

Syllabus

IN THE MATTER OF
STARTUP 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 2705. Complaint, Jan. 31, 1936—Decision, Aug. 4, 1938

Where a corporation engaged in manufacture and sale of "straight" candy and also of so-called "break and take," "draw," or "deal" assortments, purchase of which latter type is preferred by many consumers because of gambling feature connected with sale thereof, and sale of which, with opportunity of obtaining a prize or becoming a winner, teaches and encourages gambling among children, who constitute substantial number of purchasers and consumers of such type where penny a sale, and use of which type, sold in service stations, pool halls, taverns, cafes, drug and cigar stores, along with "straight" candy in competition therewith, is injurious to industry involved and, in penny candy trade, diverts business from concerns who do not use such assortments, and operates to prejudice of public—

Sold, to wholesalers, jobbers, and retailers, various assortments of candy designed for distribution to ultimate consumers by means of a lottery scheme, and consisting of assortments, with explanatory display or push cards, as case might be, in which (1) chance selection of one of a number of penny pieces of uniform size and shape, colored center of a few of which differed from that of the majority, entitled such chance purchaser, without further charge, to one of the larger pieces included therewith, while purchaser of last piece became similarly entitled to the small package of candy included, (2) penny purchaser received one of the small pieces of candy, one of the larger pieces or one of the candy bars, in accordance with particular number pushed by chance from push card included and in accordance with the explanatory legend thereon, and in which purchaser of last push or punch received one of small packages of candy similarly included, and in which (3) 5-cent purchaser received from assortment one, two, three, four, or five bars, in accordance with particular legend pushed by chance from card included and as explained thereon, and in which purchaser of last push received six bars;

Assembled and packed for use and used by retail dealers thereof, with its knowledge, for distribution to purchasing public by lot or chance, without alteration or rearrangement, contrary to public policy and in competition with many manufacturers who offer and sell their "straight" goods candy in the territory served by it in competition with its "straight," and "break and take," "draw," or "deal" assortments and in competition with others so doing; and in competition with many who regard such sale and distribution as contrary to public policy, as morally bad and as encouraging gambling, and especially among children, and as injurious to the industry in resulting in the merchandising of a chance or lottery instead of candy, and as providing retailers with a means of violating the public policy of the laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed and assembled that it may be resold to public by lot or chance;

Complaint

27 F. T. C.

With result that retailers purchased such candy, as more saleable, from it and others employing such methods, trade, and custom were unfairly diverted to it and others offering similar assortments, from such competitors who refuse to and who do not make and sell such "break and take," "draw," or "deal" assortments, and who were put to a disadvantage in competing and who could compete only by furnishing to retailers candy which might be sold by the use of the same or similar devices, which they were unwilling to do, and whose "straight" candy sales showed a marked decrease, and with result that public and competitors were prejudiced and injured and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry involved:

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

Before *Mr. Charles P. Vicini* and *Mr. Henry M. White*, trial examiners.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* 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 Startup Candy Co., 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 the State of Utah with its principal office and place of business located in the city of Provo, State of Utah. It is now and for several years last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers and to retail dealers located at points in the various States of the United States and causes the said products, when so sold, to be transported from its principal place of business in the city of Provo, Utah, 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 said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy 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 its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers certain 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 all-inclusive of the various packages nor does it include all of the details of the several sales plans 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 pieces of candy of uniform size, shape, and quality, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said smaller candies in the following manner:

The majority of said pieces of candy in said assortment have centers of the same color but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size, shape, and quality in said assortment retail at the price of 1 cent each but the purchasers who procure one of said candies having a center of a different color than the majority of said candies are entitled to receive and are to be given free of charge one of the said larger pieces of candy. The purchaser of the last piece of candy of uniform size, shape, and quality in said assortment is entitled to receive and is to be given free of charge one of the said larger pieces of candy. The color of the center of said pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy, and the purchaser of the last piece of candy in said assortment, thus procure one of the said larger pieces of candy wholly by lot or chance.

