

Complaint

33 F. T. C.

IN THE MATTER OF

P. D. MEADORS AND M. M. MEADORS, TRADING AS
MEADORS MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4473. Complaint, Mar 21, 1941—Decision, June 30, 1941*

Where two individuals engaged in the manufacture and in the competitive interstate sale and distribution of candy and nut products, including certain assortments, which were so packed and assembled as to involve the use of games of chance, gift enterprise or lottery schemes when sold and distributed to consumers, a typical assortment consisting of (a) 150 assorted pink or white candy-covered gum balls concealed in a hollow cardboard container for sale under a plan by which purchasers of balls, at 1 cent each, who punched the white balls received that gum only, while those punching a pink ball received in addition a 5-cent candy bar; and (b) 32 packages of peanuts packed in a carton bearing a label reading " * * * Prize in Every Package. A Silver Dime in One * * *," under which plan the facts as to whether a purchaser received nothing but a package of peanuts and a prize of insignificant value, or a package with a 10-cent prize included therein, were determined wholly by lot or chance;

Sold such assortments to wholesalers and jobbers, and, directly or indirectly to retailers by whom they were exposed and sold to the purchasing public in accordance with said sales plan, involving game of chance to procure candy at less than its regular retail price, and package of nuts, with money in addition, contrary to the established public policy of the United States Government, 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 their said sales plans and the element of chance involved therein and were thereby induced to buy and sell their products in preference to those of their said competitors, and with tendency and capacity to divert trade in commerce unfairly from such competitors to them:

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

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

Blythe & Bonham, of Greenville, S. Car., 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 P. D. Meadors and M. M. Meadors, individually and trading as Meadors Manufacturing Co., 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, P. D. Meadors and M. M. Meadors, are individuals trading and doing business as Meadors Manufacturing Co., with their office and principal place of business located at 533 South Main Street, Greenville, S. C. Respondents are now and for more than 1 year last past have been engaged in the manufacture and in the sale and distribution of candy and nut products to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondents cause and have caused said candy and nut products, when sold, to be transported from their place of business in the city of Greenville, S. C., to purchasers thereof at their respective points of location in various States of the United States other than South Carolina and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by respondents in such candy and nut 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 said business, respondents are and have been in competition with other individuals and firms and with corporations engaged in the sale and distribution of candy and nut 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 their business as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy and nuts so packed and assembled as to involve the use of games of chance, gift enterprise, or lottery schemes when sold and distributed to the consumers thereof. Two of said assortments are hereinafter described for the purpose of showing the method used by respondent, and are as follows:

This assortment consists of 150 assorted candy covered gum balls. One hundred and twenty-eight of said balls are white colored and 22 of said balls are colored pink. Said balls are concealed in a hollow cardboard container so that they may be punched from the container, one at a time. Sales are made in the following manner. Purchases are 1 cent each. Persons who punch the white balls of gum receive that gum only; persons who punch one of the pink balls are given, in addition, a five-cent bar of candy. The balls are so concealed in the container that the purchaser cannot determine until after the

Complaint

33 F. T. C.

punch is made whether he will receive a white or pink ball; or whether he will receive nothing but the white ball, or the pink ball and a 5-cent bar of candy. The candy is thus distributed to the purchasers of punches from the container wholly by chance.

Respondent has also packed certain assortments of peanuts described as follows:

The peanuts are packed in a carton containing 32 packages. Upon a label fastened to said carton appears the following legend: "Meadors Prize Peanuts, Prize in Every Package. A Silver Dime in One. Meadors Manufacturing Company, Greenville, South Carolina."; and distributed in the following manner:

The said packages of peanuts retail at the price of 5 cents each. In each of 31 of the said packages of peanuts there is packed a small novelty of a value of less than 1 cent. The other package contains a dime (10 cents). All of said packages of peanuts are sealed and the purchaser thereof is unable to determine until after the packages have been opened whether he will receive the novelty merchandise of a value of less than 1 cent or a 10-cent piece. The fact as to whether the purchaser of a package of peanuts receives nothing but the peanuts and a prize of insignificant value or whether he receives the peanuts plus 10 cents (twice the purchase price) is thus determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondents' candy or nuts, directly or indirectly, 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 products and the sale of said products 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 and packages of nuts to the purchasing public by the methods or sales plans hereinabove set forth involves a game of chance or the sale of a chance to procure candy at less than the retail regular prices of said candy and a sum of money in addition to a package of said nuts. Many persons, firms, and corporations who sell and distribute products in competition with respondents, 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 methods employed

by respondents in the sale and distribution of their products and by the element of chance involved therein and are thereby induced to buy and sell respondents' products in preference to products 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 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.

