

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.

## 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 Robert R. Raynor, individually and trading as Southern 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 Robert R. Raynor is an individual trading as Southern Sales Co., with his office and principal place of business located at Dunn, N. C. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers. Respondent causes, and has caused, said products when sold to be transported from his place of business in the city of Dunn, N. C., to purchasers thereof at their respective points of location in various States of the United States other than North Carolina. There is now, and for more than 1 year last past has been, a course of trade by respondent in said candy 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 individuals, and with partnerships and corporations engaged in the sale and distribution of candy 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 its 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 or 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 is composed of 37 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 36 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 1 to 5, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, 3, 4, and 5 pay 1 cent, 2 cents, 3 cents, 4 cents, and 5 cents, respectively. The purchaser pushing the last disk on the said card receives an extra bar of candy without additional cost. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondent furnishes, and has furnished, various 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 cards are similar to the one herein 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 or plan hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof or additional bars 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 of respondent 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 various States of the United States 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 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 30, 1940, issued and served

its complaint in this proceeding upon respondent Robert R. Raynor, individually and trading as Southern 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 11, 1940, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint. The respondent has waived all intervening procedure and 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, Robert R. Raynor, is an individual trading as Southern Sales Co., with his office and principal place of business located at Dunn, N. C. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers. Respondent causes, and has caused, said products when sold to be transported from his place of business in the city of Dunn, N. C., to purchasers thereof at their respective points of location in various States of the United States other than North Carolina. There is now, and for more than 1 year last past has been, a course of trade by respondent in said candy 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 individuals, and with partnerships and corporations engaged in the sale and distribution of candy 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:

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said push card has 36 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 1 to 5, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, 3, 4, and 5 pay 1 cent, 2 cents, 3 cents, 4 cents, and 5 cents, respectively. The purchaser pushing the last disk on the said card receives an extra bar of candy without additional cost. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

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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 or plan hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof or additional bars 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 and sell respondent's candy in preference to candy of said competitors of respondent 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 com-

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merce between and among various States of the United States to respondent from his said competitors who do not use the same or equivalent methods.

## 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 Robert R. Raynor, individually and trading as Southern 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.

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  
THE FAIRFACTS COMPANY

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

*Docket 2327. Complaint, Mar. 13, 1935—Decision, Oct. 23, 1940*

Where a corporation engaged in sale and distribution of recessed china bathroom accessories and related products, to various contractors, retailers, and purchasers located in other States, in competition with others engaged in manufacture, sale, and distribution of similar products in commerce among the various States, and including those who manufacture such accessories and products and truthfully represent themselves as so doing to purchasing public—

Represented itself as a manufacturer, and displayed such designation on all of its stationery, billheads, invoices, and other printed matter, and in classified telephone directory advertising described itself as "Manufacturers," notwithstanding fact it did not own and operate or directly and absolutely control any pottery or plant wherein such products were produced or made, and it was not such a manufacturer, from whom a substantial portion of buyers of such accessories and related products, including contractors and retail dealers who purchase such bathroom fixtures, prefer to buy, rather than from jobbers or wholesalers, due to fact that standard grade of fixtures may not be had from jobbers or nonmanufacturing sellers, and commodity advertised, when not made by such jobbers or dealers, may not be obtainable therefrom in event of breakage;

With effect of misleading and deceiving retailers into erroneous and mistaken belief that products offered and sold by it were by it made, or that it was a manufacturer and not a seller and distributor of recessed china bathroom accessories and related products made by some other concern, and with result that some of aforesaid dealers and purchasers, who prefer to buy from such manufacturers, as above set forth, products in question, purchased same of it, representing itself, as aforesaid, as manufacturer, believing it to be maker of products sold and distributed by it, and substantial volume of commodity in question was purchased of it by consuming public, and trade was diverted unfairly to it from those engaged in sale of such accessories and related products who manufacture same and truthfully represent themselves as such manufacturers; to the substantial injury of competition in commerce:

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

Before *Mr. Robert S. Hall* and *Mr. John W. Addison*, trial examiners.

*Mr. Morton Nesmith*, for the Commission.