Respondent furnishes to said wholesale and retail dealers with said assortment of candy, a display card, to be used by the retailer in offering said merchandise for sale to the public, which display card bears a legend or statement informing the prospective purchaser which color of the said colored center candies contained in said assortment entitles the purchaser to a prize, and that by purchasing the last piece of candy in said assortment the purchaser will receive one of the said larger pieces of candy free of charge.

(b) Another assortment manufactured and distributed by the respondent 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

Complaint

27 F. T. C.

device commonly called a push card. The candy in said assortment is distributed to the consuming public in the following manner:

The push card has a number of partially perforated discs and when a disc is separated from the card, a number is disclosed. Sales are 1 cent each and the card bears statements informing customers and prospective customers as to 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 the discs or pushes are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disc 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.

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

The push card has a number of partially perforated discs and when a push is made and the disc separated from the card, a legend is disclosed. Sales are 5 cents each, and the card bears statements informing customers and prospective customers as to the number of bars which are to be given with particular legends. Certain specified legends receive one bar, certain specified legends receive two bars, others three bars, others four bars, and others five bars. The purchaser of the last push on said card receives six bars. The legends on the discs or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disc separated from the card. The number of candy bars which a customer receives 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 plans. 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 plans 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 as above alleged involves a game of chance or the sale of a chance to procure

(a) larger pieces of candy, (b) larger pieces of candy or a box of candy, (c) additional bars of candy.

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 methods, acts, and practices of the respondent are all to the prejudice of the public and of 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, 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 the Federal Trade Commission Act, the Federal Trade Commission on January 31, 1936, issued and thereafter served its complaint in this proceeding upon the respondent, Startup Candy Co., a corporation, 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, testimony and other evidence in support of the allegations of the complaint were introduced by P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by H. L. Mulliner and F. W. James, attorneys for the respondent, before Charles P. Vicini and Henry M. White, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral argument of Henry C. Lank, counsel for the Commission. The respondent was not represented, although duly notified of the time and place of such hearing; and the Commission, after duly considering the matter, and being fully advised in the premises, on June 19, 1937, issued and served upon the respondent its findings as to the facts and its conclusion drawn therefrom, and its order to cease and desist from the practices complained of.

On May 10, 1938, the respondent, by its attorney, Walter G. Moyle, filed a motion to vacate the findings as to the facts and the order to cease and desist theretofore entered by the Commission on June 19, 1937, and further moved the Commission for leave to file a motion to modify the findings as to the facts and the order to cease and desist and for leave to file brief in support of said motion to modify and for leave to present oral argument in support of said motion.

The Commission, after duly considering the motion to vacate the findings as to the facts and the order to cease and desist and the record, and being fully advised in the premises, issued its order dated May 16, 1938, vacating the findings as to the facts and the order to cease and desist previously issued on June 19, 1937, and further, on May 16, 1938, entered and issued its order granting respondent leave to file brief on or before June 15, 1938, in support of its motion to modify, and setting the matter for oral argument for June 28, 1938, at 2:00 p. m. in the Commission's offices in Washington, D. C., copies of which orders were duly served upon respondent.

