

Syllabus

IN THE MATTER OF
OAK LANE 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 4099. Complaint, Apr. 23, 1940—Decision, June 26, 1940

Where a corporation engaged in sale and distribution of certain assortments of candy and peanuts, 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 pieces of candy and push card for use in sale and distribution thereof under a plan in accordance with which chance selection of certain numbers from card entitled penny purchaser to 20, 10, 5, 3, or 2 pieces of candy as case might be, and under which last purchaser in each of first 3 sections into which card was divided was entitled to and received 5 pieces, and purchaser pushing last number on card was entitled and received 15 pieces, and those securing other numbers were entitled to and received 1 piece only, and (2) various other assortments of said product, together with punchboards and push cards and involving methods or sales plans like or similar to that above described and varying therefrom in detail only—

Sold said assortments to dealers, and to retailers, by whom as direct and indirect purchasers thereof, they were exposed and sold to purchasing public in accordance with aforesaid sales plan, under which persons selecting many of the numbers designated, as above indicated, received pieces of candy which had retail values greatly in excess of amounts to be paid therefor, and under which such additional pieces were distributed to persons selecting such designated numbers wholly by lot or chance, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products in accordance with sales plans or methods as above set forth, contrary to the established public policy of the United States Government, and in violation of criminal law, and in competition with many who are unwilling to adopt and use said or any sales plans or methods involving game of chance or sale of a chance to win something by chance, or any other sales plan or method contrary to public policy and refrain therefrom;

With result that many dealers in, and ultimate purchasers of, said products were attracted by its said sales plan or method and manner of packing such products and by element of chance involved in sale thereof as above described and were thereby induced to purchase said products so packed and sold by it in preference to like or similar ones offered or sold by said competitors, who do not use same or equivalent methods, and with result, through use of such methods and because of said game of chance, of diverting unfairly trade to it from its said competitors who do not use same or equivalent methods, to the substantial injury of competition in commerce:

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.

Mr. Martin B. Ebbert, of York, Pa., 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 Oak Lane Candy Co., 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, Oak Lane Candy Co., is a corporation organized and doing business under the laws of the State of Pennsylvania with its principal office and place of business located at Pine and Oak Lane Streets, York, Pa. Respondent is now, and for more than 1 year last past has been engaged in the sale and distribution of candy and peanuts to dealers. Respondent causes and has caused its said products, when sold, to be shipped or transported from its aforesaid place of business in the State of Pennsylvania to purchasers thereof in various other States of the United States 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 products in commerce between and among various States of the United States. In the course and conduct of its 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 products in commerce between and among various States of the United States.

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 and peanuts so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said products are sold and distributed to the consumers thereof. One of said assortments consists of a number of pieces of candy together with a device commonly called a push card. Such assortment is sold and distributed to the purchasing public in substantially the following manner: Said push card is divided into 4 sections and each

section contains a number of partially perforated discs, within each of which there is a number. Sales are 1 cent each. The card bears legends informing purchasers and prospective purchasers that the person pushing a designated number is entitled to, and receives 20 pieces of candy; persons pushing other designated numbers are entitled to, and receive 10 pieces of candy; persons pushing other designated numbers are entitled to, and receive 5 pieces of candy; persons pushing other designated numbers are entitled to, and receive 3 pieces of candy; persons pushing other designated numbers are entitled to, and receive 2 pieces of candy. The purchaser of each of the remaining numbers is entitled to, and receives 1 piece of candy; the last purchaser in each of the first three of said sections is entitled to, and receives 5 pieces of candy; and the purchaser pushing the last number on said card is entitled to, and receives 15 pieces of candy. Persons selecting said designated numbers receives pieces of said candy which have retail values greatly in excess of the amounts to be paid therefor. The said numbers are effectively concealed from purchasers and prospective purchasers until the said disks have been selected and removed from said card. The said additional pieces of candy distributed to the persons selecting said designated numbers are thus distributed to the purchasers thereof wholly by lot or chance.

The respondent sells and distributes various assortments of said products together with punchboards and push cards but the methods or plans used in the sale and distribution of each of said assortments, is like or similar to the one hereinabove described varying only in detail.

PAR. 3. Retailers who purchase respondent's said products 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 lotteries in the sale of its products in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its products and the sale of said products by and through the use thereof, and by the aid of said sales plans or methods, is a practice of a sort which is contrary to the established public policy of the Government of the United States and in violation of criminal law.

PAR. 4. The sale of said products to the purchasing public in the manner above alleged involves a game of chance or a sale of a chance to procure said products at prices much less than the normal retail prices thereof. Many persons, firms, and corporations who sell and distribute products in competition with the respondent, as above

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alleged, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or a sale of a chance to win something by a chance, or any other sales plans or methods that are contrary to public policy and such competitors refrain therefrom. Many dealers in, and ultimate purchasers of, said products are attracted by respondent's sales plans or methods and the manner of packing said products and by the element of chance involved in the sale thereof, in the manner above described, and are thereby induced to purchase said products so packed and sold by respondent, in preference to like or similar products offered for sale or sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent, because of said game of chance, has a tendency and capacity to, and does unfairly divert trade to respondent from its 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 various States of the United States.

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, Oak Lane Candy Co., 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 request 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, Oak Lane Candy Co., is a corporation organized and doing business under the laws of the State of Pennsylvania with its principal office and place of business located at Pine and Oak Lane Streets, York, Pa. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of candy and peanuts to dealers. Respondent causes and has caused its said products when sold to be shipped or transported from its aforesaid place of business in the State of Pennsylvania to purchasers thereof in various 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 products in commerce between and among various States of the United States. In the course and conduct of its 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 products in commerce between and among various States of the United States.

