilling to and do not use such or equivalent method as unlawful, lessen competition therein and tend to create monopoly thereof in him and such other distributors as use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method; and

- (b) Represented to customers and prospective customers through use of firm name and style including abbreviation "Mfg.", that he was manufacturer of some or all of said merchandise distributed and sold by him, facts being he neither owned, controlled, nor operated any factory whatsoever and did not manufacture any of such merchandise;

With effect of misleading and deceiving many of his said customers into erroneous belief that he made some or all of aforesaid merchandise, and that persons dealing with him were buying same directly from manufacturer thereof, and thereby eliminating profits of middlemen and obtaining various advantages not had by those buying therefrom, and of diverting trade to him from others selling similar merchandise, including those who do not falsely represent themselves as manufacturers of their products:

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. 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 Samuel Goldberg, an individual trading as U. S. Specialty & Mfg. Co., 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 an individual doing business as U. S. Specialty & Mfg. Co., with his principal office and place of business located at 10222 Superior Avenue, in the city of Cleveland, State of Ohio. He is now and during the past year has been engaged in the sale and distribution of candy to wholesale dealers, jobbers, retail dealers, and schools located at points in the various States of the United States and causes the said product, when so sold, to be transported from his principal place of business in the city of Cleveland, Ohio, 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 said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his said business, respondent has caused and causes the representation to be made to his customers and prospective customers by his salesmen and agents, and has caused

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and causes said representation to be set forth on his business stationery, billheads, invoices, catalogues, labels, and other trade literature, to the effect that he controls and operates factories and is the manufacturer of said candy in which he deals.

PAR. 3. The use by respondent of said representation that he is a manufacturer of candy has the capacity and tendency to and does mislead and deceive many of respondent's said customers and prospective customers into the erroneous belief that respondent is a business concern which controls and operates a factory in which aforesaid candy sold by respondent is manufactured, and that persons dealing with respondent are buying said candy directly from the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various advantages, including advantages in service, delivery, and adjustment of account that are not obtained by persons purchasing goods from middlemen. The truth and fact is that respondent neither owns, controls, nor operates any factory whatsoever and does not manufacture said candy sold by him, but, on the contrary, only purchases and repacks the candy which he sells.

PAR. 4. There are among the competitors of respondent referred to in paragraph 1 hereof, many who manufacture the candy which they sell and who rightfully represent that they are the manufacturers thereof. There are others of said competitors who purchase the candy in which they deal and resell the same at a profit to themselves over and above the cost of said candy to said competitors, and who in nowise represent that they manufacture said candy. The above alleged acts and practices of respondent as set out in paragraphs 2 and 3 hereof tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 5. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to jobbers, wholesale and retail dealers, and to schools a package or assortment of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, and is as follows:

The said assortment of candy is composed of a number of small packages containing several small pieces of candy, which said packages retail at a price of 1 cent each. They are designated "Pirate's Treasure Tubes." Each of said small packages of candy contain, in addition to the candy, an article of merchandise, or a prize, or, in the event that the article of merchandise or prize is too large to be packed within the package, a printed coupon or premium notice entitling the holder thereof to the larger article of merchandise or prize. The majority of these articles of merchandise or prizes contained within the said packages are of very little value, but a small number of the said articles of

merchandise or prizes are of a value greater than 1 cent. The articles of merchandise, or prizes, or printed coupons entitling the holder thereof to a prize, are concealed from the consuming or purchasing public within the packages of candy until after the packages have been purchased and broken open by the said purchasing or consuming public. The articles of merchandise or prizes thus obtained by the purchasing or consuming public are of unequal value. The candy contained in each of the said packages is not the equivalent in quantity or quality to candy that ordinarily retails for 1 cent. The purchasers of the said small packages of candy containing an article or merchandise or prize, or coupon entitling the holder to a prize greater in value than 1 cent, thus procure the article of merchandise or prize wholly by lot or chance.

PAR. 6. The jobbers and wholesale dealers to whom respondent sells his assortment resell said assortment to retail dealers, and said retail dealers, and the retail dealers and schools to whom respondent sells direct, expose said assortment for sale and sell said candy 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 his product in accordance with the sales plan hereinabove set forth as a means of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by his competitors.

PAR. 7. 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 articles of merchandise.

The use by respondent of said method of 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 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.

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. 8. 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 his 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. 9. 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. 10. 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 February 17, 1936, issued, and on February 18, 1936, served, its complaint in this proceeding upon the respondent, Samuel Goldberg, an individual trading as U. S. Specialty & Mfg. Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said

act. After the issuance of said complaint, respondent filed in the office of the Commission an answer admitting all the material allegations of the complaint to be true and waiving the taking of further testimony and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer; and the Commission having duly considered the matter 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 an individual doing business under the firm name and style of U. S. Specialty & Mfg. Co., with his principal office and place of business located at 10222 Superior Avenue in the city of Cleveland, State of Ohio. Since the year 1935 the respondent has been engaged in the sale and distribution of candy to wholesale dealers, jobbers, retail dealers, and schools located at points in the various States of the United States and causes the said product, when so sold, to be transported from his principal place of business in the city of Cleveland, Ohio, 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 said business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to jobbers, wholesale and retail dealers, and to schools a package or assortment of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, and which is described as follows:

