

Syllabus

IN THE MATTER OF

U-NEED CANDY CO., INC., AND LOUIS J. WEGER, MRS.
LOUIS J. WEGER, AND CHARLES R. HOSEY, INDIVID-
UALSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3855. Complaint, July 20, 1939—Decision, Dec. 29, 1939*

Where a corporation and three individuals who were officers and directors thereof and stockholders therein and, as case might be, controlled, formulated, and directed its practices and policies, and who acted together and in cooperation with each other in acts and things below set forth, engaged in manufacture of candy and in sale and distribution of certain assortments thereof which were so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof and with which, as case might be, it included (1) push card for use in sale and distribution of certain assortments under plan by which person, for 5 cents paid, received, in accordance with number pushed by chance from one to four candy bars and last sale on card entitled purchaser to eight of such bars, and (2) various other push cards for use in sale and distribution of their said candy under plan similar to that described and varying therefrom in detail only and involving game of chance, gift enterprise, or lottery scheme;

Sold such assortments, along with such push cards to wholesalers, jobbers, and retailers by whom, as direct or indirect purchasers thereof, such assortments were exposed and sold to purchasing public in accordance with aforesaid sales plan involving game of chance or sale of chance to procure additional bars of candy without additional cost, 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 said sales plan or method employed by them in sale and distribution of their candy and in element of chance involved therein and were thereby induced to buy and sell their said candy in preference to that of competitors aforesaid who do not use same or equivalent methods and with effect through use of such method and because of said game of chance of unfairly diverting trade to them from their competitors aforesaid:

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 in commerce and unfair and deceptive acts and practices therein.

Mr. L. P. Allen, Jr. for the Commission.

Complaint

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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 U-Need Candy Co., Inc., a corporation, and Louis J. Weger, Mrs. Louis J. Weger, and Charles R. Hosey, individuals, 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 in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent U-Need Candy Co., Inc., is a corporation organized and doing business under the laws of the State of Indiana, with its principal office and place of business located at 1231 West Washington Avenue, South Bend, Ind. Respondent Charles R. Hosey is an individual and prior to April 3, 1939, was secretary and treasurer, a stockholder, and a director of corporate respondent. Respondent Louis J. Weger, an individual, is and has been president, a stockholder, and director of the corporate respondent. Respondent Mrs. Louis J. Weger, an individual, is and has been a stockholder and director of corporate respondent. Respondents Louis J. Weger, Mrs. Louis J. Weger, and Charles R. Hosey, within the time mentioned herein, formulate, control, and direct the practices and policies of the corporate respondent. All of said individual respondents and said corporate respondent, within the time mentioned herein, acted together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are and have been, within the time mentioned herein, 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. Respondents cause and have caused, within the time mentioned herein, said products when sold to be transported from their principal place of business in the city of South Bend, Ind., to purchasers thereof, at their respective points of location in the various States of the United States other than Indiana and in the District of Columbia. There is and has been, within the time mentioned herein, a course of trade by respondents 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 said business, respondents are and have been, within the time mentioned herein, 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 their business as described in paragraph 1 hereof, respondents, within the time hereinabove set forth, sell and have 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. One of said assortments is herein fully described for the purpose of showing the method used by respondents and is as follows:

This assortment consists of bars of candy together with the device commonly called a push card. The push card has 60 partially perforated disks, on the face of each of which is printed the word "Push." Concealed within the said disks are numbers. If the number punched corresponds with any of the numbers set out in the legend at the top of said card, the purchaser thereof is entitled to additional bars of candy without additional cost. Sales are 5 cents each and those not securing a winning number receive one bar of candy. The said card bears a legend or statement as follows:

5¢	Assortment No. 2	5¢
A SALE	DELICIOUS CANDY BARS	A SALE
All Winners—No Blanks		
EVERY SALE RECEIVES A 5¢ CANDY BAR		
No. 15 Receives 4 5¢ BARS—No. 25 Receives 3 5¢ BARS		
Numbers 7—14—21—28—35—42—49—56 Each Receive 2 5¢ BARS		
LAST SALE ON CARD RECEIVES 8 5¢ CANDY BARS		

Sales of respondents' candy are made in accordance with the above legend. The numbers aforesaid are effectively concealed until a purchase has been made and the disk pushed or separated from said card. The said bars of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondents furnish and have furnished, within the time hereinabove set forth, various push cards for use in the sale and distribution of their candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' said candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. 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. The use by respondents of said sales plan or method

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in the sale of their candy and the sale of said candy by and through the use thereof and by the aid of said sales plan or method 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 method and plan hereinabove set forth involves a game of chance or the sale of a chance to procure additional bars of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with respondents, as above alleged, 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 contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their candy and in the element of chance involved therein and are thereby induced to buy and sell respondents' candy in preference to candy of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondents from their 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 respondents 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 respondents, as herein alleged, are all to the prejudice and injury of the public and 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 July 20, 1939, issued and subsequently served its complaint in this proceeding upon respondents, U-Need Candy Co., Inc., a corporation, and Louis J. Weger, Mrs. Louis J. Weger, and Charles R. Hosey, individuals, charging them 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 August 18, 1939, the respondent Charles R. Hosey filed his answer, and on November 28, 1939, the respondents U-Need Candy Co., Inc., Louis J. Weger, and Mrs. Louis J. Weger, filed their answer. In such answers respondents

admitted all the material allegations of fact set forth in said complaint, and waived all intervening procedure and further hearings as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission upon the said complaint and the answers 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 U-Need Candy Co., Inc., is a corporation organized and doing business under the laws of the State of Indiana, with its principal office and place of business located at 1231 West Washington Avenue, South Bend, Ind. Respondent Charles R. Hosey is an individual and prior to April 3, 1939, was secretary and treasurer of corporate respondent, and a stockholder and a director therein. Respondent Louis J. Weger, an individual, is and has been president, a stockholder, and director of the corporate respondent. Respondent, Mrs. Louis J. Weger, an individual, is and has been a stockholder and director of corporate respondent. Respondents, Louis J. Weger and Mrs. Louis J. Weger formulate, control, and direct the practices and policies of the corporate respondent. Prior to April 3, 1939, respondent, Charles R. Hosey, participated in controlling and formulating such policies. All of said individual respondents acted together and in cooperation with each other in doing the acts and things hereinafter found. Respondents are and have 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. Respondents cause and have caused, said products when sold to be transported from their principal place of business in the city of South Bend, Ind., to purchasers thereof, at their respective points of location in the various States of the United States other than Indiana and in the District of Columbia. There is and has been, a course of trade by respondents 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 said business, respondents are and have 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.

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PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents, sell and have sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is herein fully described for the purpose of showing the method used by respondents and is as follows:

This assortment consists of bars of candy together with the device commonly called a push card. The push card has 60 partially perforated disks, on the face of each of which is printed the word "Push." Concealed within the said disks are numbers. If the number punched corresponds with any of the numbers set out in the legend at the top of said card, the purchaser thereof is entitled to additional bars of candy without additional cost. Sales are 5 cents each and those not securing a winning number receive only one bar of candy. The said card bears a legend or statement as follows:

Assortment No. 2

DELICIOUS

CANDY BARS

5¢
A SALE

All Winners—No Blanks

5¢
A SALE

EVERY SALE RECEIVES A 5C CANDY BAR

No. 15 Receives 4-5¢ BARS—No. 25 Receives 3-5¢ BARS Numbers 7-14-21-28-35-42-49-56—Each Receive 2-5¢ BARS
LAST SALE ON CARD RECEIVES 8-5C CANDY BARS

Sales of respondents' candy are made in accordance with the above legend. The numbers aforesaid are effectively concealed until a purchase has been made and the disk pushed or separated from said card. The said bars of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondents furnish and have furnished, various push cards for use in the sale and distribution of their candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' said candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. 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. The use by respondents of said sales plan or

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method in the sale of their candy and the sale of said candy by and through the use thereof and by the aid of said sales plan or method 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 method and plan hereinabove set forth involves a game of chance or the sale of a chance to procure additional bars of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with respondents, as above found, 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 contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their candy and in the element of chance involved therein and are thereby induced to buy and sell respondents' candy in preference to candy of said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondents from their said competitors who do not use the same or equivalent methods.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and 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 U-Need Candy Co., Inc., a corporation, its officers, and Louis J. Weger, Mrs. Louis J. Weger, and Charles R. Hosey, individuals, their respective representatives, agents,

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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 lottery scheme, gaming device, or gift enterprise.

2. Supplying to, or placing in the hands of, others assortments of candy, or other merchandise, together with push or pull cards, punchboards, or other lottery devices, which said push or pull cards, punchboards, or other lottery devices, are to be used, or may be used, in selling or distributing such candy, or other merchandise, to the general public.

3. Supplying to, or placing in the hands of, others push or pull cards, punchboards, or other lottery devices, either with assortments of candy, or other merchandise, or separately, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling or distributing such candy, or other merchandise, to the general public.

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

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
STONE BROS., INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3878. Complaint, Aug. 26, 1939—Decision, Dec. 29, 1939*

Where a corporation engaged in sale and distribution of candy, liquor chests, utility chests, and other articles of merchandise to purchasers in the various other States and in the District of Columbia; in soliciting the sale of and in selling and distributing its merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for sale and distribution thereof to ultimate consumers wholly by lot or chance, and included (1) assortments consisting of liquor chests and candy filled section thereof and push card for sale and distribution of such merchandise under plan in accordance with which person selecting by chance from list displayed on card, feminine name corresponding to that concealed under card's master seal received such liquor "cabinet" and glasses filled with candies and in accordance with which amount paid for chance was dependent upon number secured as displayed by removal from card of particular disc selected, and (2) merchandise with which various other push cards for use in sale and distribution of such merchandise by means of game of chance, gift enterprise, or lottery scheme, and varying from that described in detail only, were supplied, and in accordance with which plans direct or indirect retail dealer purchasers of merchandise in question displayed and sold same to purchasing public; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of its said product in accordance with sales plan above set forth, under which fact as to whether purchaser received article of merchandise or nothing for amount of money paid was determined wholly by lot or chance, and there was involved game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, 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 said sales plan or method employed by it in sale and distribution of its merchandise and element of chance involved therein and were thereby induced to buy and sell its products in preference to merchandise offered and sold by its competitors aforesaid who do not use such or equivalent method, and with effect through use of and because of such game of chance of unfairly diverting trade in commerce to it from its competitors aforesaid:

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 in commerce and unfair and deceptive acts and practices therein.