

IN THE MATTER OF

JULEP BOTTLING COMPANY, INC.

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

Docket 3583. Complaint, Sept. 13, 1938—Decision, Dec. 7, 1938

Where a corporation engaged in sale and distribution of soda water, including certain bottle assortments thereof, so arranged and assembled as to constitute a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and including assortment which consisted of 24 bottles with numbers from 1 to 24 printed on inside of crowns thereof, for sale under a plan in accordance with which purchaser receiving bottle, crown of which contained number 7 or number 11 printed on inside, received additional bottle without further charge—

Sold to dealers, for display and resale by retailer-purchasers thereof to purchasing public, in accordance with aforesaid sales plan, such soda water, and thereby supplied to and placed in the hands of others means of conducting a lottery in the sale of its products, in accordance with aforesaid plan or method, involving game of chance or sale of a chance to procure additional bottle without additional cost, contrary to an established public policy of the United States Government, and in violation of the criminal laws, and in competition with many sellers and distributors of such products who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win by chance, or any other method contrary to public policy, and refrain therefrom;

With result that many were attracted by said plan or method employed in sale and distribution of its products because of element of chance involved therein, and thereby induced to buy and sell such products in preference to those offered and sold by competitors who do not use same or equivalent plan or method, and with tendency, because of said game of chance, to, and effect of, diverting trade unfairly to it from its said competitors who do not use such or equivalent sales plan or method; to the substantial injury of competition in commerce:

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

Mr. D. C. Daniel for the Commission.

Mr. Cecil D. Quillen, of Gate City, Va., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Julep Bottling Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the 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, Julep Bottling Co., Inc., is a corporation organized and doing business under the laws of the State of Tennessee, with its principal office and place of business located at Kingsport, Tenn. Respondent is now, and for some time last past has been, engaged in the sale and distribution of soda water to dealers. Respondent causes, and has caused, its said products, when sold, to be shipped or transported from its aforesaid place of business in the State of Tennessee to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by said respondent in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or 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 said business as described in paragraph 1 hereof, respondent sells, and has sold, to dealers certain assortments of bottles of soda water so arranged and assembled as to constitute a game of chance, gift enterprise, or lottery scheme, when said bottles of soda water are sold and distributed to the consumers thereof. One of said assortments is as follows:

This assortment consists of 24 bottles of soda water capped with crowns. On the inside of each of said crowns is printed a number. The numbers range from 1 to 24. A purchaser who receives a bottle of soda water having a crown with either the number 7 or the number 11 printed on the inside thereof, receives an additional bottle of soda water without additional cost. The said numbers are effectively concealed from purchasers and prospective purchasers until a bottle of said soda water has been purchased and the crown removed therefrom. Said additional bottles of said soda water are thus distributed to the purchasing public wholly by lot or chance.

PAR. 3. Retail dealers who purchase said soda water sell and expose the 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 a lottery in the sale of its products in accordance with the sales plan or method hereinabove set forth. The use by respondent of said method in the sale of its products and the sale of such products by and through the use thereof and by the aid of

said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of said products to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an additional bottle of soda water without additional cost. Many persons, firms, and corporations who sell and distribute products in competition with the respondent as above alleged 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, and such competitors refrain therefrom. Many persons are attracted by the sales plan or method employed in the sale and distribution of respondent's products because of the element of chance involved therein and are thereby induced to buy and sell said products in preference to products offered for sale and sold by competitors of respondent who do not use the same or an equivalent sales plan or method. The use of said sales plan or method by respondent, because of said game of chance, has a tendency and capacity to, and does, divert trade unfairly to the respondent from its said competitors who do not use the same or an equivalent sales plan or method. As a result thereof injury is done, and has been done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 13, 1938, issued and thereafter served its complaint in this proceeding upon respondent, Julep Bottling Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 3, 1938, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint to be true. Respondent further waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Com-

mission, 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, Julep Bottling Co., Inc., is a corporation organized and doing business under the laws of the State of Tennessee, with its principal office and place of business located at Kingsport, Tenn. Respondent is now, and for some time last past has been, engaged in the sale and distribution of soda water to dealers. Respondent causes, and has caused, its said products when sold, to be shipped or transported from its aforesaid place of business in the State of Tennessee to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by said respondent in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or 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 said business as described in paragraph 1 hereof, respondent sells, and has sold, to dealers certain assortments of bottles of soda water so arranged and assembled as to constitute a game of chance, gift enterprise, or lottery scheme, when said bottles of soda water are sold and distributed to the consumers thereof. One of said assortments is as follows:

