

IN THE MATTER OF

CONSOLIDATED CANDY COMPANY, INC., A CORPORATION, AND LESLIE FINUCANE, INDIVIDUALLY, AND AS AN OFFICER OF CONSOLIDATED CANDY COMPANY, INC.

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

Docket 3657. Complaint, Dec. 3, 1938—Decision, Sept. 18, 1939.

- Where a corporation and an individual, who was secretary and treasurer thereof and formulated and directed its practices and policies, engaged in manufacture and sale of candy and nut confections which were sold, packed and assembled so as to involve use of a lottery scheme when sold and distributed to the consumers thereof and which included (1) number of bars of a nut confection or candy, together with push card, for sale under a plan and in accordance with said card's explanatory legend, pursuant to which customer received the confection or candy without cost or paid therefor 1, 2, or 3 cents, dependent upon the securing by chance of the letter O or number 1, 2, or 3 in accordance with disk selected on card, and (2) various other assortments of candy and nut confection which involved lottery or chance feature in method of sale and distribution, but were similar to that above described and varied therefrom in detail only; and acting in cooperation with one another in the matters here involved—
- Sold to dealers for display and resale by retail dealer purchasers thereof in accordance with aforesaid sales plan such assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their product in accordance with such sales plan involving game of chance or sale of a chance to secure a bar of candy or nut confection without cost or at a price much less than normal retail price thereof, contrary to an established policy of the United States Government and in violation of the criminal laws and in competition with many who are unwilling to offer and sell candy and nut confections so packed and assembled as above described or otherwise arranged and packed for sale to purchasing public so as to involve game of chance or any other method of sale contrary to public policy and refrain therefrom;
- With tendency and capacity to induce purchasers of their candy and nut confections to buy their said products in preference to those offered and sold by competitors, and with result that many dealers in and ultimate purchasers of candy and nut confections were attracted by their said method and manner of packing such products and by element of chance involved in sale thereof, as above set forth, and were thereby induced to purchase such candy and nut confections thus packed and sold by them in preference to products offered and sold by their competitors aforesaid who do not use same or equivalent or similar method, and with tendency and capacity through use of such method and because of said game of chance to divert to them trade and custom from their said competitors who do not use any such method, to exclude from candy and nut confections trades all competitors who are unwilling to and do not use same or equivalent or

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similar method as unlawful, to lessen competition therein and to create monopoly thereof in them and such other distributors of candy and nut confections as use same or equivalent or similar method, and to deprive purchasing public of benefit or free competition in trades in question, and with tendency and capacity, through the use of such method by them in sale of their products, to eliminate from trades involved all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent or similar methods:

Held, That such acts and practices under the circumstances set forth were all to the prejudice and injury of competitors and constituted 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 Consolidated Candy Co., Inc., a corporation, and Leslie Finucane, individually and as an officer of Consolidated Candy Co., Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Consolidated Candy Co., Inc., is a corporation with its principal office and place of business located at 826 Exposition Avenue, Dallas, Tex. Individual respondent Leslie Finucane, is secretary and treasurer of said corporation and has his principal office at the same address as corporate respondent. Said individual respondent controls, formulates, and directs the practices and policies of Consolidated Candy Co., Inc. 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 nut confections and in the sale and distribution thereof to dealers. Respondents cause and have caused their products, when sold, to be shipped or transported from the aforesaid principal place of business in Texas to purchasers thereof in the various 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 by said respondents in such candy and nut confections 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 respondents

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are in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of candy and nut confections 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of candy and nut confections so packed and assembled so as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner:

This assortment is composed of a number of bars of a nut confection or candy, together with a device commonly called a push card. The push card contains a number of partly perforated disks and on the face of each disk is printed the word "push." Within each of said disks is printed either the letter O or number 1, 2, or 3, and the persons pushing the disk containing the letter O receive bars of said nut confection or candy without cost, and the persons pushing the disks containing the number 1, 2, or 3, pay in cents the amount of the number pushed. The said numbers printed within the said disks are effectively concealed from purchasers and prospective purchasers until a push has been made and the disks separated or removed from said card. The fact as to whether a customer receives a bar of said nut confection or candy without charge, or the price to be paid therefor, is determined wholly by lot or chance.

