

IN THE MATTER OF
PEANUT SPECIALTY COMPANY

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

Docket 2273. Complaint, June 22, 1939¹—Decision, Sept. 23, 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 consumers thereof, and which included (1) box of large number of malted milk balls, together with four-section push card, for sale and distribution of said milk balls under a plan and in accordance with said card's explanatory legend by which customer received for penny paid from said "Basketball" assortment 1, 2, 3, 5, 10, or 20 pieces in accordance with legend secured by chance through disk of card selected for push, and last sale in first three sections entitled purchasers to 5 pieces, and last sale on card entitled purchaser to 15 pieces, and (2) number of penny pieces of chocolate covered candy of uniform size, shape, and quality, together with a number of larger pieces to be given as prizes to those purchasers of such uniform pieces who secured by chance one of a relatively few pieces thereof, the enclosed colored centers of which differed from majority, and together with explanatory display card for retailers' use, and (3) various other assortments of which the two above described were illustrative—

Sold to wholesalers, jobbers, and retailers for display and resale by retailer purchasers thereof in accordance with the aforesaid sales plans such assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products in accordance with sales plans above described, involving game of chance or sale of a chance to procure additional pieces of candy without additional cost, or larger pieces of candy or packages of candy, 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 sales plans or methods employed by it in sale and distribution of its candy and element of chance involved therein and were thereby induced to buy and sell its said product in preference to that of competitors who do not use such or equivalent methods, and with effect, through use of such method by it and by reason of said game of chance, of unfairly diverting trade to it from its competitors aforesaid who do not use such or equivalent method, to the substantial injury of competition in commerce:

¹ Amended and supplemental.

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

Mr. Henry C. Lank and Mr. D. C. Daniel for the Commission.

AMENDED AND SUPPLEMENTAL 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 Peanut Specialty 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 amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Peanut Specialty Co., is a corporation organized and doing business under the laws of the State of Illinois with its principal office and place of business located in the city of Chicago, State of Illinois. 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 Chicago, Ill., 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 the 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. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all-inclusive of the various assortments, nor does it include all of the

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details of the several plans which respondent has been or is using in the sale and distribution of candy by lot or chance:

(a) One assortment consists of a box of 216 count malted milk balls together with a device commonly called a push card. The push card is divided into 4 sections and each of said sections contains 25 partially perforated discs, on the face of which is printed the word "push." Concealed within the said disc is one of the following words or phrases: Basket, double free throw, free throw, tip off, time out, out of bounds, double dribble, traveling, and foul. These words or phrases are effectively concealed from purchasers and prospective purchasers until a push or selection has been made and the selected disc removed or separated from said push card. Punches on the said card are 1 cent each and the number of malted milk balls received by the purchaser is determined by the following legend which appears on the face of the card:

BASKETBALL (1¢)

BASKET receives.....	20 Pieces
DOUBLE FREE THROW receives.....	10 Pieces
FREE THROW receives.....	10 Pieces
TIP OFF receives.....	5 Pieces
TIME OUT receives.....	5 Pieces
OUT OF BOUNDS receives.....	3 Pieces
DOUBLE DRIBBLE receives.....	3 Pieces
TRAVELING receives.....	2 Pieces
FOUL receives.....	1 Piece
Last Sale in First 3 Sections receives.....	5 Pieces
Last Sale on Card receives.....	15 Pieces

The sales of respondent's candy by means of said push card are made in accordance with the above-described legend. Said pieces of candy are allotted to the customers or purchasers in accordance with the above legend. The fact as to whether a purchaser receives one or more pieces of candy for the amount of money paid is thus determined wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of candy along with push cards involving a lot or chance feature but such assortments are similar to the one hereinbefore described and vary only in detail.

