

Syllabus

IN THE MATTER OF

PELICAN STATE CANDY COMPANY, AND MAX J. PINSKI,
INDIVIDUALLY AND AS OFFICER THEREOF, AND
FORMERLY INDIVIDUALLY AND TRADING AS
PELICAN STATE CANDY COMPANY AND ROYAL
CHOCOLATES

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

Docket, 4210. Complaint, July 31, 1940—Decision, June 18, 1941

Where a corporation and an individual, who was its president and principal stockholder and formulated, controlled, and directed its policies and practices, engaged in the manufacture of candy and the competitive interstate sale and distribution of assortments thereof which were so packed or assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, typical assortments consisting of (1) a number of quarter, half, and one pound bars of pecan candy, value of each of which was in excess of 5 cents, for sale and distribution under a plan, as explained on punchboard supplied, by which purchasers of chances pushing certain numbers received a quarter- or half-pound bar, those pushing the last number in each of the four sections into which the board was divided received a pound of such candy, and others received for nickel paid nothing other than the privilege of making a punch; and (2) a package of candy, together with a push card for use in sale thereof, as thereon explained, under a plan by which the person selecting from 35 feminine names displayed on the card, the one corresponding to that concealed under the master seal received the candy, value of which was in excess of chance amount paid as determined by the particular number disclosed in the disk beneath the name selected—

Sold such assortments to wholesalers, jobbers, and, directly or indirectly, to retailers, by whom they were exposed and sold to the purchasing public, and thereby supplied to and placed in the hands of others a means of conducting lotteries in the sale of their products in accordance with said sales plans, involving game of chance or sale of chance to procure candy at prices much less than normal retail price thereof, contrary to an established public policy of the United States Government, and in competition with many who, unwilling to use such methods of chance or any other method contrary to public policy, refrain therefrom;

With result that many persons were attracted by said sales plans and by the element of chance involved therein, and were thereby induced to buy and sell said candy in preference to that of aforesaid competitors, and with tendency and capacity unfairly to divert trade in commerce from such competitors:

Held, That such acts and practices, as above 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.

Complaint

33 F. T. C.

Before *Mr. Arthur F. Thomas*, trial examiner.
Mr. L. P. Allen, 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 Pelican State Candy Co., a corporation, and Max J. Pinski, individually and as an officer of Pelican State Candy Co., and as an individual formerly trading as Pelican State Candy Co. and Royal Chocolates, hereinafter referred to as respondents, 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. The respondent Max J. Pinski, is an individual and for several years prior to July 1, 1939, traded as Pelican State Candy Co. and Royal Chocolates, with his office and principal place of business located at 523 Natchez St., New Orleans, La. Respondent Pelican State Candy Co. is a corporation organized under the laws of the State of Louisiana on or about July 1, 1939, with its office and principal place of business formerly located at 523 Natchez Street, New Orleans, La. The corporate respondent is now located at 1301 North Rampart Street, New Orleans, La. The respondent Max J. Pinski is president and principal stockholder in the corporate respondent Pelican State Candy Co., and formulates, controls and directs the acts, practices, and policies of the said corporation. All of said respondents have participated, within the time hereinabove mentioned, in doing the acts and things hereinafter alleged. Respondents are and have been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers. Respondents cause and have caused said products, when sold, to be transported from their principal place of business in the city of New Orleans, La., to purchasers thereof, at their respective points of location, in the various States of the United States other than Louisiana, and in the District of Columbia. There is and has been a course of trade by respondents 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, respondents are and have been in competition with other individuals and corporations and with 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes, when sold and distributed to the consumers thereof. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondents, and are as follows.

(a) One assortment consists of a number of one-quarter, one-half and one pound bars of pecan candy, together with a device commonly called a punchboard. Said pecan candy is sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are five cents each and when a punch is made from the board, a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing prospective purchasers that certain specified numbers entitled the purchasers thereof to receive without additional cost, a one-quarter or one-half pound bar of pecan candy. The board is also divided into four sections and the person pushing the last number in each of the four sections, receives one pound of said candy. A purchaser who does not qualify by obtaining one of the lucky numbers or the last punch in one of said sections receives nothing for his money other than the privilege of punching a number from the board. The said bars of candy are worth more than five cents and the purchaser who obtains one of the numbers calling for one of the bars of pecan candy or the last punch in one of said sections receives the same for the price of five cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the said punch separated from the board. The said candy is thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various assortments of candy along with punchboards involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

(b) Another of respondents' assortments consists of a package of candy, together with a device commonly called a push card. Said candy is sold and distributed to the consuming public by means of said push card in the following manner:

The push card bears 35 feminine names with ruled columns on the face thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 35 partially perforated

Complaint

33 F. T. C.

disks on the face of which is printed the word "push." Each of such disks is set under one of the aforesaid feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal, receives the aforesaid package of candy. The said package of candy is worth more than any of the prices paid for a chance to receive same. The push card bears a legend or instructions as follows:

NAME UNDER SEAL RECEIVES
THIS PACKAGE OF
DELICIOUS EASTER CANDY
Numbers 1 to 10
Pay Amount Punched
Numbers over 10 Pay only 10c

Sales of respondents' merchandise by means of said push card are made in accordance with the above described legend or instructions. Said candy is allotted to the customers or purchasers in accordance with the above described legend or instructions. The fact as to whether a purchaser receives the aforesaid package of candy or nothing, for the amount of money paid, is thus determined wholly by lot or chance.

Respondents furnish and have furnished various other push cards for use in the same and distribution of their candy by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said candy by means of said other push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondents' said candy, expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plans hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their candy and the sale of said candy by and through the use thereof and by the aid of said sales plans or methods 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 methods and plans hereinabove set forth involves a game of chance or the sale of a chance to procure candy at prices which are much less than

the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with respondents, as above alleged, are unwilling to adopt and use said methods or any methods 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 plans or methods employed by respondents in the sale and distribution of their candy and in the element of chance involved therein and are thereby induced to buy and sell respondents' candy in preference to candy of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents 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 respondents from their 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 respondents 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 respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' 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 July 31, 1940, issued and on August 2, 1940, served its complaint in this proceeding upon respondents Pelican State Candy Co., a corporation, and Max J. Pinski, individually and as an officer of Pelican State Candy Co. and formerly individually and trading as Pelican State Candy Co. and Royal Chocolates, charging them 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 April 14, 1941, respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, 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

Findings

33 F. T. C.

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 Max J. Pinski, is an individual and for several years prior to July 1, 1939, traded as Pelican State Candy Co. and Royal Chocolates, with his office and principal place of business located at 523 Natchez Street, New Orleans, La. Respondent Pelican State Candy Co. is a corporation organized under the laws of the State of Louisiana on or about July 1, 1939, with its office and principal place of business formerly located at 523 Natchez Street, New Orleans, La. The corporate respondent is now located at 1301 North Rampart Street, New Orleans, La. The respondent Max J. Pinski is president and principal stockholder in the corporate respondent Pelican State Candy Co., and formulates, controls and directs the acts, practices, and policies of the said corporation. All of said respondents have participated, within the time hereinabove mentioned, in doing the acts and things hereinafter found. Respondents are and have been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers. Respondents cause and have caused said products, when sold, to be transported from their principal place of business in the city of New Orleans, La., to purchasers thereof, at their respective points of location, in the various States of the United States other than Louisiana, and in the District of Columbia. There is and has been a course of trade by respondents 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, respondents are and have been in competition with other individuals and corporations and with 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes, when sold and distributed to the consumers thereof. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondents, and are as follows:

