

Complaint

IN THE MATTER OF
TRUDEAU CANDIES, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4376. Complaint, Nov. 14, 1940—Decision, Mar. 22, 1941*

Where a corporation engaged in manufacture of candy and in interstate sale and distribution of various assortments thereof 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, and included, as typical, 60 bars of candy, with push card for use in sale and distribution thereof under a plan by which purchaser paid 1, 2, 3, 4, or 5 cents for bar, in accordance with number selected by chance from disks thereon—

Sold such assortments, together with said push cards, to wholesalers, jobbers and retailers by whom, as direct and indirect purchasers, they were exposed and sold to purchasing public in accordance with sales plan aforesaid, 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 to procure bars of candy at prices much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who, unwilling to use said or any method involving game of chance or any other method contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales plan or method and by element of chance involved therein, and were thereby induced to buy and sell its said candy in preference to that of competitors aforesaid who do not use same or equivalent methods, and with tendency and capacity to unfairly divert trade in commerce to it from its said 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.

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 Trudeau Candies, 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

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of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Trudeau Candies, Inc., is a corporation organized and existing under the laws of the State of Minnesota, with its principal office and place of business located at 287 East Sixth Street, St. Paul, Minn. Respondent is now, and for more than 1 year 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 its place of business in the city of St. Paul, Minn., to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now, and for more than 1 year last past has been, a course of trade by respondent in 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 its 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 is composed of 60 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 60 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 cents, respectively. 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 its 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 its products in accordance with the sales plan hereinabove set forth. The use by respondent of said 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 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. 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.

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 November 14, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Trudeau Candies, 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 10, 1941, 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 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 Trudeau Candies, Inc., is a corporation organized and existing under the laws of the State of Minnesota, with its principal office and place of business located at 287 East Sixth Street, St. Paul, Minn. Respondent is now, and for more than 1 year 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 its place of business in the city of St. Paul, Minn., to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now, and for more than 1 year last past has been, a course of trade by respondent in 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 its 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 is composed of 60 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 60 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 cents, respectively. 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 its 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 its products in accordance with the sales plan hereinabove set forth. The use by respondent of said 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 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. 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 plan or method employed by respondent in the sale and distribution of its candy and in the element of chance involved therein

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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, Trudeau Candies, Inc., a corporation, 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 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.

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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.

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IN THE MATTER OF

CLARO LABORATORIES, INC., AND JOSEPH FERDINAND
CLARO PRZYBYSZ, ALSO KNOWN AS JOSEPH FERDI-
NAND CLARO, AND FRANCES PRZYBYSZCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3663. Complaint, Dec. 14, 1938—Decision, Mar. 25, 1941*

Where a corporation and two individuals, who owned, operated, and controlled same, engaged in manufacture of their "Claro Hair Remover" liquid preparation and in competitive interstate sale and distribution thereof—Represented, directly and by implication, that their said product would permanently remove superfluous hair, and that it was safe and non-irritating, through such statements, in publications of general circulation and on counter display cards distributed chiefly to beauty shops, as "Ladies! A New Discovery! Positively banishes unsightly hair on face or body in three or four minutes. * * * nonirritating * * *," etc., and "Banishes Unsightly Hair Claro Liquid Depilatory New—Smart—Safe;"

Facts being said product, by virtue of barium sulphide and potassium hydroxide content, would dissolve that part of hair above the skin with which it came in contact, but would not affect roots thereof nor retard growth or permanently remove superfluous hair, and instead of being safe or non-irritating, would irritate the skin and was likely to cause severe dermatitis and chemical burns;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false advertisements were true, and of thereby inducing it to purchase their said preparation, whereby trade was diverted unfairly to them from competitors who truthfully advertised their respective preparations and effectiveness thereof:

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. Edward E. Reardon*, trial examiner.

Mr. John M. Russell 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 Claro Laboratories, Inc., a corporation, and Joseph Ferdinand Claro Przybysz, also known as Joseph Ferdinand Claro, and Frances Przybysz, individuals, hereinafter referred to as respondents, have violated the