

Complaint

IN THE MATTER OF

R. P. REID, INDIVIDUALLY, AND TRADING AS REID
PACKING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3677. Complaint, Dec. 23, 1938—Decision, Feb. 9, 1939

Where an individual engaged in the processing and sale and distribution of salted peanuts which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers thereof and which were composed of a number of individual, small, sealed 5-cent packages of such product enclosed in larger pasteboard cartons and containing concealed therein, in the case of a few, 5 cents, 10 cents, 25 cents, or \$1 as the case might be, for distribution to prospective purchasers by lot or chance—

Sold to wholesalers, retailers, and jobbers, together with explanatory display cards for retailers' use, said assortments for display and resale to purchasing public in accordance with sales plan aforesaid, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its product in accordance with sales plan hereinabove set forth, involving game of chance or sale of a chance to procure sum of money, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to offer or sell their said product so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public so as to involve game of chance or any other method of sale contrary to public policy and refrain therefrom;

With result that many dealers in and ultimate purchasers of such product were attracted by his said method and manner of packing said salted peanuts and by element of chance involved in sale thereof as above described and were thereby induced to purchase such salted peanuts, thus packed and sold by him, in preference to those offered and sold by said competitors who do not use such or equivalent method, and of unfairly diverting trade to him from his competitors aforesaid; to the substantial injury of competition in commerce:

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

Mr. D. C. Daniel for the Commission.

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 R. P. Reid, individually and trading as Reid Packing Co., hereinafter referred to as re-

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spondent, 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, R. P. Reid, is an individual, doing business under the trade name of Reid Packing Co., with his principal office and place of business located at 320 South College Street, Charlotte, N. C. The respondent is now, and for some time last past has been, engaged in the processing of salted peanuts and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, his product, when sold, to be transported from his aforesaid place of business in North Carolina to purchasers thereof in the various States of the United States other than North Carolina and in the District of Columbia, at their respective places of location. There is now, and has been for some time last past, a course of trade by said respondent in salted peanuts in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is, and has been for some time last past, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of salted peanuts 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 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. Sealed within a small number of the said individual cartons are 5 cents, 10 cents, 25 cents, or \$1, but the ultimate purchaser 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.

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:

REID'S ROASTED AND SALTED PEANUTS		
5¢	You May get	5¢
5¢-10¢	For Advertising Purposes	25¢ or \$1.00
We Pack \$6.00 In Money		
in each shipping case of 30 cartons—denominations of		
5¢-10¢		25¢ or \$1.00
REID PACKING CO. CHARLOTTE, N. C.		

Sales of salted peanuts by the method herein described are made in accordance with the above-described legends or instructions. The said prizes are allotted to the customers or purchasers in accordance with the above legends. The said prizes are thus distributed to the purchasing public wholly by lot or chance.

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 product in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his product, and the sale of said product by and through the use thereof and by the aid of said sales plan or method, is a practice of a 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 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. Many persons, firms, and corporations who make and sell salted peanuts in competition with the respondent, as above alleged, are unwilling to offer for sale or sell their said product 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. Many dealers in, and ultimate purchasers of, salted peanuts 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 offered for sale and sold by said com-

petitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, 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 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 December 23, 1938, issued, and on December 24, 1938, served its complaint in this proceeding upon the respondent R. P. Reid, individually and trading as Reid Packing Co., charging him 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. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted the respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commissioner. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and 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. Respondent, R. P. Reid, is an individual, doing business under the trade name of Reid Packing Co., with his principal office and place of business located at 320 South College Street, Charlotte, N. C. The respondent is now, and for some time last past has been, engaged in the processing of salted peanuts and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers in commerce between and among the various States

of the United States and in the District of Columbia. Respondent causes, and has caused, his product, when sold, to be transported from his aforesaid place of business in North Carolina to purchasers thereof in the various States of the United States other than North Carolina and in the District of Columbia, at their respective places of location. There is now, and has been for some time last past, a course of trade by said respondent in salted peanuts in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is, and has been for some time last past, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of salted peanuts 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 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. Sealed within a small number of the said individual cartons are five cents, ten cents, twenty-five cents, or one dollar, but the ultimate purchaser 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.

