

Syllabus

IN THE MATTER OF

WILLIAM W. CUMMINGS, ARTHUR W. LAWTON, AND
EVERETT BUCK, INDIVIDUALLY, AND TRADING AS
UNITED STATES CARAMEL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3336. Complaint, Feb. 14, 1938—Decision, Mar. 30, 1938*

Where a firm engaged in manufacture and sale of candy assortment, among others, consisting of a number of individually wrapped penny pieces of uniform size and shape, the enclosed, concealed differing color of a minority of which pieces entitled chance purchaser, without additional charge, to one of licorice pops included with assortment—

Sold said assortments for display by retail dealer vendees and sale to purchasing public in accordance with aforesaid plan and thereby supplied to and placed in hands of others means of conducting lotteries in sale of its products, in accordance with such plan, and in violation of long-standing public policy of the common law and criminal statutes, and that of United State Government;

With tendency and capacity to induce purchasers to buy said candy in preference to that offered and sold by competitors and unduly to hinder competition or create monopoly in excluding from candy trade competitors, including those who do not or are unwilling to offer or sell their products so packed and assembled or otherwise arranged and packed for sale to purchasing public as to involve a game of chance or other method of sale contrary to public policy, and refrain therefrom, and to divert trade unfairly to themselves, and with result that many dealers in and ultimate consumers of candy, by reason of such method and manner of packing aforesaid candy and element of chance involved in sale thereof, were induced to purchase same, thus packed, etc., in preference to that offered and sold by said competitors, who do not use same or equivalent methods, and with tendency and capacity to divert unfairly to themselves trade and custom from such competitors, exclude from candy trade all such competitors and lessen competition therein, tend to create a monopoly thereof in themselves and in such other distributors as use same or equivalent methods, and deprive purchasing public of benefit of free competition, and with capacity and tendency to eliminate from said trade all actual competitors and exclude therefrom all potential competitors, who do not use same or equivalent methods:

Held, That such method, acts and practices were all to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

*Mr. Henry C. Lank and Mr. D. C. Daniel for the Commission.
Perry, Saunders & Cheney, of Boston, Mass., for respondents.*

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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 William W. Cummings, Arthur W. Lawton, and Everett Buck, individually, and trading as United States Caramel Company, hereinafter referred to as respondents, have been and are 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. The respondents, William W. Cummings, Arthur W. Lawton, and Everett Buck, are copartners trading as United States Caramel Company, with their principal office and place of business located at 150 Orleans Street, East Boston, Mass. 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 dealers. Respondents cause and have caused their products when sold to be transported from their principal place of business in the city of East Boston, Mass., to purchasers thereof in the State of Massachusetts and in other States of the United States and in the District of Columbia, at their respective places of business. There is now, and has been for some time last past, a course of trade and commerce by said respondents in such candy between and among the various States of the United States and in the District of Columbia. In the course and conduct of their business respondents are in competition with other firms, individuals, and corporations engaged in the sale and distribution of candy and similar products, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when distributed to the consumers thereof. One of said assortments is sold and distributed to the consuming public in the following manner:

This assortment consists of a number of individually wrapped pieces of candy of uniform size and shape, together with a number of licorice pops, which licorice pops are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner: The majority of said pieces of candy of uniform size and shape are of a certain color, but the minority of said pieces

of candy are of a different color. The said pieces of candy of uniform size and shape in said assortment retail at the price of 1 cent each, but the purchaser who procures one of the said minority pieces of candy is entitled to receive, without additional charge, and is given, one of the licorice pops heretofore referred to. The color of the said pieces of candy of uniform size and shape is effectively concealed from the purchaser or prospective purchaser until a selection has been made and the wrapper removed therefrom. The aforesaid purchasers who procure one of the said minority pieces of candy of uniform size and shape in said assortment thus procure one of said licorice pops wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondents' candy, directly or indirectly, expose and sell the same 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. Said sales plan has a tendency and capacity to induce purchasers thereof to purchase respondents' candy in preference to candy and similar products offered for sale and sold by their 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 an additional piece of candy. 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 a tendency unduly to hinder competition or to create a monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude from the candy-trade competitors who do not adopt and use the same method or equivalent or similar methods involving the same or equivalent or similar elements of chance or lottery. Many persons, firms, and corporations who make and sell candy or similar products in competition with the respondents, as above alleged, are unwilling to offer for sale or to sell their 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 consumers 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 a tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their competitors who do not use the same or equivalent methods, to exclude from the candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful, to lessen competition in the candy trade, to tend to create a monopoly of said candy trade in respondents and in such other distributors of said candy as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition. The use of said method by respondents has a 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 the same method or equivalent methods.

