

## Syllabus

IN THE MATTER OF  
GREAT BUCKEYE CANDIES, INC.

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

*Docket 4015. Complaint, Feb. 5, 1940—Decision, June 26, 1940*

Where a corporation 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 a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers, and included (1) number of penny candy, all day suckers, upon sticks of some of which, embedded in said pieces of candy, appeared word "Bullet," for sale and distribution to such penny purchasers under a plan by which chance purchaser securing stick with word "Bullet" thereon was entitled to and received an additional piece of candy without additional cost, and (2) various other assortments which were so packed and assembled that sales thereof were to be made to purchasing public by means of game of chance, gift enterprise, or lottery scheme and under sales plan or method substantially similar to that above described and varying therefrom in detail only—

Sold said assortments to dealers and to retailers by whom, as direct or indirect purchasers thereof, such assortments were exposed and sold to purchasing public in accordance with aforesaid sales plan, under which additional pieces of candy worth one cent each were distributed to purchasing public wholly by lot or chance, and involving aforesaid game of chance or sale of a chance to procure additional piece of candy without additional cost, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its candy in accordance with sales plan or method above set forth, contrary to the established policy of the United States Government, and in violation of criminal laws, and in competition with many who are willing to adopt and use said or any method involving use of a 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 its said method and by element of chance involved in sale of said merchandise as above described and were thereby induced to buy and sell its said product in preference to that offered and sold by its said competitors, who do not use same or equivalent method, and with effect, through use of such method and because of said game of chance, of diverting unfairly trade in commerce to it from its competitors aforesaid who do not use such or equivalent sales plan or method; to the substantial injury of competition in commerce:

*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.

## 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 Great Buckeye Candies, Inc., a corporation, 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 Great Buckeye Candies, Inc., is a corporation organized and doing business under the laws of the State of Ohio with its principal office and place of business located at 567 East South Street, Akron, Ohio. Respondent is now and for more than one year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers located in the various States of the United States and in the District of Columbia. It causes and has caused said candy, when sold, to be shipped or transported from its aforesaid place of business in the State of Ohio to purchasers thereof in various other States of the United States and in the District of Columbia at their respective points of location. There is now and for more than one 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 said business respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise 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 its 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 is sold and distributed to the purchasing public in substantially the following manner:

This assortment consists of a number of pieces of candy commonly known as all-day suckers. Each of said pieces of candy has imbedded therein a wooden stick or handle. On some of said sticks there appears the word "Bullet" and the ends of said sticks on which such word appears are imbedded in said pieces of candy. Sales are one cent each, and each purchaser is entitled to and receives one piece of candy. Each purchaser who secures a piece of candy containing a

stick with the word "Bullet" thereon is entitled to and receives an additional piece of candy without additional cost. The word "Bullet" is effectively concealed from purchasers and prospective purchasers until the piece of candy purchased has been consumed or removed from said stick. Each of said pieces of candy is worth one cent. The additional pieces of candy are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various assortments of candy so packed and assembled that the sales of such candy are to be made to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method employed in connection with each of said assortments is substantially the same as the sales plan or method hereinabove described, varying 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 aforesaid sales plan. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of its candy in accordance with the sales plan or method hereinabove set forth. The use by respondent of said method in the sale of its candy and the sale of such 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 in violation of criminal laws.

PAR. 4. The sale of candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an additional piece of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with the respondent as above alleged are unwilling to adopt and use said method or any method involving the use of a game of chance or the sale of a chance to win something by a chance or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale of said merchandise in the manner above alleged, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by the respondent, because of said game of chance, has the 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 its said competitors who do not use the same or an equivalent sales plan or method. As a result thereof,

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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 the 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 February 5, 1940, issued, and thereafter served, its complaint in this proceeding upon respondent, Great Buckeye Candies, Inc., a corporation, charging it 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. 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. 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. Respondent, Great Buckeye Candies, Inc., is a corporation organized and doing business under the laws of the State of Ohio, with its principal office and place of business located at 567 East South Street, Akron, Ohio. Respondent is now and for more than one year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers located in the various States of the United States and in the District of Columbia. It causes and has caused said candy, when sold, to be shipped or transported from its aforesaid place of business in the State of Ohio to purchasers thereof in various other States of the United States and in the District of Columbia at their respective points of location. There is now and for more than one 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 said business respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise 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 its 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 is sold and distributed to the purchasing public in substantially the following manner:

