

IN THE MATTER OF  
IDEAL CANDY NOVELTIES COMPANY, INC., AND ABRAHAM ARONOFF AND ROSE ARONOFF, INDIVIDUALLY  
AND AS OFFICERS THEREOF

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

*Docket 4086. Complaint, Apr. 8, 1940—Decision, Nov. 1, 1940*

Where a corporation and two individuals, who were its president and vice president and secretary, and formulated, controlled, and directed its acts, practices, and policies, engaged in sale and distribution of certain assortments of candy and other articles of merchandise 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) 150 penny pieces of individually wrapped caramels, of uniform size and shape, together with 14 common lead pencils and 8 pencil sets consisting of ruler, pencil, and penholder, for sale and distribution under a plan in accordance with which purchasers securing by chance chocolate caramels were entitled to and received without additional cost one of such pencils, those procuring one of the red caramels were similarly entitled to and received one of such pencil sets, and purchaser of last caramel in assortment also became entitled to and thus received one of such sets, and (2) various other assortments of candy and other articles involving lot or chance feature, but similar to that described and varying therefrom in detail only; acting together in cooperation with each other in such acts and things—

Sold such assortments to brokers, wholesalers, jobbers, and retailers, by whom, as direct or indirect purchasers thereof, said assortments and other articles were 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 the sale of their products in accordance with such plan, as above set forth, involving game of chance or sale of a chance to procure an 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 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 who refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by them and element of chance involved therein, and were thereby induced to buy and sell their said products in preference to those of competitors aforesaid, and with tendency and capacity, through use of said method and because of such game of chance, unfairly to divert trade in commerce to them from their said competitors who do not use same or equivalent method:

*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.

Before *Mr. Arthur F. Thomas*, trial examiner.

*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 Ideal Candy Novelties Co., Inc., a corporation, and Abraham Aronoff and Rose Aronoff, individually and as officers of Ideal Candy Novelties Co., Inc., hereinafter referred to as respondents, have 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 Ideal Candy Novelties Co., Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 770 Coney Island Avenue, Brooklyn, N. Y. Respondent Abraham Aronoff, an individual, is president of the corporate respondent. Respondent Rose Aronoff, an individual, is vice president and secretary of the corporate respondent. Both of the individual respondents have their offices at the same address as corporate respondent. Respondents Abraham Aronoff and Rose Aronoff, formulate, control, and direct the acts, practices and policies of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of candy and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their aforesaid place of business in the State of New York to purchasers thereof, at their respective points of location, in the various States of the United States other than New York and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by said respondents 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 respondents are and have been in competition with other corporations and individuals and with

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partnerships 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to brokers, wholesale dealers, jobbers, and retail dealers certain assortments of candy and other articles of merchandise 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 respondents and is as follows:

This assortment consists of 150 pieces of caramel candy of uniform size and shape, together with 14 common lead pencils and 8 pencil sets. The said pencil sets contain a ruler, a pencil and a penholder. Seven of the said caramels are red, 14 are chocolate and the remainder, 129, are vanilla. The said caramels are individually wrapped and the color of each is effectively concealed from purchasers and prospective purchasers until a purchase has been made and the wrapper removed therefrom. All of the caramels retail at the price of 1 cent each. Purchasers procuring 1 of the said chocolate caramels are entitled to and receive, without additional cost, 1 of the said pencils. Purchasers procuring 1 of the said red caramels are entitled to and receive, without additional cost, 1 of the said pencil sets. The purchaser of the last caramel in said assortment is entitled to and receives, without additional cost, 1 of the said pencil sets. The said pencils and pencil sets are thus distributed to the purchasing and consuming public wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various assortments of candy and other articles of merchandise 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 respondents' said candy and other articles of merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their products and the sale of said products 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.

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PAR. 4. The sale of candy and other articles of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute candy and other articles of merchandise in competition with the 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 that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their candy and other articles of merchandise and the element of chance involved therein and are thereby induced to buy and sell respondents' said products in preference to products offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents because of said game of chance has a tendency and a 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 respondents from their said competitors, who do not use the same or equivalent method, and as a result thereof substantial injury is being and has been done by respondents 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 respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' 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 April 8, 1940, issued and served its complaint in this proceeding upon respondents Ideal Candy Novelties Co., Inc., a corporation, and Abraham Aronoff and Rose Aronoff, individually and as officers of Ideal Candy Novelties Co., Inc., charging them 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 2, 1940, the respondents filed their answer in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts.

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Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and 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 Ideal Candy Novelties Co., Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 770 Coney Island Avenue, Brooklyn, N. Y. Respondent Abraham Aronoff, an individual, is president of the corporate respondent. Respondent Rose Aronoff, an individual, is vice-president and secretary of the corporate respondent. Both of the individual respondents have their offices at the same address as corporate respondent. Respondents Abraham Aronoff and Rose Aronoff, formulate, control, and direct the acts, practices, and policies of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter set forth. Respondents are now and for more than 1 year last past have been, engaged in the sale and distribution of candy and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their aforesaid place of business in the State of New York to purchasers thereof, at their respective points of location, in the various States of the United States other than New York and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by said respondents 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 respondents are and have been in competition with other corporations and individuals and with partnerships 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to brokers, wholesale dealers, jobbers, and retail dealers certain assortments of candy and other articles of merchandise 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 respondents and is as follows:

This assortment consists of 150 pieces of caramel candy of uniform size and shape, together with 14 common lead pencils and 8 pencil sets. The said pencil sets contain a ruler, a pencil and a penholder. Seven of the said caramels are red, 14 are chocolate and the remainder, 129, are vanilla. The said caramels are individually wrapped and the color of each is effectively concealed from purchasers and prospective purchasers until a purchase has been made and the wrapper removed therefrom. All of the caramels retail at the price of 1 cent each. Purchasers procuring 1 of the said chocolate caramels are entitled to and receive, without additional cost, 1 of the said pencils. Purchasers procuring 1 of the said red caramels are entitled to and receive without additional cost, 1 of the said pencil sets. The purchaser of the last caramel in said assortment is entitled to and receives, without additional cost, 1 of the said pencil sets. The said pencils and pencil sets are thus distributed to the purchasing and consuming public wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various assortments of candy and other articles of merchandise 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 respondents' said candy and other articles of merchandise expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their products and the sale of said products 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 and other articles of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute candy and other articles of merchandise in competition with the respondents, 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

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something by chance or any other method that is contrary to the public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their candy and other articles of merchandise and the element of chance involved therein and are thereby induced to buy and sell respondents' said products in preference to products offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents, because of said game of chance, has a tendency and a 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 respondents from their said competitors who do not use the same or equivalent method.

## CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents' 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent Ideal Candy Novelties Co., Inc., a corporation, its officers, Abraham Aronoff and Rose Aronoff, individually, and as officers of Ideal Candy Novelties Co., Inc., its and their respective 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 public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme.

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2. Supplying to or placing in the hands of others, assortments of candy or other merchandise or any lottery devices, which are to be used, or which may be used, to conduct a game of chance, gift enterprise, or lottery scheme in the sale or distribution of said candy or other merchandise to the public.

3. Supplying to or placing in the hands of others for sale to the public, packages or assortments of candy composed of individually wrapped pieces of candy of uniform size and shape and of different colors, together with articles of merchandise or larger pieces of candy which are to be, or may be, given as prizes to the purchasers procuring pieces of said candy of a particular color.

4. 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 them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

## IN THE MATTER OF

## JACOB SCHACHNOW, TRADING AS MODERN HAT WORKS

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

*Docket 2047. Complaint, Aug. 10, 1939<sup>1</sup>—Decision, Nov. 2, 1940*

Where an individual engaged in manufacture of men's and boys' hats from felts obtained from old, worn, and previously used hat bodies purchased by him, through cleaning, steaming, ironing, blocking, and fitting with new trimmings, sweat bands, and size labels and, in some instances, new linings, such bodies—

Sold, to jobbers and wholesalers by whose retailer vendees they were sold to purchasing public, his said hats, thus processed, a portion of which had appearance of new hats never worn or used, with no label, marking or designation thereon to indicate to purchasing public that said hats were in fact made from old, worn and previously used bodies which had been dry cleaned and renovated by him, and with no designation in invoicing and billing purchasers to indicate or disclose that his said products were in fact made from old, worn, and previously used bodies, and failed, through use of phrase "Made Over," embossed on hats' sweat bands, immediately under words "Personality Hats" or similar matter, to disclose to members of purchasing public that said hats were made as aforesaid from old, worn, and previously used, rather than shopworn, hat bodies or from new materials which had never been used or worn, as made by manufacturers from new but shopworn, discolored, or otherwise unsalable new hats with much the same process employed in manufacture of such products from old, worn, and previously used hat bodies;

With effect of misleading and deceiving substantial number of wholesalers, jobbers, retailers, and members of purchasing public into erroneous and mistaken belief that his said products were made from new and unused materials or from new or shopworn bodies which had never been worn or used, and into purchase of a substantial number of his said hats, nature of which was not made entirely from new materials would not be disclosed by hat purchaser's casual examination, because of aforesaid erroneous and mistaken belief:

*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.

Before *Mr. Robert S. Hall*, trial examiner.

*Mr. Robert Mathis, Jr.*, for the Commission.

## AMENDMENT AND SUPPLEMENTAL 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 Jacob Schachnow,

<sup>1</sup> Amended and supplemental.