

IN THE MATTER OF

J. T. TARLTON, TRADING AS J. T. TARLTON CANDY
COMPANY

COMPLAINT, 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.

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 J. T. Tarlton, individually and trading as J. T. Tarlton Candy 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 public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, J. T. Tarlton, is an individual trading under the name of J. T. Tarlton Candy Co., with his principal office and place of business located in Marshville, N. C. Respondent is now and for more than 1 year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused said candy, when sold, to be shipped or transported from his 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 respondent in such candy in commerce between and among the various States of the United States. In the course and conduct of his 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 various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has 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 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 number 1, 2, 3, 4, or 5, and the persons pushing the disks containing either number 1, 2, 3, 4, or 5 pay in cents the amount of the number 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. All of said

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bars are worth more than some of said amounts to be paid therefor. Whether a purchaser receives a bar of candy for 1, 2, 3, 4, or 5 cents is thus determined wholly by lot or chance.

The respondent manufactures, sells, and distributes 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, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's 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. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale and distribution of his candy in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said sales plans or methods 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 plans or methods, 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 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 at a price much less than the normal retail price thereof. Many persons, firms, or corporations who sell or distribute merchandise in competition with respondent, 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 respondent in the sale and distribution of his candy and the element of chance involved therein and are thereby induced to buy respondent's candy in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plans or methods by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from his 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 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 thereafter served its complaint in this proceeding upon respondent J. T. Tarlton, individually and trading as J. T. Tarlton Candy 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 December 2, 1940, the respondent filed his answer, in which answer he 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 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 FACT

PARAGRAPH 1. The respondent, J. T. Tarlton, is an individual trading under the name of J. T. Tarlton Candy Co., with his principal office and place of business located in Marshville, N. C. Respondent is now and for more than 1 year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused said candy, when sold, to be shipped or transported from his 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 respondent in such candy in commerce between and among various States of the United States. In the course and conduct of his 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 various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has 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 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 number 1, 2, 3, 4, or 5, and the persons pushing the disks containing either number 1, 2, 3, 4, or 5 pay in cents the amount of the number 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. All of said bars are worth more than some of said amounts to be paid therefor. Whether a purchaser receives a bar of candy for 1, 2, 3, 4, or 5 cents is thus determined wholly by lot or chance.

The respondent manufactures, sells, and distributes 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, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's 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. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale and distribution of his candy in accordance with the sales plans or methods hereinabove found. The use by respondent of said sales plans or methods 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 plans or methods, 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 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 at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondent, 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 com-

petitors refrain therefrom. Many dealers in, and ultimate consumers of, said candy are attracted by said sales plans or methods employed by respondent in the sale and distribution of his candy and the element of chance involved therein and are thereby induced to buy respondent's candy in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plans or methods by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from his 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 respondent to competition in commerce between and among various States of the United States.

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 the respondent, in which answer the respondent admits all material allegations of fact set forth in said complaint and states that he 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 J. T. Tarlton, individually and trading as J. T. Tarlton Candy 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 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.

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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 the respondent shall, within 60 days after the 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.

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IN THE MATTER OF

T. A. WARD, CARR WARD, AND WILMA WARD, TRADING
AS MINETREE BROKERAGE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4285. Complaint, Aug. 29, 1940—Decision, Dec. 19, 1940

Where three individuals who were engaged, in Poplar Bluff, in conducting brokerage business, and of whom two were president and secretary-treasurer of Ward Stores, Inc., and Poplar Bluff Wholesale Grocery Co., and owned and controlled 98 percent and 88 percent, respectively, of outstanding capital stock of said corporations, doing business in southeastern Missouri, and of whom third was employed by other two to render services of an executive nature to their enterprises, and particularly those above named—Received and accepted brokerage fees and commissions, which consisted of certain percentage, and usually from $2\frac{1}{2}$ to 5 percent, of sales prices of purchases placed by said Wholesale Grocery Co. with sellers, mostly located in other States, and through said brokerage firm, and constituting substantial portion of goods, wares, and merchandise, and particularly foodstuffs, required in ordinary conduct of its business by said Wholesale Grocery Co., and which were transmitted and paid by sellers to said brokers or brokerage firm on transactions in question, in all of which transactions three individuals involved acted in fact for and on behalf of such Wholesale Grocery Co.:

Held, That in accepting and receiving brokerage fees or commissions consisting of certain percentage, and usually from $2\frac{1}{2}$ to 5 percent, of sales prices upon purchases of commodities of such Wholesale Grocery Co. in interstate commerce, as above set forth, said individuals, individually and trading as brokerage company, violated provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. P. C. Kolinski for the Commission.

Mr. Lawrence E. Tedrick, of Poplar Bluff, Mo., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating, the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents, T. A. Ward and Wilma Ward, are individuals residing in the city of Poplar Bluff, Mo. Said respondents, T. A. Ward and Wilma Ward, own and control 88 percent