

Complaint

IN THE MATTER OF

MITCHELL A. BAZELON AND JACOB L. BAZELON, TRADING AS EVANS NOVELTY COMPANY AND PREMIUM SALES COMPANY

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

Docket 3711. Complaint, Feb. 14, 1939—Decision, Apr. 11, 1941

Where two partners for a time, and one of said individuals thereafter, as partnership successor, engaged in interstate sale and distribution of radios, fishing tackle, clocks, and a general line of merchandise, and in advertising their business in trade literature; in soliciting sale of and in selling their said products through various plans and devices which involved operation of games of chance, gift enterprises, or lottery schemes for sale or distribution thereof to ultimate consumers wholly by lot or chance, as illustrated and explained in circulars distributed to prospective customers—

Furnished to purchasers along with such merchandise, various punchboards and push cards, including, as illustrative, a combination consisting of a miniature radio and a 1,440-tube punchboard for use, as explained thereon, in sale and distribution or award of said radios and 74 other money prizes ranging from one \$5 prize to 55 prizes of 10 cents, under a plan by which purchaser received, for 5 cents paid, one of said prizes or nothing other than privilege of chance, dependent upon success or failure in punching number corresponding to one of the "Jack-Pot" numbers, and with particular prize decided by ticket concealed in particular "Jack-Pot" tube selected, and purchaser of the last of the 1,440 punches receiving awards indicated in all the unpunched "Jack-Pot" tubes; and thereby placed in the hands of others various plans, methods and devices involving such games of chance;

With the result that many persons were attracted by said sales methods and were thereby induced to purchase said individuals' merchandise in preference to that offered by competitors who do not use any such method, whereby trade was unfairly diverted from them to individuals aforesaid:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors, were contrary to the established public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. D. C. Daniel and *Mr. L. P. Allen, Jr.*, for the Commission.

Mr. Gordon L. Bazelon and *Mr. Morton J. Harris*, of Chicago, Ill., 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 Mitchell A. Bazelon and Jacob L. Bazelon, individually and as copartners trading as Evans

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Novelty Co. and Premium Sales Co., hereinafter referred to as respondents, have violated the provisions of the 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 respondents, Mitchell A. Bazelon and Jacob L. Bazelon, are individuals and copartners trading as Evans Novelty Co. and Premium Sales Co., with their principal office and place of business located at 946 Diversey Parkway, Chicago, Ill. Respondents are now, and for some time last past have been, engaged in the sale and distribution of radios, clocks, novelty dolls, fishing tackle sets, cameras, novelty cigarette containers, electric drink shakers, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise, when sold, to be transported from their aforesaid place of business in the State of Illinois to the purchasers thereof in the various States of the United States other than Illinois and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondents in said merchandise 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, respondents are now, and for some time last past have been, in competition with other partnerships and with corporations and individuals engaged in the sale and distribution of like or similar articles of merchandise 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 their business, in said commerce, as described in paragraph 1 hereof, respondents sell, and have sold, to wholesale dealers, jobbers, and retail dealers, various articles of merchandise so sold and distributed as to involve the use of a game of chance, gift enterprise or lottery scheme. One of respondents' deals substantially illustrates the sales plan or method used in the sale and distribution of their merchandise to the purchasing public, and is as follows:

This deal consists of a radio, together with a device commonly called a punchboard. The said radio is distributed to the consuming public by means of said punchboard, in the following manner: the sales are 5 cents for each punch, and when a punch is made from

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the board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board is divided into two sections, one containing approximately 1,440 punches and the other, known as the "jackpot," contains 75 punches. The board bears the statement or statements informing prospective purchasers that certain specified numbers, punched from the larger section, entitle the purchaser thereof to a punch in the said jackpot and that a punch in the jackpot entitles the purchaser to a prize, depending upon the punch selected in the jackpot, of either \$5, \$1, 50 cents, 25 cents, 10 cents or the said radio as a grand prize. A purchaser who does not qualify by obtaining one of the winning numbers receives nothing for his money other than the privilege of punching a number from the board. The numbers and winning punches are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The retail value of the said radio is greatly in excess of the designated price of said punches. The radios and other articles of merchandise are thus distributed to the purchasers of said punches from said board wholly by lot or chance.

