

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,

individually and trading as Hoosier Candy Sales 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Louis Talesnick, is an individual trading as Hoosier Candy Sales Co., with his principal office and place of business located at 426 South Meridian Street, Indianapolis, Ind. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of candy and other confectionery products to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused said products, when sold, to be transported from his aforesaid place of business in the State of Indiana to purchasers thereof, at their respective points of location in the various States of the United States other than Indiana and in the District of Columbia. There is now, and has been for more than 1 year 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 his 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 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. 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 approximately 200 pieces of candy of uniform size and shape, together with a device commonly called a push card. The push card has 150 partially perforated disks on the face of each of which is printed the word "Push." Concealed within the said disks are numbers. If the number punched from the said card corresponds with any of the numbers set out in the legend at the top of the card the purchaser thereof is entitled to, and receives, additional pieces of candy without additional cost. Sales are 1 cent each and those not securing a winning number receive one piece of candy. The numbers within the said disks are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disk pushed or separated from the card. The additional

pieces of candy are thus distributed to purchasers of punches on the said card wholly by lot or chance.

The respondent furnishes and has furnished various other push cards for use in the sale and distribution of his candy by means of a game of chance, gift enterprise, or lottery scheme. Such other cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said candy 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 plan hereinabove set forth. The use by respondent of said sales plan or method 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 plan or 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 candy to the purchasing public by the method and plan hereinabove set forth involves a game of chance or the sale of a chance to procure additional pieces of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with 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 other method 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 his candy and in the element of chance involved therein and are thereby induced to buy and sell respondent's candy in preference to candy of said competitors who do not use the same or equivalent methods. 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 his said competitors who do not use the same or equivalent 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 July 31, 1940, issued and served its complaint in this proceeding upon respondent, Louis Talesnick, individually and trading as Hoosier Candy Sales 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. On September 5, 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, Louis Talesnick, is an individual trading as Hoosier Candy Sales Co., with his principal office and place of business located at 426 South Meridian Street, Indianapolis, Ind. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of candy and other confectionery products to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused said products, when sold, to be transported from his aforesaid place of business in the State of Indiana to purchasers thereof, at their respective points of location, in the various States of the United States other than Indiana and in the District of Columbia. There is now, and has been for more than 1 year 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 his 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 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.

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 approximately 200 pieces of candy of uniform size and shape, together with a device commonly called a push card. The push card has 150 partially perforated disks on the face of each of which is printed the word "Push." Concealed within the said disks are numbers. If the number punched from the said card corresponds with any of the numbers set out in the legend at the top of the card the purchaser thereof is entitled to, and receives, additional pieces of candy without additional cost. Sales are 1 cent each and those not securing a winning number receive one piece of candy. The numbers within the said disks are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disk pushed or separated from the card. The additional pieces of candy are thus distributed to purchasers of punches on the said card wholly by lot or chance.

The respondent furnishes and has furnished various other push cards for use in the sale and distribution of his candy by means of a game of chance, gift enterprise, or lottery scheme. Such other cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said candy 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 plan hereinabove set forth. The use by respondent of said sales plan or method 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 plan or 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 candy to the purchasing public by the method and plan hereinabove set forth involves a game of chance or the sale of a chance to procure additional pieces of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with 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 other method 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 his candy and in the element of chance involved therein and are thereby induced to buy

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and sell respondent's candy in preference to candy of said competitors who do not use the same or equivalent methods. 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 his said competitors who do not use the same or equivalent 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.

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 allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said fact, 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 Louis Talesnick, individually and trading as Hoosier Candy Sales 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 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, 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 such candy or other merchandise to the public.

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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.

Syllabus

IN THE MATTER OF
HOWARD DECKELBAUM, TRADING AS SUN CUT RATE
STORE

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

Docket 4213. Complaint, Aug. 2, 1940—Decision, Oct. 21, 1940

Where an individual engaged in sale and distribution of various medicinal preparations, including drug-containing product variously advertised as "Harmless Prescription Capsules" and "Special Prescription Capsules," and otherwise designated as "Prescription Female Capsules—Double Strength," and as "Prescription Female Capsules—Triple Strength"; in advertisements of his said product which he disseminated and caused to be disseminated through the mails, in newspaper advertisements, circulars, other advertising literature, and in commerce and otherwise, and which were intended and likely to induce purchase thereof—

- (a) Represented, directly and by implication, that his said preparation, designated as above set forth, constituted a competent and efficient treatment for delayed menstruation, and that it was safe and harmless, facts being his said statements and representations, used and disseminated as above, were grossly exaggerated, false, and misleading, such preparation was not a competent or efficient treatment for said purpose and was not safe or harmless by virtue of inclusion therein of drugs apiol green, ergotin, oil of savin and aloin, in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual; and
- (b) Failed to reveal, in said advertisements thus disseminated, facts material in the light thereof, and that use of said product, under the conditions prescribed in such advertisements or under such conditions as are customary or usual, might result in injury to health, and might cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy might cause uterine infection and blood poisoning and other serious conditions and complications;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true, and that such preparation was a safe, competent, and effective treatment for delayed menstruation, and to induce, directly or indirectly, purchase by such public of his said preparation:

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. William L. Taggart, for the Commission.