

Complaint

IN THE MATTER OF
CANDYMASTERS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4243. Complaint, Aug. 20, 1940—Decision, Mar. 19, 1941*

Where a corporation engaged in competitive interstate sale and distribution of candy and confectionery products, including various assortments 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, including, as typical, small candy bars of uniform size and shape, together with certain larger bars and a four-section push card for use in sale and distribution of said candy to purchasing public under a plan, explained thereon, by which those securing certain numbers received, for the five cents paid, in lieu of small bars first referred to, "One Large Chocolate Divinity Bar" or "One Extra Large Chocolate Divinity Bar," and last number in each section received "One Super Special Bar";

Sold such assortments, along with said 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, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products in accordance with plan involving game of chance or sale of a chance to procure larger bars of candy without additional cost, 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 use said or any method involving a game of chance or any other method contrary to public policy, refrain therefrom;

With the result that many persons were attracted by its said sales plan or method and the element of chance involved therein, and were thereby induced to buy and sell its said candy in preference to that of its aforesaid competitors, and with tendency and capacity, because of said game of chance, unfairly to divert trade in commerce to it from such competitors:

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

Mr. Clifton Parks, of St. Paul, Minn., for respondent.

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 Candymasters, Inc.,

a corporation, 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, Candymasters, Inc., is a corporation organized and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 3-5 North Fifteenth Street, Minneapolis, Minn. The corporate respondent was formerly known as Candycraft, Inc., having in November 1939, or thereabouts, by amendment to the certificate of incorporation, changed the name to Candymasters, Inc. Respondent is now, and for more than 10 months 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 its principal place of business in the city of Minneapolis, Minn., to purchasers thereof, at their respective points of location, in the various States of the United States other than Minnesota and in the District of Columbia.

There is now, and has been for more than 10 months last past, a course of trade by respondent in such candy 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 corporations and with partnerships and individuals 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 its business, as described in paragraph 1 hereof, respondent sells and has sold to 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 consists of small bars of candy of uniform size and shape and larger candy bars, the latter to be given as premiums, together with a device commonly called a push card. The push card is divided into four sections and each of said sections contains 25 partially perforated disks on the face of which is printed the word "push." Concealed within each of the said disks is a number which entitles the purchaser thereof to larger bars of candy without ad-

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ditional cost when said number corresponds with any of the numbers set out in the legend at the top of said card. The last disk pushed out of each section also entitles the purchaser thereof to one of the said larger bars of candy. The sales are 5 cents each and those not securing a winning number receive one of the smaller bars of candy. The said card bears a legend or statement as follows:

* SWEEPSTAKES *

5c
No Blanks

5c
30 Big Prizes

Everybody Wins

Numbers 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24,
26, 28, 30, 32, 34, 36, 38, 40

RECEIVE * ONE LARGE CHOCOLATE DIVINITY BAR

Numbers 80, 82, 84, 86, 88, 90

RECEIVE * ONE EXTRA LARGE CHOCOLATE DIVINITY BAR

The Last Number in Each Section

RECEIVES * ONE SUPER SPECIAL BAR

All Other Numbers Receive a REGULAR BAR

NOTE: Only One Bar, Loaf or Package with Each 5¢ Purchase

Sales of respondent's candy by means of said push card are made in accordance with the above legend or instructions. The numbers aforesaid are effectively concealed until a purchase has been made and the disk separated or removed from said card. The said larger bars of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various assortments of candy along with push cards involving a lot or chance feature, but such assortments and push cards 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 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 its products in accordance with the sales plan hereinabove set forth. The use by respondent of such sales plan or method in the sale of its 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 and plan hereinabove set forth involves a game of chance or the sale of a chance to procure larger bars of candy without additional cost.

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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 its 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 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 its 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 the various States of the United States and in the District of Columbia.

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 20, 1940, issued and thereafter served its complaint in this proceeding upon respondent Candymasters, Inc., charging it 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 March 1, 1940, the respondent filed its answer in which answer it 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 FACTS

PARAGRAPH 1. Respondent, Candymasters, Inc., is a corporation organized and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 3-5 North Fifteenth Street, Minneapolis, Minn. The corporate respondent was formerly known as Candycraft, Inc., having in November 1939, or thereabouts, by amendment to the certificate of incorporation, changed the name to Candymasters, Inc. Respondent is now, and for more than 10 months 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 its principal place of business in the city of Minneapolis, Minn., to purchasers thereof, at their respective points of location, in the various States of the United States other than Minnesota and in the District of Columbia.

There is now, and has been for more than 10 months last past, a course of trade by respondent in such candy 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 corporations and with partnerships and individuals 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 its business, as described in paragraph 1 hereof, respondent sells and has sold to 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 consists of small bars of candy of uniform size and shape and larger candy bars, the latter to be given as premiums, together with a device commonly called a push card. The push card is divided into four sections and each of said sections contains 25 partially perforated disks on the face of which is printed the word "push." Concealed within each of the said disks is a number which entitles the purchaser thereof to larger bars of candy without additional cost when said number corresponds with any of the numbers set-out in the legend at the top of said card. The last disk pushed out of each section also entitles the purchaser thereof to one of

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the said larger bars of candy. The sales are 5 cents each and those not securing a winning number receive one of the smaller bars of candy. The said card bears a legend or statement as follows:

5¢	* SWEEPSTAKES *	5¢
No Blanks		30 Big Prizes
Everybody Wins		
Numbers 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40		
RECEIVE * ONE LARGE CHOCOLATE DIVINITY BAR		
Numbers 80, 82, 84, 86, 88, 90		
RECEIVE * ONE LARGE CHOCOLATE DIVINITY BAR		
The Last Number in Each Section		
RECEIVES * ONE SUPER SPECIAL BAR		
All Other Numbers Receive a REGULAR BAR		
NOTE: Only One Bar, Loaf or Package with Each 5¢ Purchase		

Sales of respondent's candy by means of said push card are made in accordance with the above legend or instructions. The numbers aforesaid are effectively concealed until a purchase has been made and the disk separated or removed from said card. The said larger bars of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various assortments of candy along with push cards involving a lot or chance feature, but such assortments and push cards 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 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 its products in accordance with the sales plan hereinabove set forth. The use by respondent of such sales plan or method in the sale of its candy and the sale of said candy by and through the use thereof and by 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 and plan hereinabove set forth involves a game of chance or the sale of a chance to procure larger 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 there-

from. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its 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 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 its 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 states that it 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, Candymasters, Inc., its officers, 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. Supplying to or placing in the hands of others candy or any other merchandise together with push or pull cards, punchboards, or other lottery devices, 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.

2. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices either with assortments of candy or other merchandise or separately, which said push or

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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 it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Complaint

IN THE MATTER OF

ABRAHAM FRIEDMAN AND SAMUEL FRIEDMAN, DOING
BUSINESS AS S. FRIEDMAN & SONS AND SUNRAY YARN
HOUSECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT 26, 1914*Docket 4274. Complaint, Aug. 27, 1940—Decision, Mar. 19, 1941*

Where two individuals engaged in interstate sale and distribution of knitting yarns, including two grades or types which had the general appearance of wool—

Represented, through use of legends "Sunray Cashmere Sport Yarn," "Sundry Cashmere Sport," "Cashmere Sport," and "Sunray Cashmere DeLaine," to designate and describe said yarns in labeling and advertising, that said products were made entirely from the hair of the cashmere goat, notwithstanding yarns in question were not products thus made, as long well known to purchasing public and held in high esteem by it, and as understood from term thus used, but contained, in one case no such fiber, and in case of said "Sunray Cashmere DeLaine" was composed of a mixture of hair of said goat and Australian wool;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to constituent fibers or materials of which said yarns were made, and to cause it to purchase substantial quantities thereof:

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. Lewis C. Russell*, trial examiner.

Mr. Donovan Divet for the Commission.

Mr. Louis Fineman, of New York City, for respondents.

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 Abraham Friedman and Samuel Friedman, individuals doing business as S. Friedman & Sons, and as Sunray Yarn House, hereinafter referred to as the 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: