

Syllabus

IN THE MATTER OF
PEARSON CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2702. Complaint, Jan. 31, 1936—Decision, Jan. 24, 1938*

Where a corporation engaged in manufacture and sale of candy including various packages or assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which included assortments composed of—

(1) Number of small pieces of candy, number of larger pieces, and small box of candy, together with push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for penny paid, one of small pieces, or one of larger pieces, in accordance with number pushed by chance, and purchaser of last push received the small box of candy;

(2) Number of candy bars, together with small boxes of candy and push card, for sale under plan, and in accordance with card's explanatory legend, pursuant to which purchaser received, for 5 cents paid, one, two or three bars of candy, and purchasers of last push in each of the two sections into which card was divided received box of candy; and

(3) Number of boxes of candy of varying size and article of merchandise, together with punch board, for sale under a plan, and in accordance with board's explanatory legend, pursuant to which purchaser received, for 5 cents paid, one of aforesaid boxes (value of which, and of aforesaid article, exceeded said amount), or nothing other than punch, in accordance with number secured, and last punch received aforesaid article—

Sold to wholesalers and to retailers, for display and resale 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 its products in accordance with said 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 said product and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase such candy, thus packed and sold by it, in preference to that offered and sold by 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 as aforesaid, exclude from said trade all competitors who are unwilling to and do not use such or equivalent method because unlawful, lessen competition therein and tend to create monopoly thereof in it and such other distributors as use same or equivalent method, deprive purchasing public of benefit of free competi-

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tion 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:

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. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.
Guesmer, Carson & MacGregor, of Minneapolis, Minn., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Pearson Candy Company, 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. Respondent is a corporation, organized under the laws of Minnesota with its principal place of business 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 and retail dealers located at points in the various States of the United States, and causes said products, when so sold, to be transported from its place of business in the city of Minneapolis, State of Minnesota, 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 the said business, respondent is in competition with other corporations and with individuals and partnerships 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 its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers, various packages or assortments of candy, so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said packages

are hereinafter described for the purpose of showing the methods used by respondent but this list is not inclusive of the various packages nor does it include all the details of the sales plan which respondent has been or is using in the distribution of candy by lot or chance.

(a) One of said assortments is composed of a number of small pieces of candy, a number of larger pieces of candy and a small box of candy together with a device commonly called a push card. The candy contained in said assortments is distributed to purchasers in the following manner:

The push card has a number of partially perforated disks and when a push is made and the disk separated from the card a number is disclosed. Sales are 1 cent each and the card bears statements informing customers and prospective customers which numbers receive one of the small pieces of candy, which numbers receive one of the larger pieces of candy and that the purchaser of the last push from said card receives the small box of candy. The numbers on said card are effectively concealed from customers and prospective customers until a push or selection has been made and the disk separated from the card. The fact as to whether a purchaser receives one of the small pieces of candy, one of the larger pieces of candy, or the small box of candy is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by respondent is composed of a number of candy bars, two small boxes of candy, and a device commonly called a push card. The candy contained in said assortment is distributed to purchasers in the following manner:

The push card is divided into two sections and each section has a number of partially perforated disks. When a push is made a number is disclosed. Sales are 5 cents each and the card bears statements informing customers and prospective customers that certain specified numbers receive one bar of candy, that certain other specified numbers receive two bars of candy, that certain other specified numbers receive three bars of candy, that the last push in one section receives one of the boxes of candy, and the last push on the board receives the other box of candy. The numbers on the disks or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disk separated from the card. That fact as to whether a purchaser receives one candy bar, two candy bars, three candy bars or one of the small boxes of candy for the price of 5 cents is thus determined wholly by lot or chance.

(c) Another assortment manufactured and distributed by the respondent includes a number of boxes of candy of varying size and another article of merchandise together with a device commonly called a punchboard. The box of candy and the other article of merchandise are distributed to the purchasing public by means of said punchboard in the following manner:

The board has a number of holes therein and secreted in each hole is a slip of paper bearing a number. When a punch is made from said board one of these slips is disclosed. The board bears legends or statements informing the customers and prospective customers as to which numbers receive particular pieces of candy and that the last punch of said board receives the other article of merchandise. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by purchasing the last punch on the board receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy and other article of merchandise are worth more than 5 cents each. The numbers on said board are effectively concealed from purchasers and prospective purchasers until a punch has been made and the slip of paper separated from the board. The fact as to whether a purchaser receives nothing for his money, one of the boxes of candy or the other article of merchandise for the price of 5 cents is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers 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 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 its products in accordance with the sales plan hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products 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 (a) and (b) larger pieces of candy or small box of candy, (c) boxes of candy or another article of merchandise.

