

IN THE MATTER OF
WILLIAM C. EVANS, TRADING AS EVANS CANDY HOUSE

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

Docket 4102. Complaint, Apr. 23, 1940—Decision, June 11, 1940

Where an individual engaged in sale and distribution of candy including assortments thereof which were so packed and assembled as to involve use of game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and included (1) a number of candy bars, together with push card for use in sale and distribution of said bars under a plan by which customer purchaser paid 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents for bar, retail value of which was greater than many of the prices to be paid therefor, in accordance with number secured by chance from disk of card, and (2) various other assortments for distribution to consumers by methods involving lottery or chance features, similar to that hereinabove described and varying therefrom in detail only—

Sold to dealers such assortments and boards involving game of chance or sale of a chance to procure candy bars at prices much less than normal retail prices thereof, contrary to an established public policy of the United States Government and in violation of criminal laws and in competition with many who are unwilling to offer and sell candy so packed and assembled as above described or candy 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 refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by his said method and manner of packing same and by element of chance involved in sale thereof as above described, and were thereby induced to purchase said product, thus packed and sold by him, in preference to candy offered and sold by his said competitors, who do not use such or equivalent methods, and with tendency and capacity, through use of said method and because of such game of chance, to divert unfairly to himself, trade from his said competitors who do not use same or equivalent methods, exclude from candy trade all competitors who are unwilling to and do not use such methods because unlawful, lessen competition in said trade and create monopoly thereof in him and such other distributions of candy as do use same or equivalent methods, and deprive purchasing public of benefit of free competition in trade in question, and to eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use said or equivalent 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. D. C. Daniel for the Commission.

Mr. C. D. Stewart, of Atlanta, Ga., 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 William C. Evans, individually and trading as Evans Candy House, 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 public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent William C. Evans is an individual trading under the name of Evans Candy House with his principal office and place of business located at 309 Marietta Street, Atlanta, Ga. Respondent is now, and for more than one year last past, has been, engaged in the sale and distribution of candy to dealers. Respondent causes, and has caused, his products when sold to be shipped or transported from his aforesaid principal place of business in the State of Georgia to purchasers thereof in various other States of the United States at their respective points of location. 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 various States of the United States. In the course and conduct of his business, respondent is, and has been, in competition with other individuals and partnerships, and with corporations engaged in the sale and distribution of like or similar products in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells, and has sold, to dealers certain assortments of said candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said candy is sold and distributed to the consumers thereof. One of said assortments consists of a number of bars of candy together with a device commonly called a push card. The said bars of candy are sold and distributed to the consumers thereof by means of said push cards in substantially the following manner:

Said push card contains a number of partially perforated disks with the word "Push" appearing on the face of each of said disks. Printed within each of said disks is either the number 1, 2, 3, 4, or 5. Each purchaser selects and removes one of said disks from the card, pays in cents the amount of the number contained in said disk, and receives a bar of said candy. Each of said bars of candy has a retail value greater than many of the prices to be paid therefor. The said numbers are effectively concealed from purchasers and prospec-

tive purchasers until the disks have been selected and removed from said card. The amounts to be paid for said bars of candy are thus determined wholly by lot or chance. The respondent sells and distributes various assortments of candy to be distributed to the consumers thereof by methods involving lot or chance features, but such assortments and the methods of sale thereof are similar to the one hereinabove described, varying only in detail.

PAR. 3. 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 bars of candy at prices much less than the normal retail prices thereof. The use by respondent of said methods in the sale of candy and the sale of 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 criminal laws. The use by respondent of said methods has the tendency unduly to hinder competition or to create a monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same or equivalent methods involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale and sell candy 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 of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 4. Many dealers in, and ultimate purchasers of, candy are attracted by respondent's said methods 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 its said competitors who do not use the same or equivalent methods, to exclude from said candy trade all competitors who are unwilling to, and who do not, use the same or equivalent or similar methods because the same are unlawful, to lessen competition in said candy trade, to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or equivalent methods and to deprive the purchasing public of the benefit of free competition in said candy trade. The use

of said methods by respondent has a tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and used said methods or equivalent methods.

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 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 April 23, 1940, issued and thereafter served its complaint in this proceeding upon respondent William C. Evans, individually and trading as Evans Candy House, 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 17, 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 the 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 William C. Evans is an individual trading under the name of Evans Candy House with his principal office and place of business located at 309 Marietta Street, Atlanta, Ga. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of candy to dealers. Respondent causes, and has caused his products when sold to be shipped or transported from his aforesaid principal place of business in the State of Georgia to purchasers thereof in various other States of the United States at their respective points of location. 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 various States of the United States. In the course and conduct of his

Findings

31 F. T. C.

business, respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells, and has sold, to dealers certain assortments of said candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said candy is sold and distributed to the consumers thereof. One of said assortments consists of a number of bars of candy together with a device commonly called a push card. The said bars of candy are sold and distributed to the consumers thereof by means of said push cards in substantially the following manner:

Said push card contains a number of partially perforated disks with the word "Push" appearing on the face of each of said disks. Printed within each of said disks is either the number 1, 2, 3, 4, or 5. Each purchaser selects and removes one of said disks from the card, pays in cents the amount of the number contained in said disks, and receives a bar of said candy. Each of said bars of candy has a retail value greater than many of the prices to be paid therefor. The said numbers are effectively concealed from purchasers and prospective purchasers until the disks have been selected and removed from said card. The amounts to be paid for said bars of candy are thus determined wholly by lot or chance. The respondent sells and distributes various assortments of candy to be distributed to the consumers thereof by methods involving lot or chance features, but such assortments and the methods of sale thereof are similar to the one hereinabove described, varying only in detail.

PAR. 3. 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 candy and the sale of 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 criminal laws. The use by respondent of said methods has the tendency unduly to hinder competition or to create a monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same or equivalent methods involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above described,

100

Order

are unwilling to offer for sale and sell candy 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 of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 4. Many dealers in, and ultimate purchasers of, candy are attracted by respondent's said methods 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 its said competitors who do not use the same or equivalent methods; to exclude from said candy trade all competitors who are unwilling to, and who do not, use the same or equivalent or similar methods because the same are unlawful; to lessen competition in said candy trade; to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods by respondent has a 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 said methods 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 the 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.

Order

31 F. T. C.

It is ordered, That the respondent William C. Evans, individually and trading as Evans Candy House, 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 are to be made or may be made by means of a lottery, 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 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
WARREN WATKINS, TRADING AS SQUARE DEAL
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 3405. Complaint, May 6, 1938—Decision, June 12, 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 the use of a lottery scheme when sold and distributed to the consumers, and included assortments of one dozen boxes of candy together with push or punch card for use of retailer in disposing thereof in accordance with said card's explanatory legend, under which amount paid by purchaser for box secured ranged from 1 cent to 47 cents or from 1 cent to 39 cents, depending on number secured by chance from card and on particular scheme employed;

Sold such assortments along with said push or punch cards to brokers, wholesalers, jobbers, department stores, and retail dealers, by whom, as direct or indirect purchasers, such assortments were exposed and sold to public in accordance with aforesaid sales plan involving game of chance or sale of a chance to secure box of candy at 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 product in accordance with sales plan above set forth, contrary to an established public policy of the United States Government and in violation of its criminal laws, and in competition with many who are unwilling to offer and sell candy so packed and assembled as above described or otherwise arranged and packed for sale to purchasing public so as to involve a game of chance or any other method of sale that is contrary to public policy, and refrained therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by his said method or manner of packing same and by element of chance involved in sale thereof as above described, 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 or similar method, and with tendency and capacity, because of said game of chance, to divert to him trade and custom from his competitors who do not use any such method, to exclude from candy trade all competitors who are unwilling to and do not use any such method because unlawful, to lessen competition in trade in question and create monopoly thereof in him, and such other distributors of candy as do use same or equivalent or similar method, and to deprive purchasing public of benefit of free competition in trade in question, and to eliminate from said trade all actual, and to exclude therefrom all potential, competitors who do not adopt and use said or equivalent or similar method:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and of competitors, and constituted unfair methods of competition in commerce.

Before *Mr. Charles P. Vicini* and *Mr. John J. Keenan*, trial examiners.

Mr. D. C. Daniel for the Commission.