

Complaint

31 F. T. C.

IN THE MATTER OF
QUEEN CITY CANDY COMPANY, INC.

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

Docket 4220. Complaint, Aug. 6, 1940—Decision, Sept. 18, 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 the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and which included (1) number of candy bars, together with push card for use in sale and distribution thereof to purchasers under a plan by which persons pushing by chance certain numbers received bar without cost, and others paid 1, 2, or 3 cents in accordance with number thus secured; and (2) various other similar assortments involving lottery or chance feature and varying only in detail from that described above—

Sold such assortments to dealer and retail purchasers by whom, as direct or indirect buyers, they were exposed and sold to purchasing public in accordance with aforesaid plans or methods, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale and distribution of candy in accordance with sales plans or methods above set forth, involving game of chance or sale of a chance to procure bar of candy without cost or 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 sales plans or methods involving game of chance or sale of a chance to win something by chance, or any other sales plans or methods contrary to public policy, and refrain therefrom;

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

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 Queen City 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Queen City Candy Co., Inc., is a corporation organized and doing business under the laws of the State of North Carolina, with its principal office and place of business located at 531 Bruns Avenue, Charlotte, N. C. 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 place of business in the State of North Carolina to purchasers thereof in various other 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 candy, 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 candy 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 certain assortments of 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 bars of candy together with a device commonly called a push card. Said bars of candy are distributed to the consumers thereof by means of said push card in substantially the following manner.

The push card contains a number of partially perforated disks, and on the face of each of said disks is printed the word "push." Within each of said disks is printed either the letter "o" or number 1, 2, or 3, and the persons pushing the disk containing the letter "o" each receive a bar of said candy without cost, and the persons pushing the disks containing either number 1, 2, or 3 pay in cents the amount appearing on the disks pushed. The said numbers printed within the said disks are effectively concealed from purchasers and prospective purchasers until selections have been made and the disks separated or removed from said card. Whether a customer receives a bar of candy without cost or is required to pay

Complaint

31 F. T. C.

1 cent, 2 cents, or 3 cents therefor is thus determined wholly by lot or chance.

The respondent manufactures, sells, and distributes various assortments of candy involving a lottery or chance feature, but such assortments and the methods of sale and distribution thereof are similar to the one herein described and vary 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 the 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 in the manner above alleged involves a game of chance or the sale of a chance to procure a bar of candy without cost or 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 of 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 consumers of, said 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 candy in preference to candy 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 plan 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 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 August 6, 1940, issued and on August 7, 1940, served its complaint in this proceeding upon respondent, Queen City Candy Co., Inc., 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, Queen City Candy Co., Inc., is a corporation organized and doing business under the laws of the State of North Carolina, with its principal office and place of business located at 531 Bruns Avenue, Charlotte, N. C. 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 place of business in the State of North Carolina to purchasers thereof in various other 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 candy, 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 candy 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 certain assortments of 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 bars of candy together with a device commonly called a push card. Said bars of candy are distributed to the consumers thereof by means of said push card in substantially the following manner:

The push card contains a number of partially perforated disks, and on the face of each of said disks is printed the word "push." Within each of said disks is printed either the letter "o", or number 1, 2, or 3, and the persons pushing the disks containing the letter "o" each receive a bar of said candy without cost, and the persons pushing the disks containing either number 1, 2, or 3 pay in cents the amount appearing on the disk pushed. The said numbers printed within the said disks are effectively concealed from purchasers and prospective purchasers until selections have been made and the disks separated or removed from said card. Whether a customer receives a bar of candy without cost or is required to pay 1 cent, 2 cents, or 3 cents therefor is thus determined wholly by lot or chance.

The respondent manufactures, sells and distributes various assortments of candy involving a lottery or chance feature, but such assortments and the methods of sale and distribution thereof are similar to the one herein described and vary 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 the 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 in the manner above described involves a game of chance or the sale of a chance to procure a bar of candy without cost or 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 described, are unwilling to adopt and use said sales

924

Order

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 consumers of, said 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 candy in preference to candy 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 various States of the United States.

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 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, Queen City 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 or distributing candy or any other merchandise so packed and assembled that sales of said candy or other merchandise are to be

Order

31 F. T. C.

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 candy or other 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 candy or any other 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 candy or 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 or other merchandise to the 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.

Syllabus

IN THE MATTER OF

HILLS BROTHERS COMPANY, ET AL.

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

Docket 4105. Complaint, Apr. 25, 1940—Decision, Sept. 19, 1940

Where a domestic corporation engaged in importing into the United States dates grown in the Kingdom of Iraq, and in sale and distribution thereof in the various States of the United States and in the District of Columbia; an individual, doing business as English private company, with principal office and place of business in London, engaged in purchasing dates in said Kingdom or country and in importing them into United States and reselling and distributing them in the various States and in said District as aforesaid; and a domestic concern engaged in selling and distributing said products to purchasers thereof in the several States and in District in question; and as thus variously engaged in competition, prior to 1939, with others in England and the United States who purchased dates from growers in said Kingdom, source for 4 or 5 years past of some 83 percent of said product sold and consumed in the United States, and caused to be shipped to the United States and sold and distributed therein such dates in competition, as aforesaid, with said corporation, individual and concern, and their agents—

Reached, in year aforesaid, and carried out understanding with English owners of exclusive right to purchase, and to grant permission to purchase, all dates grown in said Kingdom of Iraq packed in boxes, whereby they were granted exclusive permission to purchase and pack for importation into the United States and Canada dates of 1939 crop grown in Iraq and packed in boxes, and whereby it was further understood that said English owners of such exclusive rights would not permit greater quantities of dates in question to be exported from Iraq to United States and Canada than the average quantity that had been thus exported in previous 5-year period;

With result that during year in question others, some of whom had formerly obtained dates grown in said kingdom for importation into United States, and sale and distribution therein, met with refusal of said English owners, on attempts to obtain such dates, to grant necessary permission and rights, and were unable to obtain said product there grown and packed in boxes for importation into the United States, and competition in interstate trade in commerce in products in question was substantially lessened, and competition between and among said companies or concerns and individual, and between and among them and their competitors, in sale of dates in commerce, was lessened and restrained, power to control prices was placed in them, and monopoly in sale of dates in commerce created in them, and such commerce was unreasonably restrained:

Held, That such acts, practices and methods, under the circumstances set forth, were all to the prejudice of the public, and constituted unfair methods of competition.

Mr. Lynn C. Paulson for the Commission.

Breed, Abbott & Morgan, of New York City, for Hills Bros. Co.