

Order

IN THE MATTER OF
THE ELI LILLY & COMPANY
MODIFYING CEASE AND DESIST ORDER

Docket 155. Order, January 28, 1938

Order modifying Commission's prior cease and desist order in 1 F. T. C. 442, directed against respondent's resale price maintenance practices in connection with resale by its wholesale distributors of respondent's drugs, pharmaceuticals, and similar products, so as to permit, as in said below modifying order specified, resale price maintenance agreements covering resale of commodities where lawful for intrastate transactions under statute, law, or public policy of particular State or other jurisdiction concerned.

Mr. Simon Michelet, of Washington, D. C., for respondent.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The respondent herein, The Eli Lilly & Company, by its attorney, Simon Michelet, Esq., having filed with this Commission its motion to modify the order to cease and desist issued herein on May 27, 1919, in the light of the provisions of Title VIII of the Act of Congress, approved August 17, 1937, entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes," and the Commission having duly considered the said motion and being fully advised in the premises,

Now, therefore, it is hereby ordered, That the said motion be and the same is hereby granted, and that the said order to cease and desist be and the same is hereby modified so that as modified immediately following the proviso immediately after subparagraph numbered (6) of the said order the following be and the same is hereby added:

Provided, That nothing herein contained shall prohibit contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and *Provided*

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further, That the immediately preceding proviso hereof shall not permit any contract or agreement providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between the respondent The Eli Lilly & Company and any other manufacturer or producer, or between wholesalers, or between brokers, or between factors, or between retailers of the products of The Eli Lilly & Company or between any persons, firms, or corporations in competition with each other in the products of The Eli Lilly & Company.

Syllabus

IN THE MATTER OF

BRADAS & GHEENS, INCORPORATED, AND C. E. GHEENS,
AN INDIVIDUAL TRADING AS BRADAS & GHEENSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2914. Complaint, Jan. 14, 1937¹—Decision, Jan. 29, 1938*

Where a corporation engaged in manufacture and sale of candy, including 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 number of penny pieces of uniform size and shape, together with number of larger pieces, to be given as prizes to chance purchasers of relatively few of said uniform pieces, centers of which differed in color from those of the majority—
Sold, to wholesalers and 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 means of conducting lotteries in the sale of its products in accordance with said plan involving game of chance or sale of a chance to procure larger pieces, 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 capacity and tendency to induce purchasers to buy its said product in preference to that offered and sold by competitors, and with the result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing such candy 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 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 said competitors, 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 a monopoly thereof in it and such other distributors as do, 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:

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.

Guesmer, Carson & MacGregor, of Minneapolis, Minn., for respondents.

¹ Amended and supplemental.