

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 purchase 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.

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 Warren Watkins, individually and trading as Square Deal 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, Warren Watkins, is an individual trading under the name of Square Deal Candy Co., with its principal office and place of business located at 768 Merchant Street, Los Angeles, Calif. Respondent is now, and for some time 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 transported from his principal place of business in the city of Los Angeles, Calif., to purchasers thereof located in the various States of the United States other than the State of California and in the District of Columbia at their respective places of business. There is now, and has been for some time last past, 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 likewise 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 certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said assortments consists of a number of boxes of candy and a device commonly called a push card. Said boxes of candy are distributed to the purchasing public by means of a push card in the following manner: The push card contains a number of partially perforated disks. Within each of said disks is printed a number. The card bears statements informing purchasers and prospective purchasers that each purchaser will receive a box of candy. The prices of sales vary from 1 cent to 39 cents. The purchaser pays in cents the amount of the number pushed. Said boxes of candy are worth more than many of the prices to be paid therefor, but are received by the purchasers thereof for the sums indicated by the pushes from said card. Said numbers are effectively concealed from

the purchasers and prospective purchasers until a purchase has been made and the disk separated from the push card. Whether or not a purchaser receives a box of candy of a value greatly in excess of the amount to be paid therefor is determined wholly by lot or chance.

The respondent manufactures, sells, and distributes various assortments of candy involving the lot or chance feature, but such assortments and the method of sale and distribution thereof are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's candy directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting a lottery in the sale of his products in accordance with the sales plan hereinabove set forth. Said sales plan has 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 alleged involves a game of chance or the sale of a chance to procure a box of candy at a price much less than the normal retail value thereof. The use by respondent of said method in the sale of candy and the sale of candy by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States, and which is in violation of criminal laws. The use by respondent of said method has a tendency unduly to hinder competition and 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 method or equivalent or similar methods involving the same or equivalent elements of chance or lottery. 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 their products so packaged and assembled for sale as above alleged or otherwise arranged or 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. 5. Many dealers in and ultimate purchasers 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 method by respondent has the tendency and capacity, because of said game

of chance, to unfairly divert to respondent trade and custom 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 similar or equivalent methods, and to deprive the purchasing public of the benefit of free competition. The use of said method 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 of the public and of respondent's competitors and constitute unfair methods of competition 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 May 6, 1938, issued, and thereafter served its complaint in this proceeding upon the respondent Warren Watkins, an individual, trading as the Square Deal Candy Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, no answer having been filed by the respondent, testimony and other evidence in support of the allegations of the complaint were introduced by DeWitt T. Puckett, Esq., and Reuben J. Martin, Esq., attorneys for the Commission, before C. P. Vicini and John J. Keenan, trial examiners of the Commission, theretofore duly designated by it. The respondent appeared in his own behalf. The said testimony and other evidence were duly recorded and filed in office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, testimony, and other evidence, brief in support of the complaint, respondent not having filed brief and oral argument not having been requested, 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, Warren Watkins, doing business individually and as Square Deal Candy Co., with offices and principal

place of business located at 768 Merchant Street, Los Angeles, Calif., has been for more than 4 years last past engaged in the manufacture, sale, and distribution of candy to brokers, wholesalers, jobbers, department stores, etc.

Respondent causes, and has caused, his products, when sold to be shipped or transported from his aforementioned principal place of business in California to purchasers thereof in the State of California and in Arizona and in other States of the United States at their respective places of business. There is now, and has been for some time last past, a course of trade by said respondent in such candy in commerce between and among the various States of the United States. In the course and conduct of said 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 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 brokers, wholesalers, jobbers, department stores, etc., certain assortments of pound boxes of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. The said assortments are sold and distributed to the purchasing public in the following manner:

A push or punch card is packed with each dozen boxes of candy for use of the retail dealer in disposing of said candy. The said punch or push cards contain the following representations:

EVERY PUNCH WINS

1¢ TO 47¢

PAY WHAT YOU PUNCH

FROM 1¢ TO 47¢

NUMBERS OVER 47 PAY ONLY 47¢

EVERY PLAY RECEIVES

A FULL LB. BOX OF

CHOCOLATES

REMEMBER

YOUR VALENTINE

WITH A BRIGHT RED

CANDY HEART

PAY WHAT YOU PULL

FROM 1¢ TO 39¢

NOTHING HIGHER

EVERY NUMBER GETS A HEART

Findings

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The punch or push cards contain a number of partly perforated discs and on the face of each disc is printed the word "push." Within each of said discs is printed a number; said numbers run from 1 to 39, and 1 to 47, and indicate in cents the price to be paid by the consumer or the person pushing the disc. The said numbers printed within the said discs are effectively concealed from purchasers and prospective purchasers until a push has been made and the disc separated or removed from said card. The fact as to whether a customer pays 1 cent or any price up to 39 cents, or 1 cent or any price up to 47 cents, is determined wholly by lot or chance.

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

PAR. 4. The sale of the said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to secure a box of candy at a price much less than the normal retail price thereof. The use by respondent of said method in the sale of his candy, and the sale of the candy by and through the use thereof, and by the aid of said method, is a practice of a sort which is contrary to an established policy of the Government of the United States and in violation of its criminal laws. The use by respondent of said method in the sale of his products has the tendency unduly to hinder competition and 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 method or an equivalent or similar method 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 respondent, as above found, 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. 5. Many dealers in, and ultimate purchasers 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 his competitors, who do not use the same or an equivalent or similar method. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from his competitors who do not use the same or an equivalent or similar method, to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent or similar method because the same is 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 an equivalent or similar method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent in the sale of his products 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 said method or an equivalent or similar method.

CONCLUSION

The aforesaid acts and practices of the respondent, Warren Watkins, individually and trading as Square Deal Candy Co., 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 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 (no answer having been filed by the respondent), testimony and other evidence taken before C. P. Vicini and John J. Keenan, trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondent having offered no proof in opposition to the allegations of said complaint) brief filed by counsel for the Commission (respondent having filed no brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Warren Watkins, individually and trading as Square Deal 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

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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 or 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

GENERAL AMERICAN SALES CORPORATION, AND DAVID
C. BASKIN, ARNOLD SIMON, AND FAYE SIMONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3706. Complaint, Feb. 11, 1939—Decision, June 14, 1940*

Where a corporation and an individual who was its president, general manager, and director, and controlling stock owner and in charge of the active management thereof, engaged in offer and sale of electric razors, cameras, radios, pencils, pencil sets, and other articles of merchandise to purchasers in various other States, in course and conduct of their said business and acting together and in cooperation with each other in doing acts and things here set forth, and in competition with others engaged in sale or distribution of like or similar articles of merchandise in commerce among the various States and in the District of Columbia—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes by which such merchandise was distributed to ultimate consumer thereof wholly by lot or chance, and distribution to purchasing public of certain advertising literature including, among other things, push cards, order blanks, and advertisements containing illustrations of products in question and explaining their plan or method of selling and distributing such merchandise and allotting it as premiums or prizes to operators of said push cards under plans including (1) assortments of articles such as Eversharp pencils and Spartus Candid Cameras for sale and distribution under a plan in accordance with which person selecting by chance from list of girls' names displayed on push card that corresponding to name concealed under card's master seal received said camera, and persons selecting by chance three certain numbers received Eversharp Pencil, and others received nothing for money paid, and under which plan amount paid by customer or purchaser for chance was dependent upon particular number pushed by chance and certain numbers were free, and including (2) various other assortments of merchandise and push cards supplied therewith for use in sale and distribution of their merchandise by means of games of chance, gift enterprises, or lottery schemes; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in sale and distribution of their said products in accordance with said sales plan or method as above set forth by persons to whom they furnished or supplied said devices and who made use thereof in selling or distributing their said merchandise in accordance with such sales plan or method, under which fact as to whether purchaser received any of said articles of merchandise, value of each of which was greater than cost of pushing any one disk, or anything for amount of money paid, or which of said articles, if any, purchaser would receive, or whether purchaser received article of merchandise without cost was determined wholly by lot or chance, and involving game of chance, or sale of chance, to procure, as aforesaid, articles of merchandise without cost or at price much less than normal retail price thereof, con-