

Syllabus

IN THE MATTER OF

E. T. JAMES, JR., TRADING UNDER THE NAME OF
UNITED CANDY COMPANY

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

Docket 4060. Complaint, Mar. 12, 1940—Decision, June 10, 1940

Where an individual engaged in manufacture of candy and in sale and distribution of assortments thereof, which were so packed and assembled as to involve use of a lottery scheme, when sold and distributed to consumers thereof, and included (1) number of candy bars, value of each of which was in excess of a cent, and push card for use in sale and distribution of said assortment to purchasing public, under a plan in accordance with which chance selection of certain numbers determined whether customer paid 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents for candy bar, and (2) various other assortments involving lot or chance feature and sales plans or methods for distribution thereof similar to that above described and varying therefrom in detail only—

Sold such assortments, along with said push cards, to dealers or retailer purchasers by whom they were exposed and sold to purchasing public in accordance with aforesaid sales plan, under which amount to be paid by each customer for a bar of candy was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure candy bars at prices much less than normal retail price thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his products in accordance with sales plans or methods above set forth, contrary to an established public policy of the United States Government and in competition with many who are unwilling to offer or sell their products 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 contrary to public policy and refrain therefrom;

With result that many dealers in and ultimate consumers of candy were attracted by his said method and manner of packing same and by element of chance involved in sale thereof as above set forth, and were thereby induced to purchase such candy so packed and sold by him, in preference to that offered and sold by his competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert unfairly to himself, trade from his competitors who do not use such or equivalent methods, exclude from candy trade or competitors who are unwilling to and do not use such methods, as unlawful, lessen competition in said trade and create a monopoly thereof in said individual and in such other distributors of candy as use same or equivalent methods, and deprive purchasing public of benefit of free competition, and to eliminate from said trade all actual, and to exclude therefrom, all potential, competitors who do not adopt and use same or equivalent methods:

Complaint

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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 in commerce and unfair and deceptive acts and practices therein.

Mr. D. C. Daniel for the Commission.

McDougle & Erwin, of Charlotte, N. Car., for respondent.

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 E. T. James, Jr., individually and trading under the name of United Candy Co., 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. The respondent, E. T. James, Jr., is an individual doing business under the trade name of United Candy Co., with his principal office and place of business located at 1507 West Trade Street, Charlotte, N. C. Respondent is now and for more than 1 year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused his products when sold to be shipped or transported from his aforesaid place of business in the State of North Carolina to purchasers thereof located 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 for more than 1 year last past has been, a course of trade by said 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 his business respondent is in competition with other individuals and with partnerships and corporations 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 his business as described in paragraph 1 hereof, respondent sells and has sold to dealers various assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner: This assortment consists of a number of bars of candy, together with a device called a push card. The card contains a number of partially perforated disks with the word "push" appearing on the face of each of said disks

and printed within each of said disks is either 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents. Each purchaser is entitled to punch one number from said card. Each purchaser is entitled to and receives one bar of candy and pays therefor the amount indicated within the disk removed from said card. All of said bars are worth more than 1 cent. The said amounts are effectively concealed from the purchasers and prospective purchasers until a push or selection has been made and the selected disk removed or separated from the card. Thus the amount to be paid by each customer for a bar of candy is determined wholly by lot or chance.

The respondent manufactures, sells, and distributes various assortments of candy, involving a lot or chance feature, and such assortments and the sales plans or methods by which said assortments are distributed are similar to the one hereinabove described varying only in detail.

PAR. 3. Retail dealers who purchase respondent's assortments of candy directly or indirectly expose and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plans or methods hereinabove set forth. Said sales plans or methods have a tendency and capacity to induce purchasers of said candy to purchase respondent's candy in preference to candy offered for sale and sold by his competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail prices thereof. The use by respondent of said methods in the sale of his candy and the sale of such candy by and through the use thereof and by the aid of said methods 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 respondent of said methods has a tendency unduly to hinder competition or to create a monopoly in that the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not use and adopt the same or equivalent methods involving the same or equivalent elements of chance or lottery. Many persons, firms, and corporations who make and sell candy in competition with respondent as above alleged are unwilling to offer for sale or to sell their products 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 which is contrary to public policy and such competitors refrain therefrom.

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PAR. 5 Many dealers in, and ultimate consumers 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 respondent in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent has a tendency and capacity, because of said game of chance to unfairly divert to respondent trade from his 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 equivalent methods and to deprive the purchasing public of the benefit of free competition. The use of said methods by respondent has the tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same or equivalent methods.

PAR. 6. 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 March 12, 1940 issued and thereafter served its complaint in this proceeding upon respondent, E. T. James, Jr., individually and trading under the name of United Candy Co., charging him with the use of 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. After the issuance of said complaint and the filing of respondent's answer the Commission by order entered herein granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission.

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Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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. The respondent, E. T. James, Jr., is an individual doing business under the trade name of United Candy Co., with his principal office and place of business located at 1507 West Trade Street, Charlotte, N. C. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused his products when sold to be shipped or transported from his aforesaid place of business in the State of North Carolina to purchasers thereof located 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 for more than 1 year last past has been, a course of trade by said 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 his business respondent is in competition with other individuals and with partnerships and corporations 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 his business as described in paragraph 1 hereof, respondent sells and has sold to dealers various assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner: This assortment consists of a number of bars of candy, together with a device called a push card. The card contains a number of partially perforated disks with the word "push" appearing on the face of each of said disks and printed within each of said disks is either 1 cent, 2 cents, 3 cents, 4 cents or 5 cents. Each purchaser is entitled to punch one number from said card. Each purchaser is entitled to and receives one bar of candy and pays therefor the amount indicated within the disk removed from said card. All of said bars are worth more than one cent. The said amounts are effectively concealed from the purchasers and prospective purchasers until a push

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or selection has been made and the selected disk removed or separated from the card. Thus the amount to be paid by each customer for a bar of candy is determined wholly by lot or chance.

The respondent manufactures, sells and distributes various assortments of candy, involving a lot or chance feature, and such assortments and the sales plans or methods by which said assortments are distributed are similar to the one hereinabove described varying only in detail.

PAR. 3. Retail dealers who purchase respondent's assortments of candy directly or indirectly expose and sell the same to the purchasing public in accordance with the aforesaid sales plans, or methods. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plans or methods hereinabove set forth. Said sales plans or methods have a tendency and capacity to induce purchasers of said candy to purchase respondent's candy in preference to candy offered for sale and sold by his competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail prices thereof. The use by respondent of said methods in the sale of his candy and the sale of such candy by and through the use thereof and by the aid of said methods 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 respondent of said methods has a tendency unduly to hinder competition or to create a monopoly in that the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not use and adopt the same or equivalent methods involving the same or equivalent elements of chance or lottery. Many persons, firms, and corporations who make and sell candy in competition with respondent as above described are unwilling to offer for sale or to sell their products 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 which is contrary to public policy and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate consumers 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 respondent in preference to candy offered for sale and sold by said competitors of respondent who do

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not use the same or equivalent methods. The use of said methods by respondent has a tendency and capacity, because of said game of chance, to unfairly divert to respondent trade from his 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 equivalent methods and to deprive the purchasing public of the benefit of free competition. The use of said methods by respondent has the tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same or equivalent methods.

CONCLUSION

The aforesaid acts and practices of respondent as herein 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 he 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, E. T. James, Jr., individually and trading under the name of United Candy Co., or trading under any other name, his 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 public are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

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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 said candy or any other merchandise to the 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 public.

4. Selling or otherwise distributing any 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 him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF

R. L. JACKSON, TRADING AS CAPITAL CITY CANDY
COMPANY

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

Docket 4092. Complaint, Apr. 17, 1940—Decision, June 10, 1940

Where an individual 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 games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof and included (1) assortments together with pushcards for use in sale and distribution to purchasing or consuming public of a number of candy bars of uniform size and shape, under a plan in accordance with which customer or purchaser paid 1 cent, 2 cents, 3 cents, 4 cents, and 5 cents in accordance with particular number secured by chance, and purchaser making last push in each of two sections into which card was divided received two of said bars, and included assortments (2) together with various other pushcards for use in sale and distribution thereof by means of game of chance, gift enterprise, or lottery scheme and similar to that above described and varying therefrom in detail only—

Sold said assortments along with such pushcards to wholesalers, jobbers, and retailers, by whom, as direct or indirect purchasers thereof, they were exposed and sold to purchasing public in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of, other means of conducting lotteries in the sale of his products, in accordance with such plan as above set forth, involving game of chance or sale of a chance to procure candy bars at prices much less than normal retail prices thereof or additional bars 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 his said sales plan or method employed in sale and distribution of his candy and in element of chance involved therein, and were thereby induced to buy and sell his said product in preference to that of competitors who do not use same or equivalent method, and with result through use of said method and because of said game of chance of diverting unfairly trade in commerce to himself from his competitors as aforesaid who do not use such methods:

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

McElreath, Scott, Duckworth & DuVal, of Atlanta, Ga., for respondent.