

Complaint

IN THE MATTER OF

ARTHUR G. SPANGLER, ERNEST D. SPANGLER, AND MRS.
FAIE SPANGLER, TRADING AS SPANGLER CANDY
COMPANY

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

Docket 4540. Complaint, July 16, 1941—Decision, Aug. 20, 1941

Where three partners engaged in the manufacture of candy, and in the competitive interstate sale and distribution of certain assortments thereof packed and assembled so as to involve use of games of chance, gift enterprizes, or lottery schemes when sold and distributed to consumers, a typical assortment including a number of small pieces of uniform size and shape, together with a push card for use in their sale under a plan by which purchaser received for 1 cent paid, from 1 to 20 pieces, in accordance with the concealed legend punched from the disk selected, such as "Touch-down," "Drop Kick," "Safety," etc., person making the last purchase in each of the card's first 3 sections received 5 pieces, and the person making the last on the card received 15—

Sold and distributed such assortments to dealers, including retailers, by whom they were exposed and sold to the purchasing public in accordance with sales plan aforesaid, involving a game of chance or sale of a chance to procure pieces of candy at much less than their normal retail price, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their candy, as above set forth, contrary to an established public policy of the United States Government, and in competition with many unwilling to use any sales method involving chance, or contrary to public policy, and who refrain therefrom;

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

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.

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 Arthur G. Spangler, Ernest D. Spangler, and Mrs. Faie Spangler, individually and as copartners trading under the name of Spangler Candy Co., herein-

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after 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, Arthur G. Spangler, Ernest D. Spangler, and Mrs. Faie Spangler, are individuals doing business as copartners under the name of Spangler Candy Company, with their principal office and place of business located at 420 West Edgerton Street, Bryan, Ohio. Respondents also maintain a place of business in Toledo, Ohio. Respondent Ernest D. Spangler resides at 232 East Wayne Street, Maumee, Ohio. Respondents are now, and for more than 1 year last past have been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondents cause and have caused said candy, when sold, to be transported from their principal place of business in Bryan, Ohio, to purchasers thereof at their respective points of location in the various States of the United States other than the State of Ohio, and in the District of Columbia. There is now, and for more than 1 year last past has been, a course of trade by respondents 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 respondents are and have been in competition with other individuals, partnerships and corporations 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to 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 as follows:

This assortment consists of a number of small pieces of candy of uniform size and shape, together with a device commonly called a push card. The push card contains 100 partially perforated disks, on the face of each of which is printed the word "PUSH." Sales are 1 cent each. Concealed within each of the said disks is a legend, which corresponds to a legend appearing on the face of said card. The legends or instructions on the face of the card are as follows:

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FOOTBALL 1¢

TOUCHDOWN receives.....	20	PIECES
DROP KICK receives.....	10	
SAFETY receives.....	10	
FIELD GOAL receives.....	5	
FORWARD PASS receives.....	5	
END RUN receives.....	3	
LINE BUCK receives.....	3	
FAKE PASS receives.....	2	
OFF SIDE receives.....	1	
Last Sale First 3 Sections receives.....	5	
Last Sale on Card receives.....	15	
No. 200		

Sales of respondents' candy by means of said push cards are made in accordance with the above legend or instructions. The legends or instructions aforesaid are effectively concealed from purchasers and prospective purchasers until a purchase has been made and the disk separated or removed from said card. The number of said pieces of candy to be procured by a purchaser for 1 cent is thus determined wholly by lot or chance.

The respondents sell and distribute, and have sold and distributed, various assortments of candy involving lot or chance features, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondents' said candy expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale of their candy in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their candy, 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 candy to the purchasing public by the sales plan or method hereinabove alleged involves a game of chance or the sale of a chance to secure pieces 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 respondents, as above alleged, are unwilling to adopt and use said sales plan or 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

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are attracted by said sales plan or method employed by respondents in the sale and distribution of their candy and by the element of chance involved therein, and are thereby induced to buy and sell respondents' candy in preference to candy of said competitors of respondents who do not use the same or an equivalent method. The use of said method 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 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 July 16, 1941, issued and thereafter served its complaint in this proceeding upon respondents Arthur G. Spangler, Ernest D. Spangler, and Mrs. Faie Spangler, individually and as copartners trading under the name of Spangler Candy Co., charging them 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 August 1, 1941, respondents filed their answer in which answer they 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, this 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. Respondents, Arthur G. Spangler, Ernest D. Spangler, and Mrs. Faie Spangler, are individuals doing business as copartners under the name of Spangler Candy Co., with their principal office and place of business located at 420 West Edgerton Street, Bryan, Ohio. Respondents also maintain a place of business in Toledo, Ohio. Respondent Ernest D. Spangler resides at 232 East

Wayne Street, Maumee, Ohio. Respondents are now, and for more than 1 year last past have been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers.

