

## Syllabus

## IN THE MATTER OF

JESSE W. ALLRED AND ROBERT A. ALLRED, TRADING  
UNDER THE NAME OF ALLRED BROTHERS CANDY CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4244. Complaint, Aug. 20, 1940—Decision, Dec. 19, 1940*

Where two individuals engaged in manufacture of candy and in sale and distribution of certain assortments thereof which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumers thereof, and included (1) number of bars of candy, together with push card for use in sale and distribution of said bars to purchasing public under a plan in accordance with which purchaser secured bar without cost, or for 1, 2, or 3 cents as determined by his chance receipt of letter "O" or number 1, 2, or 3, through disk selected on card, and (2) various other assortments involving lottery or chance feature and methods of sale and distribution similar to that above described from which they varied in detail only;

Sold said assortments along with such push cards to retailers by whom as direct or indirect purchasers they were exposed and sold to purchasing public in accordance with aforesaid sales plan or methods, involving game of chance or sale of a chance to procure a bar of candy without cost or at a price much less than normal retail price thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of their candies in accordance with such sales plans or methods above set forth, 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 sales plans or methods involving a game of chance or sale of a chance to win something by a chance or any other sales plans or methods contrary to public policy and refrain therefrom;

With result that many dealers in and ultimate consumers of said candy were attracted by said sales plans or methods employed by them in sale and distribution thereof and by element of chance involved therein and were thereby induced to buy their candy in preference to that offered and sold by their said competitors who do not use same or equivalent sales plans or methods and with effect, through use of said sales plans or methods by them and because of said game of chance, of diverting unfairly trade to them from their competitors aforesaid who do not use same or equivalent sales plan or method; 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.

Before *Mr. W. W. Sheppard*, trial examiner.  
*Mr. D. C. Daniel* for the Commission.

Complaint

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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 Jesse W. Allred and Robert A. Allred, individually and trading under the name of Allred Brothers Candy Co., 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. Respondents, Jesse W. Allred and Robert A. Allred, are individuals trading under the name of Allred Brothers Candy Co., with their principal office and place of business located at 515 West Palmer Street, Charlotte, N. C. Respondents are now and for more than 1 year last past have been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondents cause and have caused said candy, when sold, to be shipped or transported from their aforesaid place of business in the State of North Carolina 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 respondents in such candy in commerce between and among various States of the United States. In the course and conduct of their business respondents are and have been in competition with other individuals and partnerships, and with corporations engaged in the sale and distribution of candy in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold certain assortments of candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme, when said candy is sold and distributed to the consumers thereof. One of said assortments consists of a number of bars of candy, together with a device commonly called a push card. Said bars of candy are distributed to the consumers thereof by means of said push card in substantially the following manner:

The push card contains a number of partially perforated disks, and on the face of each of said disks is printed the word "push." Within each of said disks is printed either the letter "o" or number 1, 2 or 3, and the persons pushing the disks containing the letter "o" each receive a bar of said candy without cost, and the persons pushing the disks containing the number 1, 2, or 3 pay in cents the

amount appearing on the disk pushed. The said numbers printed within the said disks are effectively concealed from purchasers and prospective purchasers until selections have been made and the disks separated or removed from said card. Whether a customer receives a bar of candy without cost or is required to pay 1, 2, or 3 cents therefor is thus determined wholly by lot or chance.

The respondents manufacture, sell, and distribute various assortments of candy involving a lottery or chance feature, but such assortments and the methods of sale and distribution thereof are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' said assortments of candy, either directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale and distribution of their candy in accordance with the sales plans or methods hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their candy, and the sale of said candy by and through the use thereof, and by the aid of said sales plans or 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 the criminal laws.

PAR. 4. The sale of candy to the purchasing public, in the manner above alleged, involves a game of chance or the sale of a chance to procure a bar of candy without cost or at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondents, as above alleged, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy, and such competitors refrain therefrom. Many dealers in, and ultimate consumers of, said candy are attracted by said sales plans or methods employed by respondents in the sale and distribution of their candy, and the element of chance involved therein, and are thereby induced to buy respondents' candy in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent sales plans or methods. The use of said sales plans or methods by respondents because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondents from their said competitors who do not use the same or equivalent sales plans or methods and as a result thereof substantial injury is being, and has been, done by respondents to

competition in commerce between and among various States of the United States.

