

Syllabus

IN THE MATTER OF

AMBROSIA CANDY COMPANY, AND SAMUEL R. BLOCK,
INDIVIDUALLY, AND AS AN OFFICER OF AMBROSIA
CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3315. Complaint, Jan. 26, 1938—Decision, Mar. 1, 1939*

Where a corporation and an individual engaged in manufacture and sale of candy, including bar and 5-cent candy but principally packaged or boxed chocolates in $\frac{1}{2}$ -pound, 2-pound, and 5-pound sizes, and in furnishing with about one-half their output on request and without additional charge, punchboards for distribution and sale of their product to consumer under plan by which selection of number which might entitle selector to a box of candy and whether charge for selection would cost customer 1 cent, 2 cents, 3 cents, 4 cents, 5 cents, or nothing at all, was wholly matter of chance, and in selling also number of assortments of packaged chocolates suitable for use in operation of such boards and some of which assortments had added thereto as a premium a lamp; and including—

(1) Boards having 300 holes, in sections of 100 each, for sale and distribution of candy under a plan and in accordance with board's invitation, 5 cent purchaser of chance received or failed to receive 1-pound box of chocolates in accordance with success or failure in selecting number ending with numeral 5, those securing number 50 and multiples of 50 received fancy 1-pound box of chocolates, and last sale in each of board's three sections entitled purchaser to one fancy 2-pound box of chocolates, and holders of other numbers received nothing; and

(2) Other boards of the same general nature having as many as 30 or 40 free numbers, and for which selectors paid nothing, and on some of which charge to members of public ranged from 1 cent to 5 cents for each number selected—

Sold to wholesalers and jobbers, along with punchboards thus furnished, their said candy for distribution by retail dealer buyers thereof to purchasing public through use of said boards as above set forth and wholly by lot or chance and under plan by which amount which members of public paid for chance to obtain one of prizes thus distributed by use of such boards or whether or not chance was free was determined wholly by lot or chance; and

Supplied thereby to and placed in the hands of such purchasers means by which lotteries and games of chance might be conducted in sale and distribution of candy as above set forth involving game of chance or sale of a chance to procure such candy without cost or for much less than price at which such candy is sold in usual course of retail trade, contrary to an established policy of the United States Government and in violation of the laws of several of the States, and in competition with many who sell candy of like or similar grade and quality and are unwilling to sell their said product by any method or sales plan which involves game of chance, gift enterprise, or lottery scheme, and refrain from use thereof;

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With result that many wholesale and retail dealers were attracted by element of chance involved in sales plan or method by which candy sold by them was distributed to public by use of punchboards and were thereby induced to purchase their said candy in preference to that of like or similar grade and quality sold by competitors who do not furnish with their product any punchboards or other devices by the use of which such product can be distributed to the consuming public by lot or chance, and their competitors aforesaid were placed at a disadvantage, and they sold substantial quantities of their said product, and trade was diverted unfairly to them from their competitors:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Mr. Walter C. Hughes, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Ambrosia Candy Co., a corporation, and Samuel R. Block, individually, and as an officer of Ambrosia Candy Co., 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. Respondent, Ambrosia Candy Co., is a corporation organized and doing business under the laws of the State of Illinois, with its offices and principal place of business at 1719 Federal Street, Chicago, Ill.

Respondent Samuel R. Block, secretary and treasurer, majority stockholder, and moving spirit of Ambrosia Candy Co., has his office at the same address and directs the activities and controls the business policy and affairs of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged.

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 wholesale and retail dealers and jobbers. Respondents cause and have caused their products when sold to be transported from their principal place of business in the city of Chicago, Ill., to purchasers thereof in the State of Illinois and in other States of the

United States 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. In the course and conduct of their business respondents are in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of candy and similar products, in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale and retail dealers and jobbers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said assortments consists of a number of 1-pound boxes of candy, a number of fancy 1-pound boxes of candy, and a number of 2-pound boxes of candy, together with a device commonly called a punchboard. Said boxes of candy are distributed to the purchasing public by means of said punchboard in the following manner:

Sales are 5 cents each and when a punch is made a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence, and said numbers are arranged in three sections. The board bears statements informing purchasers and prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a 1-pound box of candy, certain other specified numbers entitle the purchasers thereof to receive a fancy 1-pound box of candy, and the last punch in each section entitles the purchaser of same to a 2-pound box of candy. A customer who does not qualify by obtaining one of the specified numbers or the last punch in a section receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5 cents each and a purchaser who obtains a number calling for a box of candy receives the same for 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The 1-pound boxes of candy are thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondents manufacture, sell, and distribute various assortments of candy involving the lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

