

Complaint

IN THE MATTER OF

SISCO-HAMILTON COMPANY

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

Docket 4471. Complaint, Mar. 13, 1941—Decision, July 9, 1941

Where a corporation engaged in the manufacture of candy and in the competitive interstate sale and distribution thereof, including certain assortments which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, a typical assortment consisting of 24 boxes of chocolate candy, together with a push card for use in sale and distribution thereof, as thereon explained, by a plan under which customer paid for a box from 1 to 32 cents, depending upon the number he secured by chance—

Sold such assortments to wholesalers, jobbers, and retailers, by whom said candy was exposed and sold to purchasing public in accordance with such sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its candy, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who, unwilling to use method involving a game of chance or other method contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales plan or method and the element of chance involved therein, and were thereby induced to buy and sell its candy in preference to that of its said competitors, and with effect of unfairly diverting trade in commerce to it from them:

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. V. Mishou 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 Sisco-Hamilton Co., 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, Sisco-Hamilton Co., is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 514 South Loomis

Complaint

33 F. T. C.

Street, Chicago, Ill. Respondent is now and for more than 6 years last past has been engaged in the manufacture and in the sale and distribution of candy. Respondent causes and has caused said candy, when sold, to be transported from its aforesaid place of business in the State of Illinois to purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois and in the District of Columbia. There is now and for more than 6 years last past has been 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 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 has sold to wholesale dealers, jobbers, 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 consists of 24 boxes of chocolate candy together with a device commonly called a push card. The push card bears 24 small partially perforated disks, on the face of each of which is printed the word "Push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The purchaser pays in cents the amount of the number punched from the said card, to and including the No. 32. Purchasers punching numbers over 32 pay only 32 cents. The purchasers aforesaid receive one of said boxes of chocolate candy for the amount of money expended. The numbers are effectively concealed within the said disks until same are pushed or separated from the card. The push card bears a legend or instructions as follows:

561

Complaint

EVERY PUNCH WINS

1¢ to 32¢

Nos. 1 to 32 Pay What You Punch

Nos. Over 32 Pay Only 32¢

NO HIGHER

EVERY PLAY WINS

A BOX OF

CHOCOLATES

Sales of respondent's merchandise by means of said push card are made in accordance with the above described legend or instructions. The amount said purchasers are to pay for said boxes of candy is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various other push cards for use in the sale and distribution of its 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 push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's candy 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 candy in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its 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.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a box of candy at a price which is much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute candy in competition with the 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 that is 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 distribu-

Findings

33 F. T. C.

tion of its merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's said candy 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 method 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. 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 the 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 March 13, 1941, issued and thereafter served its complaint in this proceeding upon respondent Sisco-Hamilton Co., 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. After the issuance of said complaint respondent filed its answer admitting all the material allegations of fact set forth in said complaint and waiving 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 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, Sisco-Hamilton Co., is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 514 South Loomis Street, Chicago, Ill. Respondent is now and for more than 6 years last past has been engaged in the manufacture and in the sale and distribution of candy. Respondent causes and has caused said candy, when sold, to be transported from its aforesaid place of business in the State of Illinois to purchasers thereof at their respective points of

561

Findings

location in various States of the United States other than the State of Illinois and in the District of Columbia. There is now and for more than 6 years last past has been 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 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 has sold to wholesale dealers, jobbers, 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 consists of 24 boxes of chocolate candy together with a device commonly called a push card. The push card bears 24 small partially perforated disks, on the face of each of which is printed the word "Push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The purchaser pays in cents the amount of the number punched from the said card, to and including the No. 32. Purchasers punching numbers over 32 pay only 32 cents. The purchasers aforesaid receive one of said boxes of chocolate candy for the amount of money expended. The numbers are effectively concealed within the said disks until same are pushed or separated from the card. The push card bears a legend or instructions as follows:

EVERY PUNCH WINS

1¢ to 32¢

Nos. 1 to 32 Pay What You Punch

Nos. Over 32 Pay Only 32¢

NO HIGHER

EVERY PLAY WINS

A BOX OF

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Findings

33 F. T. C.

Sales of respondent's merchandise by means of said push card are made in accordance with the above-described legend or instructions. The amount said purchasers are to pay for said boxes of candy is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various other push cards for use in the sale and distribution of its 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 push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's candy 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 candy in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its 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 criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a box of candy at a price which is much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute candy in competition with the 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 that is 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 its merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's said candy 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 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 its said competitors who do not use the same or equivalent methods.

561

Order

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 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts 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, Sisco-Hamilton Co., 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 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 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 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

IRVING COHN, TRADING AS IRVIN NOVELTY COMPANY

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

Docket 4464. Complaint, Feb. 11, 1941—Decision, July 10, 1941

Where an individual engaged in the competitive interstate sale and distribution of candy and novelty merchandise, including certain assortments so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers, typical assortments consisting of (1) 2 cedar chests filled with candy, together with a punchboard for use in sale thereof to consuming public, as explained thereon, under a plan by which the two customers securing the 2 winning numbers from the 200 concealed on the board, received said chests and candy, value of which was in excess of the 5 cents paid, and of (2) hair brush and push card, under a plan by which the purchaser of a chance at 10 cents, selecting from the feminine names displayed on the card that corresponded to the name concealed under the master seal received said brush—

Sold such assortments to dealers and retailers by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his products, involving sale of a chance to procure an article at much less than its normal retail price; contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who, unwilling to use said or any sales method involving chance or any other sales plan contrary to public policy, refrain therefrom;

With the result that many dealers in and ultimate consumers of said merchandise were attracted by said sales plans and the element of chance involved therein, and were thereby induced to buy his merchandise in preference to that of his said competitors, and with effect of unfairly diverting trade to him from them; to the substantial injury of competition in commerce:

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 acts and practices therein.

Mr. D. C. Daniel for the Commission.

Hutton, Clark & Hutton, of Danville, Ill., 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 Irving Cohn, individually and trading as Irvin Novelty 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 interest of the public hereby issues its complaint, stating its charges in that respect as follows: