

IN THE MATTER OF
**LONNIE E. CARTER, INDIVIDUALLY, AND TRADING AS
CARTER CANDY COMPANY**

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

Docket 3300. Complaint, Jan. 15, 1938—Decision, Mar. 11, 1938

Where an individual engaged in manufacture of candies and processing of salted nuts, and in sale and distribution thereof to wholesalers, jobbers, and retailers, in competition with others similarly engaged in sale and distribution of candies, salted nuts, and peanut confections—

Sold its so-called "Early Bird Peanuts," packed in individual, small, sealed, 5-cent cartons, within small number of which, as placed in larger pasteboard containers, there were concealed, in accordance with individual cartons, and retailers, explanatory display cards, legends advising ultimate purchaser "You may find 5¢, 10¢, 25¢ or \$1," some such sum, as determined through chance selection and breaking of one of such enclosing cartons, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of his said product, as displayed and sold by retail purchasers thereof in accordance with such plan or game of chance and in violation of public policy of the common law and criminal statutes and contrary to that of the United States Government;

With result that many dealers in and ultimate purchasers of such products were attracted by element of chance involved in sale thereof, and thereby induced to buy same, thus packed and sold, in preference to nuts or candy of competitors who are not willing to and do not offer and sell their products so packed, assembled, or otherwise arranged as to involve game of chance, and refrain therefrom, and with tendency and capacity thereby to divert to himself trade and custom from competitors who do not use same or equivalent method, and to exclude from said trade all aforesaid unwilling competitors and lessen competition therein, and create a monopoly of said trade in himself and in such other distributors as use same or equivalent method, and to deprive purchasing public of benefit of free competition in said trade and eliminate or exclude therefrom, as case might be, all actual or potential competitors who do not adopt and use such methods:

Held, That such method, acts, and practices were all 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 Lonnie E. Carter, individually, and trading as Carter Candy Company, herein—

after referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, 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 Lonnie E. Carter is an individual doing business under the trade name of Carter Candy Company, with his principal office and place of business located at 2300 East Twenty-eighth Street, Chattanooga, Tenn. He is now, and for some time last past has been, engaged in the manufacturing of candies and processing of salted nuts, and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused his products when sold to be transported from his principal place of business in the city of Chattanooga, Tenn., to purchasers thereof in the State of Tennessee and in other States of the United States, at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondent in such candies and salted nuts between and among the various States of the United States. In the course and conduct of his business respondent is in competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of candies, salted nuts, salted peanuts, and peanut confections, 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 wholesale and retail dealers and jobbers, salted peanuts so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Said salted peanuts are packed in individual, small, sealed cartons for retail to the ultimate consumer at five cents per carton. A number of these small cartons of peanuts are placed in a larger pasteboard carton. Said salted peanuts are designated by respondent as "Early Bird Peanuts." Sealed within a small number of individual cartons are 5 cents, 10 cents, 25 cents, or \$1, but the ultimate purchasers cannot ascertain which cartons contain one of the above named sums until a selection has been made and the individual carton broken open. The aforesaid purchasers of said individual cartons of salted peanuts who procure one of the said sums of money thus procure the same wholly by lot or chance. The individual cartons of said salted peanuts bear stickers which have lithographed or printed thereon the following language: "You may find 5¢, 10¢, 25¢." With said assortments respondent furnishes display cards for use by the

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retail dealers in offering such assortments to the public, which display cards bear legends or statements containing, among other things, the following: "You may find 5¢, 10¢, 25¢ or \$1," and inform the purchasing public that such assortments are being distributed in accordance with the above described sales plan.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells the said salted peanuts resell same to retail dealers and said retail dealers, and the retail dealers to whom respondent sells direct, expose said salted peanuts for sale and sell 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 his products in accordance with the sales plan hereinabove set forth. Said sales plan has a capacity and tendency to induce purchasers thereof to purchase respondent's said products in preference to salted nuts, salted peanuts, peanut confections, or candy offered for sale and sold by his competitors.

PAR. 4. The sale of said salted peanuts to the purchasing public, in the manner above alleged, involves a game of chance or the sale of a chance to procure a sum of money. The use by respondent of said method in the sale of salted peanuts, and the sale of salted peanuts 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 a tendency unduly to hinder competition or to create a monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the salted nut, peanut confection, or 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 salted nuts, salted peanuts, and peanut confections or candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell their said products 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 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, salted nuts, salted peanuts, peanut confections, and candy are attracted by respondent's said method and manner of packing said salted peanuts and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase said

salted peanuts so packed and sold by respondent in preference to salted peanuts or 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 his competitors who do not use the same or an equivalent method, to exclude from said 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 trade, to tend to create a monopoly of said trade in respondent and in such other distributors as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by the respondent has the tendency and capacity to eliminate from said 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 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and are to the prejudice of the public.