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:

REID'S ROASTED AND SALTED PEANUTS		
5¢	You May get	5¢
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We Pack \$6.00 In Money		
in each shipping case of 30 cartons—denominations of		
5¢-10¢		25¢ or \$1
REID PACKING CO. CHARLOTTE, N. C.		

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Sales of salted peanuts by the method herein described are made in accordance with the above-described legends or instructions. The said prizes are allotted to the customers or purchasers in accordance with the above legends. The said prizes are thus distributed to the purchasing public wholly by lot or chance.

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 product in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his product, and the sale of said product by and through the use thereof and by the aid of said sales plan or method, is a practice of a 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 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. Many persons, firms, and corporations who make and sell salted peanuts in competition with the respondent, as above found, 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. Many dealers in, and ultimate purchasers of, salted peanuts 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 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, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, 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 injury and 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.

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 fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, 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, R. P. Reid, individually, and trading as Reid Packing Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of salted peanuts or other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing said salted peanuts or any other merchandise so packed and assembled that sales of said merchandise 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 said salted peanuts or any other merchandise which is 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 said merchandise contained in said assortments to the public.

3. Selling or distributing individual packages of said salted peanuts or any other merchandise containing coins or other United States money, which said individual packages of said merchandise is packed and assembled in assortments with other individual packages of said merchandise 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 said salted peanuts or any other merchandise or separately, bearing a legend or legends or statements informing the purchasers thereof that said merchandise 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.

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5. Mailing, shipping, or transporting to dealers or others, punchboards, push or pull cards, or other lottery devices, so prepared or printed as to enable such persons to sell or distribute any merchandise by the use thereof.

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

Syllabus

IN THE MATTER OF

BANFI PRODUCTS CORPORATION AND HARRY MARIANI,
JOHN MARIANI, PAUL MARIANI, AND JOSEPH B. MARIANICOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3598. Complaint, Sept. 21, 1938—Decision, Feb. 10, 1939*

Where a corporation and four individuals, officers thereof and in control of its advertising policies and business activities and acting in concert with one another, engaged in selling and distributing Montecatini Salts or laxative medicine in crystal and powder form, plain and iodated, and allegedly extracted from the Italian springs thus named, to purchasers in the District of Columbia and in other States, in substantial competition with others engaged in sale and distribution of similar products in commerce among the various States and in said District, and including many who do not make any misrepresentations concerning the qualities and properties of their respective products and their effectiveness—

Represented in their advertising in pamphlets, circulars, advertisements in newspapers and periodicals, radio broadcasts, and other advertising media circulated generally throughout the United States, either directly in English or in Italian, that due to qualities and properties of said Montecatini Salts they constituted an effective and competent remedy or treatment for diseases of the stomach, liver and heart, and for constipation, headaches, rheumatism, high blood pressure, uric acid, and various other conditions, and were always good for any minor ailment, and effective in the treatment of virtually all ailments, and that they constituted a mild, efficacious laxative and were harmless and could be used freely and without irritation;

Facts being they were not a competent treatment or remedy for diseases of the stomach, liver, and heart, or for headaches, bad breath, rheumatism, gout, obesity, high blood pressure, and rash, blotches, or pimples, or for uric acid or other ailments, and were not effective as a treatment for all minor ailments, nor harmless, and could not be used freely without irritation, and had no beneficial value except as a laxative or purgative in cases of temporary or occasional constipation, and, whether plain or iodated or in crystal or powder form, had no value in treating any ailment or the symptoms thereof except when such conditions or symptoms could be relieved by a laxative or purgative, and use thereof freely constituted a drastic purge which would irritate intestines;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that all said representations and implications were true, and with result, as a direct consequence of such belief, that number of the consuming public purchased substantial volume of their products and trade was diverted unfairly to them from competitors likewise engaged in distribution and sale of laxatives and other medicinal preparations in commerce and who truthfully advertise their respective products and the effectiveness thereof; to the injury of competition in commerce: