

IN THE MATTER OF

HARRY A. GREENBERG, TRADING AS PIONEER SPECIALTY COMPANY, AND THE CANDYLAND COMPANY

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

Docket 4381. Complaint, Nov. 20, 1940—Decision, Jan. 10, 1941

Where an individual engaged in sale and distribution of candy and confectionery products including certain assortments of candy and other articles of merchandise 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 the consumers thereof, and which included (1) as illustrative, assortment consisting of 150 pieces of penny candy of uniform size and shape, together with souvenir pen and 18 larger pieces of candy, for sale and distribution to purchasers under a plan by which those securing by chance from such uniform pieces one of the 18 chocolate creams included therein, received, in addition, one of said 18 larger pieces, and purchaser of last of said penny pieces in assortment was entitled to and received without additional cost said souvenir pen; and (2) various other assortments of candy and other articles of merchandise involving lot or chance feature and similar to that above described from which they varied in detail only;

- (a) Sold said assortments 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 an article of merchandise at a price which was much less than the normal retail price thereof, or additional pieces of candy without additional cost, 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 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 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 other articles of merchandise and element of chance involved therein, and were thereby induced to buy and sell his said products in preference to those offered and sold by his said competitors who do not use same or equivalent methods, and with effect, through use of said method by him and because of said game of chance, of diverting trade unfairly in commerce to him from his competitors aforesaid who do not use same or equivalent methods; to the substantial injury of competition in commerce; and

- (b) Represented through use of word "factory" on his letterheads and by other means that he owned or operated a factory where his products were made and that he was the manufacturer thereof, facts being he purchased

all of his products from others and did not own or operate any factory or make any of his said products;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them mistakenly and erroneously to believe that he was the manufacturer of said products, for dealing directly with whom as such rather than with wholesalers, jobbers, or other dealers there is a preference on the part of a substantial portion of the purchasing public as affording lower prices and other advantages, and by causing them to purchase his products as manufacturer thereof, as aforesaid, and as owning and operating or controlling plant in which they are made:

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 Harry A. Greenberg, individually, and trading as Pioneer Specialty Co., and The Candyland 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, Harry A. Greenberg, is an individual, trading as Pioneer Specialty Co. and The Candyland Co., with his principal office and place of business located at 38 Crosby Avenue, Brooklyn, N. Y. Respondent is now, and for more than 5 years last past has been, engaged in the sale and distribution of candy and confectionery products 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 Brooklyn, N. Y., 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 for more than 5 years last past has been, a course of trade by respondent in said candy and confectionery 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 respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy and confectionery products 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 his business, as described in paragraph 1 hereof, respondent sells, and has sold, to 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 respondent, and is as follows:

This assortment consists of 150 pieces of candy of uniform size and shape, together with a souvenir pen and 18 larger pieces of candy. One hundred and thirty-two of the said 150 pieces of candy of uniform size and shape are vanilla creams, and the remaining 18 are chocolate creams. The color of each of the said 150 pieces of candy is effectively concealed from purchasers and prospective purchasers until a purchase has been made and the candy broken open. All of the said 150 pieces of candy retail at the price of 1 cent each. Purchasers procuring one of the said 18 chocolate creams are entitled to, and receive, without additional cost, one of the said larger pieces of candy. Purchasers procuring one of the said 132 vanilla creams receive nothing in addition thereto for the 1 cent paid. The purchaser of the last of the 150 pieces of candy of uniform size and shape in said assortment is entitled to, and receives, without additional cost, the said souvenir pen. The said pen and larger pieces of candy are thus distributed to the purchasing and consuming public wholly by lot or chance.

Respondent sells and distributes, and has 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 respondent's said candy and other articles of merchandise expose and sell the same to the purchasing public in accordance with the sales plan hereinabove set forth. 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 described. The use by respondent of said sales plan or method in the sale of said 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 criminal laws.

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 which is much less than the normal retail price thereof, or additional pieces of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy and other articles of merchandise in competition with the 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 that is 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 other articles of merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's said products in preference to products offered for sale and sold by 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 the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury in being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of his business, as aforesaid, respondent, in soliciting the sale of, and in selling, his merchandise has represented, through the use of the word "factory" on his letterheads and by other means, that he owns or operates a factory where his products are manufactured and that he is the manufacturer of such products. In truth and in fact the respondent does not own or operate any factory, nor does he manufacture any of his products. The respondent purchases all of his products from other parties.

PAR. 6. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with the manufacturer of products rather than with wholesalers, jobbers, or other dealers, such preference being due in part to a belief on the part of the public that by dealing directly with the manufacturer lower prices and other advantages may be obtained.

PAR. 7. The use by the respondent of the word "factory" on his letterheads and by other means, as hereinabove alleged, has had, and now has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them to mistakenly and erroneously believe that the respondent is the manufacturer of such products and owns and operates or controls the plant wherein such products are

manufactured, and to purchase respondent's products on account of such mistaken and erroneous belief.

PAR. 8. The aforesaid acts and practices of the 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 November 20, 1940, issued and on November 22, 1940, served its complaint in this proceeding upon respondent Harry A. Greenberg, individually and trading as Pioneer Specialty Co. and The Candyland 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. Thereafter the respondent filed his answer, in which answer he admitted all material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. 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, Harry A. Greenberg, is an individual, trading as Pioneer Specialty Co. and the Candyland Co., with his principal office and place of business located at 38 Crosby Avenue, Brooklyn, N. Y. Respondent is now, and for more than 5 years last past has been, engaged in the sale and distribution of candy and confectionery products 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 Brooklyn, N. Y., 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 for more than 5 years last past has been, a course of trade by respondent in said candy and confectionery 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 respondent is, and has been, in competition with other individuals and with partnerships and corpo-

rations engaged in the sale and distribution of candy and confectionery 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 his business, as described in paragraph 1 hereof, respondent sells, and has sold, to 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 respondent, and is as follows:

This assortment consists of 150 pieces of candy of uniform size and shape, together with a souvenir pen and 18 larger pieces of candy. One hundred and thirty-two of the said 150 pieces of candy of uniform size and shape are vanilla creams, and the remaining 18 are chocolate creams. The color of each of the said 150 pieces of candy is effectively concealed from purchasers and prospective purchasers until a purchase had been made and the candy broken open. All of the said 150 pieces of candy retail at the price of 1 cent each. Purchasers procuring one of the said 18 chocolate creams are entitled to, and receive, without additional cost, one of the said larger pieces of candy. Purchasers procuring one of the said 132 vanilla creams receive nothing in addition thereto for the 1 cent paid. The purchaser of the last of the 150 pieces of candy of uniform size and shape in said assortment is entitled to, and receives, without additional cost, the said souvenir pen. The said pen and larger pieces of candy are thus distributed to the purchasing and consuming public wholly by lot or chance.

Respondent sells and distributes, and has 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 respondent's said candy and other articles of merchandise expose and sell the same to the purchasing public in accordance with the sales plan hereinabove set forth. 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 described. The use by respondent of said sales plan or method in the sale of said 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 criminal laws.

PAR. 7. The sale of candy and other articles of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an article of merchandise at a price which is much less than the normal retail price thereof, or additional pieces of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy and other articles of merchandise in competition with the 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 that is 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 other articles of merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's said products in preference to products offered for sale and sold by 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 the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of his business, as aforesaid, respondent, in soliciting the sale of, and in selling, his merchandise has represented, through the use of the word "factory" on his letterheads and by other means, that he owns or operates a factory where his products are manufactured and that he is the manufacturer of such products. In truth and in fact the respondent does not own or operate any factory, nor does he manufacture any of his products. The respondent purchases all of his products from other parties.

PAR. 6. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with the manufacturer of products rather than with wholesalers, jobbers, or other dealers, such preference being due in part to a belief on the part of the public that by dealing directly with the manufacturer lower prices and other advantages may be obtained.

PAR. 7. The use by the respondent of the word "factory" on his letterheads and by other means, as hereinabove found, has had, and

now has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them to mistakenly and erroneously believe that the respondent is the manufacturer of such products and owns and operates or controls the plant wherein such products are manufactured, and to purchase respondent's products on account of such mistaken and erroneous belief.

CONCLUSION

The aforesaid acts and practices of the 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 he 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, Harry A. Greenberg, individually and trading as Pioneer Specialty Co. and as The Candyland Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or any 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 any merchandise so packed and assembled that sales thereof 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 dealers packages or assortments of any merchandise which are to be used, or may be used, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of candy, or any other merchandise, to the public.

3. Supplying to or placing in the hands of dealers any lottery device, either with assortments of merchandise or separately, which

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lottery device is to be used, or may be used, in selling or distributing said merchandise to the public.

4. Packing or assembling in the same package, or packages, of candy or other merchandise for sale to the public at retail, pieces of candy of uniform size and shape having centers of a different color, together with larger pieces of candy, or other articles of merchandise, or separately, which said larger pieces of candy, or other articles of merchandise, are to be, or may be, given as prizes to purchasers procuring a piece of candy having a center of a particular color.

5. Selling or otherwise distributing any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

6. Using the word "Factory" in connection with respondent's trade names, or otherwise representing that respondent owns or operates a manufacturing plant, or that respondent manufactures his said products.

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

R. G. BOWE AND W. W. HARTMAN, TRADING AS BOWE & HARTMAN

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

Docket 4373. Complaint, Nov. 8, 1940—Decision, Jan. 11, 1941

Where two individuals engaged in interstate sale and distribution of their "Bowe's Tablets," medicinal preparation, in advertisements thereof which they disseminated and caused to be disseminated through the mails, and through other means in commerce, and through newspapers and periodicals, and through circulars, leaflets, and other advertising literature, and otherwise, and which were intended and likely to induce purchase of their said product—

- (a) Represented, directly or by implication, that ulcers of the stomach, duodenum and intestines, gas on the stomach, sour stomach, indigestion, heartburn, constipation, nausea, pains around the heart, muscular pains, nervousness, melancholia, colds, headaches, dizziness, fatigue, lack of appetite, bad breath, and insomnia were due to or persisted because of hyperacidity or the presence of excess acid in the body, and that their said product was a cure or remedy for hyperacidity and thereby constituted a cure or remedy for the specific ailments and conditions mentioned, facts being that, while gastric hyperacidity might be associated with ulcers of the stomach and various other symptoms above set forth, it was not the cause of such conditions, and they did not persist solely because of hyperacidity and, while their said product would afford temporary neutralization of such hyperacidity, it did not constitute a cure or remedy therefor and possessed no therapeutic value in the treatment thereof, in excess of such temporary and palliative relief as it might afford in those cases where gastric hyperacidity was a concomitant factor; and
- (b) Represented that they were manufacturing pharmacists, and that said preparation was made by them, facts being they did not manufacture their said preparation, but obtained same from other sources and were not, as aforesaid claimed, manufacturers, for dealing with whom there is a preference on the part of substantial portion of the purchasing public due to belief, in part, that thereby lower prices and other advantages may be obtained;

With effect of misleading and deceiving substantial portion of purchasing public with respect to their business status and as to the therapeutic properties of their said preparation, and with result of inducing such public to purchase substantial quantities of said preparation:

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. William L. Taggart for the Commission.