

Syllabus

IN THE MATTER OF

TRINIDAD CREAMERY COMPANY

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

Docket 4251. Complaint, Aug. 21, 1940—Decision, Oct. 21, 1940

Where a corporation engaged in the processing of butter and in the sale and distribution thereof, including certain packages which were so packed as to involve use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and including (1) one-pound, individually wrapped packages sold at designated prices and containing coupons bearing one of letters making up name of product in question, for use under plan by which customer-purchaser who assembled, as thus secured, and remitted, with 25 cents in stamps, necessary coupons to spell aforesaid name received, without further cost, choice of number of listed articles of merchandise, retail value of each of which severally exceeded aforesaid amount, and (2) various other sales plans involving use of game of chance, gift enterprise, or lottery scheme similar to one above described and varying therefrom in detail only—

Sold such butter to dealer or retailer purchasers; by whom as such direct or indirect buyers, same was exposed and sold to purchasing public in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of its said butter in accordance with such sales plans or methods, involving game of chance or sale of a chance to procure an additional article of merchandise 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 criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving use of a 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 its said methods and element of chance involved in sale of said butter as above set forth, and were thereby induced to buy and sell its said product in preference to butter offered and sold by such competitors who do not use same or equivalent methods, and with tendency and capacity thereby unfairly to divert trade to it from its competitors who do not use same or equivalent sales plans or methods in commerce between and among various States of the United States; 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.

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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 Trinidad Creamery Co., 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, Trinidad Creamery Co., is a corporation organized and doing business under the laws of the State of Colorado, with its principal office and place of business located at 328 Commercial Street, Trinidad, Colo. Respondent is now and for more than 1 year last past has been engaged in the processing of butter and in the sale and distribution thereof to dealers located in various States of the United States. It causes and has caused said butter, when sold, to be shipped or transported from its aforesaid place of business in the State of Colorado 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 butter in commerce between and among various States of the United States. In the course and conduct of said business 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 merchandise 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 to dealers packages of its said butter, which said packages are so packed as to involve the use of a game of chance, gift enterprise, or lottery scheme when said butter is sold and distributed to the consumers thereof. Said packages of butter are sold and distributed to the purchasing public in substantially the following manner:

The name of said butter is "Colorado Gold Butter," and said butter is sold in 1-pound individually wrapped packages at designated prices. In each of said packages is placed a coupon bearing, among other things, one of the letters contained in said name. Persons successful in purchasing packages of said butter containing coupons bearing the necessary letters for the spelling of said name may submit said letters, together with 25 cents in stamps, to respondent, and in turn therefor will receive their choice of a number of listed articles of merchandise without further cost from respondent. Each of said listed articles of merchandise has a retail value greater than 25 cents.

The said letters on said coupons are effectively concealed from purchasers and prospective purchasers until the said packages of butter have been purchased, unwrapped, and said coupons removed therefrom. Said listed articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent in the sale and distribution of its butter has employed various sales plans or methods involving the use of games of chance, gift enterprises, or lottery schemes, but all of said sales plans or methods were similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's butter directly or indirectly expose and sell the same to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of its butter in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said methods in the sale of its butter and the sale of such butter by and through the use thereof and by the aid of said 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 criminal laws.

PAR. 4. The sale of butter to the purchasing public in the manner above alleged, involves a game of chance or the sale of a chance to procure an additional article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute butter in competition with respondent as above alleged are unwilling to adopt and use said method or any method involving the use of a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale of said butter in the manner above alleged, and are thereby induced to buy and sell respondent's butter in preference to butter offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the respondent because of said game of chance has the tendency and capacity to and does unfairly divert trade to respondent from its competitors who do not use the same or equivalent sales plans or methods in commerce between and among various States of the United States. At 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 the respondent as herein alleged are all to the prejudice and injury of the public and of respond-