Respondents cause and have caused said candy, when sold, to be transported from their principal place of business in Bryan, Ohio, to purchasers thereof at their respective points of location in the various States of the United States other than the State of Ohio, and in the District of Columbia. There is now, and for more than 1 year last past has been, a course of trade by respondents 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 respondents are and have been in competition with other individuals, partnerships, and corporations 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to 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 as follows:

This assortment consists of a number of small pieces of candy of uniform size and shape, together with a device commonly called a push card. The push card contains 100 partially perforated disks, on the face of each of which is printed the word "PUSH." Sales are 1 cent each. Concealed within each of the said disks is a legend, which corresponds to a legend appearing on the face of said card. The legends or instructions on the face of the card are as follows:

FOOTBALL 1¢		
TOUCHDOWN receives.....	20	PIECES
DROP KICK receives.....	10	
SAFETY receives.....	10	
FIELD GOAL receives.....	5	
FORWARD PASS receives.....	5	
END RUN receives.....	3	
LINE BUCK receives.....	3	
FAKE PASS receives.....	2	
OFF SIDE receives.....	1	
Last Sale First 3 Sections receives.....	5	
Last Sale on Card receives.....	15	
No. 200		

Sales of respondents' candy by means of said push cards are made in accordance with the above legend or instructions. The legends or instructions aforesaid are effectively concealed from purchasers and

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prospective purchasers until a purchase has been made and the disk separated or removed from said card. The number of said pieces of candy to be procured by a purchaser for 1 cent is thus determined wholly by lot or chance.

The respondents sell and distribute, and have sold and distributed, various assortments of candy involving lot or chance features, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondents' said candy expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale of their candy in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their 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 candy to the purchasing public by the sales plan or method hereinabove described involves a game of chance or the sale of a chance to secure pieces 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 respondents, as above described, are unwilling to adopt and use said sales plan or 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 respondents in the sale and distribution of their candy and by the element of chance involved therein, and are thereby induced to buy and sell respondents' candy in preference to candy of said competitors of respondents who do not use the same or an equivalent method. The use of said method 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 to respondents from their said competitors who do not use the same or equivalent methods.

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 state that they waive all intervening procedure and further hearing as to said facts, and the Commission having duly made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Arthur G. Spangler, Ernest D. Spangler, and Mrs. Faie Spangler, individually and as copartners trading under the name of Spangler Candy Co., their 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 thereof are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

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 either with assortments of candy or other merchandise or separately, which said push or pull cards, punchboards, or other devices are to be used or may be used in selling or distributing said candy or other merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

4. Selling or otherwise distributing 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.

IN THE MATTER OF
**SCHNECK-WAYNE COMPANY, INC., AND GUSTAVE B.
WAYNE AND FRANK J. SCHNECK**

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

Docket 3441. Complaint, May 23, 1938—Decision, Aug. 21, 1941

Where a corporation and two officers and owners thereof, who formulated and directed its policies, acts, and practices, engaged in competitive interstate sale and distribution of various articles of merchandise, including clocks, watches, fountain pens, electrical appliances, radios, traveling bags, blankets, and silverware, and, as thus engaged, in carrying on their business under a general plan by which they entered into agreements with fraternal or charitable organizations to conduct for them money-raising enterprises, such as fairs and carnivals, upon profit-sharing basis, and under which they cooperated with the particular local organization and managed the enterprise and the sale and distribution of their merchandise—

Used and caused others to use various devices and plans of merchandising involving the operation of games of chance, gift enterprises, or lottery schemes in the sale and distribution of their said products, through forwarding to the organization sales literature and material, including pull cards and circulars illustrating their merchandise and explaining their plan of awarding it as prizes to purchasers selecting, from list of feminine names on a card, the same name as that concealed under the card's master seal, who received their choice of any gift illustrated in the "Purchasers Gift Folder" and the operators of cards—usually members of the organization—received a similar choice, and under which the cost of a chance was dependent upon the number under the tab adjoining the name selected, and each purchaser of a chance received also a ticket representing credit on the price of admission to the carnival and bearing a number participating in the special drawing for a grand award of an automobile which usually climaxed the event; and thereby

Supplied to and placed in the hands of others means of conducting lotteries in the sale of their merchandise in accordance with aforesaid plan under which articles of greater value than the cost of a single pull were sold and distributed wholly by lot or chance, contrary to an established policy of the United States Government, and in competition with many who, unwilling to use any method involving a game of chance or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by their said sales method and by the element of chance involved therein, and were thereby induced to buy and sell their said merchandise in preference to that offered and sold by their said competitors, and with tendency and capacity to divert trade unfairly to them 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 of the public and competitors, and constituted unfair methods of competition in commerce.