Respondent filed no brief and did not appear for argument of aforesaid motion on June 28, 1938. On May 31, 1938, Attorney Walter G. Moyle withdrew his appearance as counsel for respondent. On July 5, 1938, the Commission ordered hearing for oral argument on the merits reset for July 18, 1938, at 2:00 p. m. in the main hearing room, Federal Trade Commission Building, Washington, D. C., and gave due notice of same to respondent and its attorney-of-record, H. L. Mulliner. On July 15, 1938, said H. L. Mulliner withdrew his appearance as counsel for respondent. Thereafter, the proceeding regularly came on for hearing before the Commission on July 18, 1938, at 2:00 p. m. (brief of respondent not having been filed on June 15, 1938, or subsequent thereto, and respondent making no appearance at said hearing on July 18, 1938), and the Commission having duly considered the matter on the said complaint, the answer thereto, the record, testimony and other evidence, 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. Respondent, Startup Candy Co., is a corporation organized under the laws of the State of Utah, with its principal office and place of business located in the city of Provo, State of Utah. Respondent is now, and for several years last past has been, engaged in the manufacture of candy in the city of Provo and in the sale and distribution thereof to retail dealers, wholesalers, and jobbers located in the State of Utah, and in the States of Arizona, Idaho, Nevada, and Wyoming. It causes said candy when sold to be shipped or transported from its principal place of business in the State of Utah to purchasers thereof in Utah and in the other States of the United States as mentioned above. In the conduct of said business, respondent is and has been engaged in interstate commerce, and is and has been engaged in active competition with other cor-

Findings

27 F. T. C.

porations and with partnerships and individuals located in various States of the East, Middle West, and Far West, and engaged in the manufacture of candy and its sale and distribution 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 dealers, jobbers and retail dealers certain assortments of candy designed for distribution to ultimate consumers by means of a lottery scheme.

One of such assortments manufactured, sold, and distributed by respondent is composed of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy and a small package of candy, which larger pieces of candy and small package of candy 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 the said pieces of candy of uniform size and shape have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size and shape retail at the price of 1 cent each, but the purchaser who procures one of the said candies having a center of a different color from the majority is entitled to receive and is to be given free of charge one of the said larger pieces of candy in said assortment. The purchaser of the last piece of candy in said assortment is entitled to receive and is to be given free of charge the small package of candy contained in said assortment. The color of the center of said pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy selected broken open. The purchasers of said candies having a center colored differently from the majority thus procure one of the said larger pieces of candy or the small package of candy wholly by lot or chance. The respondent furnishes to said dealers a display card to be used by retail dealers in offering said chance candy assortment to the public. This display card bears a legend or statement informing purchasers and prospective purchasers that the said candy is being sold in accordance with the above-described sales plan.

Other assortments manufactured, sold, and distributed by the respondent are composed of a number of small pieces of candy, a number of larger pieces, and bars of candy, and a number of small packages of candy, together with a device commonly called a "push card." The candy in said assortments is distributed to the consuming public in the following manner: The "push card" has a number of partially perforated discs and when a disc is separated from the card, a number is disclosed. Sales are 1 cent each and the

card bears statements or legends informing purchasers and prospective purchasers as to which numbers receive one of the small pieces of candy, which numbers receive one of the larger pieces of candy, which numbers receive one of the bars of candy, which numbers receive one of the small packages of candy, and that the purchaser of the last push or punch from said card receives one of the small packages of candy. The numbers on the discs or pushes are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disc selected 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, one of the bars of candy, or one of the small packages of candy, is thus determined wholly by lot or chance.

The respondent also manufactures, sells, and distributes assortments which are composed of a number of bars of candy, together with a device commonly called a "push card." The candy contained in said assortments is distributed to the consuming public in the following manner: The "push card" has a number of partially perforated discs and when a push is made and the disc selected separated from the card, a legend is disclosed. Sales are 5 cents each and the card bears statements informing purchasers and prospective purchasers as to the number of bars of candy which are to be given with particular legends. Certain specified legends receive one bar; other specified legends receive two bars; others, three bars; others, four bars; and others, five bars. The purchaser of the last push on said card receives six bars. The legends on the discs or pushes are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the disc selected separated from the card. The fact as to whether a purchaser receives one, two, three, four, five, or six bars of candy for the price of 5 cents is thus determined wholly by lot or chance.

PAR. 3. Candy assortments involving the lot or chance feature, as above described, are generally referred to in the candy trade or industry as "break and take," "draw," or "deal" assortments and may be designated as "chance" candy. Candies distributed to consumers and purchasers without lot or chance features are generally referred to in the candy trade or industry as "straight" goods. These terms will be used hereafter in these findings to distinguish these separate types of assortments.

