

IN THE MATTER OF

W. C. ALLEN CANDY COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4156. Complaint, June 4, 1940—Decision, Sept. 18, 1940

Where a corporation engaged in sale and distribution of candy and confectionery products, including certain assortments which were sold, packed, and assembled so as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof and which included (1) various containers, candy, a suitcase, and a punchboard for use in sale and distribution of such containers, candy, and other merchandise to the consuming public under a plan and in accordance with said board's explanatory legend by which amount, if any, paid for chances and ranging from 1 to 5 cents was determined by kind of number punched, and by which certain specified numbers from the 400 concealed on board entitled purchasers to receive bars of candy, purchaser of last punch on board received suitcase, and purchasers failing to secure such specified numbers or make last punch received nothing for money paid other than privilege of making punch; and (2) various other similar assortments of merchandise along with punchboards involving lot or chance feature and varying in detail only from that above described—

Sold such assortments along with punchboards, as above set forth, to jobbers, wholesalers, and retailers by whom as direct or indirect purchasers such assortments were exposed and sold to purchasing public in accordance with aforesaid sales plans, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its merchandise in accordance with plan above set forth, involving game of chance or sale of chance to procure candy or other merchandise at price much less than normal retail price thereof, 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 game of chance or sale of a chance to win something by chance, or any method contrary to public policy and refrain therefrom;

With the result that many persons were attracted by its said sales plan or method employed by it in the sale and distribution of its merchandise, and element of chance involved therein, and were thereby induced to buy and sell same in preference to that offered and sold by its said competitors who do not use such or equivalent method, and with effect, through use of said method and because of such game of chance, of unfairly diverting trade in commerce to it from its competitors aforesaid, who do not use such method:

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 and unfair and deceptive acts and practices therein.

Mr. L. P. Allen, Jr., for the Commission.

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 W. C. Allen Candy Co., 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent W. C. Allen Candy Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 1028 East Burnside Street, Portland, Oreg. Respondent is now, and for more than 10 years last past has been, engaged in the sale and distribution of candy and confectionery in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said candy and confectionery, when sold, to be transported from its place of business as aforesaid to purchasers thereof, at their respective points of location, in the various States of the United States other than the State of Oregon, and in the District of Columbia. There is now, and has been for more than 10 years last past, a course of trade by said respondent in such merchandise 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, the respondent is and has been in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of like or similar articles of 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 wholesalers, jobbers, and retail dealers assortments of merchandise so packed or 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 consists of various containers, candy, and a suitcase, together with the device commonly called and known as a punchboard. Said containers, candy, and other merchandise are sold and distributed to the consuming public by means of said punchboard in the following manner: There are 400 numbers concealed in said board, which bears the statement that players punching numbers ending in 0 pay

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nothing; those punching numbers ending 1 pay 1 cent per punch; those punching numbers ending in 2 pay 2 cents, and so on. Those punching numbers ending in from 5 to 9 pay only 5 cents each. The board also bears a statement informing purchasers or prospective purchasers that certain specified numbers entitle the purchasers thereof to receive boats of candy, and the purchaser of the last punch on the board receives a suitcase. A purchaser who does not punch one of the specified numbers receives nothing for his money other than the privilege of punching a number from the board. All of the numbers are effectively concealed from purchasers or prospective purchasers until the punch is selected and made, and the number punched or separated from the board. The said candy and merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes and has sold and distributed, various assortments of merchandise along with punchboards involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, 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 merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its merchandise and the sale of said merchandise 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 public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure candy or other merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the 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 method that is 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 merchandise and the element of chance involved therein, 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 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 an equivalent 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.

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 June 4, 1940, issued and subsequently served its complaint in this proceeding upon respondent, W. C. Allen Candy Co., 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 W. C. Allen Candy Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 1028 East Burnside Street, Portland, Oreg. Respondent is now, and for more than 10 years last past has been, engaged in the sale and distribution of candy and confectionery products in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said candy and

confectionery products, when sold, to be transported from its place of business as aforesaid to purchasers thereof, at their respective points of location, in the various States of the United States other than the State of Oregon, and in the District of Columbia. There is now, and has been for more than 10 years last past, a course of trade by said respondent in such merchandise 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, the 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 articles of 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 wholesalers, jobbers, and retail dealers assortments of merchandise so packed or 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 consists of various containers, candy, and a suitcase, together with the device commonly called and known as a punchboard. Said containers, candy, and other merchandise are sold and distributed to the consuming public by means of said punchboard in the following manner: There are 400 numbers concealed in said board, which bears the statement that players punching numbers ending in 0 pay nothing; those punching numbers ending in 1 pay 1 cent per punch; those punching numbers ending in 2 pay 2 cents, and so on. Those punching numbers ending in from 5 to 9 pay only 5 cents each. The board also bears a statement informing purchasers or prospective purchasers that certain specified numbers entitle the purchasers thereof to receive boats of candy, and the purchaser of the last punch on the board receives a suitcase. A purchaser who does not punch one of the specified numbers receives nothing for his money other than the privilege of punching a number from the board. All of the numbers are effectively concealed from purchasers or prospective purchasers until the punch is selected and made, and the number punched or separated from the board. The said candy and merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes and has sold and distributed, various assortments of merchandise along with punchboards involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

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PAR. 3. Retail dealers who purchase respondent's said merchandise, 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 merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its merchandise and the sale of said merchandise 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 public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure candy or other merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the 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 method that is 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 merchandise and the element of chance involved therein, 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 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 an equivalent method.

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 allega-

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tions of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to the 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, W. C. Allen Candy Co., 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 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.

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.

Complaint

IN THE MATTER OF

LOUIS COHEN, SOL COHEN AND MARVYN COHEN, INDIVIDUALLY, AND TRADING AS COHEN'S CUT RATE DRUG STORE, AND AS COHEN DRUG CO., AND AS COHEN'S

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

Docket 4202. Complaint, July 30, 1940—Decision, Sept. 18, 1940

Where three individuals who owned and operated a chain of drug stores in West Virginia and were engaged in sale and distribution of various medicinal preparations, including product designated as Soluble Gelatin Capsules No. 5, Apiol, and Ergotin Compound, and advertised and sold as Lady Lydia Capsules; in advertisements which they disseminated or caused to be disseminated concerning their said product through the mails and through various other means in commerce and through various means, and which were intended and likely to induce purchase thereof—

- (a) Represented that their said product designated and advertised and sold as above set forth constituted a competent and effective treatment for delayed menstruation and was safe and harmless, facts being it was not such a treatment, was not safe or harmless, but contained drugs apiol green, ergotin, oil of savin, and aloin, in quantities sufficient to cause serious and irreparable injury to health if used under conditions prescribed in advertisements in question, or such conditions as are customary or usual, and use thereof might result in a toxic condition and other serious consequences, including blood poisoning or septicemia; and
- (b) Failed to reveal in advertisements in question that use of said preparation under conditions prescribed therein, or such conditions as are customary or usual, might result in serious and irreparable injury to health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true, and that such preparation was safe, competent, and effective treatment for aforesaid condition, and to induce, directly or indirectly, purchase thereof by public:

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

Mr. R. P. Bellinger for the Commission.

Mr. Philip Angel and *Mr. Harry R. Angel*, of Charleston, W. Va., for respondents.

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 Louis Cohen, Sol Cohen, and Marvyn Cohen, individually, and trading as Cohen's Cut