

Syllabus

IN THE MATTER OF

CURTIS C. WALKER, TRADING AS DIAMOND 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 4224. Complaint, Aug. 7, 1940—Decision, Sept. 26, 1940

Where an individual 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 included (1) number of bars of candy, together with push card for use in sale and distribution of such products to purchasing public under plan in accordance with which customer received bar without cost or paid therefor 1, 2, or 3 cents depending upon number secured by chance in accordance with particular disc of card pushed, and (2) various other assortments involving lottery or chance feature and similar in methods of sale and distribution to that above described from which they varied in detail only—

Sold such assortments, along with said push cards to dealer or retailer purchasers, by whom, as such direct or indirect purchasers, assortments in question were displayed and sold to purchasing public in accordance with afore-said sales plans or methods, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of his candy in accordance with such plans or methods as above set forth, involving game of chance or sale of a chance to procure a bar of candy without cost, or at a 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 that are contrary to public policy, and refrain therefrom;

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

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

31 F. T. C.

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 Curtis C. Walker, individually and trading as Diamond Candy 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 public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Curtis C. Walker, is an individual trading under the name of Diamond Candy Co., with his principal office and place of business located at 219 North Graham Street, 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 his 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 his business respondent is and has been in competition with other individuals and partnerships, and with corporations 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 his 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 discs, and on the face of each of said discs is printed the word "push." Within each of said discs is printed either the letter "o" or number 1, 2, or 3, and the persons pushing the discs containing the letter "o" each receive a bar of said candy without cost, and the persons pushing the discs containing either number 1, 2, or 3 pay in cents the amount appearing on the disc pushed. The said numbers printed within the said discs are effectively concealed from purchasers and prospective

purchasers until selections have been made and the discs 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 his 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 his 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 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 his 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 his 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.

Findings

31 F. T. C.

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 7, 1940, issued, and on August 8, 1940, served, its complaint in this proceeding upon respondent, Curtis C. Walker, individually and trading as Diamond Candy Co., charging him 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 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, Curtis C. Walker, is an individual trading under the name of Diamond Candy Co., with his principal office and place of business located at 219 North Graham Street, 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 his 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 his business, respondent is and has been in competition with other individuals and with partnerships and cor-

porations 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 his 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 discs, and on the face of each of said discs is printed the word "push." Within each of said discs is printed either the letter "o" or number 1, 2, or 3, and the persons pushing the discs containing the letter "o" each receive a bar of said candy without cost, and the persons pushing the discs containing either number 1, 2, or 3 pay in cents the amount appearing on the disc pushed. The said numbers printed within the said discs are effectively concealed from purchasers and prospective purchasers until selection have been made and the discs 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 his 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 his 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 corpora-

tions who sell or distribute merchandise in competition with 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 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 his 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 his 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 he 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, Curtis C. Walker, individually and trading as Diamond Candy Co., or trading under any other name or names, his 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 any other merchandise, 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, 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 said candy, or other merchandise to the public.

3. 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 him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

Complaint

31 F. T. C.

IN THE MATTER OF
DR. PIERRE CHEMICAL COMPANY

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

Docket 4005. Complaint, Jan. 31, 1940—Decision, Sept. 27, 1940

Where a corporation engaged in the manufacture, sale and distribution in commerce among the various States and in the District of Columbia of its medicinal preparations known as Dr. Pierre's Boro-Pheno-Form Vaginal Suppositories and Dr. Pierre's Boro-Pheno-Form Vaginal Creme; in advertisements which it disseminated concerning its said medicinal preparations through the mails, through newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce among the various States, and through other means in commerce and otherwise, and which were intended and likely to induce purchase of its said product—

Represented directly or by implication that its said products constituted in all cases competent and effective contraceptives and were competent and effective germicides and possessed substantial therapeutic agents which healed irritated tissues and membranes and had been approved and accepted and were recommended by a substantial number of reputable physicians;

Facts being aforesaid products did not generally or in a majority of cases constitute competent or effective preventives for aforesaid purposes and while they possessed antiseptic ingredients of low toxicity were not competent or effective germicides generally; contained no substantial therapeutic agents or properties which would serve to heal irritated tissues or membranes and had not been approved, accepted, or recommended by any substantial number of reputable physicians;

With tendency and capacity to mislead and deceive substantial portion of the purchasing public into the erroneous belief that said representations were correct and constituted statements of fact, and with result, as direct consequence of such mistaken and erroneous beliefs induced by its said representations, that a number of the purchasing public bought substantial quantities of said Boro-Pheno-Form Vaginal Suppositories and Boro-Pheno-Form Vaginal Creme:

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. James L. Baker for the Commission.

Mr. Clinton Robb, of Washington, D. C., 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 Dr. Pierre Chemical Co., a corporation, hereinafter referred to as respondent, has