

## Complaint

## IN THE MATTER OF

BURRY BISCUIT CORPORATION AND TASTY BUD  
BISCUIT COMPANY, INC.

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

*Docket 4374. Complaint, Nov. 9, 1940—Decision, June 11, 1941*

Where two corporations engaged in manufacture of bakery products, including crackers, and in interstate sale and distribution thereof to purchasers, including retail stores—

- (a) Caused certain of their cracker products, called "Bisc-O-Bits," to be packaged, offered for sale and sold in cardboard containers bearing in conspicuous type, visible to shoppers, the statement "Average 90 Crackers," when in fact said packages did not contain or average 90 crackers, but contained substantially less; and
- (b) Made use of practice of slack filling, in that aforesaid containers were substantially larger than reasonably required to package the 10 ounces of crackers actually placed therein, and, when offered and sold to purchasing public, were not filled to capacity, but, as aforesaid, contained substantially less;

With effect of misleading and deceiving a substantial portion of the buying public into the false belief that aforesaid packages contained 90 crackers, or more, and that they were filled to capacity, and into purchase of such crackers in reliance upon such erroneous belief, and with further effect of placing in the hands of retail sellers the means of deceiving members of the buying public;

*Held*, That such acts and practices were all to the injury and prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

*Mr. Jay L. Jackson* for the Commission.

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COMPLAINT<sup>1</sup>

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 Burry Biscuit Co.,

<sup>1</sup> The Commission on April 30, 1941 granted request of respondents to substitute parties and amend complaint and granted leave to file substitute answer by the following order:

This matter coming on to be heard upon the request of Burry Biscuit Corporation and Tasty Bud Biscuit Co., Inc., that they be substituted as parties respondent in lieu and instead of Burry Biscuit Co., Inc., and Tastybud Biscuit Co., Inc., respectively, and that the complaint be considered and taken as amended by the substitution of the names of said petitioners in lieu of the names appearing in said complaint, and requesting leave to withdraw their answer filed herein on November 27, 1940, and to substitute in lieu thereof their answer dated January 22, 1941, and annexed to said request; and it appearing to the Commission that said petitioners Burry Biscuit Corporation and Tasty Bud Biscuit Co., Inc., corporations, have heretofore been duly served in this proceeding, that they are proper parties respondent, having been erroneously named in the complaint as Burry Biscuit Co., Inc., and Tastybud Biscuit Co., Inc., respectively, and the Commission having duly considered the matter and being now fully advised in the premises.

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Inc., a corporation, and Tastybud Biscuit Co., Inc., a corporation, hereinafter referred to as 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:

PARAGRAPH 1. Respondent Burry Biscuit Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 925 Newark Avenue, in the city of Elizabeth, State of New Jersey. Said respondent also maintains a branch office and plant in the city of Chicago, State of Illinois.

Respondent Tastybud Biscuit Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 925 Newark Avenue, in the city of Elizabeth, State of New Jersey. Said respondent is a wholly owned and controlled subsidiary of respondent Burry Biscuit Co., Inc.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the business of manufacturing bakery products including crackers, and in the sale thereof in commerce among and between the various States of the United States and in the District of Columbia. Said respondents cause said products, when sold, to be transported from their places of business in the States of New Jersey and Illinois to purchasers thereof located in various States of the United States other than the States of New Jersey and Illinois, and to purchasers located in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia, in the course of which commerce respondents sell and have sold their said products to retail stores and other resale outlets.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have offered and offer for sale, and have sold and sell, crackers under the brand name "Bisc-O-Bits Crackers," packaged in a cardboard container which is sealed and wrapped in wax paper. Imprinted and labeled on the visible surface of said containers and wrappers, among other printed statements, in conspicuous type and

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*It is ordered*, That said request be granted and that Burry Biscuit Corporation and Tasty Bud Biscuit Co., Inc., corporations, be, and they hereby are, substituted as parties respondent in this proceeding in lieu and instead of Burry Biscuit Co., Inc., and Tastybud Biscuit Co., Inc., respectively, and that the complaint herein be considered as if so amended;

*It is further ordered*, That the respondents' request for leave to withdraw their answer filed herein on November 27, 1940, and to file in lieu thereof their answer dated January 22, 1941, and annexed to said request, be, and the same hereby is, granted.

visible to the eye of shoppers and members of the purchasing public, appears the following statement:

Average 90 Crackers.

The foregoing statement and representation, as caused by respondents to appear on the containers and wrappers of its Bisc-O-Bits Crackers, packaged as aforesaid, is false and misleading in that the said packages did not, and do not, contain 90 crackers, nor do they average 90 crackers to a box. In truth and in fact, the said packages contain substantially less than 90 crackers to a box.

The aforesaid cardboard containers measure  $6\frac{3}{8}$  by 3 by  $8\frac{5}{8}$  inches and are of a capacity and size in excess of that reasonably required to package 10 ounces of said crackers, the quantity of crackers actually placed therein by respondents. Said containers, when offered for sale and sold to the purchasing public, are not filled to capacity, and the quantity of crackers contained therein is substantially less than the capacity of said containers. The practice of using over-size containers is known in the trade and generally as "slack filling" and has the force and effect of misleading or deceiving members of the purchasing public with respect to the quantity of product contained in such packages.