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 March 21, 1941, issued, and on March 22, 1941, served its complaint in this proceeding upon respondents P. D. Meadors and M. M. Meadors, individually and trading as Meadors Manufacturing Co., 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 11, 1941, the respondents, through their attorneys, filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint. Subsequently the respondents, through their attorneys, waived the filing of a brief and oral argument. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the 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. Respondents, P. D. Meadors and M. M. Meadors, are individuals trading and doing business as Meadors Manufacturing Co., with their office and principal place of business located at 533 South Main Street, Greenville, S. C. Respondents are now and for more than 1 year last past have been engaged in the manufacture and in the sale and distribution of candy and nut products to wholesale dealers, jobbers, and retail dealers located at points in the various

Findings

33 F. T. C.

States of the United States and in the District of Columbia. Respondents cause and have caused said candy and nut products, when sold, to be transported from their place of business in the city of Greenville, S. C., to purchasers thereof at their respective points of location in various States of the United States other than South Carolina and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by respondents in such candy and nut 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 said business, respondents are and have been in competition with other individuals and firms and with corporations engaged in the sale and distribution of candy and nut 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 their business as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy and nuts so packed and assembled as to involve the use of games of chance, gift enterprise, or lottery schemes when sold and distributed to the consumers thereof. Two of said assortments are hereinafter described for the purpose of showing the method used by respondent, and are as follows:

This assortment consists of 150 assorted candy covered gum balls. One hundred and twenty-eight of said balls are white colored and 22 of said balls are colored pink. Said balls are concealed in a hollow cardboard container so that they may be punched from the container, one at a time. Sales are made in the following manner. Purchases are 1 cent each. Persons who punch the white balls of gum receive that gum only; persons who punch one of the pink balls are given, in addition, a 5-cent bar of candy. The balls are so concealed in the container that the purchaser cannot determine until after the punch is made whether he will receive a white or pink ball; or whether he will receive nothing but the white ball, or the pink ball and a 5-cent bar of candy. The candy is thus distributed to the purchasers of punches from the container wholly by chance.

Respondent has also packed certain assortments of peanuts described as follows:

The peanuts are packed in a carton containing 32 packages. Upon a label fastened to said carton appears the following legend: "Meadors Prize Peanuts, Prize in Every Package. A Silver Dime in One. Meadors Manufacturing Company, Greenville, South Carolina."; and distributed in the following manner:

The said packages of peanuts retail at the price of 5 cents each. In each of 31 of the said packages of peanuts there is packed a small novelty of a value of less than 1 cent. The other package contains a dime (10 cents). All of said packages of peanuts are sealed and the purchaser thereof is unable to determine until after the packages have been opened whether he will receive the novelty merchandise of a value of less than 1 cent or a 10-cent piece. The fact as to whether the purchaser of a package of peanuts receives nothing but the peanuts and a prize of insignificant value or whether he receives the peanuts plus 10 cents (twice the purchase price) is thus determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondents' candy or nuts, directly or indirectly, 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 products and the sale of said products 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 and packages of nuts to the purchasing public by the methods or sales plans hereinabove set forth involves a game of chance or the sale of a chance to procure candy at less than the retail regular prices of said candy and a sum of money in addition to a package of said nuts. Many persons, firms, and corporations who sell and distribute products in competition with respondents, 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 methods employed by respondents in the sale and distribution of their products and by the element of chance involved therein and are thereby induced to buy and sell respondents' products in preference to products 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 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.

Order

33 F. T. C.

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 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 respondents having thereafter waived the filing of brief and oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, P. D. Meadors and M. M. Meadors, individually and trading under the name of Meadors Manufacturing Co., or trading under any other name, their representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy, nuts, or nut products 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 any merchandise so packed or assembled that sales of such 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 any devices, schemes or plans either with assortments of merchandise or separately, which said devices, schemes, or plans are to be used or may be used in selling or distributing such merchandise to the public.

3. Packaging or assembling any merchandise which is ultimately to be sold to the public in such a manner that cash or other prizes or awards are distributed to the purchasers thereof by means of a game of chance, gift enterprise, or lottery scheme.

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 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.

Order

IN THE MATTER OF

JACOB SCHACHNOW, TRADING AS MODERN HAT
WORKS

MODIFIED CEASE AND DESIST ORDER

Docket 2047. Order, July 3, 1941

Modified order, pursuant to provisions of Section 5 (1) of Federal Trade Commission Act, in proceeding in question, in which (1) Commission, on November 2, 1940, 31 F. T. C. 1256, made its findings and conclusion and issued cease and desist order, and (2) Circuit Court of Appeals for the Third Circuit, on April 2, 1941, in *Jacob Schachnow, trading as Modern Hat Works v. Federal Trade Commission*, 32 F. T. C. 1875, not reported in Federal Reporter, issued its decree modifying said order and directing Commission to modify the same in accordance therewith—

Requiring respondent, his representatives, etc., in connection with offer, etc., in commerce, of hats, to cease and desist from representing that hats composed in whole or in part of used or second-hand materials are new or composed of new materials, by failure to stamp on the sweat bands, in conspicuous and legible terms which cannot be removed, etc., a statement to such effect, as in order set forth, and subject to proviso thereof; and to cease and desist from representing in any manner that hats made in whole or in part from old, used, or second-hand materials are new or composed of new materials.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on November 2, 1940, the Commission made its findings as to the facts and concluded therefrom that the respondent had violated the provisions of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on April 2, 1941, the United States Circuit Court of Appeals for the Third Circuit issued its decree modifying the aforesaid order of the Commission and directed the Commission to modify its aforesaid order to cease and desist in accordance with said decree.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act the Commission issues this its modified order to cease and desist in conformity with said court decree.

It is ordered, That respondent Jacob Schachnow, an individual trading as Modern Hat Works, 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