

Syllabus

IN THE MATTER OF
ILLINOIS BAKING CORPORATION

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

Docket 3495. Complaint, July 16, 1938—Decision, Mar. 27, 1939

Where a corporation engaged in manufacture of ice cream cones and in sale and distribution thereof and in selling and distributing certain of its cones by means of a lottery scheme, gift enterprise, or game of chance under which retail dealer assembling from coupons, of which it enclosed and concealed one with each 250 cone-package, letters to spell legend "S-A-F-E-T C-O-N-E-S," became entitled to receive from his jobber-seller 1,000 additional cones without additional cost—

Sold assortments as aforesaid to wholesaler and jobber customers by whom coupons, in accordance with aforesaid plan and explanatory legends enclosed, were redeemed for retailer customers in accordance with such plan, and thereby supplied to and placed in the hands of others means of conducting lotteries, gift enterprises, or games of chance in sale of its products in accordance with such sales plans, contrary to public policy as long considered, and to an established public policy of the United States Government, and in competition with many who make and sell such products and are unwilling to offer or sell such cones by said or equivalent or similar method involving same or equivalent or similar element of chance or lottery scheme and refrain therefrom;

With capacity and tendency to induce retail dealers to purchase its said products in preference to those made and offered and sold by its competitors and with result that many dealers were attracted by its said method and manner of selling its said ice cream cones and by element of chance involved in sale thereof as above described and were thereby induced to buy and sell such products in preference to those offered and sold by competitors who do not use such or equivalent methods, and with effect, through use of such method and because of said element of chance, of unfairly diverting trade and custom to it from its competitors aforesaid who are unwilling to and do not use such or equivalent method as unlawful, to their substantial injury:

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. Charles F. Diggs*, trial examiner.

Mr. D. C. Daniel for the Commission.

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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 the Illinois Baking Corporation, 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 is a corporation organized and operating under the laws of the State of Delaware, with its principal office and place of business located at 2230 South Union Avenue, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the manufacture of ice cream cones and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be shipped or transported from its place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of ice cream cones 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 its business as described in paragraph 1 hereof respondent has, for the past several months, sold and distributed, and is now selling and distributing, certain of its said ice cream cones by means of a lottery scheme, gift enterprise, or a game of chance. Respondent packs and assembles its "Safe-T Cones" in packages containing 250 of said cones and also packs and assembles in each of said packages containing 250 cones, a coupon containing the following statements and legends, among others:

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T	SAFE-T CONES COUPON	T
Save these "SAFE-T CONE" Coupons. Each coupon bears a letter from the name "SAFE-T CONES" After you have saved ten coupons to spell the name "S-A-F-E-T C-O-N-E-S", you will receive one thousand "SAFE-T CONES" absolutely free. There is a coupon packed in every box of "SAFE-T CONES". — Look for it! — MR. DEALER! Ten "SAFE-T CONE" COUPONS which spell the name "SAFE-T CONES" will be redeemed ONLY BY YOUR JOBBER for one thousand "SAFE-T CONES". There <i>is</i> a difference in ice cream cones "SAFE-T CONES" are better. They will not drip <i>inside</i> or <i>outside</i>. ILLINOIS BAKING CORPORATION 2230 S. Union Avenue, Chicago, Ill. Phone MONroe 4051		
T		T

The letters in the corners of said coupons are one of the letters in the words "Safe-T Cones" and retail dealers obtaining coupons the letters on which spell the words "Safe-T Cones" are entitled to receive and are to be given by the jobber from whom said cones were purchased one thousand additional cones free of charge or without additional cost. The said printed coupons are sealed in the packages containing 250 cones and the letters in the corners of the coupons cannot be ascertained until the package of cones has been delivered and opened by the retail dealer. Retail dealers thus secure additional cones wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells the above described packages of ice cream cones containing the above described printed slip, resell such packages of cones as packed by respondent to retail dealers and redeem the said coupons in accordance with the above described legends. The respondent thus supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale of its products in accordance with the sales plan hereinabove set forth and said sales plan has the capacity and tendency to induce retail dealers to purchase respondent's said products in preference to ice cream cones manufactured and offered for sale and sold by its competitors.

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PAR. 4. The sale of ice cream cones in the manner above described involves a game of chance, gift enterprise, or a lottery scheme, and the use by respondent of said method in the sale of ice cream cones and the sale of ice cream cones by and through the use thereof and by the aid of said method is a practice of the sort which has long been deemed contrary to public policy and is contrary to an established public policy of the Government of the United States. Many persons, firms, and corporations who make and sell ice cream cones in competition with the respondent as above described are unwilling to offer for sale or sell ice cream cones by said method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme and such competitors refrain therefrom. Many dealers are attracted by respondent's said method and manner of selling its ice cream cones and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to buy and sell respondent's products in preference to products offered for sale and sold by competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent because of said element of chance has the capacity and tendency to and does unfairly divert trade and custom to respondent from its said competitors who are unwilling to and who do not use the same or equivalent method because the same is unlawful. As a result thereof, substantial injury is being, and has been, done to said competitors of respondent.