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 and peanuts so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said products are sold and distributed to the consumers thereof. One of said assortments consists of a number of pieces of candy together with a device commonly called a push card. Such assortment is sold and distributed to the purchasing public in substantially the following manner: Said push card is divided into four sections and each section contains a number of partially perforated disks, within each of which there is a number. Sales are 1 cent each. The card bears legends informing purchasers and prospective purchasers that the person pushing a designated number is entitled to, and receives, 20 pieces of candy; persons pushing other designated numbers are entitled to, and receive 10 pieces of candy; persons pushing other designated numbers are entitled to, and receive, 5 pieces of candy; persons pushing other designated numbers are entitled to, and receive, 3 pieces of candy; persons pushing other designated numbers are entitled to, and receive, 2 pieces of candy. The purchaser of each of the remaining numbers is entitled to, and receives, 1 piece of candy; the last purchaser in each of the first three of said sections is entitled to, and receives 5 pieces of candy; and the purchaser pushing the last number on said card is entitled to, and receives, 15 pieces of candy. Persons selecting many of said designated numbers receive pieces of said candy which have retail values greatly in excess of the amounts to be paid therefor. The said numbers are effectively concealed from

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purchasers and prospective purchasers until the said discs have been selected and removed from said card. The said additional pieces of candy distributed to the persons selecting said designated numbers are thus distributed to the purchasers thereof wholly by lot or chance.

The respondent sells and distributes various assortments of said products, together with punchboards and push cards, but the methods or plans used in the sale and distribution of each of said assortments, is like or similar to the one hereinabove described, varying only in detail.

PAR. 3. Retailers who purchase respondent's said products 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 lotteries in the sale of its products in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its products and the sale of said products by and through the use thereof, and by the aid of said sales plans or methods, is a practice of a sort which is contrary to the established public policy of the Government of the United States and in violation of criminal law.

PAR. 4. The sale of said products to the purchasing public in the manner above described involves a game of chance or a sale of a chance to procure said products at prices much less than the normal retail prices thereof. Many persons, firms, and corporations who sell and distribute products in competition with the respondent, as above described, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or a sale of a chance to win something by chance, or any other sales plans or methods that are contrary to public policy and such competitors refrain therefrom. Many dealers in, and ultimate purchasers of, said products are attracted by respondent's sales plans or methods and the manner of packing said products and by the element of chance involved in the sale thereof, in the manner above described, and are thereby induced to purchase said products so packed and sold by respondent, in preference to like or similar products offered for sale or sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade to respondent from its 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 various States of the United States.

CONCLUSION

The aforesaid acts and practices of 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 conclusions that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Oak Lane Candy Co., 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 and peanuts 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 any merchandise so packed and assembled that sales thereof 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 packages or assortments of any 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 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 said candy and peanuts or any 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 and peanuts or other merchandise to the general 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 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
GROVE LABORATORIES, INC.

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

Docket 3445. Complaint, May 24, 1938—Decision, June 29, 1940

Where a corporation engaged in sale and distribution of its Pazo Ointment, as treatment for hemorrhoids, and of its Dr. Porter's Antiseptic Healing Oil, for variety of skin disorders, to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar medicinal preparations in commerce among the various States and in said District; in advertising its said products in newspapers and magazines, and pamphlets, circulars and otherwise—

- (a) Represented or implied that said ointment would cure hemorrhoids in all cases, through statement "Effective treatment today for piles is to be had in Pazo Ointment";
- Facts being treatment by any ointment such as said product cannot be effective in all cases or, at least, as a rule, rather than the exception, and cannot be efficacious except in being helpful in relieving symptoms through aid in alleviating pain by virtue of phenol contained therein, and through having generally soothing effect, many prescriptions found in prescription books generally recognized and used by medical profession in treatment of said condition or ailment contain same or similar ingredients as those found in its said ointment, and including, as an important one, phenol, which, together with other medication, will relieve mild conditions of hemorrhoids without necessity of resort to surgery, only effective treatment in many instances, or to other severe measures, and its said ointment constituted no more than a treatment for alleviation of minor rectal irritations accompanying piles, therapeutic value of which was limited to affording palliative relief in cases of simple hemorrhoids; and
- (b) Represented that its said Antiseptic Healing Oil constituted an effective or standard treatment for skin diseases caused by infection, and an effective agent in the treatment of dandruff, falling hair, or diseases peculiar to the scalp, and that it would promote growth of hair and prevent baldness, and destroy parasites usually associated with dandruff and other diseases of scalp, through such statements, among others, as "Most scalp troubles involve a parasite of some kind—a living organism that causes infection with resulting itch, scales, crust, thin and falling hair. Here, at last, is a treatment that not only destroys the parasite but helps repair the damage done. * * * it works wonders in correcting scalp and skin troubles. Stops itch almost instantly. Softens and removes crust. Cleanses and stimulates the whole scalp, making it white and wholesome and promoting growth of new hair * * *," and such statements as "* * * not only destroys the parasites that cause many skin troubles but, at the same time, helps heal the sore and damaged skin" and "* * * an oil, which, of course, is not drying and an oil which is Both antiseptic and an aid to healing. * * * not only checks bacterial growth but at the same time increases the superficial blood supply to the local tissues and thereby promotes the natural healing process";