PAR. 4. The wholesale dealers or jobbers to whom respondent sells its assortments resell the same to retail dealers. Respondent sells most of its said assortments direct to retail dealers. Numerous retail dealers purchase the assortments described in paragraph 2 above

either from respondent or from wholesale dealers or jobbers who in turn have purchased said assortments from respondent, and such retail dealers display said assortments for sale to the public as packed by respondent, and the candy contained in said assortments is generally sold and distributed to the consuming public in accordance with respondent's sales plans, as above described.

Respondent's annual dollar volume of candy sales is approximately \$100,000, the major portion of which is "straight" merchandise. All of its salesmen offer also its "break and take," "draw," or "deal" assortments to respondent's customers in the States of Arizona, Idaho, Nevada, and Wyoming, as well as in the State of Utah, and its sales of chance candy assortments are substantial.

A number of manufacturers and distributors of candy have discontinued their interstate shipment of chance candy assortments as a result of complaints and orders to cease and desist distribution of candy by lottery methods issued by the Commission. Some manufacturers allow their local representatives to procure push card and punchboard devices and candies by separate interstate shipments and then to assemble such materials into chance candy assortments for distribution in the States where they are located.

PAR. 5. All sales made by respondent, whether to wholesalers and jobbers or to retail dealers, are absolute sales and respondent retains no control over said assortments after they are delivered to the wholesale dealer or jobber or retail dealer. The assortments are assembled and packed in such manner that they are designed to be used and are used by the retail dealer for distribution to the purchasing public by lot or chance without alteration or rearrangement. Respondent has knowledge that said candy will be resold to the purchasing public by retail dealers by lot or chance.

PAR. 6. There are in the United States many manufacturers of candy selling and offering for sale such candy in the territory served by this respondent, who do not manufacture and sell "break and take," "draw," or "deal" assortments of candy (otherwise designated as "chance" candy), and who offer for sale and sell their "straight" goods in interstate commerce in competition with the "straight," "break and take," "draw," or "deal" candy of respondent and others selling similar or like assortments, with the result that trade and custom are unfairly diverted to respondent and others offering similar assortments from such competitors because of the gambling or lottery feature connected with the "break and take," "draw," or "deal" assortments as hereinabove described. The record shows that the use of "break and take" assortments is injurious to the candy industry, and in the penny candy trade diverts trade from concerns who do not

use them; and that such use is to the prejudice of the public. Witnesses from several branches of the candy industry testified in this proceeding, and the Commission finds, that many consumers prefer to purchase "break and take," "draw," or "deal" candy because of the gambling feature connected with its sale. The sale and distribution of "break and take," "draw," or "deal" candy, which has connected with its sale the means or opportunity of obtaining a prize or becoming a winner, teaches and encourages gambling among children, who comprise a substantial number of the purchasers and consumers of this type of candy, where the unit of sale is 1 cent.

Many chance assortments are sold in service stations, pool halls, taverns, cafes, drug stores, and cigar stores but such retail establishments also display straight candies for sale in competition with such chance assortments.

PAR. 7. The sale and distribution of candy by retailers by the methods described herein is the sale and distribution of candy by lot or chance and constitutes a lottery or gaming device. The Commission finds that many competitors regard such sale and distribution as contrary to public policy, as morally bad, and as encouraging gambling, especially among children; as injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy; and as providing retail merchants with a means of violating public policy and the laws of the several States. Because of these reasons some competitors of respondent refuse to sell candy so packed and assembled that it may be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. The retailers, finding that they can dispose of candy more easily by the "break and take," "draw," or "deal" method, buy from respondent and others employing the same methods of sale and thereby trade is diverted to respondent and others using similar methods from said competitors who do not use said methods. Such competitors can compete on even terms in the sale of "straight" candy only by also furnishing to retailers candy which may be sold by the use of the same or similar devices. This they are unwilling to do, and their sales of "straight" candy show a marked decrease. The use of such methods by respondent, in the sale and distribution of its candy, is prejudicial and injurious to the public and its competitors, and is a restraint upon, and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 8. The Commission further finds that the sale and distribution in interstate commerce of assortments or packages of candy so packed and assembled as to enable retail dealers, without alteration, addition,