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 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 July 16, 1938, issued and thereafter served its complaint in this proceeding upon respondent Illinois Baking 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute

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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 Commission. 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 is a corporation organized and operating under the laws of the State of Delaware, with its principal office and place of business located at 2230 South Union Avenue, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the manufacture of ice cream cones and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be shipped or transported from its place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of ice cream cones 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 its business as described in paragraph 1 hereof respondent has, for the past several months, sold and distributed, and is now selling and distributing, certain of its said ice cream cones by means of a lottery scheme, gift enterprise, or a game of chance. Respondent packs and assembles its "Safe-T Cones" in packages containing 250 of said cones and also packs and assembles in each of said packages containing 250 cones, a coupon containing the following statements and legends, among others:

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T	"SAFE-T CONES" COUPON	T
	Save these "SAFE-T CONE" Coupons. Each coupon bears a letter from the name "SAFE-T CONES" After you have saved ten coupons to spell the name "S-A-F-E-T C-O-N-E-S", you will receive one thousand "SAFE-T CONES" absolutely free There is a coupon packed in every box of "SAFE-T CONES" —Look for it!— MR. DEALER! Ten "SAFE-T CONE" COUPONS which spell the name "SAFE-T CONES" will be redeemed ONLY BY YOUR JOBBER for one thousand "SAFE-T CONES." There <i>is</i> a difference in ice cream cones "SAFE-T CONES" are better. They will not drip <i>inside</i> or <i>outside</i> ILLINOIS BAKING CORPORATION 2230 S. Union Avenue, Chicago, Ill. Phone MONroe 4051	
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The letters in the corners of said coupons are one of the letters in the words "Safe-T Cones" and retail dealers obtaining coupons the letters on which spell the words "Safe-T Cones" are entitled to receive and are to be given by the jobber from whom said cones were purchased one thousand additional cones free of charge or without additional cost. The said printed coupons are sealed in the packages containing 250 cones and the letters in the corners of the coupons cannot be ascertained until the package of cones has been delivered and opened by the retail dealer. Retail dealers thus secure additional cones wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells the above described packages of ice cream cones containing the above described printed slip, resell such packages of cones as packed by respondent to retail dealers and redeem the said coupons in accordance with the above described legends. The respondent thus supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale of its products in accordance with the sales plan hereinabove described and said sales plan has the capacity and tendency to induce retail dealers to purchase respondent's said products in preference to ice cream cones manufactured and offered for sale and sold by its competitors.

PAR. 4. The sale of ice cream cones in the manner above described involves a game of chance, gift enterprise, or a lottery scheme, and

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the use by respondent of said method in the sale of ice cream cones and the sale of ice cream cones by and through the use thereof and by the aid of said method is a practice of the sort which has long been deemed contrary to public policy and is contrary to an established public policy of the Government of the United States. Many persons, firms, and corporations who make and sell ice cream cones in competition with the respondent as above described are unwilling to offer for sale or sell ice cream cones by said method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme and such competitors refrain therefrom. Many dealers are attracted by respondent's said method and manner of selling its ice cream cones and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to buy and sell respondent's products in preference to products offered for sale and sold by competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent because of said element of chance has the capacity and tendency to and does unfairly divert trade and custom to respondent from its said competitors who are unwilling to and who do not use the same or equivalent method because the same is unlawful. As a result thereof, substantial injury is being, and has been, done to said competitors of respondent.

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 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 states that it 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, Illinois Baking Corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale,

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sale and distribution of ice cream cones or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing ice cream cones so packed and assembled that sales of such cones are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Selling or distributing ice cream cones together with coupons so designed or printed that the use of said coupons in the sale or distribution of said cones constitutes the operation of a game of chance, gift enterprise, or lottery scheme.

3. Selling or otherwise disposing of any merchandise 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 this order.

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IN THE MATTER OF
COLUMBIA REFINING CO.COMPLAINT, MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914¹*Docket 3517. Complaint, July 30, 1938—Decision, Mar. 27, 1939*

Where a corporation engaged, as wholesale dealer in motor oils and lubricants, in selling and distributing such products to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such products as aforesaid, and including dealers therein who are not refiners or manufacturers of such products and who sell and offer the same in commerce and do not in any way misrepresent that they are refiners or otherwise misrepresent their business or products—

Caused its corporate name, including word "Refining," to appear variously in its catalogs and other advertising matter and on its letterheads, invoices and other printed matter and on its containers, issued and circulated by it through the mails, transportation facilities and otherwise to its customers and prospective customers in the various other States and in said District, and represented thereby and otherwise to members of purchasing public, dealers and others, that it owned, controlled and operated a refinery, and that purchasers of its products were dealing directly with the manufacturer or refiner of such motor oils and lubricants, for purchase of which oils direct from refiner thereof there is a preference on part of substantial number among members of purchasing public, as securing them, in their belief, better prices, superior quality, and other advantages not ordinarily obtainable when purchasing through middlemen or others who are not actual refiners of such motor oils being purchased;

Facts being it did not manufacture or refine motor oils and lubricants advertised and sold by it as aforesaid, and did not own, operate, or control a refinery, and did not refine any of products which it sold, and said representations were false, misleading, and untrue;

With tendency and capacity to mislead and deceive substantial portion of purchasing public, and purchasers for resale, into erroneous belief that such representations were true, and with result, as direct consequence of such erroneous and mistaken belief induced by its advertising and representations, that number of consuming public and purchasers for resale bought substantial quantities of its said motor oils and lubricants, and trade was unfairly diverted to it from competitors likewise engaged in sale and distribution of such products and who truthfully advertise the same and their business status:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. John M. Russell for the Commission.

Chamberlin, Kafer, Wilds & Jube and *Mr. Frederick G. Weisser*, of New York City, for respondent.

¹ Original findings and order, issued as of January 18, 1939, not published.