This assortment consists of 24 bottles of soda water capped with crowns. On the inside of each of said crowns is printed a number. The numbers range from 1 to 24. A purchaser who receives a bottle of soda water having a crown with either the number 7 or the number 11 printed on the inside thereof, receives an additional bottle of soda water without additional cost. The said numbers are effectively concealed from purchasers and prospective purchasers until a bottle of said soda water has been purchased and the crown removed therefrom. Said additional bottles of said soda water are thus distributed to the purchasing public wholly by lot or chance.

PAR. 3. Retail dealers who purchase said soda water sell and expose the 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 a lottery in the sale of its products in accordance with the sales plan or method hereinabove set forth. The use by respondent of said method in the sale of its products and the sale of such products by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of said products to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an additional bottle of soda water without additional cost. Many persons, firms and corporations who sell and distribute products in competition with the respondent as above alleged 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, and such competitors refrain therefrom. Many persons are attracted by the sales plan or method employed in the sale and distribution of respondent's products because of the element of chance involved therein and are thereby induced to buy and sell said products in preference to products offered for sale and sold by competitors of respondent who do not use the same or an equivalent sales plan or method. The use of said sales plan or method by respondent, because of said game of chance, has a tendency and capacity to, and does, divert trade unfairly to the respondent from its said competitors who do not use the same or an equivalent sales plan or method. As a result thereof substantial injury is being done, and has been done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and respondent further states that

it waives hearing on the charges set forth in said complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered. That the respondent, Julep Bottling Co., Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of soda water in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Selling and distributing said soda water so arranged and assembled that sales of such soda water to the general public are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme;

2. Furnishing to dealers bottles of soda water capped with crowns, which caps or crowns have printed or impressed numbers therein, which said bottle caps or crowns are to be used or may be used in selling or distributing said products to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme;

3. Furnishing to or placing in the hands of dealers said products or any other products together with a device which said device is to be used or may be used in selling or distributing said products to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the respondent shall within 60 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.

IN THE MATTER OF

WILLIAM A. WOODBURY SALES COMPANY, INC., WILLIAM A. WOODBURY, RICHARD PICARD, AND ARTHUR BAUM

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

Docket 3113. Complaint, Apr. 24, 1937—Decision, Dec. 8, 1938

Where a corporation and three individuals, officers thereof and directors and controllers of its sales policies and business operations, engaged in sale and distribution of facial, dental, and shaving creams, and of powders, rouge, and other cosmetics, dentifrices, toilet supplies, and accessories, in substantial competition with others engaged in sale and distribution, in commerce among the various States and in the District of Columbia, of similar and other products designed for similar usage, and including those who, in connection with sale and distribution of their respective products, do not represent themselves as being manufacturers unless they actually are, or otherwise engage in unfair and deceptive practices—

- (a) Represented, in designation "turtle oil cream" applied to emulsion of oils and fats sold by them, that principal ingredient thereof was turtle oil, notwithstanding fact it contained only a small portion of said substance and was not cream or similar product with turtle-oil base, or composition thereof, as principal ingredient, as preferred by substantial portion of purchasing public; and
- (b) Represented, through display of its corporate name on letterheads, billheads, and other printed matter used in marketing their products, followed by words "prepared by William A. Woodbury Corporation, New York, New York," or "by William A. Woodbury Co., New York, New York," that said various concerns were manufacturers of products sold and distributed by them, and thereby misled purchasing public, of which large portion prefers to buy direct from manufacturers because of economies and certain other advantages thereby brought about, into erroneous belief that they owned and operated factory and were in fact manufacturers of said several products which they sold and distributed as aforesaid, notwithstanding fact they did not manufacture any of them, nor own, operate, or control any factory wherein such products were made or prepared;

With tendency and capacity to mislead purchasing public into erroneous and mistaken beliefs that emulsion of oils and fats described and designated as "turtle oil cream," as aforesaid, actually contained said substance as principal ingredient, and that they were the manufacturers of the various preparations sold by them, and into purchase thereof on account of such representations, and with result that trade was diverted unfairly to them from competitors engaged in sale and distribution in commerce among the various States and in said District of similar preparations or others designed and intended for similar usage and who do not, in any way, misrepresent the character and nature of their preparations or business status:

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