(b) Another of said assortments of candy consists of a number of pieces of chocolate covered candy of uniform size, shape, and quality, together with a number of larger pieces of candy or packages of candy which larger pieces of candy or packages of candy are to given as prizes to purchasers of said candy of uniform size, shape, and quality in the following manner:

The majority of said chocolate covered candy in said assortment has centers of the same color, but a small number of pieces of said chocolate covered candy have centers of a different color. The color of the center of said chocolate covered candy is effectively concealed from the prospective purchaser until a selection or purchase has been made and the piece of candy broken open. The said candy of uniform size, shape, and quality in said assortment retails at the price of 1 cent each, but the purchasers who procure a piece of the said candy having a center of a different color than the majority of pieces of said candy are entitled to receive, and are to be given free of charge, one of the said larger pieces of candy or packages of candy heretofore referred to. The aforesaid purchasers of said candy who procure a piece of candy having a center colored differently from the majority of said pieces of candy are thus to procure one of the larger pieces of candy or packages of candy wholly by lot or chance.

Respondent furnishes to said wholesale dealers, jobbers, and retail dealers with said assortments of candy, display cards to be used by retail dealers in offering said candy for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candy are being sold in accordance with the sales plan above described. The wholesale dealers and jobbers to whom respondent sells its assortments resell said assortments of candy to retail dealers and said retail dealers expose said assortment for sale in connection with the aforesaid display cards and sell said candy to the purchasing public in accordance with the aforesaid sales plan.

Respondent sells and distributes, and has sold and distributed, various assortments of candy as above described involving a lot or chance feature, but such assortments are similar to the one hereinabove 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 plans 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 plans hereinabove set forth. The use by respondent of said sales plans or methods 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 plans or methods 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 methods and plans hereinabove set forth involves a game of chance or the sale of a chance to procure additional pieces of candy without addi-

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tional cost or such larger pieces of candy or packages 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 plans or methods 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 methods 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 June 22, 1939, issued and thereafter served its amended and supplemental complaint in this proceeding upon respondent Peanut Specialty Co., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 11, 1939, the respondent filed its answer in which answer it admitted all the material allegations of fact set forth in said amended and supplemental 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 amended and supplemental 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, Peanut Specialty Co., is a corporation organized and doing business under the laws of the State of Illinois with its principal office and place of business located in the city of Chicago, State of Illinois. 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 Chicago, Ill., 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 the 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. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all-inclusive of the various assortments, nor does it include all of the details of the several plans which respondent has been or is using in the sale and distribution of candy by lot or chance:

(a) One assortment consists of a box of 216 count malted milk balls together with a device commonly called a push card. The push card is divided into 4 sections and each of said sections contains 25 partially perforated discs, on the face of which is printed the word "push." Concealed within the said disc is one of the following words or phrases: Basket, double free throw, free throw, tip off, time out, out of bounds, double dribble, traveling, and foul. These words or phrases are effectively concealed from purchasers and prospective purchasers until a push or selection has been made and the selected disc removed or separated from said push card. Punches on the said cards are 1¢ each and the number of malted milk balls received by

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the purchaser is determined by the following legend which appears on the face of the card:

BASKETBALL (1¢)

BASKET receives.....	20 Pieces
DOUBLE FREE THROW receives.....	10 Pieces
FREE THROW receives.....	10 Pieces
TIP OFF receives.....	5 Pieces
TIME OUT receives.....	5 Pieces
OUT OF BOUNDS receives.....	3 Pieces
DOUBLE DRIBBLE receives.....	3 Pieces
TRAVELING receives.....	2 Pieces
FOUL receives.....	1 Piece
Last Sale in First 3 Sections receives.....	5 Pieces
Last Sale on Card receives.....	15 Pieces

The sales of respondent's candy by means of said push card are made in accordance with the above-described legend. Said pieces of candy are allotted to the customers or purchasers in accordance with the above legend. The fact as to whether a purchaser receives one or more pieces of candy for the amount of money paid is thus determined wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of candy along with push cards involving a lot or chance feature but such assortments are similar to the one hereinbefore described and vary only in detail.

(b) Another of said assortments of candy consists of a number of pieces of chocolate-covered candy of uniform size, shape, and quality, together with a number of larger pieces of candy or packages of candy which larger pieces of candy or packages of candy are to be given as prizes to purchasers of said candy of uniform size, shape, and quality in the following manner:

The majority of said chocolate-covered candy in said assortment has centers of the same color, but a small number of pieces of said chocolate covered candy have centers of a different color. The color of the center of said chocolate covered candy is effectively concealed from the prospective purchaser until a selection or purchase has been made and the piece of candy broken open. The said candy of uniform size, shape, and quality in said assortment retails at the price of 1 cent each, but the purchasers who procure a piece of the said candy having a center of a different color than the majority of pieces of said candy are entitled to receive, and are to be given free of charge, one of the said larger pieces of candy or packages of candy heretofore referred to. The aforesaid purchasers of said candy who procure a piece of candy having a center colored differently from the majority of said

pieces of candy are thus to procure one of the larger pieces of candy or packages of candy wholly by lot or chance.

Respondent furnishes to said wholesale dealers, jobbers, and retail dealers with said assortments of candy, display cards to be used by retail dealers in offering said candy for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candy are being sold in accordance with the sales plan above described. The wholesale dealers and jobbers to whom respondent sells its assortments resell said assortments of candy to retail dealers and said retail dealers expose said assortments for sale in connection with the aforesaid display cards and sell said candy to the purchasing public in accordance with the aforesaid sales plan.

Respondent sells and distributes, and has sold and distributed, various assortments of candy as above described involving a lot or chance feature, but such assortments are similar to the one hereinabove 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 plans 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 plans hereinabove described. The use by respondent of said sales plans or methods in the sale of its candy and the sale of said candy by and through the use thereof and by the aid of said sales plans or methods 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 candy to the purchasing public by the methods and plans hereinabove described 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 or packages of candy in the manner above found. Many persons, firms, and corporations who sell and distribute candy in competition with respondent, as above found, are unwilling to adopt and use such 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 plans or methods employed by respondent in the sale and distribution of its candy and in the element of chance involved therein and are thereby induced to buy and sell respondent's candy in preference to candy of said competitors of respondent who do not use the same or equivalent methods. The use of said methods 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 hereinabove 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 answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Peanut Specialty Co., a corporation, 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 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.
3. Packing or assembling in the same package or assortment of candy for sale to the general public at retail pieces of candy of uniform size and shape having centers of a different color together with larger

pieces of candy, which said larger pieces of candy are to be given as prizes to purchasers procuring a piece of candy having a center of a particular color.

4. Selling or otherwise disposing of candy or any other merchandise by use of push or pull cards, punchboards 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
**KARL W. PETERS, TRADING AS NATIONAL INSTITUTE
FOR PHYSICAL ADVANCEMENT**

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

Docket 3460. Complaint, June 16, 1938—Decision, Sept. 26, 1939

Where an individual engaged in sale and distribution of physical culture book designated "Bust Culture," to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in distribution and sale of like and similar books, courses, methods, and articles on physical culture and bust culture, and including many who do not in any manner misrepresent the results to be obtained from their said culture methods or courses and do not use representations, acts and practices used as below set forth in connection with sale and distribution of their books, courses, methods, and articles—

Represented, through testimonials, letters, circulars, leaflets, newspaper, and magazine advertisements, and by other means, that through following method outlined in said book any woman could obtain a beautiful bust, and that there was no need to be flattered or embarrassed by overly large or sagging bust, and that said method had helped millions, and that it had been tried out and found effective in all cases, and that no matter what a woman's problem might be concerning her bustline and breasts, she would find the proper, effective method of correction in said book;

Facts being representations and implications thus made and used were grossly exaggerated, false, misleading, and deceptive, and said method would not obtain for all women beautiful busts and accomplish results set forth above, had not helped millions nor been found effective in all cases, and woman would not find in it proper method of correction, irrespective of her problem with respect to matters aforesaid;

With effect of causing substantial portion of purchasing public to form mistaken and erroneous beliefs that said representations were true, and that results claimed by him would be obtained upon following his method and course, and into purchase of his said book because of such beliefs induced as aforesaid, and of thereby diverting trade unfairly to him from his competitors aforesaid; to the injury of competition in commerce:
Held, That such acts and practices were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition.

Before *Mr. Charles P. Vicini* and *Mr. John J. Keenan*, trial examiners.

Mr. Reuben J. Martin, *Mr. DeWitt T. Puckett*, and *Mr. Merle P. Lyon* for the Commission.