Respondents sell and distribute various articles of merchandise and furnish various punchboards and push cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plans or methods vary in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish the said punchboards and push cards use the same in selling and distributing respondents' said merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their said merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise, and the sale of said merchandise 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 said 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 much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute merchandise in competition with the re-

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spondents 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 the respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by competitors of respondents who do not use the same or equivalent method. The use of said method by respondents, because of said game of chance, has a tendency and capacity to and does unfairly divert trade to respondents from their said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being and has been done by respondents 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 respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' 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 the 14th day of February A. D. 1939, issued and thereafter served its complaint in this proceeding upon the respondents, Mitchell A. Bazelon and Jacob L. Bazelon, individually and as copartners trading as Evans Novelty Co. and Premium Sales Co., charging them with unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel and L. P. Allen, Jr., attorneys for the Commission, before Miles J. Furnas, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding. The attorneys for respondents introduced no testimony or other evidence. The testimony and other evidence introduced were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, and brief in sup-

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port of the complaint (no brief being filed by respondents' attorneys nor oral argument requested). 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. Respondents, Mitchell A. Bazelon and Jacob L. Bazelon, were copartners from November 1937 to March 1, 1939, and during said time traded as Premium Sales Co. From January or February 1938, to March 1, 1939, they also traded as Evans Novelty Co. On March 1, 1939, respondent Jacob L. Bazelon purchased the interest of Mitchell A. Bazelon in the business and since then has been and now is the sole owner of said business, and has continued to conduct same under the aforesaid trade names. During the entire existence of the partnership respondents' principal place of business was located in the city of Chicago, State of Illinois, and respondent Jacob L. Bazelon has continued to conduct his business at the same place at all times since he has been the sole owner.

PAR. 2. Respondents, during the existence of the partnership, were, and since March 1, 1939, respondent Jacob L. Bazelon has been and now is, engaged in the business of selling and distributing to jobbers and distributors, radios, fishing tackle, clocks, and a general line of novelty merchandise, and have caused said merchandise, when sold, to be shipped from their said place of business to purchasers located in various States of the United States.

PAR. 3. Respondents, in the course and conduct of their business as set forth in paragraph 2 hereof, as copartners were, and respondent Jacob L. Bazelon now is, in competition with other individuals, partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among various States of the United States.

PAR. 4. From November 1937, to some time in January or February 1938, respondents said business was conducted under the trade name "Premium Sales Company;" since said time no sales have been made by them or either of them under said trade name, but all purchases have been made under the trade name, "Premium Sales Company," and the selling and distribution of respondents' merchandise have been conducted under the trade name, "Evans Novelty Company."

PAR. 5. Respondents, in the sale and distribution of their merchandise described in paragraph 2 hereof, as copartners furnished,

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and respondent Jacob L. Bazelon has since furnished and now furnishes, to purchasers thereof, various plans and devices which involve the operation of games of chance, gift enterprises, or lottery schemes, by means of which said merchandise is sold and distributed to the ultimate consumers wholly by lot or chance. Typical of the methods used by the respondents is the following:

One of respondents' combinations consists of a miniature radio and a punchboard whose caption bears a description of the radio. Below this caption, under the designation "Jack Pot," are 75 covered tubes, each containing a ticket bearing words or figures indicating the prize to be awarded, and which is effectively concealed until the cover of the tube has been punched and the ticket removed. The awards thus made are as follows: One grand prize (the radio); 1 prize of \$5; 1 prize of \$1; 5 prizes of 50 cents each; 12 prizes of 25 cents each and 55 prizes of 10 cents each.

To the right of this jack pot is an illustration of a miniature radio, while to the left is a series of 25 numbers ranging from 25 to 625, followed by the statement, "Each Receives One Punch In The Jack Pot."

In the lower section of the board, under the heading "Last Sale On Board Receives Remaining Punches in Jack Pot," are ranged 1,440 covered tubes, for the right to punch which a charge of 5 cents each is made. Each of these tubes contains a ticket which is effectively concealed until the cover of the tube has been punched and the ticket is then removed. On each of 25 of these tickets is printed one of the numbers shown at the left of the jack pot, and each entitles the purchaser to one punch of the jack pot and to the award thus disclosed. The purchaser of the last of the 1,440 punches is entitled to the awards indicated in all the unpunched tubes of the jack pot. Purchasers who do not obtain any of the awards indicated in the jack pot receive nothing for their investment but the right to punch one of the 1,440 tubes.

Other items of merchandise were sold and distributed by respondents during the copartnership, and have since been and are now sold and distributed by Jacob L. Bazelon, by means of like or similar methods, and the punchboards accompanying such merchandise differ only in detail.

PAR. 6. Respondents, in soliciting the sale of and selling their said merchandise, as copartners have distributed, and respondent Jacob L. Bazelon has since distributed and now distributes, to prospective customers, circulars illustrating and explaining their plans, methods,

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and devices for the sale and distribution of their merchandise as set forth in paragraph 5 hereof, and have advertised their said business in trade literature.

PAR. 7. Respondents, by their sales methods hereinbefore described, as copartners have placed, and respondent Jacob L. Bazelon now places, in the hands of others various plans, methods, and devices which involve games of chance, gift enterprises, or lottery schemes to be used in the distribution of said merchandise, and by the use of such plans, methods, and devices, such merchandise is distributed to the ultimate consumers wholly by lot or chance.

PAR. 8. Many persons have been and are attracted by the sales methods employed by respondents in the sale and distribution of their said merchandise and by the element of chance involved therein, and have been thereby induced to purchase respondents' merchandise in preference to merchandise offered for sale by respondents' competitors who do not use the same or a similar method.

PAR. 9. During all of the times herein mentioned, respondents have been in competition with individuals, partnerships, and corporations engaged in the sale and distribution in commerce of merchandise similar to that sold by respondents, in commerce between and among various States of the United States, who are unwilling to use and do not use, in the sale and distribution of their merchandise, any method involving a game of chance, gift enterprise, or lottery scheme, and as a result trade has been unfairly diverted from such competitors to the respondents.

CONCLUSION

The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and of respondents' competitors, are contrary to the established public policy of the Government of the United States of America, and constitute unfair methods of competition in commerce and unfair 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, the answer of the respondents, testimony, and other evidence taken before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, and brief filed by the attorney for the Commis-

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sion (no brief being filed by respondents and oral argument not requested), and the Commission, having made its findings as to the facts and its conclusion that the respondents, Mitchell A. Bazelon and Jacob J. Bazelon, individually and trading as Evans Novelty Co. and Premium Sales Co., have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Mitchell A. Bazelon and Jacob L. Bazelon, their representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of radios, fishing tackle, clocks or any other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Selling or distributing any merchandise so packed or 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.

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 said 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 respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

DOUGLAS 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 3817. Complaint, June 13, 1939—Decision, Apr. 11, 1941

Where a corporation engaged in manufacture of candy and in competitive interstate sale and distribution thereof—

Furnished to purchasers various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for sale and distribution of said product to the ultimate consumer wholly by lot or chance, including as typical of methods used, a number of 5 cent candy bars packed as (1) "Winner Bar Assortment," (2) "Play Ball" and (3) "Basket Ball" combinations, together with punchboards for use in their sale and distribution under plans, as explained thereon, by which purchaser received 1 to 5 or 6 bars, in accordance with number concealed in disc beneath feminine name selected, or, in latter two cases, dependent upon his success in selecting from the three hundred tube boards involved, one of the 5 or 6 tubes containing special award legends; and thereby

Placed in the hands of others various devices for use in the distribution of its merchandise by means of said game of chance and boards, employment of which its salesman truthfully urged as assisting in sale of candy involved, contrary to the established public policy of the United States Government; With result that trade was thereby diverted to it from its manufacturer and distributor competitors who were unwilling to and did not use such method: Held, That such acts and practices 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. Miles J. Furnas*, trial examiner.

Mr. William L. Pencke and *Mr. L. P. Allen, Jr.* for the Commission.
Landis & Landis, of St. Joseph, Mo., 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 Douglas Candy Co., 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, Douglas Candy Co., is a corporation organized and doing business under the laws of the State of Mis-