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 15, 1938, issued and served its complaint in this proceeding upon the respondent, Lonnie E. Carter, individually, and trading as Carter Candy Company, 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 Lonnie E. Carter is an individual doing business under the trade name of Carter Candy Company, with his principal office and place of business located at 2300 East 28th Street, Chattanooga, Tenn. He is now, and for some time last past has been, engaged in the manufacture of candies and processing of salted nuts, and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused his products when sold to be transported from his principal place of business in the city of Chattanooga, Tenn., to purchasers thereof in the State of Tennessee and in various States of the United States, at their respective places of business. There is now, and for more than 1 year last past has been, a course of trade and commerce by said respondent in such candies and salted nuts between and among the various States of the United States. In the course and conduct of his business respondent is in competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of candies, salted nuts, salted peanuts, and peanut confections, 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 wholesale and retail dealers and jobbers, salted peanuts so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Said salted peanuts are packed in individual, small, sealed cartons for retail to the ultimate consumer at 5 cents per carton. A number of these small cartons of peanuts are placed in a larger pasteboard carton. Said salted peanuts are designated by respondent as "Early Bird Peanuts." Sealed within a small number of individual cartons are 5 cents, 10 cents, 25 cents, or \$1, but the ultimate purchasers cannot ascertain which cartons contain one of the above named sums until a selection has been made and the individual carton broken open. The aforesaid purchasers of said individual cartons of salted peanuts who procure one of the said sums of money thus procure the same wholly by lot or chance. The individual cartons of said salted peanuts bear stickers which have lithographed or printed thereon the following language: "You may find 5¢, 10¢, 25¢." With said assortments respondent furnishes display cards for use by the retail dealers in offering such assortments to the public, which display cards bear legends or statements containing, among other things, the following: "You may find 5¢, 10¢, 25¢ or \$1.00," and inform the purchasing public that

such assortments are being distributed in accordance with the above described sales plan.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells the said salted peanuts resell same to retail dealers and said retail dealers, and the retail dealers to whom respondent sells direct, expose said salted peanuts for sale and sell 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 his products in accordance with the sales plan hereinabove set forth. Said sales plan has a capacity and tendency to induce purchasers thereof to purchase respondent's said products in preference to salted nuts, salted peanuts, peanut confections, or candy offered for sale and sold by his competitors.

PAR. 4. The sale of said salted peanuts to the purchasing public, in the manner above found, involves a game of chance or the sale of a chance to procure a sum of money. The use by respondent of said method in the sale of salted peanuts, and the sale of salted peanuts 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 a tendency unduly to hinder competition or to create a monopoly, in this, to wit: that the use thereof has the tendency and capacity to exclude from the salted nut, peanut confection, or candy trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same of an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell salted nuts, salted peanuts, and peanut confections or candy in competition with the respondent, as above described, are unwilling to offer for sale or sell their said products 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, salted nuts, salted peanuts, peanut confections, and candy are attracted by respondent's said method and manner of packing said salted peanuts and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase said salted peanuts so packed and sold by respondent in preference to salted peanuts or 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

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chance, to divert to respondent trade and custom from his competitors who do not use the same or an equivalent method, to exclude from said salted peanut and 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 salted peanut and candy trade, to tend to create a monopoly of said salted peanut and candy trade in respondent and in such other distributors of salted peanuts and candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said salted peanut and candy trade. The use of said method by the respondent has the tendency and capacity to eliminate from said salted peanut and 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 aforementioned method, acts, and practices of respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove found. 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."

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 the respondent, Lonnie E. Carter, individually, and trading as Carter 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 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, Lonnie E. Carter, an individual trading as Carter Candy Company, or under any other trade name, his agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of salted nuts or confections in interstate commerce, do forthwith cease and desist from:

1. Selling and distributing salted nuts or confections so packed and assembled that sales of such salted nuts or confections 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 and placing in the hands of dealers assortments of salted nuts or confections 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 salted nuts or confections contained in said assortment to the public;

3. Selling or distributing individual packages of salted nuts or confections containing coins or other United States money, which said individual packages of salted nuts or confections are packed and assembled in assortments with other individual packages of salted nuts or confections of similar size, shape and appearance not containing coins or other United States money, for resale to the public by retail dealers;

4. Furnishing to dealers a display card, either with packages or assortments of salted nuts or confections, or separately, bearing a legend or legends or statements informing the purchaser that the salted nuts or confections are 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 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.

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IN THE MATTER OF

VAN OGDEN, INC., AND FREDERICK T. GORDON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2851. Complaint, June 26, 1936—Decision, Mar. 18, 1938*

Where a corporation, as engaged under direct management, supervision, direction, and control of an individual who was president, treasurer, and managing officer thereof, in sale and transportation of chemicals, extracts, and other food products through personal solicitation of prospective purchasers in various States by agents and other representatives—

- (a) Described two of its products, in advertising same through circulars and pamphlets distributed throughout the various States, as "Dr. Gordon's Solid Comfort Foot Soap" and "Dr. Gordon's Mustard Oil Cream," and made various other statements intended to create impression that commodities thus labeled and designated were made under direction or according to formula of registered physician, facts being such commodities were in fact named after aforesaid individual and president, etc., who was neither registered pharmacist nor physician;
- (b) Advertised certain products, including those designated as "Walnuts," "Maple," and "Rootbeer," as flavoring extracts, in circulars distributed in interstate commerce, notwithstanding fact such products were not compounds wherein flavoring, secured by extraction of juices from beans, berries, nuts, or fruits, is suspended in alcohol, as trade and public had been generally led to believe and understand for many years from word "extract" as applied to product offered as flavoring ingredient, but were imitation extracts composed of synthetic chemical substitutes and not of genuine ingredients;

With tendency and capacity to confuse and deceive purchasing public in regard to true nature and quality of its product and induce purchasers to buy same on account of mistaken belief that they were made in accordance with doctor's prescription and were true extracts, and with result that trade was thereby unfairly diverted to it from competitors engaged in sale in commerce of similar products, truthfully advertised and represented by them:

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

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

Mr. Alden S. Bradley and *Mr. Gerard A. Rault* for the Commission.

Mr. Charles J. Trainor, of Chicago, Ill., for respondents.

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,"