

Complaint

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IN THE MATTER OF

ILLINOIS NUT PRODUCTS COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3807. Complaint, June 3, 1939—Decision, Aug. 13, 1941*

Where a corporation engaged in manufacture and in competitive interstate sale and distribution of candy, including certain assortments packed and assembled so to involve the use of a game of chance, gift enterprise, or lottery scheme when sold to consumers, and in shipping push cards to be used with such assortments, to its wholesaler and jobber purchasers, by whom the cards and candy were assembled into assortments and sold to the retail trade; a typical assortment consisting of a box of malted milk balls, together with a push card for use in their sale under a plan in accordance with which the chance selection of such football legends as "Touchdown," "Drop Kick," "Safety," etc., entitled a customer, for the cent paid, from 20 down to 1 malted milk ball, the last play in first of card's two sections was entitled to 10, and last play on card to 20 pieces—

Sold such assortments to wholesalers, jobbers, and retailers, and furnished therewith as aforesaid, various push cards for use, in their sale, thereby placing in the hands of others devices through which said merchandise was distributed to the ultimate consumer wholly by lot or chance, in competition with those who do not use any sales method involving such a game, gift enterprise, or lottery scheme;

With the result that many persons were attracted by its 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 its said competitors, and with tendency and capacity unfairly to divert trade in commerce to it from them:

Held, That such acts and practices were contrary to the established public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Miles J. Furnas* and *Mr. W. W. Sheppard*, trial examiners.

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of authority vested in it by said act, the Federal Trade Commission, having reason to believe that Illinois Nut Products Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commis-

sion 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, Illinois Nut Products 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 613 West Lake Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the manufacture of candy and in the sale and distribution thereof 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 aforesaid place of business to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by said respondent in such 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, respondent is, and for some time last past 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 a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumers thereof. Respondent also causes, and has caused, push cards which were designed to be, and are, used with the said assortments to be shipped to the aforesaid wholesale dealers and jobbers. The wholesale dealers and jobbers aforesaid, in turn assemble the push cards and candy into one assortment and sell the same to the retail trade. Respondent distributes, and has distributed, various 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 the one hereinafter described, varying only in detail:

One of said assortments consists of a box of malted milk balls, together with a device commonly called a push card. The said malted milk balls are distributed to the consuming public by means of said push card in the following manner:

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The push card is divided into two sections, and each of said sections contain 50 partially perforated disks on the face of which is printed the word "push." Concealed within the said disks is one of the following words or phrases: Touchdown, Drop Kick, Safety, Field Goal, Forward Pass, End Run, Fake Pass, Line Buck, and Off Side. These words or phrases are effectively concealed from purchasers and prospective purchasers until a push or selection has been made, and the selected disk removed or separated from said push card. Punches on the said card are 1 cent each, and the number of malted milk balls received by the purchaser is determined by the following legend which appears on the face of the card:

		1¢ a Play	
		EVERY PLAY A WINNER	
PLAY FOOTBALL FOR DELICIOUS CHOCOLATE COVERED MALTED MILK BALLS	TOUCHDOWN Receives.....	20	P I E C E S
	DROP KICK Receives.....	10	
	SAFETY Receives.....	10	
	FIELD GOAL Receives.....	6	
	FORWARD PASS Receives.....	3	
	END RUN Receives.....	3	
	FAKE PASS Receives.....	3	
	LINE BUCK Receives.....	2	
	OFF SIDE Receives.....	1	
	LAST PLAY IN FIRST SECTION COMPLETED Receives.....	10	

LAST PLAY ON CARD RECEIVES 20 PIECES

The sales of respondent's candy by means of said push cards are made in accordance with the above described legend. Said pieces of candy are allotted to the customers or purchasers in accordance with the above legend. The fact as to whether a purchaser receiving one or more pieces of candy for the amount of money paid is thus determined wholly by lot or chance.

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 are similar to the one hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes or distributes the said push cards use the same in selling and distributing respondent's candy in accordance with the aforesaid sales plan. 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 the 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 additional pieces of candy without additional cost. 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 distribution of its candy and the element of chance involved therein, 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 an equivalent method. 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 an equivalent method. 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 the 3rd day of June A. D., 1939, issued and thereafter served its complaint in this proceeding upon the respondent, Illinois Nut Products Co., a corporation, charging it with 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, testimony and other evidence in support of the allegations of the complaint were introduced by

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attorneys for the Commission, and in opposition to the allegations of the complaint, by attorney for the respondent before duly appointed trial examiners of the Commission designated by it to serve in this proceeding. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the testimony and other evidence, the trial examiners' report thereon and brief in support of the complaint, 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, Illinois Nut Products Co., is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and since 1934 has been, engaged in the manufacture, sale, and distribution of candy to wholesale dealers, jobbers, and retail dealers, and causes its said products when sold to be shipped from its principal place of business to purchasers thereof located in the various States of the United States.

PAR. 3. Respondent in the conduct of its business, as set forth in paragraph 2 hereof, has been, and now is, in competition with other corporations and with individuals and partnerships engaged in the sale or distribution of candy in commerce between and among the various States of the United States.

PAR. 4. Respondent in the course and conduct of its business, as described in paragraph 2 hereof, 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 a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumers thereof. Respondent also causes, and has caused, push cards which were designed to be and are used with the said assortments, to be shipped to the aforesaid wholesale dealers and jobbers who, in turn, assemble the push cards and candy into one assortment and sell the same to the retail trade. Respondent distributes, and has distributed, various push cards for use in the sale and distribution of its candies, and the said push cards and the respondent's sales plan or methods vary only in detail.

One of respondent's assortments consists of a box of malted milk balls, together with a device commonly called a push card. Upon the face of the push card appears the following legend:

		1¢ a Play	
		EVERY PLAY A WINNER	
PLAY FOOTBALL FOR DELICIOUS CHOCOLATE COVERED MALTED MILK BALLS		TOUCHDOWN Receives.....	20
		DROP KICK Receives.....	10
		SAFETY Receives.....	10
		FIELD GOAL Receives.....	6
		FORWARD PASS Receives.....	3
		END RUN Receives.....	3
		FAKE PASS Receives.....	3
		LINE BUCK Receives.....	2
		OFF SIDE Receives.....	1
		LAST PLAY IN FIRST SECTION	
		COMPLETED Receives.....	10

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LAST PLAY ON CARD RECEIVES 20 PIECES

The push card is divided into two sections, each of said sections contain 50 disks, each covering a perforation in the card. These perforations are also covered on the reverse side by 12 disks. On each of the face disks is printed the word "push" and on the under side of these face disks, effectively concealed until the disk is pushed and removed from the card, is one of the football terms appearing in the legend. One cent is charged for the right to push one of the disks and the number of malted milk balls received by the purchaser is determined wholly by lot or chance, in accordance with the foregoing legend.

PAR. 5. The persons to whom the respondent furnishes or distributes the said push cards use the same in selling and distributing respondent's candy in accordance with the aforesaid sales plan. Respondent by its sales plan or methods, hereinbefore described, places in the hands of others various devices which involve games of chance, gift enterprises, or lottery schemes to be used in the distribution of its candy, and by use of said devices said merchandise is distributed to the ultimate consumer wholly by law of chance.

PAR. 6. During all the time herein mentioned respondent has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution in commerce, between and among the various States of the United States, of candy similar to that sold by the respondent who are unwilling to use and do not use in the sale and distribution of their candy any method involving

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a game of chance, gift enterprise, or lottery scheme. Many persons are attracted by the sales plan or method employed by respondent in the sale and distribution of its candy and the element of chance involved therein, 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 an equivalent method. 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 to respondent from its said competitors who do not use the same or an equivalent method.

PAR. 7. On May 11, 1937, the Commission approved a stipulation entered into between the respondent and the Commission in which respondent admitted engaging in the practices charged in the complaint and agreed to discontinue such practices. Respondent, notwithstanding said agreement, continued said practices up to the date of the issuance of the complaint herein.

CONCLUSION

The aforesaid acts and practices of respondent are contrary to the established public policy of the Government of the United States of America 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, the testimony and other evidence taken before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, the report of the trial examiners thereon, brief filed by the attorney for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent Illinois Nut Products Co., a corporation, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Illinois Nut Products Co., its officers, directors, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of candy or any other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, shall 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, pull tabs, punchboards, or other lottery devices, either with assortments of candy or other merchandise or separately, which said push or pull cards, pull tabs, punchboards, or 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 candy or any other 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
**DISABLED AMERICAN VETERANS OF THE WORLD WAR
REHABILITATION DEPARTMENT, AND FRANK J.
MACKEY, L. C. MAIER, DANIEL C. MOORE, AND ROBERT
T. MACKEY**

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

Docket 4492. Complaint, Apr. 24, 1941—Decision, Aug. 18, 1941

Where a corporation and four individuals, who as officers thereof directed and controlled its policies and operations, engaged in publication and in competitive interstate sale and distribution of books, including an 11-volume set entitled "Progress of Nations" and a 2-volume set of history and war picture books entitled "Forward March";

Following agreement with the well-known, not-for-profit "Disabled American Veterans of the World War," established shortly thereafter, and incorporated in 1932 under Federal statute, to cooperate with the Veterans Administration and other agencies devoted to improving the conditions, health and interests of wounded or disabled veterans of the World War, with the exclusive right to use aforesaid name, and under which agreement it, in consideration of right, among others, to incorporate as the "Disabled American Veterans of the World War Rehabilitation Department" and to conduct its business in the name of said national organization, was to pay latter a royalty of 15 percent, later reduced to 10 percent, on its gross sales of said two sets of books—

- (a) Represented, through their salesmen, that they were representatives of the "Disabled American Veterans of the World War," and represented literature published and circulated by said organization, as endorsing their books; facts being they were not such representatives and literature referred to made no reference to said books, but related only to the general aims and purposes of the organization;
- (b) Represented through said salesmen, that the books were being sold only to certain selected customers, and said "Disabled American Veterans" received the entire profit derived from the sale thereof, that a purchaser was in effect making a contribution to the organization, and that funds thus derived would be used by it in defraying expenses of its activities in combating anti-American and subversive organizations and influences in the United States; frequently concealing the fact that books in question were being sold and taking advantage of said campaign against subversive activities to urge prospective purchasers to contribute thereto, and making receipt of a set of books appear as only incidental to such subscription;

When in fact said books were sold as an ordinary commercial transaction for the profit of the corporation and individuals concerned, the only profit derived by the "Disabled American Veterans" was in the royalties referred to, and such books were sold indiscriminately to the general public and not, as claimed, restricted to any group or number of persons; and