The use by respondent of said method of 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 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. 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 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. 6. 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. 7. The aforementioned method, acts, and practices of the 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 January 31, 1936 issued, and on February 3, 1936 served, its complaint in this proceeding upon the respondent, Pearson Candy Company, 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, the Commission, by order entered herein, granted respondent's 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 now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation, organized under the laws of Minnesota with its principal place of business 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 and retail dealers located at points in the various States of the United States, and causes said products, when so sold, to be transported from its place of business in the city of Minneapolis, State of Minnesota, to purchasers thereof in various 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 the said business, respondent is in competition with other corporations and with individuals and partnerships 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 its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and

retail dealers, various packages or assortments of candy, so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) One of said assortments is composed of a number of small pieces of candy, a number of larger pieces of candy, and a small box of candy together with a device commonly called a push card. The candy contained in said assortments is distributed to purchasers in the following manner:

The push card has a number of partially perforated disks and when a push is made and the disk separated from the card a number is disclosed. Sales are 1 cent each and the card bears statements informing customers and prospective customers which numbers receive one of the small pieces of candy, which numbers receive one of the larger pieces of candy and that the purchaser of the last push from said card receives the small box of candy. The numbers on said card are effectively concealed from customers and prospective customers until a push or selection has been made and the disk separated from the card. The fact as to whether a purchaser receives one of the small pieces of candy or one of the larger pieces of candy is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by respondent is composed of a number of candy bars, two small boxes of candy, and a device commonly called a push card. The candy contained in said assortment is distributed to purchasers in the following manner:

The push card is divided into two sections and each section has a number of partially perforated disks. When a push is made a number is disclosed. Sales are 5 cents each and the card bears statements informing customers and prospective customers that certain specified numbers receive one bar of candy, that certain other specified numbers receive two bars of candy, that certain other specified numbers receive three bars of candy, that the last push in one section receives one of the boxes of candy and the last push on the board receives the other box of candy. The numbers on the disks or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disk separated from the card. The fact as to whether a purchaser receives one candy bar, two candy bars or three candy bars for the price of 5 cents is thus determined wholly by lot or chance.

(c) Another assortment manufactured and distributed by the respondent includes a number of boxes of candy of varying size and another article of merchandise together with a device commonly called a punchboard. The box of candy and the other article of merchan-

dise are distributed to the purchasing public by means of said punch-board in the following manner:

The board has a number of holes therein and secreted in each hole is a slip of paper bearing a number. When a punch is made from said board one of these slips is disclosed. The board bears legends or statements informing the customers and prospective customers as to which numbers receive particular boxes of candy and that the last punch of said board receives the other article of merchandise. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by purchasing the last punch on the board receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy and other article of merchandise are worth more than 5 cents each. The numbers on said board are effectively concealed from purchasers and prospective purchasers until a punch has been made and the slip of paper separated from the board. The fact as to whether a purchaser receives nothing for his money or one of the boxes of candy for the price of 5 cents is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers 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 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 its 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 larger pieces of candy, additional bars of candy, or boxes of candy.

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 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 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.

CONCLUSION

The aforesaid acts and practices of the respondent, Pearson Candy Company, 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."

CEASE AND DESIST ORDER

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amended answer of respondent, Pearson Candy 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 Commis-

sion 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, Pearson Candy Company, its officers, representatives, agents 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. Supplying to or placing in the hands of dealers assortments of candy together with a device commonly called a push card, or a device commonly called a punchboard, for use or which may be used in distributing or selling the said candy to the public at retail;

4. Furnishing to dealers a device commonly called a push card, or a device commonly called a punchboard, either with packages or assortments of candy or separately, which push card or punchboard is to be used or may be used in distributing or selling said candy to the public.

It is further ordered, That the respondent, Pearson Candy Company, 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.

Syllabus

**WALTER T. HALL AND MINNIE M. HALL, INDIVIDUALLY,
AND TRADING AS WALTER T. HALL & COMPANY**

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

Docket 2696. Complaint, Jan. 31, 1936—Decision, Jan. 25, 1938

Where a firm engaged in manufacture and sale of packages or assortments of candy, so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, or so-called "draw" or "deal" assortments, sale, and distribution of which type candy, affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who constitute substantial number of purchasers and consumers of such type of candy where prize in form of larger pieces is to them attractive, and appearance of which "draw" or "deal" assortments in the markets of manufacturers of "straight" merchandise has been followed by marked decrease in sale of such "straight" goods, due to gambling or lottery feature connected with other—

Sold to wholesalers and retailers lottery assortments as aforesaid, including those composed of number of small pieces of candy, together with number of larger pieces and push card for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for 5 cents paid, one of the smaller or one of the larger pieces, in accordance with number secured by chance from aforesaid card, and others involving same principle and type of merchandise in which sales were 1 cent instead of 5 cents each, so packed and assembled that they were and might be displayed and used by numerous retail dealer purchasers thereof for distribution and resale to purchasing public by lot or chance, as packed as aforesaid and without alteration or rearrangement, with knowledge and intent that such candy should and would thus be resold to purchasing public by lot or chance by said retail dealers;

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 regard such sale and distribution as morally bad and as encouraging gambling, and especially among children, and as injurious to the candy industry through resulting in the merchandising of a chance or lottery instead of candy, and as providing retail merchants with a means of violating the laws of the several States, and who refuse to adopt such method of selling as contrary to public policy, and some of whom, for such reasons, refuse to sell candy so packed that it can be resold to public by lot or chance;

With result that such competitors were put to a competitive disadvantage and retailers, finding that they could dispose of more candy by "draw" or "deal" method, bought from it and others employing same methods of sale, and trade was thereby diverted from said competitors to it and others using similar methods, and with effect of excluding from trade in question all competitors who are unwilling to and do not use such or equivalent method, and of lessening competition therein, and with tendency to