The respondents manufacture, sell and distribute various assortments of candy and nut confections involving a lottery or chance feature, but such assortments and the method of sale and distribution thereof are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase assortments of respondents' candy or nut confections, 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 a means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. Said sales plan has the tendency and capacity to induce purchasers of candy and nut confections to purchase respondents' said products in preference to candy and nut confections offered for sale and sold by their competitors.

PAR. 4. The sale of said candy or nut confections to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to secure a bar of candy or nut confection without cost or at a price much less than the normal retail price

thereof. The use by respondents of said method in the sale of candy and nut confections, and the sale of candy and nut confections 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 public policy of the Government of the United States and in violation of the criminal laws. The use by respondents of said method in the sale of their products has the tendency unduly to hinder competition or to create a monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the candy and nut confection trades 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 candy and nut confections in competition with the respondent, as above alleged, are unwilling to offer for sale and sell candy and nut confections so packed and assembled as above described, 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 and nut confections are attracted by respondents' said method and manner of packing said candy and nut confections and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy and nut confections so packed and sold by respondents in preference to candy and nut confections offered for sale and sold by said competitors of respondents who do not use the same or an equivalent or similar method. The use of said method by respondents has a tendency and capacity, because of said game or chance, to divert to respondents trade and custom from their said competitors who do not use the same or an equivalent or similar method, to exclude from said candy and nut confections trades all competitors who are unwilling to and who do not use the same or an equivalent or similar method because the same is unlawful, to lessen competition in said candy and nut confections trades, to create a monopoly of said candy and nut confections trades in respondents and such other distributors of candy and nut confections as use the same or an equivalent or similar method, and to deprive the purchasing public of the benefit of free competition in said candy and nut confections trades. The use of said method by respondents in the sale of their products has a tendency and capacity to eliminate from said candy and nut confections trades all actual competitors and to exclude therefrom all potential com-

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petitors who do not adopt and use said method or an equivalent or similar method.

PAR. 6. The aforesaid acts and practices of respondents, as hereinabove alleged, are all to the prejudice and injury of respondents' 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 December 3, 1938, issued and thereafter served its complaint in this proceeding upon the respondents Consolidated Candy Co., Inc., a corporation, and Leslie Finucane, individually and as an officer of Consolidated Candy Co., Inc., charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 31, 1939, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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 Consolidated Candy Co., Inc., is a corporation with its principal office and place of business located at 826 Exposition Avenue, Dallas, Tex. Individual respondent Leslie Finucane, is secretary and treasurer of said corporation and has his principal office at the same address as corporate respondent. Said individual respondent controls, formulates and directs the practices and policies of Consolidated Candy Co., Inc. 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 nut confections and in the sale and distribution thereof to dealers. Respondents cause and have caused their products when sold, to be shipped or transported from the aforesaid principal place of business in Texas to purchasers thereof in the various other States of the United States and in the District of Colum-

bia, 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 and nut confections 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 respondents are in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of candy and nut confections 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of candy and nut confections so packed and assembled so as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner:

This assortment is composed of a number of bars of a nut confection or candy, together with a device commonly called a push card. The push card contains a number of partly perforated discs and on the face of each disc is printed the word "push." Within each of said discs is printed either the letter O or number 1, 2, or 3, and the persons pushing the disc containing the letter O receive bars of said nut confection or candy without cost, and the persons pushing the discs containing the number 1, 2, or 3, pay in cents the amount of the number pushed. The said numbers printed within the said discs are effectively concealed from purchasers and prospective purchasers until a push has been made and the discs separated or removed from said card. The fact as to whether a customer receives a bar of said nut confection or candy without charge, or the price to be paid therefor, is determined wholly by lot or chance.

The respondents manufacture, sell and distribute various assortments of candy and nut confections involving a lottery or chance feature, but such assortments and the method of sale and distribution thereof are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase assortments of respondents' candy or nut confections, 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 a means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. Said sales plan has the tendency and capacity to induce purchasers of candy and nut confections to purchase respondents' said products in preference to candy and nut confections offered for sale and sold by their competitors.

