

Complaint

31 F. T. C.

IN THE MATTER OF
DIXIE CANDY COMPANY, INC.

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

Docket 4255. Complaint, Aug. 22, 1940. Decision, Oct. 23, 1940

Where a corporation engaged in the manufacture of candy, and in sale and distribution of certain assortments thereof which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and which included (1) number of 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 purchasers paid for such bars amounts ranging from 1 to 5 cents, in accordance with their success or failure in securing by chance certain numbers concealed in card, and (2) assortments with various other push cards for use in sale and distribution of its said 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 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 its products in accordance with such plans, involving game of chance or sale of a chance to procure bars of candy at prices 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 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 it in sale and distribution of its candy and element of chance involved therein, and were thereby induced to buy and sell its said candy 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 it from its 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 Dixie Candy Co., Inc.,

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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Dixie Candy Co., Inc., is a corporation, organized and existing under the laws of the State of North Carolina with its principal office and place of business located at 732 East Seventh Street, Charlotte, 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 its place of business in the city of Charlotte, 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 said commerce between and among various States of the United States. In the course and conduct of its said business respondent is and has been in competition with other corporations and with partnerships and individuals 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 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 is composed of 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 40 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 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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The respondent furnishes, and has furnished, various push cards for use in the sale and distribution of its 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 its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its 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. Many persons, firms, and corporations who sell and distribute candy in competition with respondents, 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 its 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 its 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 22, 1940, issued and on August 23, 1940, served its complaint in this proceeding upon respondent, Dixie Candy Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts or 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 in lieu thereof 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Dixie Candy Co., Inc., is a corporation, organized and existing under the laws of the State of North Carolina with its principal office and place of business located at 732 East Seventh Street, Charlotte, 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 its place of business in the city of Charlotte, 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 said commerce between and among various States of the United States. In the course and conduct of its said business respondent is and has been in competition with other corporations and with partnerships and individuals 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.

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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 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 is composed of 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 40 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 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 its 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 its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its 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. 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

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by said sales plan or method employed by respondent in the sale and distribution of its 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 its 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 it waives all intervening procedure and further hearings 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 Dixie Candy Co., Inc., 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 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 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.

Syllabus

IN THE MATTER OF

RENE P. BALDITT, TRADING AS CLITO COMPANY

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

Docket 4262. Complaint, Aug. 23, 1940—Decision, Oct. 23, 1940

Where an individual engaged, as "Clito Company," in sale and distribution of two drug preparations advertised under name "Clito," and designated respectively as "Clito Emmenagogue Capsules" and "Rayo De Sol"; in advertisements of his said preparations which he disseminated and caused to be disseminated through the mails and by various other means in commerce, through advertisements in newspapers and by circulars and other advertising literature, and otherwise—

- (a) Represented, directly and by implication, that his said product designated as "Clito," and also as "Clito Emmenagogue Capsules," was a competent and effective treatment for delayed menstruation, and was safe and harmless, facts being said preparation was not a competent or efficient treatment for such condition, and was not safe or harmless, in that it contained apiol and various other drugs in quantities sufficient to cause serious and irreparable injury to health if used under conditions described in said advertisements or under such conditions as are customary and usual, and might result in gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs and, in case of pregnancy, might cause uterine infection and blood poisoning and other serious conditions, resulting, in some instances, in serious and irreparable loss and injury to health;
- (b) Represented that said "Rayo De Sol" was a competent and efficient cure for cataracts, cloudiness of vision, or film carnosity, ulcers, and inflammation of the eyes, and possessed therapeutic value in the treatment of such conditions, facts being said "Rayo De Sol" was not a competent and efficient cure for conditions above set forth, and had no value in treatment thereof; and
- (c) Failed to reveal in said advertisements facts material in the light of such representations, and that use of said "Clito Emmenagogue Capsules," under conditions prescribed in such advertisements or under such conditions as are customary or usual, might result in serious and irreparable injury to health;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that said false, misleading, and deceptive statements, representations, and advertisements were true, and that said preparation designated as "Clito Emmenagogue Capsules" was a safe, competent, and effective treatment for delayed menstruation, and that said preparation designated as "Rayo De Sol" was a competent and efficient treatment and cure for aforesaid conditions of the eyes, and to induce purchase by the public of his said preparations:

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. R. P. Bellinger, for the Commission.

Mr. Henry Junge, of Chicago, Ill., for respondent.