

Complaint

IN THE MATTER OF
GORDON FOODS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4438. Complaint, Dec. 31, 1940—Decision, June 13, 1941*

Where a corporation engaged in the competitive interstate sale and distribution of food products including assortments of nuts, which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold to the consuming public, and included, as typical, a display card with twenty-seven 5-cent packages of nuts each, three of which, however, concealed within them a printed slip of paper bearing the word "free" and were without cost to purchasers procuring same;

Sold such assortments to jobbers and, directly or indirectly, to retailers, by whom they were exposed and sold in accordance with said plan, involving game of chance to procure without cost, package of nuts, and thus supplied to and placed in the hands of others means of conducting lotteries in the sale of its products, contrary to established public policy of the United States Government, and in competition with many who, unwilling to sell their products by such or any method contrary to public policy, 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 products in preference to those of its said competitors, and with tendency and capacity to divert trade unfairly to it from them:

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. Clarence H. Calhoun, of Atlanta, Ga., 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 Gordon Foods, 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:

PARAGRAPH 1. Respondent Gordon Foods, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Georgia with its principal office and place of business located at 1075 Sylvan Road SW., Atlanta, Ga. Respondent is now

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and has been for more than 1 year last past engaged in the sale and distribution of food products to jobbers and retail dealers located in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, its products when sold to be shipped and transported from its aforesaid place of business in the State of Georgia 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 more than 1 year last past a course of trade by said respondent in such food products in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business, respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar products 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 distributes, and has sold and distributed, assortments of nuts so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing and consuming public.

One of said assortments consists of 27 packages of nuts mounted on a display card bearing the legend

TRY YOUR LUCK.

You May Get a Free Package.

and distributed in the following manner:

The said packages of nuts retail at the price of 5 cents each, but three of said packages have within the wrapper or package a printed slip of paper bearing the word "Free" and thereby advising the purchaser thereof that the said package of nuts is given to him without cost. The said printed slips of paper are effectively concealed from purchasers and prospective purchasers until said packages have been opened and the said slips removed therefrom. The purchasers who procure said packages containing said printed slips thus procure the same without cost rather than at the regular retail price of 5 cents each. The fact as to whether the purchasers of said packages of nuts in said assortment procure the same without cost or pay the regular price of 5 cents each therefor, is thus determined wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various assortments of food products involving a lot or chance fea-

ture, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said packages of nuts, 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 its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its products and the sale of said products 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 packages of nuts 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 packages of said nuts without cost. Many persons, firms, and corporations who sell and distribute products 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 which is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or method employed by respondent in the sale and distribution of its products and by the element of chance involved therein and are thereby induced to buy and sell respondent's products in preference to products 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 the 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, 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 the 31st day of December 1940

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issued, and on January 2, 1941, served, its complaint in this proceeding upon respondent, Gordon Foods, Inc., a corporation, charging it 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 January 21, 1941, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent through its counsel, Clarence H. Calhoun, and by W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. The respondent also waived the filing of a report upon the evidence by a trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Gordon Foods, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Georgia with its principal office and place of business located at 1075 Sylvan Road SW., Atlanta, Ga. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of food products to jobbers and retail dealers located in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, its products, when sold, to be shipped and transported from its aforesaid place of business in the State of Georgia 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 more than 1 year last past a course of trade by said respondent in such food products in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business, respondent is, and has been, in competition with other corporations and with individuals

and partnerships engaged in the sale and distribution of like or similar products 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 distributes, and has sold and distributed, assortments of nuts so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing and consuming public.

One of said assortments consists of 27 packages of nuts mounted on a display card bearing the legend

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The said packages of nuts retail at the price of 5 cents each, but three of said packages have within the wrapper or package a printed slip of paper bearing the word "Free" and thereby advising the purchaser thereof that the said package of nuts is given to him without cost. The said printed slips of paper are effectively concealed from purchasers and prospective purchasers until said packages have been opened and the said slips removed therefrom. The purchasers who procure said packages containing said printed slips thus procure the same without cost rather than at the regular retail price of 5 cents each. The fact as to whether the purchasers of said packages of nuts in said assortment procure the same without cost or pay the regular price of 5 cents each therefor, is thus determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's said packages of nuts, 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 its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its products and the sale of said products 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.

PAR. 4. The sale of packages of nuts 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 packages of said nuts without cost. Many persons, firms, and corporations who sell and distribute prod-

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ucts 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 which is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or method employed by respondent in the sale and distribution of its products and by the element of chance involved therein and are thereby induced to buy and sell respondent's products in preference to products 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 unfairly divert trade in commerce between and among the 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.

CONCLUSION

The aforesaid acts and practices of the 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 the respondent, and the stipulation as to the facts entered into between the respondent herein and W. T. Kelly, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Gordon Foods, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of nuts, nut products, or other merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing nuts, nut products, or any other merchandise so packed and assembled that sales of such nuts, nut products,

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 dealers, or others, assortments of packages of nuts, nut products, or other merchandise which are to be used, or may be used, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of such nuts, nut products, or other merchandise to the public.

3. Packing or assembling in the same assortment packages of nuts, nut products or other merchandise for ultimate sale to the public, which individual packages of nuts, nut products or other merchandise are of uniform appearance, but some of which contain coupons or slips entitling the purchaser to receive such packages without cost.

4. 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.

IN THE MATTER OF

NEO-VIM COMPANY, AND W. C. POLLARD, A. L. RIAFF,
L. M. JENSEN, CARL G. ROSSEL, EDWIN L. MILLER, AND
L. R. DILLOWCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3969. Complaint, Oct. 10, 1940¹—Decision, June 14, 1941

Where a corporation and several individuals, who were at various times officers and managing directors thereof and formulated, directed and controlled its policies and practices or participated therein, engaged in interstate sale and distribution of their "Neo-Vim" or "Neo-Vém" medicinal preparation as a tonic, and of their "Hi-Ho Tooth Paste" for use on teeth and gums; by means of advertisements disseminated through the mails, in newspapers and periodicals, radio continuities, and circulars, leaflets, pamphlets, and other advertising literature—

- (a) Represented, directly or through implication that their said "Neo-Vim" or "Neo-Vém" was a competent and effective tonic which supplied the user with increased energy and vitality and increased the appetite, that it served to increase the quantity, and improve the quality, of the blood, and would increase the flow of gastric juices and otherwise aid digestion, and that it was a competent and effective treatment for indigestion;

Facts being, said product was not a competent or effective tonic, and had no such beneficial effects or therapeutic value except as an ordinary laxative; and

- (b) Represented that their "Hi-Ho Tooth Paste" possessed unusual and superior qualities for brightening the teeth, kept the gums healthy and firm, would remove all stain, film, and discoloration from the teeth irrespective of cause, alter the natural or original color of the tooth enamel and make any teeth white and sparkling, and that it prevented impure breath and offensive breath odors;

Facts being said preparation was not a competent or effective agency for brightening the teeth except as an ordinary cleanser, and served no other purpose than as an ordinary dentifrice;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such advertisements were true, and of causing it, as a result of such belief, to purchase substantial quantities of their preparations:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. R. A. McQuat for the Commission.

Mr. Owen B. Sherwood, of Columbus, Ohio, for respondents.

¹ Amended and supplemental.