

IN THE MATTER OF

WILLIAM P. BENNETT AND CHARLES C. BENNETT, CO-PARTNERS, DOING BUSINESS UNDER THE TRADE NAME OF PEANUT NOVELTY COMPANY

COMPLAINT, 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.

and capacity, by reason of such method, to eliminate from trade in question all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method, and with effect of unfairly diverting trade and custom to them from their competitors who are unwilling to, and do not, use such or equivalent method in sale and distribution of their peanuts, and of depriving purchasing public of benefit of free competition in trade aforesaid:

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

Before *Mr. Miles J. Furnas*, *Mr. W. W. Sheppard*, and *Mr. Arthur F. Thomas*, trial examiners.

Mr. Henry C. Lank, *Mr. P. C. Kolinski*, *Mr. D. C. Daniel*, *Mr. J. J. Smith, Jr.*, and *Mr. Edw. W. Thomerson* for the Commission.

Mr. Walter L. Barlow, *Mr. LaVergne Guinn*, *Mr. Harry I. Freedman*, *Mr. Franklin E. Spafford*, *Mr. Frank Holaday*, and *McCombs & Address*, of Dallas, Tex., for respondents.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit, on October 30, 1936, issue its complaint herein charging that respondents herein were and had been using unfair methods of competition in interstate 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"; and

Whereas, This Commission having reason to believe that the respondents herein are engaged in business other than as described in said complaint and have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, other than and in addition to those in relation to which the Commission issued its said complaint, and it appearing to said Commission that a further proceeding by it in respect thereof would be in the public interest;

Now, therefore, Acting in the public interest, pursuant to the provisions of the act of September 26, 1914, aforesaid, the Federal Trade Commission charges that William P. Bennett and Charles C. Bennett, copartners, doing business under the trade name of Peanut Novelty Co., have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and states its charges in that respect as follows:

PARAGRAPHS 1. Respondents, William P. Bennett and Charles C. Bennett, are individuals doing business as a copartnership under the trade name of Peanut Novelty Co., with their principal office and

place of business located at 1615 North Prairie Avenue, Dallas, Tex. Respondents are now, and for more than 1 year last past have been, engaged in the manufacture and processing of salted nuts, salted peanuts, and peanut confections, 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. Said respondents cause and have caused their said products when sold to be transported from their principal place of business in the city of Dallas, Tex., to purchasers thereof in the State of Texas and in the other States of the United States at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondents in such salted nuts, salted peanuts, and peanut confections between and among the States of the United States. In the course and conduct of said business, respondents are in competition with other partnerships and with corporations and individuals engaged in the manufacture of salted nuts, salted peanuts, peanut confections and candy, and in the sale and distribution thereof 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 certain assortments of salted peanuts so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Said assortments of salted peanuts are composed of a number of small sealed cartons of salted peanuts which retail to the ultimate consumer at 5 cents per carton. These assortments are designated by respondents as "Believe-It-Or-Not." Sealed within a small number of the individual cartons are 5 cents, 25 cents, 50 cents, or \$1, but the ultimate purchasers 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. The individual cartons in some of said assortments have lithographed or printed thereon the following language: "You may find 5¢, 25¢, 50¢, or \$1." With such assortments respondents furnish a display card for use by the retail dealers in offering such assortments to the public, which display card bears legends or statements informing the purchasing public that such assortments are being distributed in accordance with the above described sales plan.

PAR. 3. The wholesale dealers and jobbers to whom respondents sell their said assortments resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondents sell direct expose said assortments for sale and sell said salted nuts, salted peanuts, or peanut confections 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 the capacity and tendency of inducing purchasers thereof to purchase respondents' said products in preference to salted nuts, salted peanuts, peanut confections, or candy offered for sale and sold by their competitors.

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. The use by respondents of said method in the sale of salted peanuts, and the sale of salted peanuts 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 create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the salted nut and peanut confection or candy trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell salted nuts, salted peanuts, and peanut confections or candy in competition with the respondents, as above alleged, are unwilling to offer for sale or sell their said 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of salted nuts, salted peanuts, and peanut confections and candy are attracted by respondents' 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 respondents in preference to salted peanuts or candy offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method.

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The use of said method by respondents has the 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 an equivalent method; to exclude from said trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said trade, and to tend to create a monopoly of said trade in respondents and in such other distributors as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by respondents has the tendency and capacity to eliminate from said trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

PAR. 6. Many of said competitors of respondents are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy.

