

Complaint

IN THE MATTER OF
LEE BOYER'S CANDYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4265. Complaint, Aug. 24, 1940—Decision, Aug. 6, 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 the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers; a typical assortment consisting of a number of bars or rolls of candy, together with a punchboard for use in their sale and distribution under a plan, as explained thereon, by which the person selecting, by chance, for nickel paid, one of certain numbers, received a quarter-pound nut-roll, persons selecting certain other numbers each received a half-pound roll, purchaser of the last number in each of two sections into which board was divided received 1-pound nut roll, and others received nothing for their money—

Sold such assortments to dealers, including, as direct or indirect purchasers, retailers by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, involving sale of a chance to procure a bar or roll of candy at much less than normal retail price thereof, and thereby supplied to and placed in the hands of others a means of conducting lotteries in the sale of its merchandise, contrary to an established public policy of the United States Government, and in competition with many who refrain from using any methods involving chance, or contrary to public policy;

With the result that many persons were attracted by its said methods and the element of chance involved therein, and were thereby induced to buy and sell its candy in preference to that offered and sold by aforesaid competitors, and with tendency and capacity to unfairly divert trade to it from such competitors; 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.

Gilley, Humphreys & Sercombe, of Portland, Ore., for respondent.

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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 Lee Boyer's Candy, 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 public interest,

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hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lee Boyer's Candy, is a corporation, organized and doing business under the laws of the State of Oregon, with its principal office and place of business located at 103 Southwest Front Avenue, Portland, Ore. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers located in various States of the United States. It causes and has caused said candy, when sold, to be shipped or transported from its aforesaid place of business in the State of Oregon to purchasers thereof in various other States of the United States at their respective points of location. There is now and for more than 2 years last past has been a course of trade by said respondent in such candy in commerce between and among various States of the United States. 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 merchandise in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold certain assortments of said candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said assortments was and is sold and distributed to the purchasing public in the following manner: This assortment consists of a number of bars or rolls of candy, together with a device commonly called a punchboard. Sales are 5 cents each. Said punchboard is divided into two sections, and each section contains a number of small sealed tubes, in each of which is concealed a slip of paper with a number printed thereon. Said board contains statements or legends informing purchasers and prospective purchasers that the persons selecting certain designated numbers each receive a quarter pound nut roll; that persons selecting other designated numbers each receive a half pound nut roll; that purchasers of the last number in each section each receive a 1 pound nut roll. Persons who do not select said designated numbers receive nothing for their money. The said numbers are effectively concealed from purchasers and prospective purchasers until said slips of paper have been punched or removed from said board. The said candy is thus distributed to the purchasing public wholly by lot or chance. Respondent sells and distributes various assortments of candy

which involve the use of games of chance, gift enterprises, or lottery schemes, but the sales plans or methods employed in connection with each of said assortments are similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's candy directly or indirectly expose and sell the same to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of its merchandise in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said methods in the sale of its candy, and the sale of said candy by and through the use thereof and by the aid of said methods, is a practice of the 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 in the manner above alleged involves a game of chance or the sale of a chance to procure a bar or roll of candy at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with the respondent as above alleged are unwilling to adopt and use said methods or any methods involving the use of 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 respondent's said methods and by the element of chance involved in the sale of said candy in the manner above alleged, and are thereby induced to buy and sell respondent's 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 methods by the respondent, because of said game of chance, has the tendency and capacity to and does unfairly divert trade to respondent from its competitors who do not use the same or equivalent methods in commerce between and among various States of the United States. As a result thereof, substantial injury is being done and has been done by respondent to competition in commerce between and among various States of the United States.

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.

Findings

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REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 24, 1940, issued and thereafter served its complaint in this proceeding upon the respondent Lee Boyer's Candy, 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. On June 24, 1941, 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, Lee Boyer's Candy, is a corporation, organized and doing business under the laws of the State of Oregon, with its principal office and place of business located at 103 Southwest Front Avenue, Portland, Oreg. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers located in various States of the United States. It causes and has caused said candy, when sold, to be shipped or transported from its aforesaid place of business in the State of Oregon to purchasers thereof in various other States of the United States at their respective points of location. There is now and for more than 2 years last past has been a course of trade by said respondent in such candy in commerce between and among various States of the United States. 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 merchandise in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold certain assortments of said candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said assortments was and is sold and distributed to the purchasing

public in the following manner: This assortment consists of a number of bars or rolls of candy, together with a device commonly called a punchboard. Sales are 5 cents each. Said punchboard is divided into two sections, and each section contains a number of small sealed tubes, in each of which is concealed a slip of paper with a number printed thereon. Said board contains statements or legends informing purchasers and prospective purchasers that the persons selecting certain designated numbers each receive a quarter pound nut roll; that persons selecting other designated numbers each receive a half pound nut roll; that purchasers of the last number in each section each receive a 1 pound nut roll. Persons who do not select said designated numbers receive nothing for their money. The said numbers are effectively concealed from purchasers and prospective purchasers until said slips of paper have been punched or removed from said board. The said candy is thus distributed to the purchasing public wholly by lot or chance. Respondent sells and distributes various assortments of candy which involve the use of games of chance, gift enterprises, or lottery schemes, but the sales plans or methods employed in connection with each of said assortments are similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's candy directly or indirectly expose and sell the same to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of its merchandise in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said methods in the sale of its candy, and the sale of said candy by and through the use thereof and by the aid of said methods, is a practice of the 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 in the manner above described involves a game of chance or the sale of a chance to procure a bar or roll of candy at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with the respondent as above found are unwilling to adopt and use said methods or any methods involving the use of 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 respondent's said methods and by the element of chance involved in the sale of said candy in the manner above described, and are thereby induced to buy

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and sell respondent's 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 methods by the respondent, because of said game of chance, has the tendency and capacity to and does unfairly divert trade to respondent from its competitors who do not use the same or equivalent methods in commerce between and among various States of the United States. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among various States of the United States.

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, 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 Lee Boyer's Candy, 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 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 or pull cards, punchboards or other devices, which said push or pull cards, punchboards, 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 or pull cards, punchboards or other devices, which said push or pull cards, punchboards, 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.

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IN THE MATTER OF
ATLAS WALL PAPER MILLS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 4288. Complaint, Aug. 29, 1940—Decision, Aug. 6, 1941

Where a corporation engaged in the manufacture and interstate sale and distribution of wall paper; through price lists and sample books and oral statements by its salesmen—

Represented and implied to jobber and retailer purchasers that the wall paper in question might be washed or cleaned with water without suffering damage or loss of appearance and was capable of resisting the usual effects of water, that the colors printed thereon would not fade, and that it was unaffected by exposure to sunlight, through such statements, in referring to said products, as "washable," "water-resisting," "colorfast," and "printed with the best non-fading colors obtainable";

Facts being such wall paper was not washable or water-resisting, as such terms are commonly understood, since application of water thereto caused it to deteriorate substantially and the colors to smear, and the colors were not fast, but faded appreciably when subjected to sunlight for short periods of time;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, with result that it purchased a substantial quantity of said products:

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.

Mr. Maurice C. Pearce for the Commission.

Palmer & Serles, of New York City, 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 the Atlas Wall Paper Mills, 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 public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Atlas Wall Paper Mills, Inc., is a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located in Coal City, State of Illinois.