

Complaint

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-

Complaint

32 F. T. C.

souri with its principal office and place of business located at 209 South Second Street, St. Joseph, Mo. Respondent is now and for some time last past has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. The respondent causes and has caused said products, when sold, to be transported from its principal place of business in the city of St. Joseph, Mo., to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now and has been for some time 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 a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumers thereof. Respondent also causes and has caused push cards and punchboards which are designed to be and are used with the said assortments to be shipped to the aforesaid wholesale dealers, jobbers, and retail dealers. The wholesalers and jobbers, aforesaid, in turn assemble the push cards or punchboards and candy into one assortment and sell same to the retail trade. Respondent distributes and has distributed various push cards and punchboards for use in the sale and distribution of its candy to the consuming public by means of a game of chance, gift enterprise, or lottery scheme. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various assortments, nor does it include all of the details of the several plans which respondent has been or is using in the sale and distribution of candy by lot or chance.

(a) One assortment consists of a box or boxes of candy bars in conjunction with a device commonly called a push card. The push card contains 100 partially perforated disks and on the face of each of said disks is printed the word "push." Concealed within the said disks are numbers which are effectively concealed from purchas-

1167

Complaint

ers and prospective purchasers until a push or selection has been made and the selected disks pushed or separated from the card. Sales are 5 cents each. The following legend appears on the face of said card:

5¢ WINNER BAR ASSORTMENT 5¢

(No blanks)

Number 100—receives 5 Douglas Bars

Number 50—receives 3 Douglas Bars

NOS. 5-15-25-35-45-55-65-75-85 receive
—2 Douglas Bars

All other numbers receive—1 Douglas Bar

The sales of respondent's candy by means of said push card are made in accordance with the above described legend or instructions. Said pieces or bars of candy are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives one or more pieces or bars of candy for the amount of money paid is thus determined wholly by lot or chance.

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 are similar to the one hereinabove described and vary only in detail.

(b) Another of said assortments consists of a box or boxes of candy bars in conjunction with a device commonly called a punchboard. The said punchboard contains 300 holes into which have been inserted slips of paper and on the slips of paper certain words or phrases have been printed. Such words or phrases are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the selected slip punched or separated from the board. Each purchaser is entitled to one bar of candy for the amount of money paid, but purchasers who punch slips containing certain words or phrases which correspond to words or phrases appearing at the top of said board are entitled to, and receive, additional bars of candy without additional cost. Sales are 5 cents each. The following legend appears on the face of said board:

PLAY BALL

All Plays Receive
Douglas Bars

Complaint

32 F. T. C.

ONLY

Home Run receives 5 Bars

3 Base Hit receives 5 Bars

2 Base Hit receives 4 Bars

1 Base Hit receives 2 Bars

Stolen Base receives 2 Bars

All Other Plays receive 1 Bar

Batter Up Make A Hit

The sales of respondent's candy by means of said punchboard are made in accordance with the above described legend or instructions. Said pieces or bars of candy are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives one or more pieces or bars of candy for the amount of money paid is thus determined wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of candy along with punchboards 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 purchase respondent's said candy directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of its candy in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods 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 plans or methods 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 methods and plans hereinabove set forth involves a game of chance or the sale of a chance to procure additional pieces 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 methods or any method involv-

ing 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 methods employed by respondent in the sale and distribution of its candy and 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 and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury is being done 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 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 the 13th day of June A. D., 1939, issued and thereafter served its complaint in this proceeding upon the respondent, Douglas Candy Co., a corporation, charging it 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 filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of the complaint by John C. Landis, attorney for the respondent, before Miles J. Furnas, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding. Said testimony and other evidence 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

Findings

32 F. T. C.

briefs in support of the complaint and in opposition thereto (oral argument not being 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. Respondent, Douglas Candy Co. is a corporation organized and doing business under the laws of the State of Missouri, and having its principal place of business in the city of St. Joseph, in said State.

PAR. 2. Respondent, for some time last past, has been, and now is, engaged in the manufacture and sale of candy, and its distribution to wholesale and retail dealers and jobbers, and causes its said product, when sold, to be shipped from its principal place of business to purchasers thereof located in various States of the United States.

PAR. 3. Respondent, in the conduct of its business as set forth in paragraph 2 hereof, has been, and now is, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy in commerce between and among various States of the United States.

PAR. 4. Respondent, in the sale and distribution of its merchandise as described in paragraph 2 hereof, has furnished and furnishes to the purchasers thereof various devices and plans of merchandising same 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 consumer wholly by lot or chance. Typical of the methods used by the respondent are the following:

(a) One of the respondent's assortments consists of a number of candy bars, together with a device commonly called a "push card." This push card bears the caption:

5¢ WINNER BAR ASSORTMENT 5¢

(No Blanks)

Number 100 receives.....	5 Douglas Bars
Number 50 receives.....	3 Douglas Bars
Nos. 5-15-25-35-45-55-65-75-85 receive.....	2 Douglas Bars
All Other Numbers receive.....	1 Douglas Bar

Below this heading are ranged one hundred partially perforated disks, for which pushes are sold at 5 cents each; over each disk appears a feminine name and concealed beneath the disk is a number which is

1167

Findings

not disclosed until the disk is pushed out; the number revealed entitles the purchaser of the push to the amount of candy indicated in the above-described caption.

(b) Another of respondent's combinations consists of a number of candy bars, together with a device commonly called a "punchboard," which bears the following caption:

PLAY BALL

ALL PLAYS—RECEIVE DOUGLAS BARS ONLY

Home Run receives.....	5 Bars
Three Base Hit receives.....	5 Bars
Two Base Hit receives.....	4 Bars
One Base Hit receives.....	2 Bars
Stolen Base receives.....	2 Bars
All Other Plays receive.....	1 Bar

(with illustrations of two ball players and the additional words):

Batter Up Make a Hit

Below this caption are ranged 300 covered tubes, concealed within each of which is a slip of paper bearing certain printed words or phrases which are not disclosed until the cover is punched and the slip is withdrawn; these punches are sold at 5 cents each and each purchaser is entitled to 1 bar of candy, but the purchaser who punches out a slip containing words or phrases which correspond with 1 of the 5 specifically named awards appearing in the caption receives the number of bars there indicated, without additional cost.

(c) Another of respondent's combinations consists of a number of candy bars, together with a punchboard bearing the following caption:

BASKET BALL

Play 5¢ Play

Tip-Off Goal, rec's.....	6 Bars
Set Play Goal rec's.....	3 Bars
Rebound Goal rec's.....	2 Bars
Side Court Goal rec's.....	2 Bars
Long Shot Goal rec's.....	2 Bars
Free Throw Goal rec's.....	2 Bars
All Other Plays rec.....	1 Bar

Make a Goal

Under this caption are ranged 300 covered tubes, concealed within each of which is a slip of paper bearing certain printed words or phrases which are not disclosed until the cover is punched and the slip is withdrawn. Each of these punches is sold for 5 cents, and each purchaser is entitled to 1 bar of candy, but the purchaser punch-

Order

32 F. T. C.

ing out a slip containing words or phrases which corresponds with 1 of the 6 specifically named awards appearing in the caption receives the number of bars there indicated, without additional cost.

PAR. 5. Respondent's salesman has urged the use of respondent's "boards" because they assist in the sale of the candy. The use of said boards does, in fact promote such sales.

PAR. 6. Respondent, by its sales methods hereinbefore described, places in the hands of others various devices to be used in the distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme, and by the use of such devices said merchandise is distributed to the ultimate consumer wholly by lot or chance, and respondent's said sales methods are contrary to the established public policy of the Government of the United States.

PAR. 7. During all of the time herein mentioned, respondent has been in competition with other manufacturers and distributors of candy who are engaged in commerce between and among various States of the United States, and who are unwilling to use, and do not use, in the distribution of their merchandise, any method involving a game of chance, gift enterprise, or lottery scheme; and as a result of respondent's said methods, trade has been unfairly diverted from such competitors to the respondent.

CONCLUSION

The aforesaid acts and practices of the respondent 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, the answer of respondent, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission heretofore duly designated by it, in support of the allegations of said complaint, no evidence being offered in opposition thereto, briefs filed herein, oral argument having been waived, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Douglas Candy Co., its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and

1167

Order

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 or distributing candy or any other merchandise so packed or assembled that sales of such candy or other 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 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 said 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

32 F. T. C.

IN THE MATTER OF

S. & K. SALES, INC.

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

Docket 3769. Complaint, Apr. 19, 1939—Decision, Apr. 14, 1941

Where a corporation engaged in interstate sale and distribution of tapestries, neckties, pipes, knives, fountain pens, and other articles of merchandise, to jobbers, wholesalers, and retailers, and in distributing circulars illustrating and explaining its plans and devices for the sale thereof—

Furnished to purchasers along with such merchandise various plans and devices which involved the operation of games of chance, gift enterprises, or lottery schemes in sale or distribution thereof to ultimate consumers, typical "deals" including, respectively, 12 neckties with bands of heavy paper or cardboard to be arranged by the retailer to enfold the narrow part of the tie, attached to pull tabs, separation of which disclosed particular amount, ranging from 1 cent to 25 cents, purchaser was to pay for tie, and 12 tapestry table covers, together with a punch card for use in sale thereof, under a plan by which the number secured by chance determined amount to be paid therefor, so placing, thereby, in the hands of others various devices involving chance or lottery schemes or games for distribution of its products, whereby they were distributed to ultimate consumers wholly by lot or chance;

With the result that trade was thereby diverted to it from competitors who are unwilling to and do not use any such method:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors, 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. L. P. Allen, Jr. and *Mr. William L. Pencke*, for the Commission.

McCarthy, Morris, Smith & Sparrow, of St. Louis, 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 S. & K. Sales, 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