

IN THE MATTER OF

J. C. HELMS, INDIVIDUALLY AND TRADING AS H. & L.
CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4455. Complaint, Jan. 30, 1941—Decision, June 12, 1941*

Where an individual engaged in manufacture of candy, and in interstate sale and distribution of various assortments thereof, which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers, a typical assortment including a number of candy bars, together with a push card for use in sale and distribution thereof under a plan by which purchaser, depending upon the particular number secured by chance in accordance with disk pushed, paid nothing or 1, 2 or 3 cents, for a bar, retail value of each of which was greater than 1 cent—

Sold such assortments to dealers and retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plans or methods, involving game of chance or sale of a chance to procure bars of candy without cost or at prices much less than normal retail prices thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of his product, contrary to an established public policy of the United States Government, and in violation of the criminal laws, and in competition with many who, unwilling to offer or sell their products so packed and assembled as to involve a game of chance or any other method contrary to public policy, refrain therefrom; .

With tendency and capacity to induce purchasers to buy his said product in preference to that of his competitors, and with result that many dealers in and ultimate consumers were attracted by said manner of packing candy and by the element of chance involved in sale thereof, and were thereby induced to purchase his said candy in preference to that of his said competitors who do not use such methods; and with tendency and capacity to divert unfairly to him trade from his competitors aforesaid and exclude them from candy trade; lessen competition therein; create monopoly thereof in him and such other distributors as do use such methods; deprive the purchasing public of benefit of competition; and eliminate from said trade all actual, and exclude therefrom all potential, competitors, who do not adopt and use such methods:

Held, That such acts and practices, under the circumstances set forth, 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.

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

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 J. C. Helms, individually and trading under the name of H. & L. Candy Co., hereinafter referred to as respondent, has 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 respondent, J. C. Helms, is an individual doing business under the trade name of H. & L. Candy Co., with his principal office and place of business located at Marshville, N. C. Respondent is now and for more than 1 year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused the said candy, when sold, to be shipped or transported from his aforesaid place of business in the State of North Carolina to purchasers thereof at their respective points of location in various States of the United States other than the State of North Carolina and in the District of Columbia. There is now and for more than 1 year last past has been a course of trade by said 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 his business respondent is in competition with other individuals and with partnerships and corporations 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 dealers various assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner: This assortment consists of a number of bars of candy together with a device called a push card. The card contains a number of partially perforated disks with the word "push" appearing thereon, and printed within each of said disks is either "0¢," "1¢," "2¢," or "3¢." Each purchaser is entitled to push one number from said card. Each purchaser is entitled to and receives one bar of candy and pays therefor the amount indicated within the disk removed from said card, or the purchaser of a disk indicating the amount "0¢" pays nothing for the bar of candy received. All of said bars have a retail value greater than 1 cent. The said amounts to be paid for the candy are effectively concealed from the purchasers and prospective purchasers until a push or selection has been made and the selected disk removed or separated from the card. Thus the amount to be paid by each customer for a bar of candy is determined wholly by lot or chance

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The respondent manufactures, sells, and distributes various assortments of candy, involving a lot or chance feature, and such assortments and the sales plans or methods by which said assortments are distributed are similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's assortments of candy directly or indirectly expose and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. 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 plans or methods hereinabove set forth. Said sales plans or methods have a tendency and capacity to induce purchasers of said candy to purchase respondent's candy in preference to candy offered for sale and sold by his competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above described 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 prices thereof. The use by respondent of said methods in the sale of his candy and the sale of such candy by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws. The use by respondent of said methods has a tendency unduly to hinder competition or to create a monopoly in that the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not use and adopt the same or equivalent methods involving the same or equivalent elements of chance or lottery. Many persons, firms, and corporations who make and sell candy in competition with respondent as above alleged are unwilling to offer for sale or to sell their products so packed and assembled as above described or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or any other method which is contrary to public policy and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate consumers of, candy are attracted by respondent's said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase said candy so packed and sold by respondent in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent has a tendency and capacity, because of said game of chance, to unfairly divert to respondent trade from his competitors who do not use the same or equivalent methods; to exclude from the candy trade all

competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in the candy trade; to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or equivalent methods and to deprive the purchasing public of the benefit of free competition. The use of said methods by respondent has the tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same or equivalent methods.

PAR. 6. 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 January 30, 1941, issued and on February 3, 1941, served its complaint in this proceeding upon J. C. Helms, individually and trading under the name of H. & L. 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 February 14, 1941, respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint. No brief having been filed by respondent and oral argument not having been requested, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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. The respondent, J. C. Helms, is an individual doing business under the trade name of H. & L. Candy Co., with his principal office and place of business located at Marshville, N. C. Respondent is now and for more than 1 year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused the said candy, when sold, to be shipped or transported from his aforesaid place of business in the State of North Carolina to purchasers thereof at their respective points of location in various States of the United States other than the State of North Carolina and in the District of Co-

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lumbia. There is now and for more than 1 year last past has been a course of trade by said 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 his business respondent is in competition with other individuals and with partnerships and corporations 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 dealers various assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner: This assortment consists of a number of bars of candy together with a device called a push card. The card contains a number of partially perforated disks with the word "push" appearing thereon, and printed within each of said disks is either "0¢," "1¢," "2¢," or "3¢." Each purchaser is entitled to push one number from said card. Each purchaser is entitled to and receives one bar of candy and pays therefor the amount indicated within the disk removed from said card, or the purchaser of a disk indicating the amount "0¢" pays nothing for the bar of candy received. All of said bars have a retail value greater than 1 cent. The said amounts to be paid for the candy are effectively concealed from the purchasers and prospective purchasers until a push or selection has been made and the selected disk removed or separated from the card. Thus the amount to be paid by each customer for a bar of candy is determined wholly by lot or chance.

The respondent manufactures, sells, and distributes various assortments of candy, involving a lot or chance feature, and such assortments and the sales plans or methods by which said assortments are distributed are similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's assortments of candy directly or indirectly expose and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. 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 plans or methods hereinabove set forth. Said sales plans or methods have a tendency and capacity to induce purchasers of said candy to purchase respondent's candy in preference to candy offered for sale and sold by his competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above described 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 prices thereof. The use by respondent of said methods in the sale of his candy and the sale of such candy by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws. The use by respondent of said methods has a tendency unduly to hinder competition or to create a monopoly in that the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not use and adopt the same or equivalent methods involving the same or equivalent elements of chance or lottery. Many persons, firms, and corporations who make and sell candy in competition with respondent as above found are unwilling to offer for sale or to sell their products so packed and assembled as above described or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or any other method which is contrary to public policy and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate consumers of, candy are attracted by respondent's said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase said candy so packed and sold by respondent in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent has a tendency and capacity, because of said game of chance, to unfairly divert to respondent trade from his competitors who do not use the same or equivalent methods; to exclude from the candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in the candy trade; to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or equivalent methods and to deprive the purchasing public of the benefit of free competition. The use of said methods by respondent has the tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same or equivalent methods.

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 com-

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merce 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 and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, respondent having filed no brief and oral argument not having been requested, 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, J. C. Helms, individually and trading under the name of H. & L. Candy Co., or trading under any other name or names, 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 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.

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IN THE MATTER OF

ACTINO LABORATORIES, INC., AND CARL LOEB

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

Docket 3813. Complaint, June 8, 1939—Decision, June 13, 1941

Where a corporation and an individual, who was its president and principal stockholder and in charge of its operations, engaged in competitive interstate sale and distribution of certain orthoptic instruments for use in treatment and correction of visual defects, accepting as trade-ins, from purchasers of its "Chrome-Orthoptoscope" certain orthoptic instruments known as "Syntonizers" made by competitors, and resold by it; in advertisements in journals or magazines circulating generally among optometrists—

(a) Represented that certain of such "Syntonizers" were new and unused, through such statements as "FOR SALE—Three Syntonizers, Latest type. Hundred dollars each. One slightly used, seventy-five dollars. * * *," and "FOR SALE.—Three Syntonizers, late type. Price \$125.00 each. * * *"; facts being all were used or second hand machines accepted by it as trade-in allowances on new purchases; and

(b) Failed to disclose in its advertising, offer and sale thereof that such instruments were used or second-hand;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature and character of their products, and to cause it to purchase them as a result of the mistaken belief so engendered, and with effect of diverting trade unfairly to them from their competitors who do not misrepresent their products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce.

Before *Mr. Randolph Preston* and *Mr. William C. Reeves*, trial examiners.

Mr. R. P. Bellinger for the Commission.

Mr. E. Sydney Feinstein, 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 Actino Laboratories, Inc., a corporation, and Carl Loeb, an individual, 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: