

Syllabus

IN THE MATTER OF
ROBERT A. JOHNSTON COMPANY

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

Docket 4104. Complaint, Apr. 23, 1940—Decision, Sept. 5, 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 thereof, and one of which included number of boxes or packages of candy and additional article of merchandise, together with punchboard for use in distribution of such packages to consumers under a plan, and in accordance with board's explanatory legend, by which 5-cent purchaser of chance received, in accordance with particular number secured by chance, as case might be, basket of candy, specified box thereof, 2-pound box or 1-pound box, or 25-cent package, and in accordance with which, further, last five punches in each section into which board was divided were free, person selecting last number on board received additional article of merchandise, and persons who did not punch numbers designated as above indicated, received nothing for their money—

Sold such assortments, along with said punchboards, to dealer and retailer purchasers, by latter of whom, as direct or indirect buyers thereof, assortments in question were exposed and sold to purchasing public in accordance with such sales plans or methods, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale and distribution of its candy in accordance with plans or methods above set forth, involving game of chance or sale of a chance to procure package or box of candy at price much less than normal retail price 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 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 plans or methods contrary to public policy, and refrain therefrom;

With result that many dealers in and ultimate purchasers of said or like or similar candy were attracted by sales plans or methods employed by it in sale and distribution of its said products and element of chance involved therein, and were thereby induced to buy its merchandise in preference to that offered and sold by competitors aforesaid, who did not and do not use same or equivalent sales plans or methods, and with effect, through use of said plans or methods and because of said games of chance, of unfairly diverting trade from its said competitors who did not use such or equivalent plans or methods; 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.

Mr. Ira Milton Jones, of Milwaukee, Wis., 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 Robert A. Johnston 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, Robert A. Johnston Co. is a corporation organized and doing business under the laws of the State of Wisconsin, with its principal office and place of business located at 4023 West National Avenue, Milwaukee, Wis. Respondent maintains a branch office at 437 Eleventh Avenue, New York, N. Y. Respondent is now and for more than 1 year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused said candy, when sold, to be shipped or transported from its aforesaid places of business in the States of Wisconsin and New York to purchasers thereof in the 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 1 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 its business, respondent is and has been in competition with other corporations and with individuals and partnerships 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 alleged in paragraph 1 hereof, respondent sells and has sold 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 boxes or packages of candy, and an additional article of merchandise, together with a device commonly called a punchboard. Said packages of candy are distributed to the consumers thereof by means of said punchboard in substantially the following manner: Sales are 5 cents each. Said punchboard is divided into sections and each section contains a number of small sealed tubes in each of which is concealed a slip of paper with a number printed thereon. The board bears statements or legends inform-

ing purchasers and prospective purchasers that the person selecting a certain designated number, receives a basket of candy; that persons selecting certain other designated numbers, each receive a specified box of candy; that persons selecting other designated numbers each receive a 2-pound box of candy; that persons selecting certain other designated numbers each receive a 1-pound box of candy; that persons selecting certain other designated numbers each receive a 25-cent package of candy; that the last five punches in every section of said board are free; that the person selecting the last number on the said board receives said additional article of merchandise. Persons who do not punch said designated numbers receive nothing for their money. The said numbers are effectively concealed from purchasers and prospective purchasers until said slips of paper have been punched or removed from said board. The facts as to which of said packages or boxes of candy a purchaser is to receive, if any, and whether such package is without cost are thus determined wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various assortments of said candy, together with punchboards and push cards, but all of said assortments of candy are sold and distributed to the consuming public by means of sales plans or methods similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of candy, either directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale and distribution of its candy 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 candy, and the sale of said candy 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 an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sales of candy to the purchasing public in the manner above alleged, involves a game of chance or the sale of a chance to procure a package or box of candy at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondent, as above alleged, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy and such com-

petitors refrain therefrom. Many dealers in and ultimate purchasers of said candy or like or similar candy, are attracted by said sales plans or methods employed by respondent in the sale and distribution of its candy, and the element of chance involved therein and are thereby induced to buy respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plans or 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 sales plans or 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 23, 1940, issued and subsequently served its complaint in this proceeding upon respondent, Robert A. Johnston 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. Respondent filed no answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of the facts filed and executed by Ira Milton Jones, counsel for respondent, and W. T. Kelley, chief counsel for the Federal Trade Commission, may be taken as the facts in this proceeding and in lieu of testimony, and that respondent waived all hearings and other intervening procedure. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Robert A. Johnston Co. is a corporation organized and doing business under the laws of the State of Wisconsin, with its principal office and place of business located at 4023 West National Avenue, Milwaukee, Wis. Respondent maintains a branch office at 437 Eleventh Avenue, New York, N. Y. Respondent is now and for more than 1 year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused said candy, when sold, to be shipped or transported from its aforesaid places of business in the States of Wisconsin and New York to purchasers thereof in the 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 1 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 its business, respondent is and has been in competition with other corporations and with individuals and partnerships 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 has sold 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 consisted of a number of boxes or packages of candy, and an additional article of merchandise, together with a device commonly called a punchboard. Said packages of candy were distributed to the consumers thereof by means of said punchboard in substantially the following manner: Sales were 5 cents each. Said punchboard was divided into sections and each section contained a number of small sealed tubes in each of which was concealed a slip of paper with a number printed thereon. The board contained statements or legends informing purchasers and prospective purchasers that the person selecting a certain designated number, received a basket of candy; that persons selecting certain other designated numbers, each received a specified box of candy; that persons selecting other designated numbers each received a 2-pound box of candy; that persons selecting certain other designated numbers each received a 1-pound box of candy; that persons selecting certain other designated numbers each received a 25-cent package of candy; that the last five punches in every section of said board were free; that the person selecting the last number on the said board received said addi-

tional article of merchandise. Persons who did not punch said designated numbers received nothing for their money. The said numbers were effectively concealed from purchasers and prospective purchasers until said slips of paper had been punched or removed from said board. The facts as to which of said packages or boxes of candy a purchaser was to receive, if any, and whether such package was without cost were thus determined wholly by lot or chance.

PAR. 3. Retail dealers who purchased respondent's said assortments of candy, either directly or indirectly, exposed and sold the same to the purchasing public in accordance with the aforesaid sales plans or methods. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale and distribution of its candy 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 candy, and the sale of said candy by and through the use thereof and by the aid of said sales plans or methods was and is a practice of a sort which was and is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sales of candy to the purchasing public in the manner above found involved a game of chance or the sale of a chance to procure a package or box of candy at a price much less than the normal retail price thereof. Many persons, firms, and corporations who have sold or distributed merchandise in competition with respondent, as above found, were and are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or the 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 candy or like or similar candy, were attracted by said sales plans or methods employed by respondent in the sale and distribution of its candy, and the element of chance involved therein and were thereby induced to buy respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who did not and do not use the same or equivalent sales plans or methods. The use of said sales plans or methods by respondent because of said game of chance, had a tendency and capacity to, and did, unfairly divert trade to respondent from its said competitors who did not use the same or equivalent sales plans or methods, and as a result thereof, substantial injury 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. Respondent discontinued the sale of lottery assortments of candy as hereinabove found on or about December 1, 1939, upon receipt of inquiry from the Federal Trade Commission as to the acts and practices being engaged in by respondent.

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 (respondent having filed no answer) and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that the respondent waives all hearings and other intervening procedure, 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, Robert A. Johnston Company, 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 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 any merchandise, together with push or pull cards, punchboards, or any other devices, which said push or pull cards, punchboards or other devices are to be used or may be used in selling or distributing said merchandise to the general public by means of a game of chance, gift enterprise, or lottery scheme.

3. Supplying to or placing in the hands of others push or pull cards, punchboards or other devices either with assortments of merchandise or separately, which said push or pull cards, punchboards or other devices are to be used or may be used in selling or distributing said merchandise to the general public by means of a game of chance, gift enterprise, or lottery scheme.

Order

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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.

Syllabus

IN THE MATTER OF

CANADIAN FUR TRAPPERS CORPORATION, AND DANIEL DORNFELD, JACOB DORNFELD, AND MORRIS DORNFELD

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

Docket 3424. Complaint, May 13, 1938—Decision, Sept. 16, 1940

Where a corporation and two individuals, who were, and had been since its incorporation, officers thereof, and who participated in controlling and directing its policies and practices, engaged in sale and distribution of furs and fur products to purchasers in other States and in the District of Columbia, in substantial competition with others likewise engaged in sale and distribution of such products in commerce as aforesaid, including those selling and distributing their products in commerce who do not in any manner misrepresent their status or nature, or character of their business, or geographical origin of their products, and who do not represent that they are trappers or manufacturing furriers when such is not the case, and do not misrepresent in any manner the nature, character or quality of products sold or offered by them—

- (a) Adopted and used as corporate and trade name, name including words "Canadian Fur Trappers," and carried on their business thereunder continuously in soliciting sale of and selling their said products in commerce as aforesaid, and displayed said name on letterheads, billheads, cards, invoices, and labels, and in newspaper and radio advertising, and featured in certain of their said advertisements word "Canadian" and also words "Fur Trappers," with abbreviation "Corp." in small and inconspicuous type, and displayed in certain advertising matter large seal or emblem simulating Royal Coat of Arms of Great Britain, together with word "Canadian" in conspicuous letters and words "Fur Trappers" less conspicuously and, in very fine print, word "Corp."; notwithstanding fact concern in question was not a Canadian corporation, but a domestic one, and had no connection or association with any organization, group, or interest composed or representing Canadian fur trappers or trappers of fur-bearing animals, and was not engaged in business of fur trapping or otherwise taking or capturing such animals, and furs of Canadian origin dealt in by them did not exceed from 25 percent to 35 percent of such products in which, as a whole, they dealt;

With effect of deceiving and misleading prospective purchasers and purchasers of their said products into the belief that corporation in question was a Canadian one, owned, controlled, and operated by Canadian fur trappers, and that products offered and sold by them were furs and fur products which they had made or manufactured from peltries of animals actually shot, trapped, or killed, or otherwise caught and taken by them in Canada, and were offered and sold to public by them without any intervention of middleman, as preferred by substantial portion of purchasing public, and of deceiving and misleading purchasers into erroneous belief, through such simulation