

IN THE MATTER OF
SCHALL 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 3776. Complaint, Apr. 29, 1939—Decision, July 10, 1939

Where a corporation engaged in manufacture and sale of candy including certain assortments which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumer thereof and which included assortments composed of number of small chocolate covered egg-shaped pieces of candy, number of larger size chocolate covered candy bars, and push card, for sale under a plan and in accordance with said card's explanatory legend pursuant to which purchaser, pushing by chance certain numbers, received for his penny, in addition to one of said egg-shaped pieces, as premium one of such larger candy bars, and certain other numbers entitled persons securing same, by chance, to four of such premiums, and last number in each of three sections into which card was divided entitled persons securing same to three of such premiums—

Sold to wholesalers, jobbers, and retailers for display and resale to purchasing public by retail dealer purchasers thereof, in accordance with aforesaid or similar sales plan, such or similar assortments and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products in accordance with aforesaid or similar plans, under which said larger bars were distributed to purchasing public wholly by lot or chance and involving game of chance or sale of a chance to procure additional pieces or bars of candy 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 who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and refrain therefrom;

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

Held, That such acts and practices, under the circumstances set forth, were all to the injury and prejudice of the public and competitors and constitutes unfair methods of competition.

Before *Mr. John J. Keenan*, trial examiner.
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 Schall Candy Co., 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Schall Candy Co., is a corporation organized and doing business under the laws of the State of Iowa, with its principal office and place of business located in the city of Clinton, State of Iowa. Respondent is now and for some time last past has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be transported from his principal place of business in the city of Clinton, Iowa, to purchasers thereof in the various other States of the United States 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 respondent in such candy 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 and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy 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 sells and has sold to wholesale dealers, jobbers, and retail dealers, certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of small chocolate covered egg-shaped pieces of candy and medium sized chocolate covered candy bars, the latter to be given as premiums, together with a device commonly called a push card. The push card is divided into 3 sections and

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each of said sections contains 50 partially perforated disks on the face of which is printed the word "Push." Concealed within the said disk is a number which entitles the purchaser thereof to additional and larger pieces of candy when said number compares with the numbers set out in the legend at the top of said card. The last disk pushed out of each section also entitles the purchaser thereof to additional pieces of candy. The sales are 1 cent each and those not securing a winning number receive 1 of the smaller pieces of candy. The said card bears statements or legends as follows:

YOUR LUCKY DAY FOR 1¢.**Everybody Wins****All Numbers Ending in 5 receive One Premium****No. 50, 100, 150 Receive Four Premiums****LAST NUMBER IN EACH SECTION RECEIVES THREE PREMIUMS****All Other Numbers Receive One Chocolate Egg**

Sales of respondent's candy are made in accordance with the above legend. The numbers aforesaid are effectively concealed until a purchase has been made and the disk separated or removed from said card. The said pieces of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various push cards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said candies, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. 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 plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its candies and the sale of said candies 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 candies to the purchasing public by the method and plan hereinabove set forth involves a game of chance or the sale of a chance to procure additional pieces of candy without additional cost or such larger pieces of candy in the manner alleged. Many persons, firms, and corporations who sell and distribute candy in

competition with respondent, as above alleged, are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its candies and in the element of chance involved therein and are thereby induced to buy and sell respondent's candies in preference to candies of said competitors of respondent who do not use the same or equivalent methods. 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 its said competitors who do not use the same or equivalent methods, 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 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 29, 1939, issued and on May 1, 1939, served its complaint in this proceeding upon respondent Schall Candy Co. charging it with the use of unfair methods of competition and unfair and deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the respondent's answer, the Commission by order entered herein granted respondent's request 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 hearings 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 the 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, Schall Candy Co., is a corporation organized and doing business under the laws of the State of Iowa, with its principal office and place of business located in the city of Clinton, State of Iowa. Respondent is now and for some time last past has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be transported from its principal place of business in the city of Clinton, Iowa, to purchasers thereof in the various other States of the United States other than the State of Iowa 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 respondent in such candy 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 and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy 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 sells and has sold to wholesale dealers, jobbers, and retail dealers, certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of a number of small chocolate-covered egg-shaped pieces of candy and a number of larger sized chocolate covered candy bars, the latter to be given as premiums, together with a device commonly called a push card. The push card is divided into 3 sections and each of said sections contains 50 partially perforated disks on the face of which is printed the word "Push." Sales are 1 cent each and each purchaser is entitled to 1 of said small pieces of candy. Concealed within the said disks are numbers which entitle the purchasers thereof to said larger bars of candy when said numbers compare with the numbers set out in the legend at the top of said card. The last disk pushed out of each section also entitles the purchaser thereof to said larger bars of candy. The said card bears statements or legends as follows:

YOUR LUCKY DAY FOR 1¢.