Order

27 F. T. C.

or rearrangement, to resell the same to the consuming public by lot or chance, is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of respondent are all 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 the **Federal Trade Commission Act**.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Charles P. Vicini and Henry M. White, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the **Federal Trade Commission Act**.

It is ordered, That the respondent, Startup Candy Co., a corporation, its officers, directors, agents, representatives, and employees, in the offering for sale, sale, and distribution in interstate commerce of candy, do cease and desist from;

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers or to retail dealers direct, 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 wholesale dealers and jobbers or retail 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 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, pieces of candy of uniform size and shape having centers of a different color, together with larger pieces of candy or small packages of candy, which larger pieces of candy or small packages of candy are to be given as prizes to the purchasers procuring pieces of candy with a center of a particular color.

4. Supplying to, or placing in the hands of wholesale dealers and jobbers, or retail dealers assortments of candy, together with a device commonly called a "push card" for use or which may be used in distributing or selling said candy to the public at retail.

5. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "push card," either with assortments of candy or separately bearing a legend or legends, or statements informing the purchasing public that the candy is 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, Startup Candy Co., a corporation, shall, within 60 days after the 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.

IN THE MATTER OF

SHUPE-WILLIAMS 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 2708. Complaint, Jan. 31, 1936—Decision, Aug. 4, 1938

Where a corporation engaged in manufacture and sale of "straight" goods candy, and also of so-called "break and take," "draw," "deal," or "chance" candy, purchase of which latter type is preferred by many consumers because of gambling feature connected with sale thereof, and sale of which, with opportunity of obtaining a prize or becoming a winner, teaches and encourages gambling among children, who comprise a substantial number of the purchasers and consumers of such type, and particularly where penny a sale, and sale of which type (considerable proportion of which, in the 5-cent units, along with "straight" candy, is sold in service stations, drug stores, cigar stands, taverns, and cafes), in the penny sale units is injurious to industry involved and, in penny candy trade, diverts trade in volume from the concerns who do not use such assortments, and operates to prejudice of public—

Sold, to wholesalers, jobbers, and retailers, certain assortments of candy which were so packed and assembled as to involve, or were designed to or might involve, use of a lottery scheme when sold and distributed to consumers thereof, and which assortments consisted of (1) a number of penny pieces of uniform size and shape, together with a number of larger pieces to be given as prizes to those purchasers of such uniform pieces, colored centers of which differed from that of the majority, together with a small package of candy secured free of charge by purchaser of last piece in assortment, and also together with explanatory display cards for retailers' use; and (2) candy bars, with push cards, for distribution to consuming public under plan by which 5-cent purchaser received, in accordance with legends pushed from card by chance and explanatory statement contained thereon, from one to five bars, with purchaser of last push receiving six;

Assembled and packed in such a manner that they were designed to be used and were used and resold, with its knowledge and intent, without alteration or rearrangement, to the purchasing public by lot or chance by retailers thereof, contrary to public policy and in competition with many manufacturers who offer and sell their "straight" goods candy in the territory served by it in competition with the "chance" and "straight" candy of it and others selling similar or like assortments, and in competition with many who regard such sale and distribution as contrary to public policy, as morally bad, and as encouraging gambling, and especially among children, and as injurious to the industry in resulting in the merchandising of a chance or lottery instead of candy, and as providing retailers with means of violating the public policy and the laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed and assembled that it can be resold to public by lot or chance;

With result that retailers, finding more salable such candy, bought from it, and others employing such methods of sale as to said "chance" candy, their entire candy, and including "straight" merchandise, requirements, trade in