PAR. 7. The aforementioned method, acts and practices of respondents are all to the prejudice of the public and 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 October 30, 1936, issued and served its complaint in this proceeding upon the respondents, William P. Bennett and Charles C. Bennett, and on August 4, 1937, issued and served its amended and supplemental complaint upon the respondents, William P. Bennett and Charles C. Bennett, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, no answer having been filed by the respondents, testimony and other evidence in support of the allegations of said complaint were introduced by P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by Walter L. Barlow and LaVergne Guinn, attorneys for the respondents, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it; after the issuance of the amended and supplemental complaint,

and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said amended and supplemental complaint were introduced by J. J. Smith and Edward W. Thomerson, attorneys for the Commission, and in opposition to the allegations of the amended and supplemental complaint by Harry I. Freedman and Franklin E. Spafford, attorneys for the respondents, and by Charles C. Bennett, pro se, before W. W. Sheppard and Arthur F. Thomas, trial examiners 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 said complaint, the amended and supplemental complaint, answer to the amended and supplemental complaint, testimony and other evidence, brief in support of the complaint and said amended and supplemental 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. Respondents, William P. Bennett and Charles C. Bennett, are copartners, doing business under the trade name Peanut Novelty Co., with office and principal place of business located at 1615 North Prairie Avenue, Dallas, Tex. Since 1930, they have been engaged in the business of manufacturing or processing, roasting, and packaging peanuts, and in the sale and distribution thereof to wholesalers, jobbers, wagon peddlers, and retail dealers.

PAR. 2. Respondents cause, and have caused, their products, when sold, to be transported from their principal place of business in the city of Dallas, Tex., to the purchasers thereof in the State of Texas and in Arkansas and other States of the United States at their respective places of business.

PAR. 3. In the course and conduct of their business, respondents are, and for more than 2 years last past have been, in substantial competition with other partnerships, and with corporations and individuals engaged in the manufacture or processing, roasting, and packaging of peanuts and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 4. Respondents advertise their products through a display card furnished to the retail dealer for his use and by statements

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printed on the container of the individual unit for sale to the ultimate consumer. Among the representations so made, are the following:

BELIEVE IT OR NOT!

5¢ Lucky 5¢
 Peanuts

Toasted and salted, Crisp and Delicious
Try Your Luck
You May Find

5¢, 25¢, 50¢ or \$1.00
As Advertisement

Peanut Novelty Co., 1615 Prairie Avenue, Dallas, Texas.

"Believe it or not"
Peanuts

You may find—

5¢, 25¢, 50¢

or

\$1.00

Toasted and salted
Crisp and Delicious

Peanut Novelty Co.,
1615 North Prairie,
Dallas.

Net wt., 1 oz., or over.

* * * * * *

Believe it or not

(?) (?) (?)

Peanuts

Toasted and salted

Peanut Novelty Co.

Crisp and Delicious

1615 N. Prairie, Dallas.

Net wt. 1 oz. or over.

PAR. 5. In the course and conduct of their business, respondents sell, and have sold, to wholesale and retail dealers salted peanuts packaged and assembled as follows: Peanuts for sale to the ultimate consumer at 5 cents per unit are packaged 1 ounce or over in an individual container and these containers are packaged for sale and distribution to the wholesaler 30 to the carton. Each carton of 30 containers has a minimum of 2 nickels or a maximum of 7 nickels placed in certain unidentifiable containers, in addition to the peanuts therein, for resale to the ultimate consumer. Then every sixth carton that goes out of the factory has a quarter and 2 nickels in certain units. If the quarter is not put in the sixth carton, then seven nickels will be run in that carton; or every twelfth carton will contain 2 nickels and one 50-cent piece; or every twenty-fourth carton contains 2 nickels and a dollar bill. In other words, there is a definite amount of money included in every 24 cartons. The prizes run from a nickel to a dollar, every 24 cartons containing \$3.40 in money, distributed in certain 5-cent packages, and the remainder of the individual 5-cent packages in the carton contain nothing except peanuts.

PAR. 6. The customer who purchases a 5-cent package of respondents' "Believe It Or Not" peanuts has no knowledge prior to open-

ing the package whether the package will contain peanuts only or peanuts and the prize money.

PAR. 7. The question mark and the three blue figures on the display card and on the peanut containers refer to only one thing—the prize money actually placed in the containers. It was respondents' goal to so pack the money in the container that the customer could not determine which package contained the prize money and the system of packing had been so well worked out that the ultimate consumer keeps playing with them to get the money prize. It would have a detrimental effect on these sales if the money could not be distributed in the packages and customers and prospective customers were informed that various packages of said peanuts contained money.

PAR. 8. Respondents' sale and distribution of peanuts, as set forth in these findings, constitutes a lottery scheme, game of chance, or gambling method, and encourages gambling among those who are enticed by the element of chance to purchase such packaged peanuts in preference to purchasing packaged peanuts which do not contain prizes. This method of sale of "Believe It Or Not" peanuts is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 9. The wholesale dealers and jobbers to whom respondents sell their "Believe it or Not" peanuts resell the same to retail dealers, and said retail dealers, and the retail dealers to whom respondents sell direct, expose said assortments for sale, and sell said "Believe It or Not" peanuts to the purchasing public in accordance with the aforesaid sales plan. The jobber, wholesaler, and retail dealer know which particular cartons of peanuts contain the quarters, 50-cent pieces, or dollars, the quarters being indicated by a "Q" on the outside of the yellow carton or lid in pencil, "H" for half-dollars, and "D" to indicate which ones contain the dollar. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale of their product "Believe it or Not" peanuts in accordance with the sales plan hereinabove set forth.

