

Complaint

IN THE MATTER OF

E. A. HOFFMAN 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 3443. Complaint, May 24, 1938—Decision, Sept. 2, 1939

Where a corporation engaged in manufacture of candy and in sale and distribution thereof to purchasers in various States—

Furnished to customers various devices and plans for selling its said merchandise which involved operation of games of chance, gift enterprises, or lotteries for distribution of such merchandise to ultimate consumers wholly by lot or chance, and which included pushcards for use in sale and distribution of said products, in accordance with (1) said card's explanatory legend and plan, by which purchaser selecting by chance for 5 cents paid, feminine name from list of 30 corresponding with that concealed under card's master seal, received package of candy retailing for \$1.50 and other patrons received nothing, or (2) in accordance with other similar plans differing only in minor detail from that above described; and

Placed thereby in the hands of others means of conducting games of chance or lotteries in the sale of its merchandise contrary to the established public policy of the United States Government and in violation of the criminal laws;

With result that many persons were attracted by element of chance involved in its said sales plan or method of distribution of its merchandise, and were thereby induced to buy and sell same in preference to that offered by its competitors, many of whom do not use the same or similar method of distribution as contrary to public policy, and trade was thereby unfairly diverted to it from competitors aforesaid:

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

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. D. C. Daniel and *Mr. Reuben J. Martin* for the Commission.

Mr. Harry C. Bartosh, of Los Angeles, Calif., 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 E. A. Hoffman Candy Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be

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in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, E. A. Hoffman Candy Co., is a corporation organized and doing business under the laws of the State of California, with its offices and principal place of business located at 6600 Avalon Boulevard, Los Angeles, Calif. 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 dealers. Respondent causes, and has caused, its products, when sold to be transported from its principal place of business in the city of Los Angeles, Calif., to purchasers thereof located in the State of California and in other States of the United States and in the District of Columbia, 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 respondent in such candy 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 in competition with other corporations and with individuals and partnerships likewise 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 dealers 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 package of candy and a device commonly called a pushcard. Said package of candy is displayed to the purchasing public and is awarded to a purchaser by means of said pushcard in the following manner: The pushcard contains a number of partially perforated discs, a printed feminine name adjacent to each disc, and a blank space opposite each feminine name for writing in the name of the customer. The pushcard has a master seal concealed within which is one of the feminine names appearing adjacent to the discs on said card. Sales are 5 cents each, and upon perforation of a disc and selection of one of the printed feminine names, the customer writes his name in the blank opposite such feminine name. When the last printed feminine name has been selected and the last disc perforated, the master seal is removed and the feminine name concealed thereunder is disclosed. The purchaser who selected the feminine name corresponding to the feminine name disclosed under the master seal is awarded the package of candy. The remaining purchasers receive nothing for their money. The name printed under the master seal is effectively concealed from

purchasers and prospective purchasers until all purchases have been made, all feminine names selected and the last disc separated from the card. The said package of candy is thus awarded to the purchaser of a push from said card wholly by lot or chance.

Respondent furnishes or sells various pushcards and punchboards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. Said punchboards are similar, varying only in detail in that on a 400-hole punchboard, 34 purchasers receive something for their money and the remaining 366 purchasers receive nothing for their money.

PAR. 3. Retail dealers who purchase respondent's candy directly or indirectly, expose and sell 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 hereinabove set forth. Said sales plan has a tendency and capacity to induce purchasers of candy to purchase respondent's candy in preference to candy offered for sale and sold by its 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 package of candy. The use by respondent 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 is contrary to an established policy of the government of the United States and in violation of the criminal laws. The use by respondent 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 elements of chance or lottery. Many persons, firms, and corporations who make and sell candy in competition with the respondent as above alleged are unwilling to offer for sale or to sell their products so packed and assembled as above alleged, or by any other method involving a game of chance or lottery and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's 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 respondent in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has a capacity and tendency, because of said game of

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chance, to divert to respondent trade and custom from its 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 against public policy and unlawful, to lessen competition in the candy trade, to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or similar or equivalent methods, and to deprive the purchasing public of the benefit of free competition. The use of said method by respondent 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 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 the 24th day of May, A. D. 1938, issued, and thereafter served, its complaint in this proceeding upon the respondent, E. A. Hoffman Candy Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuing of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Reuben J. Martin, attorney for the Commission, before Charles P. Vicini, an examiner of the Commission theretofore duly appointed by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. No evidence was introduced by respondent. Thereafter the proceedings regularly came on for final hearing before the Commission on the complaint of the Commission, the answer thereto, the testimony and other evidence, and brief in support of the complaint; 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, E. A. Hoffman Candy Co., is a corporation, having been incorporated under the laws of the State of Cali-

fornia in the year of 1923. Its principal office and place of business is located at 6600 Avalon Boulevard, Los Angeles, Calif.