Everybody Wins

All Numbers Ending in 5 Receive One Premium

No. 50, 100, 150 Receive Four Premiums

LAST NUMBER IN EACH SECTION RECEIVES THREE PREMIUMS

All Other Numbers Receive One Chocolate Egg

Sales of respondent's candy are made in accordance with the above legend. The numbers aforesaid are effectively concealed until purchases have been made and the said disks separated or removed from said card. The said larger bars of candy are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various push cards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said candies, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. 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 plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its candies and the sale of said candies 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 candies to the purchasing public by the method and plan hereinabove found involves a game of chance or the sale of a chance to procure additional pieces or bars of candy without additional cost or such larger pieces or bars of candy in the manner found. Many persons, firms, and corporations who sell and distribute candy in competition with respondent, as above found, are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its candies and by the element of chance involved therein and are thereby induced to buy and sell respondent's candies in preference to candies of said competitors of respondent who do not use the same or equivalent

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methods. 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 its said competitors who do not use the same or equivalent methods, 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 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 substitute answer of respondent in which substitute answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearings 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, Schall Candy Co., its officers, 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 or distributing candy, or any 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 lottery scheme, gaming device, or gift enterprise.

2. Supplying to, or placing in the hands of, others assortments of candy, or other merchandise, together with push or pull cards, punchboards, or other lottery devices, which said push or pull cards, punchboards, or other lottery devices, are to be used, or may be used, in selling or distributing such candy, or other merchandise, to the general public.

3. Supplying to, or placing in the hands of, others push or pull cards, punchboards, or other lottery devices, either with assortments

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of candy, or other merchandise, or separately, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling or distributing such candy, or other merchandise, to the general public.

4. 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.

IN THE MATTER OF

MONICA M. ROCK, INDIVIDUALLY AND AS EXECUTRIX
OF THE ESTATE OF DR. ARTHUR A. ROCK, DECEASED,
AS SUCCESSOR TO DR. ARTHUR A. ROCK, DOING BUSI-
NESS IN HIS OWN NAME AND ALSO AS DR. ROCK AND
DR. A. A. ROCK¹COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2509. Complaint, Aug. 8, 1935—Decision, July 11, 1939*

Where a physician, and the widow and executrix thereof, following his demise, engaged in sale and distribution of tablets and ointment for use, in accordance with directions furnished, in treatment of goiter by those thus afflicted, and in sending to prospective customers replying to their advertisements form of questionnaire with blank spaces for answers covering length of time goiter had existed, and symptoms and general history of progress of disease, for their use in making diagnosis from answers given in such questionnaires without personal contact with patient, and in competition, as thus engaged, with others likewise engaged in selling and distributing to consumers and retail drug stores, for resale to consumers, medicines and preparations designed, intended and used for treatment of said ailment and condition; in advertising their said tablets and ointments in numerous periodicals and other publications of interstate circulation, and through circulars and other

¹ Order of June 4, 1937, substituting Monica M. Rock as respondent in proceeding in question, etc., follows:

This matter coming on for consideration by the Commission upon the record to date, and it appearing that respondent, Dr. Arthur A. Rock, died on or about July 17, 1936; and that thereafter Monica M. Rock, his widow, was appointed executrix of the estate of said Arthur A. Rock, deceased, and is now acting as such executrix; that said Monica M. Rock has tendered to the Commission a stipulation, authorized by the County Court of Milwaukee County, Wis., in which she agrees that she, as such executrix and individually, shall and may be substituted as respondent in this proceeding in the place of said respondent so deceased, and that upon such substitution being made this case may proceed in accordance with the rules of the Commission in the same manner as it would have proceeded had not said original respondent so died; and the said stipulation having been considered by the Commission and approved, and the Commission having only considered the same and being now fully advised in the premises;

It is ordered, That Monica M. Rock, individually and as executrix of the estate of Dr. Arthur A. Rock, deceased, be, and she hereby is substituted as respondent herein for Dr. Arthur A. Rock, the original respondent hereinabove named.

It is further ordered, In accordance with the terms and provisions of said stipulation, that this case now proceed as against said substituted respondent in like manner and to the same effect as it would have proceeded had not said original respondent so died, and all testimony and proceedings heretofore taken and had herein be considered in the same manner and given like effect as though said substituted respondent had been the respondent originally named in the complaint heretofore issued herein.

It is further ordered, That the title of this case shall be and same hereby is amended to read as follows:

"In the Matter of: MONICA M. ROCK, individually and as Executrix of the Estate of Dr. Arthur A. Rock, deceased, as successor to Dr. Arthur A. Rock, an individual, doing business in his own name and also under the name and style of Dr. Rock and Dr. A. A. Rock, respondent."