

Syllabus

IN THE MATTER OF
CHRISTOPHER CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3394. Complaint, Apr. 29, 1938—Decision, Nov. 7, 1939*

Where a corporation engaged in manufacture of candy, and in sale and distribution of certain assortments thereof, which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consuming public, and included (1) number of candy bars of uniform size and shape, together with push card for use in sale and distribution of said bars to purchasing public under a plan in accordance with which customer received, for 5 cents paid, one, two, three, or four bars, depending upon name of fish concealed and displayed within discs of card, and disclosed by chance selection, and purchaser of last push was entitled to five bars of candy in question, and (2) number of boxes of candy and punchboard for use in sale of said candy to purchasers under a plan, and in accordance with legend displayed thereon, by which purchaser or customer received, for 5 cents paid, one of said boxes or nothing, dependent upon success or failure in securing by chance certain numbers concealed within holes of board, and (3) various other assortments of candy, so packed and assembled as to involve use of a lottery scheme in sale and distribution to purchasing public under methods similar to those above described and varying therefrom in detail only—

Sold such assortments, along with said punchboards or devices to retailer purchasers, by whom assortments in question were displayed and sold in accordance with aforesaid sales plans, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of its candy in accordance with such plans, as above set forth, involving game of chance or sale of a chance to procure boxes and bars of candy at prices much less than prevailing price for like or similar candy in usual course of retail trade, contrary to the established public policy of the United States Government and in violation of the laws of several of the States, and in competition with many who are unwilling to offer or sell their candy by any sales plan or method which involves game of chance, gift enterprise, lottery scheme, or any method or sales plan contrary to public policy, and refrain therefrom;

With effect of inducing numerous customers to purchase candy manufactured and sold by it in preference to that sold by competitors who had not used and did not use like or similar sales plans or methods in sale or distribution of their products, and with result that substantial trade was diverted to it from its competitors aforesaid:

Held, That such acts and practices were all to the injury and 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.

Complaint

29 F. T. C.

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

PARAGRAPH 1. Respondent, Christopher Candy Co., is a corporation organized and doing business under the laws of the State of Delaware, with its offices and principal place of business located at 4020 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 number of bars of candy and a device commonly called a pushcard. Said bars of candy are distributed to the purchasing public by means of said push card in the following manner: Sales are 5 cents each. The push card contains a number of partially perforated discs. Within each of said discs is printed the name of a fish. The card bears statements informing purchasers and prospective purchasers that the names of certain fish entitle the purchasers thereof to one bar of candy; certain other names entitle the purchasers thereof to two bars of candy; certain other names entitle the purchasers thereof to three bars of candy; certain other names entitle the purchasers thereof to four bars of candy, the purchaser of the last push from said board being

1253

Complaint

entitled to five bars of said candy. Said names are effectively concealed from the purchasers and prospective purchasers until a purchase has been made and the disc separated from the card. The said bars of candy are thus distributed to the purchasers of pushes of said card wholly by lot or chance.

The respondent manufactures, sells, and distributes various assortments of candy involving the 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 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 additional bars 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 the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established policy of the Government of the United States. 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 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 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 respondents in preference to candy offered for sale and sold by said competitors of respondent who do

Findings

29 F. T. C.

not use the same or equivalent methods. The use of said method by respondent has a capacity and tendency, because of said game of 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 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 April 29, 1938, issued and served its complaint in this proceeding upon the respondent Christopher 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 issuance of said complaint, answer having been filed by the respondent, testimony and other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin, attorney for the Commission, and in opposition to the allegations of the complaint, by Robert W. Kaneen, general manager and vice-president of the respondent, before C. P. Vicini, an examiner 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 answer, testimony and other evidence, brief in support of the complaint, respondent not having filed brief, and oral argument having been waived; 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 Christopher Candy Co. is a corporation, organized, existing, and doing business under the laws of the State of Delaware, with its principal office and place of business located at 4020 Avalon Boulevard, Los Angeles, Calif. It is now, and for some time last past has been, engaged in the manufacture of a general line of candy and in the sale and distribution of same to retail dealers.

PAR. 2. Respondent causes, and has caused, its candy when sold to be transported from its aforesaid 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.

PAR. 3. Respondent, in the regular course and conduct of its business, 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 and in the District of Columbia.

PAR. 4. In the regular course and conduct of its business, as hereinabove described, respondent sells and has sold to retail dealers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consuming public. One of said assortments consists of a number of bars of candy of uniform size and shape, together with a device commonly known as a push card. Said bars of candy are distributed to the purchasing public by means of said push card in the following manner: sales are 5 cents each; the push card contains a number of partially perforated discs. Within each of said discs is printed the name of a fish; the card bears statements informing purchasers and prospective purchasers that the names of certain fish entitle the purchasers thereof to one bar of candy; certain other names entitle the purchasers thereof to two bars of candy; certain other names entitle the purchasers thereof to three bars of candy; certain other names entitle the purchasers thereof to four bars of candy, and the purchaser of the last push from said card is entitled to five bars of said candy. Said names, within each of said discs, are effectively concealed from the purchasers and prospective purchasers until the purchase has been made and the disc separated from the card. Whether a purchaser receives two, three, or four bars of said candy is determined wholly by lot or chance.

