

Syllabus

IN THE MATTER OF

JOE L. THOMPSON, TRADING AS PREMIUM 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 4287. Complaint, Aug. 29, 1940—Decision, Dec. 28, 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) as illustrative, number of candy bars of uniform size and shape, together with push card for use in sale and distribution of said bars under a plan in accordance with which purchaser paid therefor 1, 2, 3, 4, or 5 cents in accordance with particular number pushed by chance from card, and purchaser pushing last disk on card received extra bar of candy without additional cost, and (2) assortments with which he furnished various other push cards for use in sale and distribution of his candy by means of gift enterprise or lottery scheme and similar to that above described from which they varied in detail only;

Sold such assortments thus packed and assembled, together with said devices, to agents, wholesalers, jobbers, and retailers, by whom as direct or indirect purchasers thereof they were exposed and sold to purchasing public in accordance with aforesaid sales plan, involving game of chance, or sale of a chance to procure bars of candy at much less than normal retail price thereof, or additional bars without additional cost, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of his 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 method involving game of chance or sale of a chance to win something by a chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his candy and element of chance involved therein and were thereby induced to buy and sell his said candy in preference to candy of said competitors who do not use the same or equivalent methods, and with effect, through use of said method by him and because of said game of chance, of diverting unfairly trade and commerce 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.

Oates & Quillin, of Fayetteville, N. C., for respondent.

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 Joe L. Thompson, individually, and trading as Premium 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Joe L. Thompson, is an individual trading as Premium Candy Co., with his office and principal place of business located at Fayetteville, N. C. Respondent is now, and for more than 3 years 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 Fayetteville, 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 3 years 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 agents, 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 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¢, 2¢, 3¢, 4¢ and 5¢, 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 methods 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 29, 1940, issued and thereafter served its complaint in this proceeding upon respondent Joe L. Thompson, individually and trading as Premium Candy Company, 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 16, 1940, the respondent filed his answer in which answer he admitted all the material allegations of fact set forth in said complaint, and subsequently respondent waived the filing of briefs and oral argument. 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, Joe L. Thompson, is an individual trading as Premium Candy Company, with his office and principal place of business located at Fayetteville, N. C. Respondent is now, and for more than three years 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 Fayetteville, 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 3 years 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 agents, 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 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¢, 2¢, 3¢, 4¢, and 5¢, 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 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 plans 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

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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.

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 respondent having subsequently waived the filing of briefs and oral argument, 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, Joe L. Thompson, individually and trading as Premium 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 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.

Syllabus

IN THE MATTER OF

HARRY YATES, TRADING AS CUMBERLAND CANDY
COMPANY AND DIXIE CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4296. Complaint, Aug. 30, 1940—Decision, Dec. 28, 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 games of chance, gift enterprise, or lottery schemes when sold and distributed to consumers thereof, and included, as illustrative, assortment composed of a number of candy bars of uniform size and shape, together with a push card for use in sale and distribution of said bars under a plan in accordance with which purchasers paid for said bars 1, 2, 3, 4, and 5 cents, in accordance with chance receipt of figures 1, 2, 3, 4, or 5, as case might be, and assortments with other push cards for use and sale and distribution of his candy by means of games of chance, gift enterprise, or lottery schemes similar to that above described and varying therefrom in detail only;

Sold such assortments, together with said push cards, to wholesalers, jobbers, and retailers, by whom, as direct or indirect purchasers thereof, they were exposed and sold to purchasing public, in accordance with aforesaid sales plan, involving game of chance or sale of a chance to procure bars of candy at prices 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 of his products, in accordance with sales plan above described, 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 methods involving games of chance or a 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 plan employed by him in distribution of his candy and in element of chance involved therein, and were thereby induced to buy and sell his candy in preference to that of competitors who do not use same or equivalent methods, and with effect of unfairly diverting trade to him from said competitors who do not use same or equivalent methods, 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 constitute unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. L. P. Allen, Jr., for the Commission.

Mr. R. G. Cobb, of Fayetteville, N. C., for respondent.