This assortment consists of a number of pieces of candy commonly known as all day suckers. Each of said pieces of candy has imbedded therein a wooden stick or handle. On some of said sticks there appears the word "Bullet" and the ends of said sticks on which such word appears are imbedded in said pieces of candy. Sales are one cent each, and each purchaser is entitled to and receives one piece of candy. Each purchaser who secures a piece of candy containing a stick with the word "Bullet" thereon is entitled to and receives an additional piece of candy without additional cost. The word "Bullet" is effectively concealed from purchasers and prospective purchasers until the piece of candy purchased has been consumed or removed from said stick. Each of said pieces of candy is worth one cent. The additional pieces of said candy are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various assortments of candy so packed and assembled that the sales of such candy are to be made to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method employed in connection with each of said assortments is substantially the same as the sales plan or method hereinabove described, varying 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 aforesaid sales plan. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of its candy in accordance with the sales plan or method hereinabove described. The use by respondent of said method in the sale of its candy and the sale of such candy by and through the use thereof, and by the aid of said method, is a practice

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of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of candy to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an additional piece of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving the use of a game of chance or the sale of a chance to win something by a chance or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale of said merchandise in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by the respondent, because of said game of chance, has the 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 its said competitors who do not use the same or an equivalent sales plan or method. 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.

## CONCLUSION

The aforesaid acts and practices of the respondent, as herein described, 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 substitute answer of respondent, in which substitute answer respondent admits all the material allegations of fact set forth in said complaint and states that it 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, Great Buckeye Candies, Inc., a corporation, its 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 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 assortments of any merchandise so packed and assembled that sales of said merchandise to the general public 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 any merchandise, either together with lottery devices or separately, which said lottery devices are to be used, or may be used, in selling or distributing said merchandise to the general public.

3. 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 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.

IN THE MATTER OF  
WILLIAM W. KELSO, TRADING AS NORTHWESTERN  
PRODUCTS COMPANY AND NORTHWESTERN HEALTH  
CLINIC

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

*Docket 4066. Complaint, Mar. 18, 1940—Decision, June 26, 1940*

Where an individual engaged in sale and distribution of medicinal preparation designated "Periodic Relief Pills" and recommended as remedy for delayed menstruation, to purchasers in various other States and in the District of Columbia; in advertisements of his said product which he disseminated and caused to be disseminated through the mails, by insertions in newspapers and periodicals of general circulation, and in circulars and other printed or written matter distributed among and between the various States, and by other means in commerce, and which were intended and likely to induce purchase of said product—

- (a) Represented, directly and indirectly, that said preparation was a cure or remedy for delayed menstruation and constituted a competent and effective treatment therefor, and possessed therapeutic value with respect thereto, and that it was safe and harmless, facts being it was not a cure or remedy for such condition, did not constitute competent or effective treatment therefor or possess any therapeutic value with respect thereto, and said preparation was not safe and harmless, in that it contained extract cotton root bark, extract black hellebore, aloes, oil savin, and ergotin in quantities sufficient to cause serious and irreparable injury to health if taken under conditions prescribed in said advertisements or under such conditions as are customary or usual, and use thereof might result in gastro-intestinal disturbances, and, where used to interfere with normal course of pregnancy, might result in uterine infection and even lead to condition known as septicemia or blood poisoning, and use thereof might produce severe circulatory condition, often with poisonous effects upon the human system, and tending to cause abortion in some instances, and might result in severe toxic conditions leading possibly either to loss of limbs or other serious and irreparable injury to health; and
- (b) Failed to reveal, in advertisements disseminated by him as aforesaid, that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual might result in serious or irreparable injury to health of user;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false and misleading representations were true, and into purchase of substantial quantity of his said product:

*Held*, That such acts and practices, under the circumstances set forth, were all to the injury of the public and constituted unfair and deceptive acts and practices in commerce.

*Mr. William L. Taggart* for the Commission.