Another of said assortments consists of a number of boxes of candy, together with a device commonly known as a punchboard. Sales are

Findings

29 F. T. C.

5 cents each, and each purchaser is entitled to one punch from said board. Said board has a number of holes in each of which there has been inserted a rolled slip of paper upon which is printed a number. On the face of said board there are certain instructions or legends which inform the purchasers and prospective purchasers that certain numbers concealed within said holes entitle the purchasers thereof to boxes of candy. Those purchasers who do not punch one of the lucky or winning numbers receive nothing for their money. The numbers inserted in said holes are concealed from purchasers and prospective purchasers until the said numbers have been punched, or removed from said board. The said boxes of candy are thus distributed to the consuming public wholly by lot or by chance.

Respondent has distributed various assortments of candy so packed and assembled as to involve the use of a lottery scheme when said candy was sold or distributed to the purchasing public, but the methods of distribution of said assortments are like or similar to the ones hereinabove described, varying only in detail.

PAR. 5. The Commission finds that retail dealers who purchased the assortments of candy hereinabove described exposed the same for sale and sold said candy in accordance with the aforesaid sales plans. Respondent thus supplied to, and placed in the hands of, others the means of conducting lotteries in the sale of its candy in accordance with the aforesaid sales plans, as described in paragraph 4 hereof. Said sales plans have the capacity and tendency to induce, and have induced, numerous customers to purchase candy manufactured and sold by respondent in preference to candy sold by competitors of respondent who have not, and do not, use like or similar sales plans or methods in the sale and distribution of candy sold by them.

PAR. 6. The sale and distribution of candy to the purchasing public in the manner, and by the methods described in paragraph 4 hereof, involves a game of chance, or the sale of a chance, to procure bars and boxes of candy at prices much less than the prevailing price for like or similar candy in the usual course of retail trade. The sale and distribution of candy by such method is a practice of a sort which is contrary to the established public policy of the Government of the United States and in violation of the laws of several of the States of the United States.

PAR. 7. Among the competitors of respondent are many persons, firms, and corporations who sell and distribute like or similar candy to that sold and distributed by respondent which competitors are unwilling to offer for sale or sell their said candy by any sales plan or method which involves a game of chance, gift enterprise, lottery

1253

Order

scheme, or any other method or sales plan that is contrary to public policy, and said competitors refrain from the use of any such sales plan or method, and as a result thereof substantial trade has been diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent 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 Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before C. P. Vicini, an examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, 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 Christopher Candy Co., its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of candy, or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy or any other merchandise so packed and assembled that sales of such candy or other merchandise to the general public are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme.
2. Supplying to or placing in the hands of others assortments of candy or other merchandise together with a push card, punchboard, or any other lottery device which said push card, punchboard, or other lottery device is to be used, or may be used, in selling or distributing said candy or other merchandise to the public.
3. Supplying to or placing in the hands of others push cards, punchboards or other lottery devices either with assortments of candy or other merchandise, or separately, which said push cards, punchboards or other lottery devices are to be used, or may be used, in selling or distributing such candy or other merchandise to the public.

Order

29 F. T. C.

4. Selling or otherwise disposing of candy or other merchandise by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF

E. W. KNOWLTON, TRADING AS OLD MISSION TABLET COMPANY

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

Docket 3664. Complaint, Dec. 15, 1938—Decision, Nov. 7, 1939

Where an individual engaged in compounding, selling, and distributing his "Old Mission Tablets" or "O-M Tablets" to purchasers in various other States; in advertisements which he disseminated through periodicals, newspapers, and other publications circulating throughout the various States and through continuities broadcast from radio stations of extrastate audience, and through other means—

(a) Represented, directly or through implication, that his said preparation was identical with that which helped build up the reputation of one of the greatest stomach and kidney specialists in the United States, and was prepared and used by such specialist, and one of the greatest tablets offered the public for general run-down stomach condition, and that, wherever known, it was one of the largest selling and most favored tablets therefor; and

(b) Represented, as aforesaid, that such tablets constituted an effective treatment for stomach and digestive troubles caused by costive weakened digestive system and for congestive stomach soreness, sick headaches, backaches, dizzy spells, and gastric stomach attacks, and that one or two tablets would ordinarily relieve congestive stomach soreness, sick headaches, backaches, dizzy spells, and gastric stomach attacks;

Facts being said tablets were not effective for congestive stomach soreness, sick headaches, backaches, dizzy spells, or gastric stomach attacks unless such ailments or conditions were caused primarily by constipation, and use of one or two of said tablets would not ordinarily relieve such ailments and conditions, even though primarily thus caused, and said products did not constitute effective treatment for ailments and conditions variously set forth above, were not the identical form of tablets which helped build up reputation of one of greatest specialists, as aforesaid, and were not prepared or used by such specialist, and said individual's claims as to therapeutic value or efficacy of preparation in question were grossly exaggerated, false, and deceptive and greatly exceeded any claims as to the therapeutic value and efficacy thereof which might truthfully be made;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that product in question possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of purchasing public, because of such belief, to buy substantial quantities of said product, and of thereby diverting trade unfairly to him from his competitors in commerce who truthfully advertise the effectiveness of their medical and other preparations and products for use in treatment of ailments and conditions for