

Syllabus

IN THE MATTER OF
BLUE RIBBON CANDY COMPANY, INC., AMERICAN
CANDY AND SALES COMPANY

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

Docket 4091. Complaint, Apr. 17, 1940—Decision, July 9, 1940

Where a corporation engaged in manufacture of candy and in sale 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 or distributed to consumers, and included, as illustrative, assortment of 60 bars of candy of uniform size and shape, together with push card for use in sale and distribution of said bars under a plan by which customer purchasers punching numbers ranging from one to three paid 1 cent, 2 cents, and 3 cents for said product, and purchasers punching number "0" paid nothing, and in furnishing various other push cards for use in the sale and distribution of its candy by means of game of chance, gift enterprise, or lottery scheme, and similar to that above described and varying therefrom in detail only—

Sold such assortments, together with said push cards, to wholesalers, jobbers, and retailers, by whom, as direct or indirect purchasers thereof, they were exposed and sold to purchasing public in accordance with sales plan aforesaid, under which prices of bars in question were determined wholly by lot or chance, and involving game of chance or sale of a chance to procure bars of candy at prices much less than normal retail prices thereof, 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 plan above set forth, 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 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, attracted by said sales plan or method employed by it in sale and distribution of its candy and by element of chance involved therein, were thereby induced to buy and sell its said product in preference to candy of said competitors who do not use same or equivalent methods and with result, 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 same or equivalent methods:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice 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.

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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 Blue Ribbon Candy Co., Inc., a corporation, also trading as American Candy and Sales 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, Blue Ribbon Candy Co., Inc., also trading as American Candy and Sales Co., is a corporation organized and doing business under the laws of the State of Georgia, with its office and principal place of business located at 124 Tenth Street, NE., Atlanta, Ga. Respondent is now and for more than 6 months 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 the 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 its principal place of business in the city of Atlanta, Ga., to purchasers thereof at their respective points of location in various States of the United States other than Georgia and in the District of Columbia. There is now and has been for more than 6 months last past a course of trade by 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 partnerships and individuals 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 its 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 60 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 60 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 0 to 3, inclusive. When the disks are pushed

or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, and 3 pay 1 cent, 2 cents, and 3 cents respectively. Purchasers punching number 0 pay nothing. 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 its 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 its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its 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. 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 its candy and in the element of chance involved therein and are thereby induced to buy and sell the 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 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 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 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 17, 1940, issued and subsequently served its complaint in this proceeding upon respondent Blue Ribbon Candy Co., Inc., a corporation, also trading as American Candy and Sales Co., 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. On June 18, 1940, the respondent filed its answer in which answer it 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, Blue Ribbon Candy Co., Inc., also trading as American Candy and Sales Co., is a corporation organized and doing business under the laws of the State of Georgia, with its office and principal place of business located at 124 Tenth Street, NE., Atlanta, Ga. Respondent is now and for more than 6 months 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 the 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 its principal place of business in the city of Atlanta, Ga., to purchasers thereof at their respective points of location in various States of the United States other than Georgia and in the District of Columbia. There is now and has been for more than 6 months last past a course of trade by 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 partnerships and individuals 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 its 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 60 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 60 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 0 to 3, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, and 3 pay 1 cent, 2 cents, and 3 cents respectively. Purchasers punching number 0 pay nothing. 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 its 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 directly or indirectly purchase respondent's candy, 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 its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its 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 price thereof. Many persons, firms, and corporations who

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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 employed by respondent in the sale and distribution of its 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 its 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 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 Blue Ribbon Candy Co., Inc., a corporation, also trading as American Candy and Sales Co., 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 and distributing candy or any 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 game of chance, gift enterprise, or lottery scheme.

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2. Supplying to or placing in the hands of others candy or any merchandise, together with push or pull cards, punchboards or any 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 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 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 any merchandise to the 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 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
ASA L. WOOTEN, TRADING AS UNITED STATES MARBLE
& GRANITE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914¹

Docket 4138. Complaint, May 21, 1940—Decision, July 9, 1940

Where an individual engaged in sale and distribution of marble and granite tombstones and monuments, to purchasers in various other States and in the District of Columbia, and in substantial competition with others engaged in sale and distribution of tombstones and monuments in commerce among the various States and in said District, and including many who sell and distribute like or similar products and do not misrepresent respective qualities thereof or matters pertaining thereto; in advertising his said products in catalogs having general circulation, and in circulars, price lists, and other advertising material distributed among prospective purchasers—

- (a) Represented that his memorials would stand the ravages of time forever, that they were everlasting and forever durable, would last for all time, would never fade, stain, or tarnish and would always retain their original brightness, and that they were age enduring, facts being they would stain, tarnish, fade, and deteriorate, and would not retain their original brightness, and his said representations and implications as above set forth were false, misleading, and deceptive; and
- (b) Represented that, through his "Gold Bond Guarantee," purchasers were assured of the everlasting quality and durability of his said products and the freedom thereof from fading, staining, or tarnishing, and that said "Gold Bond Guarantee" protected purchasers of such products if his claims and representations were not true and products did stain, tarnish, fade, and lose their original brightness and were not forever durable and everlasting, facts being said so-called "Gold Bond Guarantee" was not supported by any funds set aside by him or anyone else to assure fulfillment of the terms thereof, and it accordingly in no wise assured purchasers of everlasting quality and durability of said products or freedom thereof from fading, staining, or tarnishing, and did not in any wise protect purchasers of said products if his claims and representations were not true;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and with result, because of such erroneous and mistaken belief, that substantial portion of purchasing public was induced to and did purchase his said products; to the substantial injury of competition in commerce:

¹ Findings made as of date indicated are published as very slightly modified by Commission on October 11, 1940, through deleting few words theretofore included with other quoted matter in par. 3.