

IN THE MATTER OF
CHESTER E. THOMAS, TRADING AS THOMAS BROTHERS

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

Docket 4151. Complaint, June 4, 1940—Decision, Oct. 21, 1940

Where an individual engaged in manufacture of candy, salted peanuts, and other products, and in sale and distribution of certain assortments of such products which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers, and which included (1) plaster of paris toy and 30 bags of salted peanuts of uniform size, shape, and quality, stapled to cardboard sheet for sale and distribution to purchasers under a plan, and in accordance with said sheet's explanatory legend, by which purchaser paid from 1 to 5 cents for bag of peanuts, in accordance with number concealed on card's tabs as disclosed by removal of bag from card and the opening of the tab attached, and under which purchaser of last package or bag received aforesaid toy; (2) box of chocolate candy and number of candy bars of uniform size and shape, together with push card for use in sale and distribution of said candy under a plan, and in accordance with said card's explanatory legend, by which purchaser received, for nickel paid, only one, or additional bars, dependent upon success or failure in securing by chance from card certain designated numbers, and under which purchaser making last punch on card received, without additional cost, said box of candy; and (3) various other assortments of peanuts or candy involving lot or chance feature similar to those respectively above described, from which they varied in detail only—

Sold such assortments to wholesalers, jobbers, and retailers by whom, as direct or indirect retailer-purchasers thereof, assortments in question were exposed and sold to purchasing public in accordance with sales plans aforesaid, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his said products in accordance with such sales plans as above set forth, involving game of chance or sale of a chance to procure bags of peanuts at prices which are much less than normal retail prices thereof, or additional pieces or boxes of candy without additional cost, 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 other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by said sales plans or methods employed by him in sale and distribution of his candy and other products and element of chance involved therein, and were thereby induced to buy and sell his said products in preference to those of his competitors above set forth, and with effect, through use of such methods and because of said game of chance, of diverting trade unfairly to him from his said competitors who do not use same or equivalent methods:

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. 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 Chester E. Thomas, individually and trading as Thomas Bros., 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 Chester E. Thomas is an individual trading as Thomas Bros. with his principal office and place of business located at 20 Northeast Weidler Street, Portland, Oreg. Respondent is now, and for more than 10 years last past has been, engaged in the manufacture and in the sale and distribution of candy, salted peanuts, and other products to wholesale dealers, jobbers, and retail dealers located at points in various States of the United States and in the District of Columbia. The respondent causes and has caused said products, when sold, to be transported from his place of business in the city of Portland, Oreg., to purchasers thereof, at their respective points of location, in the various States of the United States other than 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 respondent in such products 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 individuals and with partnerships and corporations engaged in the sale and distribution of like or similar products 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 his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy and salted peanuts 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. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondent but this list is not all inclusive of the various assortments nor does

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it include all of the details of the several plans which respondent has been or is using in the sale and distribution of candy and salted peanuts by lot or chance:

(a) One assortment is composed of a plaster of paris toy and 30 bags of salted peanuts of uniform size, shape and quality, the latter being stapled to a sheet of cardboard. Attached at the top of each of said bags of peanuts where the bag is stapled to the board is a small paper tab with a number thereon. The said numbers range from 1 to 5 and the board contains a legend or statement informing purchasers and prospective purchasers that they pay in cents the amount of the number on the said tab. The numbers on the said tabs are concealed from purchasers and prospective purchasers until a bag of peanuts has been removed from the board and the attached paper tab opened. The purchaser of the last package of peanuts receives the said plaster of paris toy. The said toy is distributed and the price of the bags of peanuts is thus determined wholly by lot or chance.

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

(b) Another of respondent's assortments is as follows: This assortment consists of a box of chocolate candy and a number of bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has a number of small partially perforated discs on the face of each of which is printed the word "Push." When a disk is pushed or separated from the said card a number is disclosed. The numbers begin with 1 and continue to the number of pushes there are on the card but are not arranged in numerical sequence. The price for pushing one of said disks on said card is 5 cents. The said card contains a legend or instructions informing purchasers and prospective purchasers that each purchaser of a chance on the card receives one of the said bars of candy and that certain designated numbers entitle the purchasers thereof to additional bars of candy without additional cost. The purchaser making the last punch on the card receives the said box of chocolate candy without additional cost. The numbers within the said disks are effectively concealed from purchasers and prospective purchasers until a disk is pushed or separated from the card. The box of candy and additional bars of candy are thus distributed to the purchasing and consuming public wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of candy along with push cards 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 products, 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 his products in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of his products and the sale of said products 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 the criminal laws.

PAR. 4. The sale of candy and salted peanuts to the purchasing public by the methods and plans hereinabove set forth involves a game of chance or the sale of a chance to procure bags of peanuts at much less than the normal retail price thereof or additional pieces or boxes of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy and other products in competition with respondent, as above alleged, are unwilling to adopt and use said methods 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 plans or methods employed by respondent in the sale and distribution of his candy and other products and the element of chance involved therein and are thereby induced to buy and sell respondent's products in preference to products of said competitors of respondent who do not use the same or equivalent methods. The use of said methods 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 his said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury is being done 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 the 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 served its complaint in this proceeding upon respondent Chester E. Thomas, individually and trading as Thomas Bros. 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. On June 29, 1940, the respondent filed his answer in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and a 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 Chester E. Thomas is an individual trading as Thomas Bros. with his principal office and place of business located at 20 Northeast Weidler Street, Portland, Oreg. Respondent is now and for more than 10 years last past has been, engaged in the manufacture and in the sale and distribution of candy, salted peanuts, and other products to wholesale dealers, jobbers, and retail dealers located at points in various States of the United States and in the District of Columbia. The respondent causes and has caused said products, when sold, to be transported from his place of business in the city of Portland, Oreg., to purchasers thereof, at their respective points of location, in the various States of the United States other than 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 respondent in such products 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 individuals and with partnerships and corporations engaged in the sale and distribution of like or similar products 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 his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy and salted peanuts 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. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondent but this list is not all inclusive of the various assortments nor does it include all of the details of the several plans which respondent has been or is using in the sale and distribution of candy and salted peanuts by lot or chance:

(a) One assortment is composed of a plaster of paris toy and 30 bags of salted peanuts of uniform size, shape, and quality, the latter being stapled to a sheet of cardboard. Attached at the top of each of said bags of peanuts where the bag is stapled to the board is a small paper tab with a number thereon. The said numbers range from 1 to 5 and the board contains a legend or statement informing purchasers and prospective purchasers that they pay in cents the amount of the number on the said tab. The numbers on the said tabs are concealed from purchasers and prospective purchasers until a bag of peanuts has been removed from the board and the attached paper tab opened. The purchaser of the last package of peanuts receives the said plaster of paris toy. The said toy is distributed and the price of the bags of peanuts is thus determined wholly by lot or chance.

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

(b) Another of respondent's assortments is as follows: This assortment consists of a box of chocolate candy and a number of bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has a number of small partially perforated disks on the face of each of which is printed the word "Push". When a disk is pushed or separated from the said card a number is disclosed. The numbers begin with 1 and continue to the number of pushes there are on the card but are not arranged in numerical sequence. The price for pushing one of said disks on said card is 5 cents. The said card contains a legend or instructions informing purchasers and prospective purchasers that each purchaser of a chance on the card receives one of the said bars of candy and that certain designated numbers entitle the purchasers thereof to additional bars of candy without additional cost. The purchaser making the last punch on the card receives the said box of chocolate candy without additional cost. The numbers within the said disks are effectively concealed from purchasers and prospective purchasers until a disk is pushed or separated from

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the card. The box of candy and additional bars of candy are thus distributed to the purchasing and consuming public wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of candy along with push cards 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 directly or indirectly purchase respondent's said products 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 his products in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of his products and the sale of said products 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 the criminal laws.

PAR. 4. The sale of candy and salted peanuts to the purchasing public by the methods and plans hereinabove set forth involves a game of chance or the sale of a chance to procure bags of peanuts at prices which are much less than the normal retail price thereof or additional pieces or boxes of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy and other products in competition with respondent, as above found, are unwilling to adopt and use said methods 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 plans or methods employed by respondent in the sale and distribution of his candy and other products and the element of chance involved therein and are thereby induced to buy and sell respondent's products in preference to products of said competitors of respondent who do not use the same or equivalent methods. The use of said methods 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 his said competitors who do not use the same or equivalent methods.

CONCLUSION

The aforesaid acts and practices of the 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 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, Chester E. Thomas, individually and trading as Thomas Bros., 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 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 push or pull cards, pull tabs, punchboards or other lottery devices, either with assortment of merchandise or separately, which said push or pull cards, pull tabs, 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.

3. 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 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.

IN THE MATTER OF
LOUIS TALESNICK, TRADING AS HOOSIER CANDY
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 4209. Complaint, July 31, 1940—Decision, Oct. 21, 1940

Where an individual engaged in sale and distribution of candy and other confectionery products, including certain assortments 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 thereof, and which included (1) 200 pieces of candy of uniform size and shape, together with push card for use in sale and distribution of said candy to purchasers under a plan, and in accordance with said card's explanatory legend, by which customer-purchaser received for penny paid one or more pieces, in accordance with success or failure in securing certain numbers concealed in card; and (2) assortments or products with other push cards for use in sale and distribution of its candy by means of game of chance, gift enterprise, or lottery scheme similar to that above described and varying therefrom in detail only—

Sold such assortments, as aforesaid, to wholesalers, jobbers, and retailers by whom, as direct or indirect purchasers of it, such candy was exposed and sold to purchasing public in accordance with such sales plans, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of his products in accordance with plans as 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 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 the result that many persons were attracted by said sales plans or methods and by element of chance involved therein, and were thereby induced to buy and sell his said candy in preference to that of competitors who do not use same or equivalent methods, and with effect, through use of said method and because of said game of chance, of unfairly diverting trade to him from his said competitors who do not use same or equivalent 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. 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 Louis Talesnick,