The said assortment of candy is composed of a number of small packages containing several small pieces of candy, which said packages retail at a price of 1 cent each. They are designated "Pirate's Treasure Tubes." Each of said small packages of candy contain, in addition to the candy, an article of merchandise, or a prize, or, in the event that the article of merchandise or prize is too large to be packed within the package, a printed coupon or premium notice entitling the holder thereof to the larger article of merchandise or

prize. The majority of these articles of merchandise or prizes contained within the said packages are of very little value, but a small number of the said articles of merchandise or prizes are of a value greater than 1 cent. The articles of merchandise, or prizes, or printed coupons entitling the holder thereof to a prize, are concealed from the consuming or purchasing public within the packages of candy until after the packages have been purchased and broken open by the said purchasing or consuming public. The articles of merchandise or prizes thus obtained by the purchasing or consuming public are of unequal value. The candy contained in each of the said packages is not the equivalent in quantity or quality to candy that ordinarily retails for 1 cent. The purchasers of the said small packages of candy containing an article of merchandise or prize, or coupon entitling the holder to a prize greater in value than 1 cent, thus procure the article of merchandise or prize wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells his 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 plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth.

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 articles of merchandise.

The use by respondent of said method in the sale of candies, and the sale of candies 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 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.

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, or any other method of sale that is contrary to public policy, 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 his 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 capacity and tendency 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. In the course and conduct of his business respondent has caused, and causes, the representation to be made to his customers and prospective customers by the use of the firm name and style, U. S. Specialty & Mfg. Co., that he is the manufacturer of some or all of the merchandise which he sells and distributes, which representation is false and misleading for the reason that the respondent neither owns, controls, nor operates any factory whatsoever and does not manufacture any merchandise sold by him.

The Commission further finds that a considerable number of the purchasing public has a preference for dealing direct with the manufacturer of products being purchased, believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from a selling agency or middleman. The use by respondent of said representation that he is a manufacturer has the capacity and tendency to, and does, mislead and deceive many of respondent's said customers into the erroneous belief that respondent manufactures some or all of the merchandise sold by him and that persons dealing with the respondent are buying said merchandise directly from the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various advantages that are not obtained by persons purchasing goods from middlemen. There are persons, firms, and corporations selling merchandise similar to the merchandise sold and distributed by respondent who do not falsely

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represent that they manufacture the merchandise sold by them. The use by respondent of the representation that he is the manufacturer of some or all of the merchandise sold and distributed by him has the tendency and capacity to, and does, divert trade to respondent from other persons, firms, and corporations selling similar merchandise.

CONCLUSION

The aforesaid acts and practices of the respondent, Samuel Goldberg, an individual trading as U. S. Specialty & Mfg. Co., are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of respondent 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, Samuel Goldberg, an individual, trading as U. S. Specialty & Mfg. Co., or under any other trade name, his agents, representatives and employees, in connection with the offering for sale, sale, and distribution of candy in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. Selling and distributing 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 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. 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 and premium notices, together with articles of merchan-

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dise which said articles of merchandise are to be given as prizes to the purchaser procuring said premium slips;

4. Representing by the use of the firm name U. S. Specialty & Mfg. Co., or otherwise, that he is the manufacturer of some or all of the merchandise which he sells and distributes, unless and until he actually owns and operates or directly and absolutely controls the plant wherein said candy is manufactured by him.

It is further ordered, That the respondent shall within 30 days after service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
SAMUEL STECKENBERG AND ABRAHAM M. FYNKE,
TRADING AS COLONIAL RIBBON MILLS

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

Docket 2921. Complaint, Sept. 16, 1936—Decision, Jan. 19, 1938

Where two partners engaged, as selling agents or jobbers in concept of trade and industry involved, in distribution of ribbons and narrow fabrics of silk and rayon, made for and bought by them from mills under arrangements whereby mills allocated number of looms and employees thereat for manufacture into finished products of material sent by partners from time to time, and in accordance with instructions, and were compensated on basis of cost of manufacture and incidental overhead for looms' maintenance and operation, and in sale of such material, made for and bought by them, as above set forth, to manufacturers of handkerchiefs, ladies' and children's underwear, greeting cards, dolls, candies, toys, and novelties—
Made use of and featured trade name including word "Mills" in cards, invoices, letterheads, and other business stationery printed and circulated throughout the various States to customers and prospective customers, and thereby represented to aforesaid customers and general buying public that they owned, operated, or controlled a mill in which said ribbons and narrow fabrics were by them manufactured, notwithstanding fact looms and employees above referred to, under aforesaid arrangement, were not operated, supervised, or controlled by them, but by the respective owners thereof, and they neither owned and operated nor controlled any manufacturing plant or mill and did not make aforesaid products, sold by them, and owned no interest in aforesaid two manufacturers thereof, and were not manufacturers, as understood by trade and purchasing public generally;
With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that aforesaid representations were true and that they were actually manufacturers of products sold by them, and with result that number of consuming public, as direct consequence of mistaken and erroneous belief so induced, purchased substantial volume of their said ribbons and narrow fabrics, and trade was unfairly diverted to them from their competitors likewise engaged in distribution and sale of such products and who truthfully advertise and represent the nature and character of their business; to the substantial injury of competition in commerce:

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* and *Mr. John W. Addison*, trial examiners.

Mr. J. T. Welch and *Mr. Joseph C. Fehr* for the Commission.

Mr. Gustave A. Steckenberg, of New York City, for respondents.