PAR. 10. Certain of said competitors of respondents are unwilling to adopt and use said method described above or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy.

PAR. 11. Many dealers in, and ultimate purchasers of, packaged peanuts are attracted by respondents' said method and manner of packing said peanuts, and by the element of chance involved in the sale thereof in the manner above described, and are, thereby, induced

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to purchase said peanuts so packed and sold by respondents, such method having the tendency and capacity to eliminate from said trade all actual competitors, and exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method. The use of said method by respondents as aforesaid has had, and now has, the tendency and capacity to, and did, and does, unfairly divert trade and custom to themselves from their competitors who are unwilling to, and do not, use the same or an equivalent method in the sale and distribution of their peanuts, and deprives the purchasing public of the benefit of free competition in said trade.

CONCLUSION

The aforesaid acts and practices of the respondents William P. Bennett and Charles C. Bennett, copartners, doing business under the trade name of Peanut Novelty Co., are all to the injury and 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Commission upon the complaint and the amended and supplemental complaint of the Commission, the answer of respondents to the amended and supplemental complaint, testimony and other evidence taken before Miles J. Furnas, W. W. Sheppard, and Arthur F. Thomas, examiners of the Commission theretofore duly designated by it, in support of the allegations of the complaint and the said amended and supplemental complaint and in opposition thereto, brief of counsel for the Commission (counsel for 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, William P. Bennett and Charles C. Bennett, copartners, doing business under the trade name of Peanut Novelty Co., or under any other trade name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of peanuts 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 peanuts or any other merchandise so packed and assembled that sales of said peanuts 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.

2. Supplying to, or placing in the hands of others, assortments of peanuts or any other merchandise which said assortments are to be used, or may be used, without alteration or rearrangement of the contents thereof to conduct a game of chance, gift enterprise, or lottery in the sale or distribution of said peanuts or other merchandise contained in said assortments to the general public.

3. Selling or distributing individual packages of peanuts or any other merchandise containing coins or other United States money which said individual packages of said peanuts or other merchandise are packed and assembled in assortments with other individual packages of said peanuts or other merchandise of similar size, shape and appearance not containing coins or other United States money, for resale to the general public by means of a sales plan which constitutes a game of chance, gift enterprise, or lottery.

4. Furnishing to dealers a display card or other printed matter either with packages or assortments of peanuts or any other merchandise, or separately, which said display card or other printed matter bears a legend or legends or statements informing the purchasers of said peanuts or other merchandise that the same is being sold to the general public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

5. Selling or otherwise disposing of any merchandise by means of a lottery, gaming device, or gift enterprise.

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
GREAT BRITAIN SPIRITUALIST CHURCH, AND MRS.
CHARLES P. COLBERT, VIRGIL L. ECKRIDGE, MARY
HOPKINS, DELMAR WILLIAM WHITE, AND FANNIE H.
ECKRIDGE

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

Docket 3474. Complaint, July 8, 1938—Decision, Sept. 7, 1939

Where a corporation and four individuals, officers, and members thereof and in charge of its affairs, and, acting in cooperation with one another, engaged in sale and distribution of so-called holy oils, books, tracts, talismans, charms, soap, perfumes, and other similar products, to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of soaps, oils, perfumes, tracts, guides and similar products in commerce as aforesaid;

In advertising their said products in newspapers published in many cities, in which reader was informed that advertiser had "good news" for him which would "solve all problems," and in letters and pamphlets descriptive of the nature of their work, items and prices sent to those replying, and through catalogs dealing with particular items offered, and purporting to deal, among other things, with "Rare Oils, Incense and Perfume from India and Africa"—

- (a) Represented, directly and through inference, that the products described and offered were made from substances imported from Africa and India, and that said products were possible because of revelations made manifest to them by some mystic power which had revealed the secrets of nature; and
- (b) Represented that there was being conveyed to the purchaser the power to cure sickness or induce health, wealth, happiness, and love, and that the articles themselves possessed magical influences and power due to asserted origin of ingredients thereof in jungles of Africa and India;

Facts being they did not operate a factory or laboratory in which any of their said products were made or produced, all of said products were purchased in the American city in which was located their principal office and place of business, and said various products, as above set forth, did not find their source or origin in India or in tribes of India, or with African tribes or in said countries, or have any such qualities as attributed thereto, and were not made by secret process or with mystic power to ward off evil spirits, have lucky effect on dice, etc.

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and with result, as consequence of such erroneous belief, that number of consuming public purchased substantial volume of their said products and trade was diverted unfairly to them from competitors engaged in sale and distribution of soaps, perfumes, oils and similar products as aforesaid: