

Complaint

IN THE MATTER OF

C. T. CLAYTON TRADING AS CLAYTON 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 4395. Complaint, Dec. 3, 1940—Decision, June 12, 1941

Where an individual engaged in the manufacture and the competitive interstate sale and distribution of candy, including certain assortments of candy 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; and included, as typical, 60 bars of candy of uniform size and shape, together with a push card for use in sale thereof under a plan by which a purchaser paid for a bar of candy nothing or 1, 2, or 3 cents, depending on the number disclosed when a disk was pushed from the card;

Sold such assortments to wholesalers, jobbers, salesmen, and retailers, by whom, as direct or indirect purchasers, they were exposed and sold to purchasing public in accordance with aforesaid sales plan, involving game of chance to procure candy bars without cost and at prices much less than usual, and thus supplied to and placed in the hands of others means of conducting lotteries in the sale of his products, contrary to established public policy of the United States Government and in violation of criminal laws, and in competition with many, who, unwilling to use such or any method contrary to public policy, refrain therefrom;

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

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

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

Mr. Roy L. Smith, of Phenix City, Ala., 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 C. T. Clayton, an individual trading under the name of Clayton Candy Co., 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, C. T. Clayton, is trading as the Clayton Candy Co. with his office and principal place of business located in

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Phenix City, Ala. Respondent is now and for more than 6 months last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, salesmen, and retail dealers located in the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be transported from his principal place of business in the city of Phenix City, Ala., to purchasers thereof at their respective points of location in various States of the United States other than Alabama and in the District of Columbia. There is now and has been for more than 6 months 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 individuals and with corporations and partnerships 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 his business as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, salesmen, 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 0 to 3, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, and 3 pay 1, 2, and 3 cents, respectively. Purchasers punching number 0 pay nothing. 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 his 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 purchase respondent's said candy, directly or indirectly, 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 his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 without cost or 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 his 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 his 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 and in the District of Columbia.

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 December 3, 1940 issued and on December 5, 1940, served its complaint in this proceeding upon

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respondent, C. T. Clayton, an individual trading as Clayton Candy Co., charging him 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 December 23, 1940, the respondent, through his attorney, filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint but requested the right to file a brief and be heard in oral argument on the question whether the facts so admitted constitute the violation of law charged in the complaint. Thereafter a brief in support of the complaint was filed by the attorney for the Commission and served on the respondent, and subsequently the respondent, through his attorney, waived the filing of a brief and oral argument. Thereafter the proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, and the brief in support of the complaint, 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, C. T. Clayton, is an individual trading as the Clayton Candy Co., with his office and principal place of business located in Phenix City, Ala. Respondent is now and for more than 6 months last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, salesmen, and retail dealers located in the various States of the United States and in the District of Columbia. Respondent causes and has caused said candy, when sold, to be transported from his principal place of business in the city of Phenix City, Ala., to purchasers thereof at their respective points of location in various States of the United States other than Alabama, and in the District of Columbia. There is now and has been for more than 6 months 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 individuals and with corporations and partnerships 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 his business as described in paragraph 1 hereof, respondent sells and has sold to wholesale

dealers, jobbers, salesmen, 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 0 to 3, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching number 1, 2, and 3 pay 1, 2, and 3 cents, respectively. Purchasers punching number 0 pay nothing. 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 his 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 purchase respondent's said candy, directly or indirectly, 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 his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 without cost or 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 his candy and in the element of chance

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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 his 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 and in the District of Columbia.

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 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, in which answer respondent admits all the material allegations of fact set forth in said complaint, and brief in support of the complaint, respondent having waived the right to file a brief and argue the matter orally, 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 respondent, C. T. Clayton, individually, and trading as Clayton Candy Co., or trading under any other name, his 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. Selling or distributing candy or any merchandise so packed and assembled that sales of such candy or other merchandise to the general 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

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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.

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 him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

THE BRIARWOOD CORPORATION

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

Docket 4401. Complaint, Dec. 5, 1940—Decision, June 12, 1941

Where a corporation engaged in the manufacture and the competitive interstate sale and distribution of pipes—

Sold to wholesalers, jobbers, and retailers certain assortments of smoking pipes which were so packed and assembled as to involve the use of game of chance, gift enterprise, or lottery schemes when sold and distributed to consumers, and included, as typical, three "Bryson" pipes and a punchboard for use, as there explained, in sale of said articles under a plan by which certain specified numbers entitled purchaser to one of said pipes or a package of cigarettes, the last sale in each of the first nine sections completely sold entitled him to a package of cigarettes, and the last punch on the board entitled him to receive a \$3.50 "Bryson" pipe, other customers receiving nothing for their money other than the privilege of a punch; and thus

Supplied to and placed in the hands of retail purchasers, who exposed and sold its pipes in accordance with said plan, involving game of chance to procure pipes at prices much less than usual, means of conducting lotteries in the sale of its pipes, contrary to established public policy of the United States Government, and in competition with many who are unwilling to sell their products by such or any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan and the element of chance involved therein and were thereby induced to buy and sell its pipes in preference to those of its said competitors, and with effect of thus unfairly diverting trade in commerce to it from them; to the substantial injury of 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.

Mr. William H. Rosenfeld, of Cleveland, Ohio, 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 The Briarwood Corporation, 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: