

IN THE MATTER OF
FRANK URBAN, GEORGE A. URBAN, AND E. T. URBAN,
INDIVIDUALLY AND TRADING AS CLOSE & COMPANY

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

Docket 3144. Complaint, June 4, 1937—Decision, Jan. 19, 1938

Where two partners engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which were composed of a number of individually wrapped penny pieces of candy of uniform size and shape, together with number of other articles of merchandise to be given as prizes to chance purchasers of relatively few of said pieces centers of which differed in color from majority thereof, and to purchaser of last of said uniform pieces in assortment—

Sold to wholesalers and jobbers for display and resale to purchasing public by their retailer vendees, in accordance with aforesaid sales plan, said assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their 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, or otherwise arranged and packed for sale to purchasing public 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 said 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 them, 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 them trade and custom from their said competitors as aforesaid, exclude from said 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 them and such other distributors as use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, and eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

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 Frank Urban, George A. Urban, and E. T. Urban, individually and as co-partners trading as Close & Company, hereinafter referred to as respondents, have been and are 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 respondents, Frank Urban, George A. Urban, and E. T. Urban, are individuals and are doing business as a co-partnership with their principal office and place of business located at 2021 Fulton Street, in the city of Chicago, State of Illinois. Respondents are now, and for some time last past have been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States. Respondents cause and have caused their said products when sold to be transported from their principal place of business in the city of Chicago, State of Illinois, to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondents in such candies between and among the States of the United States. In the course and conduct of said business, respondents are in competition with other partnerships and individuals and with corporations engaged in the manufacture of candies 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers and jobbers assortments of candy so packed and assembled as to involve or which are designed to involve the use of a lottery scheme when sold and distributed to the ultimate consumers thereof. Such assortments are composed of a number of pieces of candy of uniform size and shape, together with a number of other articles of merchandise, which other articles of merchandise are to be given as prizes to purchasers of the pieces of candy of uniform size and shape in the

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following manner: The pieces of candy of uniform size and shape are each contained within wrappers and retail at the price of 1 cent each. The majority of the said pieces of candy of uniform size and shape are of the same color throughout, but a small number of said pieces of candy have centers of a color different from the majority. The color of the centers of said pieces of candy of uniform size and shape is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed.

Purchasers procuring one of the pieces of candy having a center colored differently from the majority are entitled to receive free of charge and are to be given as a prize one of the other articles of merchandise included in said assortment, and the purchaser of the last piece of candy of uniform size and shape in said assortment is entitled to receive free of charge and is to be given as a prize one of the said other articles of merchandise. The other articles of merchandise contained in said assortment are thus distributed to purchasers of candy from said assortment wholly by lot or chance.

The respondents manufacture, sell, and distribute several assortments involving lot or chance in their distribution to the public, but all of said assortments involve the same principle as set forth above and vary only in detail.

PAR. 3. The wholesale dealers and jobbers to whom respondents sell their assortments resell said assortments to retail dealers, and said retail dealers expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their 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 respondents' said products in preference to candy offered for sale and sold by their competitors.

PAR. 4. The sale of candy 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 respondents 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 respondents 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 respondents, 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 respondents' 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 respondents in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents has the tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their 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 respondents and in 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 respondents 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 respondents are all to the prejudice of the public and of respondents' 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 the respondents, Frank Urban, George A. Urban, and E. T. Urban, individually and

as copartners trading as Close & Company, charging them 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 respondents' answer, the Commission, by order entered herein, granted respondents' request for permission to withdraw said answer and to substitute therefor an amended 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 amended 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 amended answer; and the Commission having duly considered the matter and being 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 respondents, Frank Urban, George A. Urban, and E. T. Urban, are individuals doing business as a copartnership under the firm name and style of Close & Company, and have their principal office and place of business located at 2021 Fulton Street in the city of Chicago, State of Illinois. Respondents are now and for some time last past have been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and cause said products when so sold to be transported from their place of business in the city of Chicago, State of Illinois, to purchasers thereof in other States of the United States as their respective places of business. There is now and has been for several months last past a course of trade and commerce by said respondents in such candy between and among the States of the United States. In the course and conduct of the said business, respondents are in competition with other partnerships and with individuals and corporations engaged in the sale and distribution of candy and candy products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers and jobbers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Said assortments are composed of a number of pieces of candy of uniform size and shape, together with a number of other articles of merchandise, which other articles of merchandise are to be given as

prizes to purchasers of the pieces of candy of uniform size and shape in the following manner: The pieces of candy of uniform size and shape are contained within wrappers and retail at the price of 1 cent each. The majority of the said pieces of candy of uniform size and shape are of the same color throughout, but a small number of said pieces of candy have centers of a color different from the majority. The color of the centers of said pieces of candy of uniform size and shape is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. Purchasers procuring one of the pieces of candy having a center colored differently from the majority are entitled to receive free of charge and are to be given as a prize one of the other articles of merchandise included in said assortment, and the purchaser of the last piece of candy of uniform size and shape in said assortment is entitled to receive free of charge and is to be given as a prize one of the said other articles of merchandise. The other articles of merchandise contained in said assortment are thus distributed to purchasers of candy from said assortment wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondents sell their assortments, resell said assortments to retail dealers, and said retail dealers expose said assortments for sale, and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their 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 respondents 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 respondents 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 respondents are unwilling to offer for sale or sell candy so packed and assembled as above described, or other-

wise 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 respondents' 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 respondents, in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents has the tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their 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 respondents 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 respondents 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.

CONCLUSION

The aforesaid acts and practices of the respondents, Frank Urban, George A. Urban, and E. T. Urban, individually and as copartners trading as Close & Company, are to the prejudice of the public and of respondents' 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 amended answer of respondents, Frank Urban, George A. Urban, and E. T. Urban, individually and as copartners trading as Close & Company, 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 respondents have 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 respondents, Frank Urban, George A. Urban, and E. T. Urban, individually and as copartners trading as Close & Company, or trading under any other name, their 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 having centers of different colors together with other articles of merchandise which said articles of merchandise are to be given as prizes to the purchaser procuring a piece of candy having a center of a particular color.

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

IN THE MATTER OF

N. R. BASKIN, INDIVIDUALLY, AND TRADING AS AMERICAN RADIO COMPANY, AMERICAN NOVELTY COMPANY, AND AMERICAN RADIO AND NOVELTY COMPANY

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

Docket 2401. Complaint, May 20, 1935—Decision, Jan. 20, 1938

Where an individual engaged in sale and distribution of radios, bathroom scales, clocks, cameras, and variety of other so-called novelty merchandise, together with "sales booklets," and "sales cards" or "pull boards" and "punch boards" as instrumentality for sale of his said products in conjunction therewith and through use of lottery and chance schemes thereby entailed, as operated by customers whom he (1) solicited thus to sell his said products, (2) supplied, in response to their inquiry, with certain literature and materials descriptive of one or more of his aforesaid articles, and with circular letter descriptive of his sales plans and methods of operation, list of prizes and order blank, and (3) compensated, upon undertaking such sale, through merchandise or money, as case might be—

- (a) Represented, in soliciting customers and persons to buy and sell his said products under aforesaid plan, in advertising therefor in various magazines circulated among members of the buying public, that he was offering "New Sales Plan" and "New Free Gift Plan" involving giving away of radios and other products, and that persons made as much as \$100 a week under former and \$150 a week under latter, while giving away merchandise, facts being said scheme did not constitute "New Sales Plan" or "New Free Gift Plan," neither he nor his customers or customers' agents handed out or distributed free gifts, but each article distributed required payment of valuable consideration, and he was thus compensated, either in money or services or both, representations as to earnings, as possibility and representation applicable to most, constituted gross exaggeration of benefits or profits to be expected or derived by persons dealing with him, who could not determine whether or not they could make any such sums until after purchase and resale of his said merchandise, with resultant benefits to him of such sales as they might and did effect;

With tendency and capacity to induce members of public to buy his said products and undertake and effect distribution thereof to members of buying and consuming public, and with result, substantially, of such sale and distribution, to his benefit and profit and to injury and prejudice of competitors; and

- (b) Offered, sold, and distributed his aforesaid products as above set forth, together with sales cards, pull boards, or punch boards, for distribution to ultimate consumers or purchasers under plans by which, as case might be, chance purchaser received article being thus disposed of or nothing other than chance, dependent upon success or failure in selection of right name, as finally revealed under so-called master seal, and paid, in accordance