ent'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 21, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Trinidad Creamery Co., 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. On October 1, 1940, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came 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, Trinidad Creamery Co., is a corporation organized and doing business under the laws of the State of Colorado, with its principal office and place of business located at 328 Commercial Street, Trinidad, Colo. Respondent is now and for more than one year last past has been engaged in the processing of butter and in the sale and distribution thereof to dealers located in various States of the United States. It causes and has caused said butter, when sold, to be shipped or transported from its aforesaid place of business in the State of Colorado 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 butter in commerce between and among various States of the United States. In the course and conduct of said business 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 merchandise 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 to dealers pack-

ages of its said butter, which said packages are so packed as to involve the use of a game of chance, gift enterprise, or lottery scheme when said butter is sold and distributed to the consumers thereof. Said packages of butter are sold and distributed to the purchasing public in substantially the following manner:

The name of said butter is "Colorado Gold Butter," and said butter is sold in 1 pound individually wrapped packages at designated prices. In each of said packages is placed a coupon bearing, among other things, one of the letters contained in said name. Persons successful in purchasing packages of said butter containing coupons bearing the necessary letters for the spelling of said name may submit said letters, together with 25 cents in stamps, to respondent, and in turn therefor will receive their choice of a number of listed articles of merchandise without further cost from respondent. Each of said listed articles of merchandise has a retail value greater than 25 cents. The said letters on said coupons are effectively concealed from purchasers and prospective purchasers until the said packages of butter have been purchased, unwrapped, and said coupons removed therefrom. Said listed articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent in the sale and distribution of its butter has employed various sales plans or methods involving the use of games of chance, gift enterprises or lottery schemes, but all of said sales plans or methods were similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's butter directly or indirectly expose and sell the same to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to, and places in the hands of, others a means of conducting lotteries in the sale of its butter in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said methods in the sale of its butter and the sale of such butter by and through the use thereof and by the aid of said 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 criminal laws.

PAR. 4. The sale of butter to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an additional article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute butter in competition with respondent as above found are unwilling to adopt and use said method or any

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method involving the use of a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale of said butter in the manner above found, and are thereby induced to buy and sell respondent's butter in preference to butter offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the respondent because of said game of chance has the tendency and capacity to, and does, unfairly divert trade to respondent from its competitors who do not use the same or equivalent sales plans or methods in commerce between and among various States of the United States. 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 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 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, Trinidad Creamery Co., 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 butter 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 butter or any other merchandise so packed and assembled that sales of said butter or other merchandise are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

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2. Supplying to or placing in the hands of others packages of butter containing coupons which said coupons are to be used or may be used in the distribution of other butter to the public by means of a lottery, game of chance, or gift enterprise.

3. Supplying to or placing in the hands of others any merchandise, together with any device or separately, which said device is to be or may be used in the distribution of merchandise to the public by means of a lottery, game of chance, or gift enterprise.

4. Selling or otherwise distributing merchandise by means of a lottery, game of chance, or gift enterprise.

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.

IN THE MATTER OF
**ROBERT R. RAYNOR, TRADING AS SOUTHERN 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 4297. Complaint, Aug. 30, 1940—Decision, Oct. 21, 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 use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and which included (1) 37 candy bars of uniform size and shape, together with push card for use in sale and distribution of said candy under a plan in accordance with which purchaser paid from 1 to 5 cents for candy in question, in accordance with particular number secured by chance from card, and person pushing last disk received extra bar without additional cost, and (2) assortments with various other push cards for use in sale and distribution of his said product 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 to wholesalers, jobbers, and retailers, by whom, as direct or indirect purchasers thereof, assortments in question were exposed and sold to purchasing public in accordance with sales plan 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 plan involving game of chance or sale of a chance to procure candy bars at prices much less than normal retail prices thereof, or additional bars 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 the result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his said candy and by element of chance involved therein, and were thereby induced to buy and sell his said product in preference to that of competitors who do not use same or equivalent methods, and with effect, through use of such 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:

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.

Mr. J. W. Wilson, of Dunn, N. C., for respondent.