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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 a box 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 purchasers 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 the 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 prejudice and injury 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 the Federal Trade Commission Act, the Federal Trade Commission on January 26, 1938, issued and thereafter served its complaint in this proceeding upon the respondents, Ambrosia Candy Co., and Samuel R. Block, individually and as an officer of the Ambrosia Candy Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the complaint, and the filing of an answer by the respondent, Samuel R. Block, individually and as an officer of the respondent Ambrosia Candy Co. (no answer was filed by the respondent, Ambrosia Candy Co.), testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by Walter C. Hughes, attorney for the respondents, before William C. Reeves, an examiner 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 the said complaint, the answer thereto, testimony, and other evidence, brief in support of the complaint (respondents not having filed brief, and oral argument not having been requested); 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 Ambrosia Candy Co. is a corporation organized and doing business under the laws of the State of Illinois, with its offices and principal place of business at 1719 Federal Street, Chicago, Ill.

Respondent Samuel R. Block, secretary and treasurer, majority stockholder, and moving spirit of Ambrosia Candy Co., has his office at the same address and directs the activities and controls the business policy and affairs of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter found.

Respondents are now, and for some time last past have been, engaged in the manufacture of candy and in the sale and distribution of same to wholesale and retail dealers and jobbers. Respondents cause and have caused their products when sold to be transported from their principal place of business in the city of Chicago, Ill., to purchasers thereof in the State of Illinois, and in other States of the United States at their respective places of business. There is now, and has been for some time last past, a course of trade by said respondents in such candy in commerce between and among various States of the United States. In the course and conduct of their business respondents are in active competition with other corporations and individuals and with partnerships engaged in the sale and distribution of candy and similar products, in commerce between and among various States of the United States.

PAR. 2. The respondents manufacture a small amount of bar candy, and 5-cent candy, but their principal product is packaged or boxed chocolates, the sizes of the packages being $\frac{1}{2}$ pound, 1 pound, 2 pounds, and 5 pounds; practically their entire output is sold to jobbers or wholesale dealers; their annual volume of sales is approximately \$250,000, and with about one-half of their output, when so requested by their customers, they furnish devices sometimes described as punchboards for which no additional charge is made; these boards are shipped with the candy. Some of the boards so furnished by respondents have 300 holes which are arranged in sections of 100 each, and each hole has inserted therein a rolled slip of paper upon which is printed a number. In the operation of the boards members of the public are solicited to punch from one or more of the holes the rolled slip of paper contained therein and to pay 5 cents for each number so obtained; the holders of 12 numbers so obtained which end with the numeral 5 each receive a 1-pound box of chocolates, and the holders of number 50 and multiples of 50, 6 in all,

each receive a fancy 1-pound box of chocolates, and the last sale in each of the 3 sections entitles the purchaser to receive 1 fancy 2-pound box of chocolates, but the holders of the other numbers, 278 in all, receive nothing. Other boards of the same general nature furnished by respondents have as many as 30 or 40 numbers designated as free and for which selectors pay nothing, and on some of the boards the charge to members of the public ranges from 1 cent to 5 cents for each number selected. With all the boards so furnished by respondents the selection of a number which might entitle the selector to a box of candy or whether the charge for each selection made will cost 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents, or will cost nothing at all, is wholly a matter of chance. Said respondents also sell a number of assortments of packaged chocolates suitable for use in the operation of said boards, some of which assortments have added thereto as a premium, a lamp.

PAR. 3. The Commission finds that candy sold by respondents to wholesale dealers and jobbers with which they furnished punchboards, as set out in paragraph 2 hereof, was resold by said wholesale dealers and jobbers to retail dealers who distributed same to the purchasing public by the use of such punchboards, wholly by lot or chance, and that the amount which members of the public paid for a chance to obtain one of the prizes distributed by the use of one of such boards, or whether such chance was free, was determined wholly by lot or chance. Respondents by furnishing such boards to purchasers of candy sold by them have supplied to such purchasers and placed in their hands, the means by which lotteries and games of chance may be conducted. The sale and distribution of candy in the manner, and by the method hereinbefore described, is a practice of the sort which is contrary to the established public policy of the Government of the United States, and is in violation of the laws of several of the States of the United States. Many competitors of respondents sell candy of like or similar grade and quality to that sold by respondents, in competition with respondents, which competitors are unwilling to sell such candy by any method or sales plan which involves a game of chance, gift enterprise, or lottery scheme, and refrain from the use of same, and as a result are placed at a disadvantage in competition.