PAR. 2. Respondent is now, and since the date of its incorporation has been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes, and at all times mentioned herein has caused, its products when sold to be transported from its aforesaid principal place of business to purchasers of said candy located in 12 of the Western States of the United States at their respective places of business. There is now, and at all times mentioned herein has been, a course of trade by said respondent in such candy in commerce between and among various States of the United States.

PAR. 3. 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 candy in commerce between and among various States of the United States.

PAR. 4. Respondent, in the course and conduct of its said business, furnishes to its customers various devices and plans for selling its merchandise which involve the operation of games of chance, gift enterprises, or lotteries, by the use of which, said merchandise is distributed to the ultimate consumers wholly by lot or chance. One of the methods, or sales plans, adopted and used by respondent is as follows: Respondent furnishes its customers with push cards, having 30 disks marked "Push," above each of which is printed a feminine name; there is also a master seal covering one of the said feminine names which is not disclosed until the seal is removed. The consumer customer, upon payment of 5 cents, punches one of the said disks and signs his name above this disk. After all the disks have been punched, the master seal is removed and the patron who has punched the disk bearing the same feminine name as that which was covered by the master seal receives a package of candy which retails for \$1.50. The patrons who pushed the other disks receive nothing. Respondent distributes to its customers several other types of push cards, differing only in minor detail from that hereinabove described.

PAR. 5. Respondent, by the sales method hereinbefore described, places in the hands of others the means of conducting games of chance or lotteries in the sale of its merchandise, and said method of sale and distribution of its merchandise is contrary to the established public policy of the Government of the United States and is in violation of the criminal law.

PAR. 6. Many persons are attracted by the element of chance involved in respondent's sales plan or method of distribution of its merchandise and are thereby induced to buy and sell respondent's merchandise in preference to that offered for sale by its competitors, many of whom do not use the same or similar method of distribution because such method is contrary to public policy, and, as a result, trade has been unfairly diverted from such competitors to the respondent.

CONCLUSION

The practices of the respondent, as set forth in the foregoing findings as to the facts, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce in violation 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, testimony and other evidence taken before Charles P. Vicini, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint (respondent having offered no testimony or other evidence in opposition to the allegations of the said complaint), brief of counsel for the Commission filed herein (respondent 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, E. A. Hoffman 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 said candy or other 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 candy 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 said candy or other merchandise to the general public.

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3. Supplying to or placing in the hands of dealers push or pull cards, punchboards or other lottery devices either with assortments 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 said candy or other merchandise to the general public.

4. Selling or otherwise disposing of said candy or any other merchandise by use of push or pull cards or other lottery devices.

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

WILLIAM P. BENNETT AND CHARLES C. BENNETT, CO-
PARTNERS, DOING BUSINESS UNDER THE TRADE
NAME OF PEANUT NOVELTY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2961. Complaint, Aug. 4, 1937¹—Decision, Sept. 7, 1939*

Where two partners engaged in manufacturing or processing, roasting, and packaging peanuts, and in selling and distributing same to wholesalers, jobbers, wagon peddlers, and retailers in accordance with a plan which included (1) packing of the individual 5-cent containers in 30 container cartons, included with each of which cartons were not less than 2 or more than 7 nickels placed in certain unidentifiable containers therein enclosed, and included with which cartons there were also enclosed in every sixth carton either quarter and 2 nickels in certain units or 7 nickels, or 2 nickels and one 50-cent piece with every twelfth carton, or 2 nickels and dollar bill with every twenty-fourth, so that there was included with every 24 cartons, as identified on the outside thereof by letters for dealer, definite sum of money amounting to \$3.40 and in prizes ranging from a nickel to a dollar in individual cartons and so concealed therein that customer had no knowledge prior to opening 5-cent package selected as to whether or not it would contain peanuts only or peanuts and prize, and (2) the furnishing of display card for retailer's use, explanatory or suggestive of such plan and offer of said "Believe It or Not Lucky Peanuts," and (3) the marking of each carton with similar explanatory matter—
Sold and distributed its said "Believe It or Not" peanuts, together with aforesaid explanatory display card for retailer's use, to wholesalers and jobbers for display and resale of said assortments by retail dealer purchasers thereof to purchasing public, in accordance with aforesaid plan involving lottery scheme, game of chance or gambling method; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of their said "Believe It or Not" peanuts in accordance with said plan contrary to the established public policy of the United States Government, and in violation of the criminal laws, and in competition with those who are unwilling to adopt and use such lottery scheme, game of chance or gambling method, 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;

With result that gambling was encouraged among those who were enticed by element of chance to purchase such packaged peanuts in preference to purchasing packaged peanuts which do not contain prizes, and many dealers in, and ultimate purchasers of, packaged peanuts were attracted by their said method or manner of packing said product, and by element of chance involved in sale thereof as above set forth, and were thereby induced to purchase said peanuts, thus packed and sold by them, and with tendency

¹ Amended and supplemental.