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PAR. 4. The sale of said candy or nut confections to the purchasing public in the manner above found involves a game of chance or the sale of a chance to secure a bar of candy or nut confection without cost or at a price much less than the normal retail price thereof. The use by respondents of said method in the sale of candy and nut confections, and the sale of candy and nut confections 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 public policy of the Government of the United States and in violation of the criminal laws. The use by respondents of said method in the sale of their products has the tendency unduly to hinder competition or to create a monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the candy and nut confection trades 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 candy and nut confections in competition with the respondent, as above found, are unwilling to offer for sale and sell candy and nut confections so packed and assembled as above described, 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 and nut confections are attracted by respondents' said method and manner of packing said candy and nut confections and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy and nut confections so packed and sold by respondents in preference to candy and nut confections offered for sale and sold by said competitors of respondents who do not use the same or an equivalent or similar method. 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 said competitors who do not use the same or an equivalent or similar method, to exclude from said candy and nut confections trades all competitors who are unwilling to and who do not use the same or an equivalent or similar method because the same is unlawful, to lessen competition in said candy and nut confections trades, to create a monopoly of said candy and nut confections trades in respondents and such other distributors of candy and nut confections as use the same or an equivalent or similar method, and to deprive the purchasing public of the benefit of free competition in

said candy and nut confections trades. The use of said method by respondents in the sale of their products has a tendency and capacity to eliminate from said candy and nut confections trades all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent or similar method.

CONCLUSION

The aforesaid acts and practices of respondents, as hereinabove found, are all to the prejudice and injury of respondents' 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 answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Consolidated Candy Co., Inc., a corporation, its officer, and Leslie Finucane, individually and as an officer of Consolidated Candy Co., Inc., 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 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, gambling device, or gift enterprise.

2. Supplying to or placing in the hands of dealers, assortments of candy or any other merchandise together with push or pull cards, punchboards, or other lottery devices 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.

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3. Selling or otherwise disposing of candy or any other merchandise by use of push or pull cards, punchboards, or other lottery device.

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.

Syllabus

IN THE MATTER OF

MODEL LINGERIE COMPANY, AND GERTRUDE LEITH,
INDIVIDUALLY AND AS AN OFFICER OF MODEL LIN-
GERIE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3659. Complaint, Dec. 7, 1938—Decision, Sept. 18, 1939*

Where a corporation and an individual, who was secretary and treasurer thereof and controlled and directed its sales policies and general business practices, engaged in sale and distribution of hosiery in interstate commerce, in soliciting sale of and selling their said merchandise—

Furnished therewith push cards, together with plans for merchandising same, which involved operation of a game of chance, gift enterprise, or lottery scheme for distribution thereof to consuming public wholly by lot or chance, and under which and in accordance with card's legend persons selecting by chance from a large number of feminine names displayed that corresponding with name concealed under card's red seal received two pairs of ladies' silk hosiery, and person selecting feminine name concealed under card's blue seal received one pair thereof, and person securing certain announced number received "Ladies' Beautiful Scarf or Compact or Cigarette Case," and cost of chance, if any, to customer was determined by particular number, as announced, secured under disk pushed, and under which provision was made for sale, if desired, of men's hosiery and for "Surprise Gift" for person sending order, if within 10 days, and for compensating operator by two pairs of ladies' or six pairs of men's hosiery; and

Supplied thereby and placed in the hands of others means of conducting lotteries or games of chance in the distribution of their merchandise in accordance with aforesaid or similar sales plan, varying therefrom in detail only, but involving, in case of all, push cards for use in distribution of their product through games of chance, gift enterprises, or lottery schemes, and involving game of chance or sale of chance to procure an article of merchandise at a price much less than normal retail price thereof, contrary to the established 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 such methods or any method involving game of chance or sale of a chance to win something by chance or by 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 them in the sale and distribution of their said merchandise and element of chance involved therein and were thereby induced to buy such merchandise in preference to that offered and sold by their competitors aforesaid who did not use such or similar method, and with effect of diverting trade unfairly to them from their said competitors who do not use such or similar method, to the substantial injury of competition in commerce: