

## 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.

## Complaint

31 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 R. L. Jackson, an individual trading as Capital City Candy Co., 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 complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent R. L. Jackson is an individual trading as Capital City Candy Co., with his principal office and place of business located at 506-508 Decatur Street, Southeast, in the city of Atlanta, Ga. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers located at points in 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 his place of business in the city of Atlanta, Ga., to purchasers thereof, at their respective points of location, in the various other States of the United States and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by respondent in said 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 respondent is, and has been, 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 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 hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment is composed of 42 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 40 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 1 to 5, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, 3, 4 and 5 pay 1¢, 2¢, 3¢, 4¢ and 5¢, respectively. The card is also divided into two sections, and the purchaser making the last push in each section receives two of said bars of candy. The numbers are effectively concealed

from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondent furnishes, and has furnished, various push cards for use in the sale and distribution of his 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 respondent's said candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. 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 plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 or plan hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof or additional bars of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with respondent, 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 respondent in the sale and distribution of his 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 method by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his 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 com-

## Findings

31 F. T. C.

merce 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 April 17, 1940, issued and thereafter served its complaint in this proceeding upon respondent R. L. Jackson, individually and trading as Capital City Candy Co., charging him 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 May 8, 1940, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said 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 complaint and 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, R. L. Jackson is an individual trading as Capital City Candy Co., with his principal office and place of business located at 506-508 Decatur Street, Southeast, in the city of Atlanta, Ga. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers located at points in 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 his place of business in the city of Atlanta, Ga., to purchasers thereof, at their respective points of location, in the various other States of the United States and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by respondent in said 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 respondent is, and has been, 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 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 hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment is composed of 42 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 40 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 1 to 5, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, 3, 4 and 5 pay 1¢, 2¢, 3¢, 4¢ and 5¢, respectively. The card is also divided into two sections, and the purchaser making the last push in each section receives two of said bars of candy. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondent furnishes, and has furnished, various push cards for use in the sale and distribution of his 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 respondent's said candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. 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 plan hereinabove found. The use by respondent of said sales plan or method in the sale of his 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 or plan hereinabove found involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof or additional bars of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with respondent, 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

## Order

§1 F. T. C.

employed by respondent in the sale and distribution of his 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 method by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not 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 hearings 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, R. L. Jackson, individually and trading as Capital City Candy Co., or trading under any other name or names, 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 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 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.

## IN THE MATTER OF

EDWIN L. LEISENRING, TRADING AS U. S. DRUG &  
SALES COMPANY, U. S. DRUG LABORATORIES, AND  
U. S. DRUG COMPANY; AND GORDON LEISENRINGCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4053. Complaint, Mar. 8, 1940—Decision, June 11, 1940*

Where two individuals engaged, as case might be, under certain trade names, or otherwise, in sale and distribution to purchasers in various other States and in the District of Columbia of a drug preparation advertised as "MAN'S PEP TONIC" and "MAN'S TONIC," and sold as "U. S. SPECIAL TABLETS," and another advertised as "MAN'S PEP TONIC" (Double Str. Capsule) and "MAN'S TONIC" (Double Str. Capsule), and sold as "SEXTOGEN CAPSULES FOR MEN OR WOMEN"; in advertisements of their said products which they disseminated and caused to be disseminated through the mails and through insertion in newspapers of general circulation, and by other means in commerce, and otherwise, and which were intended and likely to induce purchase of their said products in commerce—

- (a) Represented, directly and by implication, among other things, that their said preparations were safe, competent, and scientific tonics and aphrodisiacs, and strengthened and rejuvenated the glands and sexual organs of man or woman, and that they possessed therapeutic value in the treatment of debility; facts being said products were practically without value as tonics in view of very small amounts therein contained of drugs possessed of tonic properties, and said products possessed no value for strengthening or rejuvenating glands or organs above referred to, or any therapeutic value in treatment of debility;
- (b) Failed to reveal in said advertisements of their said products designated as "MAN'S PEP TONIC" or "MAN'S TONIC" and sold as "U. S. SPECIAL TABLETS" facts material in light of representations therein or material with respect to consequences which might result from use of commodity in question under conditions prescribed in said advertisements or under such conditions as are customary or usual, in that such product contained dangerous drugs extract of nux vomica, which, even in small doses, is dangerous to man, and yohimbine hydrochloride, very powerful drug and dangerous one, not officially recognized by United States Pharmacopoeia, the national formulary, and one which, affecting particularly mucous membranes of certain organs and having similar effect upon other epithelial structures of urogenital tract, may, in large doses, produce psychic disturbances and vertigo, together with cerebral congestion; and
- (c) Failed to reveal in said advertisements of its product advertised as "MAN'S PEP TONIC" (Double Str. Capsule) and as "MAN'S TONIC" (Double Str. Capsule) and sold as "SEXTOGEN CAPSULES FOR MEN AND WOMEN" facts material in the light of its said representations or material with respect to consequences which might result from the use of said commodity under conditions prescribed in said advertisements or under such conditions as are customary or usual in that said product above referred to contained,