

Order

IN THE MATTER OF
SWEETS COMPANY OF AMERICA, INC.

MODIFIED CEASE AND DESIST ORDER

Docket 2959. Order, May 25, 1940

Modified order, pursuant to provisions of Section 5 (1) of Federal Trade Commission Act, in proceeding in question, in which original order issued on December 7, 1938, 27 F. T. C. 1190, and in which Court of Appeals for the Second Circuit on January 29, 1940, in *Sweets Company of America, Inc. v. Federal Trade Commission*, 109 F. (2d) 296, 30 F. T. C. 1625, made and entered its written opinion directing that said order be modified by substitution of words "are likely to be made" for "may be made" in subdivision 1 thereof, by substitution of words "are likely to be used" for "may be used" in subdivision 2 thereof, and by substitution of words "are likely to be given" for "may be given" in subdivision 3 thereof, and on February 19, 1940, entered its decree modifying Commission's order as aforesaid directed, and, as so modified, affirmed said order and directed respondent to comply therewith—

Requiring respondent, its officers, etc., in connection with offer, etc., of candy in interstate commerce or in the District of Columbia, forthwith to cease and desist from (1) selling, etc., candy so packed, etc., that sales thereof to the general public are to be made or are likely to be made by means of a lottery, etc., (2) supplying, etc., dealers with packages, etc., of candy which are used, or which are likely to be used, to conduct a lottery, etc., in sale, etc., of candy therein contained to public, or (3) supplying, etc., dealers, for sale to public, with packages, etc., of candy composed of individually wrapped pieces of candy of uniform size and shape and of different colors, together with larger pieces of candy or any other merchandise, which said larger pieces of candy or other merchandise are to be or likely to be given as prizes to the purchasers procuring pieces of said candy of a particular color, as in said order below set forth.

Before *Mr. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners.

Mr. D. C. Daniel for the Commission.

Mr. Louis H. Solomon, of New York City, for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony and other evidence, and briefs and oral arguments for the respective parties; and the Commission having on December 7, 1938, made its findings as to the facts and conclusion that the respondent Sweets Co. of America, Inc., had violated the provisions of the Federal Trade Commission Act; and having on December 7, 1938, issued and subsequently served, upon the respondent, its order to cease and desist from said violations; and the respondent Sweets

Co. of America, Inc., having thereafter petitioned the United States Circuit Court of Appeals for the Second Circuit to review and set aside said order to cease and desist; and said Court, on January 29, 1940, having made and entered its written opinion directing that said order to cease and desist be modified by the substitution of the words "are likely to be made" for "may be made" in subdivision 1 thereof, by the substitution of the words "are likely to be used" for "may be used" in subdivision 2 thereof, and by the substitution of the words "are likely to be given" for "may be given" in subdivision 3 thereof, and that, as so modified, the said order be affirmed; and the Court, on February 19, 1940, having entered its decree modifying the Commission's order as directed in its opinion, and, as so modified, affirming it and directing the respondent to comply therewith; and the Court, having, in its decree, directed the Commission to modify its said order to cease and desist as set forth in said decree—

Now, therefore, Pursuant to the mandate in said decree, and to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with said decree:

It is ordered, That the respondent Sweets Co. of America, Inc., it 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 in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Selling and distributing candy so packed and assembled that sales of such candy to the general public are to be made or are likely to be made by means of a lottery, gambling device, or gift enterprise.

2. Supplying to or placing in the hands of dealers, packages or assortments of candy which are used or which are likely to be used to conduct a lottery, gambling device, or gift enterprise in the sale or distribution of said candy contained in the said packages or assortments to the public.

3. Supplying to or placing in the hands of dealers for sale to the public packages or assortments of candy composed of individually wrapped pieces of candy of uniform size and shape and of different colors, together with larger pieces of candy or any other merchandise, which said larger pieces of candy or other merchandise are to be or are likely to be given as prizes to the purchasers procuring pieces of said candy of a particular color.

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

MANHATTAN HAT CO., INC., AND HARRY SAMNICK,
JACOB SAMNICK, AND LOUIS REINKEN, INDIVID-
UALLY AND AS OFFICERS OF MANHATTAN HAT CO.,
INC.

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

Docket 1898. Complaint, Dec. 15, 1939¹—Decision, May 28, 1940

Where a corporation and three individuals, who were president, secretary, and treasurer thereof, and managed, controlled and dominated its affairs and activity, engaged in manufacture and sale of men's felt hats and caps from old, worn and previously-used hat bodies which they purchased and which, after being cleaned, steamed, ironed, and shaped by them, and in some instances fitted with new trimmings, sweatbands, linings, and size labels, had the appearance of new hats and caps; acting in conjunction and cooperation with each other in acts, practices and methods below set forth and in substantial competition with others also engaged in sale and distribution of such products in commerce among the various States and in the District of Columbia—

Sold said hats and caps, with appearance aforesaid, and with no marking or designation stamped thereon to indicate to purchasing public that they were made from old, worn and previously used hat bodies and other materials, to wholesale jobbers and retailers, who resold such articles to purchasing public without disclosing facts aforesaid and under such circumstances as to indicate that said hats and caps were in fact new, and failed, through use of words "Made Over" in inconspicuous and illegible type and in connection with and in proximity to such legends as "DeLuxe Quality" stamped or imprinted on said hats and caps, to apprise prospective purchasers that said articles were made from old, worn, and previously used hat bodies rather than from shop-worn hats which had never been worn or used, as made by various manufacturers from shop-worn new hats reclaimed from merchants' shelves and never used or worn, and cleaned, steamed and renovated by manufacturers in practically same manner as with hats made from old and previously used hat bodies;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that said hats and caps were made from new and unused materials or from hat bodies which were merely shop-worn and which had not been previously used, and with result, as consequence of such belief, that purchasing public was induced to, and did, purchase substantial quantities of their said hats and caps, and trade was thereby diverted unfairly to them from their competitors, many of whom do not misrepresent their products; to the substantial injury of competition in commerce:

¹ Amended and supplemental.