

Modified Order

IN THE MATTER OF
A. McLEAN & SON

MODIFIED CEASE AND DESIST ORDER

Docket 2264. Order, May 17, 1941

Modified order, pursuant to provisions of Section 5 (1) of Federal Trade Commission Act, in proceeding in question, in which (1) original order issued on June 21, 1935, 20 F. T. C. 468, prohibiting sale of candy by lottery schemes or devices; (2) Circuit Court of Appeals for the Seventh Circuit, on July 1, 1936, in *Federal Trade Commission v. A. McLean & Son, M. J. Holloway & Co., Queen Anne Candy Co. and The Bonilla Co.*, 84 F. (2d) 910, 22 F. H. C. 1149, rendered its opinion and entered its decree modifying said order of the Commission in certain particulars and affirming the same in other particulars; and (3) on July 19, 1940, in *Federal Trade Commission v. A. McLean & Son*, 31 F. T. C. 1828,¹ modified its said decree—

Requiring respondent, its representatives, etc., in the manufacture, sale and distribution in interstate commerce of candy and candy products, to forever cease and desist from (1) selling, etc., to jobbers, etc., for resale to retailers, candy so packed and assembled that sales thereof to the general public are to be made, or are designed to be made by means of a lottery, etc., (2) supplying, etc., wholesalers, etc., with packages or assortments of candy which are used, or are designed to be used, without alteration or rearrangement of the contents, to conduct a lottery, etc., in sale or distribution of such contents, (3) packing, etc., in the same package of candy for sale to the public at retail, pieces of candy of uniform size, etc., with centers of a different color, together with larger pieces of candy, or small boxes of candy, or other articles of merchandise, to be given as prizes to those procuring piece of candy with center of a particular color, (4) furnishing wholesalers, etc., with display cards, either with assortments or separately, informing public that products are being sold to public by lot or chance, etc., and (5) furnishing wholesalers, etc., with display cards or other printed matter for use in connection with sale of such products and which inform purchasing public that upon the obtaining by the ultimate purchaser of a piece of a particular colored center, larger piece of candy, or small box of candy or another article of merchandise will be given free to such purchaser; as in order below in detail specified and set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on June 21, 1935, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of Section 5, of the Federal Trade Commission Act, and on June 21, 1935, issued, and on

¹ Modifying decree in question not reported in Federal Reporter.

June 25, 1935, served its order to cease and desist; and it further appearing that on July 1, 1936, the United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion and entered its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars, and subsequently on July 19, 1940, modified its said decree.

Now, therefore, Pursuant to the provisions of subsection (i) of Section 5 of the Federal Trade Commission Act, the Commission issues this, its modified order to cease and desist, in conformity with the said court's modified decree:

It is hereby ordered, That the said respondent, A. McLean and Son, a corporation, its representatives, agents, servants, employees, and successors, in the manufacture, sale, and distribution in interstate commerce of candy and candy products, forever cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers, for resale to retail dealers, candy so packed and assembled that sales of such candy to the general public are to be made or are designed to be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to, or placing in the hands of, wholesale dealers and jobbers packages or assortments of candy which are used or are designed to be used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said assortment to the public.

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

4. Furnishing to wholesale dealers and jobbers, display cards, either with assortments of candy or candy products, or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

5. Furnishing to wholesale dealers and jobbers display cards or other printed matter for use in connection with the sale of candy or candy products, which said advertising literature informs the purchasing public that upon the obtaining by the ultimate purchaser of a piece of

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candy of a particular colored center, a larger piece of candy or small box of candy or another article of merchandise will be given free to said purchaser.

It is further ordered, That respondent, A. McLean and Son, a corporation, shall within 30 days after the 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

M. J. HOLLOWAY & COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 2265. Order, May 17, 1941

Modified order, pursuant to provisions of Section 5 (1) of Federal Trade Commission Act, in proceeding in question, in which (1) original order issued on June 25, 1935, 21 F. T. C. 79, prohibiting sale of candy by lottery schemes or devices; (2) Circuit Court of Appeals for the Seventh Circuit, on July 1, 1936, in *Federal Trade Commission v. A. McLean & Son, M. J. Holloway & Co., Queen Anne Candy Co. and The Bonita Co.*, 84 F. (2d) 910, 22 F. T. C. 1149, rendered its opinion and entered its decree modifying said order of the Commission in certain particulars and affirming the same in other particulars; and (3) on July 19, 1940, in *Federal Trade Commission v. M. J. Holloway & Co.*, 31 F. T. C. 1829,¹ modified its said decree—

Requiring respondent, its representatives, etc., in the manufacture, sale, and distribution in interstate commerce of candy and candy products, to forever cease and desist from (1) selling, etc., to jobbers, etc., for resale to retailers, candy so packed and assembled that sales thereof to the general public are to be made, or are designed to be made by means of a lottery, etc., (2) supplying, etc., wholesalers, etc., with packages or assortments of candy which are used, or are designed to be used, without alteration or rearrangement of the contents, to conduct a lottery, etc., in sale or distribution of such contents, (3) packing, etc., in the same package of candy for sale to the public at retail, pieces of candy of uniform size, etc., with centers of a different color, together with larger pieces of candy, or small boxes of candy, or other articles of merchandise, to be given as prizes to those procuring piece of candy with center of a particular color, (4) supplying, etc., wholesalers, etc., with assortments, together with a push card or punch board, for use or which may be used in distributing or selling said candy to public at retail, and (5) furnishing to wholesalers, etc., a push card or punch board, either with packages or assortments or separately, informing purchaser that products in question are being sold to public by lot or chance, etc.; as in order below in detail specified and set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on June 25, 1935, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of Section 5 of the Federal Trade Commission Act, and on June 25, 1935, issued, and on June 27, 1935, served its order to cease and desist; and it further appearing that on July 1, 1936, the United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion and entered its decree modifying the aforesaid order of the Commission

¹ Modifying decree in question not reported in Federal Reporter.