PAR. 4. The aforesaid acts and practices of the respondents have had, and have, the tendency and capacity to, and do, mislead and deceive a substantial portion of purchasers and prospective purchasers, members of the buying public, into the false and erroneous belief that the aforesaid packages contain 90 crackers, or more, and that said containers are filled to capacity and contain the quantity of crackers indicated by the capacity of said containers, and into the purchase of said crackers in reliance upon such erroneous belief. The said practice further places in the hands of retail sellers the means whereby to mislead and deceive members of the buying public.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute 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 9, 1940, issued, and on November 12, 1940, served its complaint in this proceeding upon respondents, Burry Biscuit Corporation and Tasty Bud Biscuit Co., Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

## Findings

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After the issuance of said complaint and the filing of respondents' answer, the Commission, by an order herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and said substitute answer, 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 Burry Biscuit Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 925 Newark Avenue, in the city of Elizabeth, State of New Jersey. Said respondent also maintains a branch office and plant in the city of Chicago, State of Illinois.

Respondent Tasty Bud Biscuit Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 925 Newark Avenue, in the city of Elizabeth, State of New Jersey. Said respondent Tasty Bud Biscuit Co., Inc., is a subsidiary of, and wholly owned and controlled by, respondent Burry Biscuit Corporation.

PAR. 2. Respondents now are, and for the past several years have been, engaged in the business of manufacturing bakery products, including crackers, and in the sale and distribution thereof in commerce among and between the various States of the United States, and in the District of Columbia, and have maintained and maintain a constant course of trade in said products in said commerce. Respondents have caused and cause said products, when sold, to be transported from their aforesaid places of business in the States of New Jersey and Illinois to purchasers thereof, inclusive of retail stores, located in States of the United States other than the States of New Jersey and Illinois, and to such purchasers in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business prior to August 1940, respondents caused certain of their cracker products, called "Bisc-O-Bits," to be packaged, offered for sale and sold in

cardboard containers wrapped and sealed in wax paper, and bearing on the surface thereof, in conspicuous type, visible to the eye of shoppers and members of the purchasing public, the following statement:

*Average 90 Crackers.*

The foregoing statement and representation, as caused by respondents to appear on the packages referred to, was in fact false and misleading for the reason that said packages did not contain 90 crackers and did not average 90 crackers each. In truth, said packages contained substantially less than 90 crackers.

The aforesaid cardboard containers measure  $6\frac{3}{8}$  by 3 by  $8\frac{5}{8}$  inches and are of a capacity and size in excess of that reasonably required to package 10 ounces of said crackers, the quantity of crackers actually placed therein by respondents. Said containers, when offered for sale and sold to the purchasing public, are not filled to capacity, and the quantity of crackers contained therein is substantially less than the capacity of said containers. The practice of using over-size containers is known in the trade and generally as "slack filling" and has the force and effect of misleading or deceiving members of the purchasing public with respect to the quantity of product contained in such packages.

PAR. 4. The aforesaid acts and practices of respondents have had, and have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the buying public into the false and erroneous belief that the aforesaid containers or packages contain 90 crackers, or more, and that such packages are filled to capacity and contain the quantity of crackers indicated by the capacity or size thereof, and into the purchase of such crackers in reliance upon such erroneous belief. The said practice further places in the hands of retail sellers the means whereby to mislead and deceive members of the buying public.

CONCLUSION

The aforesaid acts and practices of respondents, Burry Biscuit Corporation and Tasty Bud Biscuit Co., Inc., are all to the injury and prejudice of the public and constitute 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 respondents, in which answer respondents admit all the material allega-

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tions of fact set forth in said complaint, and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That respondents, Burry Biscuit Corporation and Tasty Bud Biscuit Co., Inc., corporations, their officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their bakery products, inclusive of crackers, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the number or quantity of any of said products contained in any container or package in which the same is offered for sale or sold is greater than the number or quantity of such product actually contained or placed therein.

2. Offering for sale or selling any of said products in a container or package which is substantially larger in size or capacity than that required for packaging the quantity of product contained therein.

*It is further ordered*, That 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.

## Complaint

## IN THE MATTER OF

## HELEN HARRISON CANDIES, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 4467. Complaint, Feb. 21, 1941—Decision, June 11, 1941*

Where a corporation engaged in the manufacture and the competitive interstate sale and distribution of candy, including certain assortments which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers; a typical assortment including thirty boxes of candy and a punchboard for use in sale thereof under a plan, as thereon explained, by which a purchaser paid one to five cents or nothing for a punch depending on the last digit of the number of the slip he secured from the 500-hole punchboard, and whether he received a box of candy or nothing for his money was similarly determined;

Sold such assortments to wholesalers, jobbers, and retailers, by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public, in accordance with aforesaid sales plan, involving game of chance to procure candy at price much less than normal retail price thereof; and thus supplied to and placed in the hands of others means of conducting lotteries in the sale of its products, contrary to the established public policy of the United States Government; and in competition with many who are unwilling to use such or other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by its said sales plan and the element of chance involved therein and were thereby induced to buy and sell its candy in preference to that of its said competitors, whereby trade was unfairly diverted to it from such competitors and substantial injury was done to competition:

*Held*, That such acts and practices were all to the prejudice and injury of the public, and its competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

*Mr. J. W. Brookfield, Jr.*, for the Commission.

*Latimer, Donovan & Brown*, of Chicago, Ill., 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 Helen Harrison 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 of the public, hereby issues its complaint, stating its charges in that respect as follows: