

Complaint

33 F. T. C.

IN THE MATTER OF
NASSIF CANDY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4025. Complaint, Feb. 7, 1940—Decision, July 23, 1941

Where a corporation engaged in competitive interstate sale and distribution of candy and confectionery products, including certain candy assortments so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, a typical assortment consisting of small pieces of caramel candy of uniform size and shape, medium sized candy bars, and a three-section push card, for use in sale and distribution thereof under a plan, as explained thereon, by which person securing by chance one of certain numbers in each section, for cent paid, was entitled to one of said candy bars, person making last punch in each section receiving two of said bars, and all others received a caramel—

Sold such assortments to wholesalers, jobbers, and directly or indirectly to retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan involving chance to procure without additional cost, additional or larger pieces of candy, and thereby supplied to and placed in the hands of others the means of conducting lotteries in sale of its products, 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 any method involving a game of chance to win by chance, or one contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell its candy in preference to that of aforesaid competitors, thereby unfairly diverting trade in commerce to it from said competitors; to the substantial injury of competition in commerce:

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.

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 Nassif Candy Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a pro-

ceeding 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 Nassif Candy Co. is a corporation organized and doing business under the laws of the State of West Virginia, with its principal office and place of business located at 2004 Main Street, Wheeling, W. Va. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of candy and confectionery 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. Respondent causes and has caused said products, when sold, to be transported from its principal place of business in the city of Wheeling, W. Va., to purchasers thereof, at their respective points of location, in the various States of the United States other than West Virginia, and in the District of Columbia. There is now and has been for more than 1 year last past 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 partnerships and individuals 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 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 small pieces of caramel candy of uniform size and shape and medium sized candy bars, the latter to be given as premiums, together with a device commonly called a push card. The push card is divided into three sections and each of said sections contains 50 partially perforated disks on the face of which is printed the word "push." Concealed within each of the said disks is a number which entitles the purchaser thereof to additional and larger pieces of candy when said number corresponds with any of the numbers set out in the legend at the top of said card. The last disk pushed out of each section also entitles the purchaser thereof to additional bars of candy. The sales are 1 cent each and those not securing a winning

Complaint

33 F. T. C.

number receive one of the smaller pieces of caramel candy. The said card bears a legend or statement as follows:

1¢	JOBBER'S ADVERTISER	1¢
PER SALE	Nos. 2, 5, 8, 11, 16, 19, 24, 27, 30, 33, 36, 39, 42, 45, 48, 51	PER SALE

Each Receive ONE CANDY BAR

ALL OTHER NUMBERS RECEIVE ONE CARAMEL

LAST PUNCH IN EACH SECTION RECEIVES 2 CANDY BARS.

Notice—This is not a gambling device. Every punch receives full value. Extra awards for advertising

Sales of respondent's candy by means of said push cards are made in accordance with the above legend. The numbers aforesaid are effectively concealed until a purchase has been made and the disk separated or removed from said card. The said larger pieces of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various assortments of candy along with push cards involving a lot or chance feature, but such assortments and push cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said candy, 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 such 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 the criminal laws.

PAR. 4. The sale of candy to the purchasing public by the method and plan hereinabove set forth involves a game of chance or the sale of a chance to procure additional or larger pieces of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy 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 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 candy and in the element of chance involved therein and are

thereby induced to buy and sell respondent's candy in preference to candy of 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, 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 February 7, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Nassif Candy Co., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, the respondent filed its answer, in which answer it 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 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 Nassif Candy Co. is a corporation organized and doing business under the laws of the State of West Virginia, with its principal office and place of business located at 2004 Main Street, Wheeling, W. Va. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of candy and confectionery products to wholesale dealers, job-

Findings

33 F. T. C.

bers and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be transported from its principal place of business in the city of Wheeling, W. Va., to purchasers thereof, at their respective points of location, in the various States of the United States other than West Virginia, and in the District of Columbia. There is now and has been for more than 1 year last past 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 now, and has been in competition with other corporations and with partnerships and individuals 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 its said 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 small pieces of caramel candy of uniform size and shape and medium sized candy bars, the latter to be given as premiums, together with a device commonly called a push card. The push card is divided into three sections and each of said sections contains 50 partially perforated disks on the face of which is printed the word "push." Concealed within each of the said disks is a number which entitles the purchaser thereof to additional and larger pieces of candy when said number corresponds with any of the numbers set out in the legend at the top of said card. The last disk pushed out of each section also entitles the purchaser thereof to additional bars of candy. The sales are 1 cent each and those not securing a winning number receive one of the smaller pieces of caramel candy. The said card bears a legend or statement as follows:

1¢	JOBBER'S ADVERTISER	1¢
PER SALE	Nos. 2, 5, 8, 11, 16, 19, 24, 27,	PER SALE
	30, 33, 36, 39, 42, 45, 48, 51	
	Each Receive ONE CANDY BAR	
	ALL OTHER NUMBERS RECEIVE ONE CARAMEL	
	LAST PUNCH IN EACH SECTION RECEIVES 2 CANDY BARS	

Notice—This is not a gambling device. Every punch receives full value. Extra awards for advertising

Sales of respondent's candy by means of said push cards are made in accordance with the above legend. The numbers aforesaid are effectively concealed until a purchase has been made and the disk separated or removed from said card. The said larger pieces of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various assortments of candy along with push cards involving a lot or chance feature, but such assortments and push cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said candy, 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 such 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 candy to the purchasing public by the method and plan hereinabove set forth involves a game of chance or the sale of a chance to procure additional or larger pieces of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with respondent, as above described, 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 plan or method employed by respondent in the sale and distribution of its candy and in the element of chance involved therein and are thereby induced to buy and sell respondent's candy in preference to candy of 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, 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.

Order

33 F. T. C.

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 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 Nassif Candy Co., 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 candy and confectionery 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 and assembled that sales of said 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 assortments of any merchandise, together with push cards or other devices, which said push cards or other devices are to be used or may be used in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.
3. Supplying to, or placing in the hands of, others push cards or other devices, which said push cards or other devices are to be used or may be used in the sale or distribution of said merchandise to the public at retail.
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.

Syllabus

IN THE MATTER OF

AMERICAN INSTITUTE OF BUSINESS ADMINISTRATION, INC., AND PAUL KLINE

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

Docket 4195. Complaint, July 25, 1940—Decision, July 24, 1941

Where a corporation and an individual, who was its principal stockholder and managed and controlled its business, engaged in the interstate sale and distribution of correspondence courses in accounting and business law under a plan by which it circularized public accountants throughout the country with a view to having an accountant in each locality secure names of prospective students, to whom it sent advertising matter, employing the accountants to assist groups of its students and compensating them according to the number of students in the respective group—

- (a) Made use of corporate name including words "American Institute of Business Administration, Inc.", on its letterheads and in advertising matter circulated to prospective students, accountants, and others, when in fact it was not an Institute, but was engaged in a private commercial enterprise;

With effect of creating the erroneous impression that it was a national organization of business executives, administrators, accountants, or other special groups of representative business, or the medium of an organization through which instruction or training was given as a public service;

- (b) Augmented aforesaid misleading impression through such statements, on letterheads and printed matter as "Local chapters in principal cities of the United States * * *,"
- (c) Further increased said misleading impression through describing its form of application for instruction as "Application for Membership," designating its enrolled students as "members" and its study groups as "local chapters"; and
- (d) Represented that its activities were national and international in scope, through such statements as aforesaid, and "Representatives in principal cities of the United States, Canada, Porto Rico, Cuba, Philippine Islands," "
" * * * during the twelve years it has been in operation several thousand accountants throughout the United States, Canada, Porto Rico, Hawaii and the Philippine Islands have participated," and " * * * students all over the United States and Canada," facts being it had less than 100 pupils in the spring of 1938, and, some 2½ years later, about 21 located in six States and Porto Rico.

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* and *Mr. William C. Reeves*, trial examiners.

Mr. William L. Pencke for the Commission.