(a) One assortment consists of a number of one-quarter, one-half and one pound bars of pecan candy, together with a device commonly

called a punchboard. Said pecan candy is sold and distributed to the consuming public by means of said punchboard in the following manner: sales are 5 cents each and when a punch is made from the board, a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing prospective purchasers that certain specified numbers entitle the purchasers thereof to receive without additional cost, a one-quarter or one-half pound bar of pecan candy. The board is also divided into four sections and the person pushing the last number in each of the four sections, receives one pound of said candy. A purchaser who does not qualify by obtaining one of the lucky numbers or the last punch in one of said sections receives nothing for his money other than the privilege of punching a number from the board. The said bars of candy are worth more than 5 cents and the purchaser who obtains one of the numbers calling for one of the bars of pecan candy or the last punch in one of said sections receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the said punch separated from the board. The said candy is thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various assortments of candy along with punchboards involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

(b) Another of respondents' assortments consists of a package of candy, together with a device commonly called a push card. Said candy is sold and distributed to the consuming public by means of said push card in the following manner:

The push card bears 35 feminine names with ruled columns on the face thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 35 partially perforated disks on the face of which is printed the word "push." Each of such disks is set under one of the aforesaid feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal, receives the aforesaid package of candy. The said package of candy is worth more than any of the prices paid for a chance

Findings

33 F. T. C.

to receive same. The push card bears a legend or instructions as follows:

NAME UNDER SEAL RECEIVES
THIS PACKAGE OF
DELICIOUS EASTER CANDY
Numbers 1 to 10
Pay Amount Punched
Numbers over 10 Pay only 10¢

Sales of respondents' merchandise by means of said push card are made in accordance with the above described legend or instructions. Said candy is allotted to the customers or purchasers in accordance with the above described legend or instructions. The fact as to whether a purchaser receives the aforesaid package of candy or nothing, for the amount of money paid, is thus determined wholly by lot or chance.

Respondents furnish and have furnished various other push cards for use in the sale and distribution of their candy by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said candy by means of said other push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondents' said candy, expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plans hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their candy and the sale of said candy by and through the use thereof and by the aid of said sales plans or methods 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 candy to the purchasing public by the methods and plans hereinabove set forth involves a game of chance or the sale of a chance to procure candy at prices which are much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with respondents, as above found, are unwilling to adopt and use said methods or any methods 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 plans or methods employed by respondents in the sale and distribution of their candy and in the element of chance involved

367

Order

therein and are thereby induced to buy and sell respondents' candy in preference to candy of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents 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 respondents from their said competitors who do not use the same or equivalent methods.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents' 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.

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 allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to the 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 the respondent, Pelican State Candy Co., its officers, and the respondent Max J. Pinski, individually, and trading as Pelican State Candy Co. and Royal Chocolates, or trading under any other name or names, the representatives, agents, and employees of said respondents, 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 other merchandise so packed or assembled that sales of such candy or other merchandise to the 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

Order

33 F. T. C.

used, in selling or distributing said 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 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
GENERAL GROCER COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4281. Complaint, Aug. 28, 1940—Decision, June 27, 1941

Where a corporation engaged in the purchase of food stuffs at wholesale from sellers located in other States, and in the interstate sale and distribution thereof—

Received and accepted allowances and discounts in lieu of brokerage in substantial amounts, through, usually, purchasing commodities at prices lower than those at which such commodities were sold to other purchasers by an amount reflecting all or a portion of the brokerage currently being paid by sellers of such commodities to their respective brokers for effecting sales to other purchasers:

Held, That such receipt and acceptance of allowances and discounts in lieu of brokerage fees or commissions from sellers upon purchases of commodities were in violation of the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

Mr. John T. Haslett for the Commission.

Cobbs, Logan, Roos & Armstrong, of St. Louis, Mo., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent General Grocer Co. is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at 301 South Eighth Street, St. Louis, Mo. Respondent is engaged in the purchase, sale, and distribution of food products at wholesale.

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchased commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. Since June 19, 1936, in connection with the purchase of its requirements in interstate commerce, as aforesaid, respondent has