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 August 20, 1940, issued and thereafter served its complaint in this proceeding upon respondents, Jesse W. Allred and Robert A. Allred, individually and trading under the name of Allred Brothers Candy Co., 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 December 2, 1940, 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. Thereafter this 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. Respondents, Jesse W. Allred and Robert A. Allred, are individuals trading under the name of Allred Brothers Candy Co., with their principal office and place of business located at 515 West Palmer Street, Charlotte, N. C. Respondents are now and for more than 1 year last past have been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondents cause and have caused said candy, when sold, to be shipped or transported from their aforesaid place of business in the State of North Carolina 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 respondents in such candy in commerce between and among various States of the United States. In the course and conduct of their business, respondents are and have been in competition with other individuals and partnerships, and with

corporations engaged in the sale and distribution of candy in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold certain assortments of candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme, when said candy is sold and distributed to the consumers thereof. One of said assortments consists of a number of bars of candy, together with a device commonly called a push card. Said bars of candy are distributed to the consumers thereof by means of said push card in substantially the following manner:

The push card contains a number of partially perforated disks, and on the face of each of said disks is printed the word "push." Within each of said disks is printed either the letter "o" or number 1, 2, or 3, and the persons pushing the disks containing the letter "o" each receive a bar of said candy without cost, and the persons pushing the disks containing the number 1, 2, or 3 pay in cents the amount appearing on the disk pushed. The said numbers printed within the said disks are effectively concealed from purchasers and prospective purchasers until selections have been made and the disks separated or removed from said card. Whether a customer receives a bar of candy without cost or is required to pay 1, 2, or 3 cents therefor is thus determined wholly by lot or chance.

The respondents manufacture, sell, and distribute various assortments of candy involving a lottery or chance feature, but such assortments and the methods of sale and distribution thereof are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' said assortments of candy, either directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale and distribution of their candy in accordance with the sales plans or methods hereinabove found. The use by respondents of said sales plans or methods in the sale of their candy, and the sale of said candy by and through the use thereof, and by the aid of said sales plans or 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 the criminal laws.

PAR. 4. The sale of candy to the purchasing public, in the manner above found, involves a game of chance or the sale of a chance to procure a bar of candy without cost or at a price much less than the

## Order

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normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondents, as above found, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy, and such competitors refrain therefrom. Many dealers in, and ultimate consumers of, said candy are attracted by said sales plans or methods employed by respondents in the sale and distribution of their candy, and the element of chance involved therein, and are thereby induced to buy respondents' candy in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent sales plans or methods. The use of said sales plans or methods by respondents because of said game of chance has a tendency and capacity to, and does, unfairly divert substantial trade to respondents from their said competitors who do not use the same or equivalent sales plans or methods and, as a result thereof, substantial injury is being, and has been, done by respondents to competition in commerce between and among various States of the United States.

## 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 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 respondents, Jesse W. Allred and Robert A. Allred, individually and trading under the name of Allred Brothers Candy Co., or trading under any other name or names, their representatives, agents, or 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 or distributing any merchandise so packed and assembled that sales of such merchandise to the 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 assortments of any merchandise together with push or pull cards, punchboards or other lottery devices, 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 said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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 respondents 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

J. T. TARLTON, TRADING AS J. T. TARLTON CANDY  
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4256. Complaint, Aug. 22, 1940—Decision, Dec. 19, 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 the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and included (1) number of candy bars together with a push card for use in sale and distribution of said bars under a plan in accordance with which the purchaser paid 1, 2, 3, 4, or 5 cents for bar, value of which was worth more than some of said amounts to be paid therefor, in accordance with number pushed by chance from card, and (2) various other assortments of candy involving lottery or chance feature and method of sale and distribution similar to that above described and varying therefrom in detail only;

Sold such assortments along with said push card to dealers or retailers by whom as direct or indirect purchasers they were exposed and sold to purchasing public, in accordance with aforesaid sales plan involving game of chance or sale of chance to procure candy bar at price much less than normal retail price thereof, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale and distribution of candy in accordance with sales plans or methods above set forth, 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 sales plans or methods involving a game of chance or sale of a chance to win something by a chance or any other sales plans or methods contrary to public policy and refrain therefrom;

With result that many dealers in and ultimate consumers of said candy were attracted by said sales plans or methods employed by him in sale and distribution thereof and by element of chance involved therein, and were thereby induced to buy his candy in preference to that offered and sold by his said competitors who do not use same or equivalent sales plans or methods, and with effect, through use of said sales plans and methods by him and because of said game of chance, of diverting unfairly trade to him from his competitors aforesaid who do not use same or equivalent sales plan or method; 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.

Before *Mr. W. W. Sheppard*, trial examiner.  
*Mr. D. C. Daniel* for the Commission.