PAR. 4. The sale and distribution of candy to the purchasing public in the manner, and by the method hereinbefore found, involves a game of chance or the sale of a chance to procure such candy without cost or for much less than the price at which such candy is sold in the usual course of retail trade. Many wholesale and retail dealers were attracted by the element of chance involved in the sales plan

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or method by which candy sold by respondents was distributed to the public by the use of punchboards, and said dealers were thereby induced to purchase candy sold by respondents in preference to candy of like or similar grade and quality sold by competitors of respondents who did not and do not furnish with candy sold by them, any punchboards or other devices, by the use of which such candy could be distributed to the consuming public by lot or chance, and as a result respondents have sold substantial quantities of candy, which has caused trade to be diverted unfairly to respondents from their competitors.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public, and of respondents' 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 Samuel R. Block (respondent Ambrosia Candy Co. having filed no answer), testimony, and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief by attorney for the Commission (respondents having filed no brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Ambrosia Candy Co., its officers, and Samuel R. Block, individually and as an officer of Ambrosia Candy Co., their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of candy or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing candy or other merchandise so packed and assembled that sales of such candy or other merchandise 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. Supplying to or placing in the hands of others assortments of candy which are to be used or may be used to conduct a lottery,

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gaming device, or gift enterprise in the sale or distribution of candy or other merchandise to the public.

3. Supplying to or placing in the hands of others assortments of candy or other merchandise, together with a lottery device, which lottery device is to be used or may be used in selling and distributing such candy or other merchandise to the public.

4. Supplying to or placing in the hands of others a lottery device either with assortments of candy or other merchandise or separately, which lottery device is to be used or may be used in selling or distributing such candy or other merchandise to the public.

5. Selling or otherwise disposing of candy or other merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

IN THE MATTER OF

ALFRED JOHNSON SMITH, PAUL SMITH AND ARTHUR SMITH, DOING BUSINESS AS JOHNSON-SMITH AND COMPANY

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

Docket 3647. Complaint, Nov. 7, 1938—Decision, Mar. 1, 1939

Where partners engaged in sale of a large number of articles of various sorts and kinds, including books of instruction in various arts and in other subjects, musical instruments, cutlery, watches, clocks, radio receiving sets, seeds for flowers, vegetables and medicinal plants, push cards, and others, to purchasers in other States and in the District of Columbia, in substantial competition with others likewise engaged in sale and distribution of like and similar books, articles, and devices in commerce among the various States and in said District—

- (a) Represented, in catalogs descriptive of their wares distributed as aforesaid and in advertisements thereof in magazines and periodicals circulating through the various States, that purchasers of their "The Famous 5-Minute Courses" of books of instruction could, with the aid thereof and without taking lessons and with no knowledge of music necessary, learn to play, from the 15 different courses there offered, violin, guitar, saxophone, and the various others there enumerated, and that through said courses also, as the case might be, under such captions as "Crystal Gazing," "Polish Self Taught," and "Secrets of Cleopatra's Beauty Revealed," purchaser could, in effect, learn to foretell future events, rapidly acquire proficiency in the Polish language, and acquire a truly amazing beauty, facts being it is impossible, by mastering their said books, to gain the ability to play, in the generally accepted sense of the words, instruments to which they related, although it is possible to learn therefrom certain harmonic combinations or chords which may be mechanically repeated on the piano, guitar, etc., and it is also impossible therefrom rapidly to acquire proficiency in Polish, or to acquire beauty of eyes, complexion, hand, arm, or figure, and array of importunate suitors;
- (b) Represented, as aforesaid, in connection with description and offer of, and invitation to, "Play This Jazzy Saxophone Without Practice! No need to spend \$85 when you can own a Jazzy Sax," that said instrument was comparable in material, appearance, or performance to those costing said amount; and
- (c) Represented, as aforesaid, that close inspection showed that their "G-Man Pocket Knife" had "Blades of finest quality steel," and that their "Atlas Calendar Watch As an ordinary time-keeper" was "a watch of highest quality * * *," and that their "King Tut Lucky Ring" was "Made of green gold, antique finish," and referred to their "No. 8209—1 kt. Egyptian Diamond * * * Five-Year Guarantee," and represented that their "Genuine Diamond Ring for only \$3.25" was "A real genuine Diamond";

Facts being their said "Jazzy Sax" was not, as thus represented, comparable in material, appearance, or performance to saxophones selling at \$85, blades