PAR. 6. The aforementioned method, acts, and practices of respondents are all to the injury and 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 February 14, 1938, issued, and thereafter served, its complaint in this proceeding upon the respondents, William W. Cummings, Arthur W. Lawton, and Everett Buck, individually and trading as United States Caramel 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 a substitute 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 substitute answer was duly filed in the office

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of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute 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. The respondents, William W. Cummings, Arthur W. Lawton, and Everett Buck, are individuals trading as United States Caramel Company, with their principal office and place of business located at 150 Orleans Street, East Boston, Mass. 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 dealers. Respondents cause and have caused their products when sold to be transported from their principal place of business in the city of East Boston, Mass., to purchasers thereof in the State of Massachusetts and in various States of the United States and in the District of Columbia, at their respective places of business. There is now, and has been for some time last past, a course of trade and commerce by said respondents in such candy between and among the various States of the United States and in the District of Columbia. In the course and conduct of their business respondents are in competition with other firms, individuals, and corporations engaged in the sale and distribution of candy, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to dealers, in interstate commerce, certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when distributed to the consumers thereof. One of said assortments is sold and distributed to the consuming public in the following manner:

This assortment consists of a number of individually wrapped pieces of candy of uniform size and shape, together with a number of licorice pops, which licorice pops are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner: The majority of said pieces of candy of uniform size and shape are of a certain color, but the minority of said pieces of candy are of a different color. The said pieces of candy of uniform size and shape in said assortment retail at the price of one cent each, but the purchaser who procures one of the said minority pieces of candy is entitled to receive, without additional charge, and is given, one of the licorice pops heretofore referred to. The color

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of the said pieces of candy of uniform size and shape is effectively concealed from the purchaser or prospective purchaser until a selection has been made and the wrapper removed therefrom. The aforesaid purchasers who procure one of the said minority pieces of candy of uniform size and shape in said assortment thus procure one of said licorice pops wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondents' candy, directly or indirectly, expose and sell the same 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. Said sales plan has a tendency and capacity to induce purchasers thereof to purchase respondents' candy in preference to candy and similar products offered for sale and sold by their competitors.

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 an additional piece of candy. 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 a tendency unduly to hinder competition or to create a monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same method or equivalent or similar methods involving the same or equivalent or similar elements of chance or lottery. Many persons, firms, and corporations who make and sell candy in competition with the respondents, as above described, are unwilling to offer for sale or to sell their products so packed and assembled, 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 consumers 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 a tendency and capacity, because of said game

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of chance, to unfairly divert to respondents trade and custom from their competitors who do not use the same or equivalent methods, to exclude from the candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful, to lessen competition in the candy trade, to tend to create a monopoly of said candy trade in respondents and in such other distributors of said candy as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition. The use of said method by respondents has a 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 the same method or equivalent methods.

CONCLUSION

The aforementioned method, acts and practices of respondents, William W. Cummings, Arthur W. Lawton, and Everett Buck, individually and trading as United States Caramel Company, are all to the injury and prejudice of the public and of respondents' competitors, as hereinabove found, 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 substitute answer of respondents, William W. Cummings, Arthur W. Lawton, and Everett Buck, individually and trading as United States Caramel 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, William W. Cummings, Arthur W. Lawton, and Everett Buck, individually and trading as United States Caramel Company, or under any other trade name, and their respective agents, representatives, or employees, in the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia of candy, do cease and desist from:

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1. Selling and distributing to dealers 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 packages or assortments to conduct a lottery, gaming device, or gift enterprise in the sale and distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail wrapped pieces of candy of uniform size and shape of different colors, together with licorice pops, or any other articles of merchandise, which said licorice pops or other articles of merchandise are to be given as prizes to the purchasers procuring pieces of candy 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 this order.

Syllabus

IN THE MATTER OF

KORJENA MEDICINE COMPANY AND JEROME GLADKE,
DOING BUSINESS AS KORJENA MEDICINE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2685. Complaint, Jan. 14, 1936—Decision, Apr. 6, 1938*

Where a proprietorship and individual engaged in offer, sale, and distribution of so-called "Korjena," preparation for reducing and obesity; in selling same through mails and other carriers in channels of interstate commerce, and by means of newspaper advertising, circulars, labels, container box displays, and written and oral statements by said individual and his agents and employees, and by other forms of advertising and sales promotion circulated and distributed to customers and prospective customers and members of the purchasing public in the various States and in the District of Columbia—

- (a) Represented, on letterheads, invoices, containers, and circulars, as case might be, that said individual was president and general manager of said company, and that same was a corporation, facts being that he was neither, and said company was not a corporation, but a proprietorship owned and operated by him under aforesaid name as trade name;
- (b) Represented that said company was manufacturer of "Korjena" and owned and operated apparatus and machinery for that purpose, and laboratories, through such statements as "Manufacturers" and "Laboratories and General Offices," etc., facts being it neither owned nor operated any manufacturing apparatus or machinery or laboratories, either at given address or elsewhere; and
- (c) Represented that said product was drugless and safe and harmless for consumption and constituted a safe and sure way for reducing and a new and scientific treatment for such purpose, and that it cut down moisture immediately, rendered fat liquid, had approval of medical profession, and contained two important ingredients which banished weight-inducing poisons and worked against fatty foods and caused fat to melt away from 7 to 10 pounds in 2 weeks, and that weight disappeared and physical loveliness returned;

Facts being there are no such "weight-inducing poisons" known to medical science, nor is there any scientific treatment or remedy applicable to all cases or causes of obesity, tablets in question are not a scientific treatment or remedy for any case or cause thereof, nor a sure way of bringing about permanent reduction in weight, and product, as compounded, is primarily a laxative or purgative, and has effect of such a product, and, as presently compounded, three doses constitute limit with which same can be taken without expectancy of injurious effects to some individuals;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers of drugs and other prepared products used or useful in treatment of obesity or reduction of weight into false and erroneous belief that said representations were true and into purchase of said product in reliance thereon, and thereby unfairly to divert substantial trade in such commerce