

Complaint

IN THE MATTER OF

SCHULER CHOCOLATES, INC., ALSO DOING BUSINESS
AS SCHULER CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4385. Complaint, Nov. 23, 1940—Decision, Sept. 5, 1941*

Where a corporation engaged in competitive interstate sale and distribution of candy and confectionery products, including certain assortments so packed and assembled as to involve a game of chance, gift enterprise, or lottery scheme, in resale thereof to the consuming public, and distributing push cards and punchboards for use in such sale and distribution, typical assortments consisting of—

(1) A number of bars of candy of uniform size and shape and a number of boxes of candy, together with a push card for use in sale and distribution of said bars under a plan, as explained thereon, by which customer received, for 5 cents paid, a box of chocolates, two 5-cent bars or three 5-cent bars, depending on the number he secured by chance, the last punch in first section entitled purchaser also to a box of chocolates, and the last punch on the board secured purchaser the large box of chocolates, all others receiving one of said bars; and

(2) A number of boxes of candy, together with a three-section punchboard for use in their sale under a plan by which the chance selection of certain specified numbers entitled purchaser to receive one of said boxes, value of which was in excess of the 5 cents paid, the person punching the last number in each of the three sections also received a box, and others received nothing for their money other than the privilege of making a punch—

Sold such assortments to wholesalers, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its candy, contrary to an established public policy of the United States Government, and in competition with many who do not use method involving chance or any other method contrary to public policy;

Use of which methods, because of said games of chance, had a tendency and capacity unfairly to divert trade in commerce to it from competitors who did not use the same or equivalent methods:

Held, That such acts and practices 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.

Before *Mr. W. W. Sheppard*, trial examiner.

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

Lamberton & Lamberton, of Winona, Minn., 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 Schuler

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Chocolates, Inc., a corporation, doing business under that name and as Schuler Candy Co., 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. Schuler Chocolates, Inc., also trading under the name Schuler Candy Co., is a corporation organized and doing business under the laws of the State of Minnesota, with its office and principal place of business located at Winona, Minn. Respondent is now, and for more than 6 years last past has been, engaged in the sale and distribution of candy and confectionery products to wholesale dealers, jobbers, and retail dealers. The respondent causes and has caused said products, when sold, to be transported from its principal place of business in the city of Winona, Minn., to purchasers thereof at their respective points of location in the various States of the United States other than Minnesota, 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 and confectionery 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 has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy and confectionery products 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 distributes and has distributed various push cards and punchboards for use, and which are used, in the sale and distribution of its candy to the consuming public by means of a game of chance, gift enterprise, or lottery scheme. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondent, but these are not all-inclusive of the various assortments, nor do they include all the details of the several plans which respondent has been or is using in the sale and distribution of candy by lot or chance:

(a) One assortment consists of a number of bars of candy of uniform size and shape, and a number of boxes of candy, together with a device commonly called a push card. The push card contains

partially perforated disks, and on the face of each of said disks is printed the word "Push." Concealed within the said disks are numbers which are effectively concealed from purchasers and prospective purchasers until a push or selection has been made and the selected disk pushed or separated from the card. Sales are 5 cents each. The following legend appears on the face of said card:

5¢ Fairplay Assortment 5¢

No. 5—10—15 take One Box Delicious Chocolates.

Nos. 20—25—30—35—40 take Two 5c Bars.

Nos. 45—50 take Three 5c Bars.

Last punch in first section takes One Box Chocolates.

Last punch on board takes Large Box Chocolates.

All other numbers take 5c Bar.

The sales of respondent's candy by means of said push card are made in accordance with the above-described legend or instructions. Said bars or boxes of candy are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives one or more bars of candy or a box 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.

(b) Another of said assortments consists of a number of boxes of candy together with a device commonly called a punchboard. Said boxes of candy are sold and distributed to the consuming public by means of such punchboard in the following manner: Sales are 5 cents each, and when a punch is made from the board a number is disclosed. The numbers begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive one of said boxes of candy. The board is also divided into three sections, and the person punching the last number in each of the three sections receives one of said boxes of candy. A purchaser who does not qualify by obtaining one of the lucky numbers or the last punch in one of said sections receives nothing for his money other than the privilege of punching a number from the board. The said boxes of candy are worth more than 5 cents each, and a purchaser who obtains one of the numbers calling for a box of candy or the last punch in one of said sections receives the same for the price of 5 cents. The numbers are effectively con-

cealed from purchasers and prospective purchasers until a punch or selection has been made and the said punch separated from the board. The said candy is thus distributed to purchasers of punches from the board wholly by lot or chance.

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

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said candy expose and sell the same to the purchasing public in accordance with the sales plans 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 plans hereinabove set forth. The use by respondent of said sales plans or 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 sales plans or methods, 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 methods and plans hereinabove set forth involves a game of chance or the sale of a chance to procure additional pieces of candy without additional cost, or boxes of candy at prices which are much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy and confectionery products in competition with respondent, as above alleged, are unwilling to adopt and use said methods 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 plans or methods 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 of said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent, because of said games 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. 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.

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Findings

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 November 23, 1940, issued and subsequently served its complaint in this proceeding upon said respondent Schuler Chocolates, Inc., a corporation, 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 and the filing of respondent's answer, certain facts were stipulated in the record by the attorney for the respondent and the attorney for the Commission at a hearing before an examiner of the Commission theretofore duly designated by it, and said record and other evidence were duly filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the facts stipulated in the record and other evidence, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Schuler Chocolates, Inc., also trading under the name Schuler Candy Co., is a corporation organized and doing business under the laws of the State of Minnesota, with its office and principal place of business located at Winona, Minn. Respondent is now, and for more than 6 years last past has been, engaged in the sale and distribution of candy and confectionery products to wholesale dealers, jobbers, and retail dealers. The respondent causes, and has caused, said products, when sold, to be transported from its principal place of business in the city of Winona, Minn., to purchasers thereof at their respective points of location in the various States of the United States other than Minnesota, and in the District of Columbia. There is now, and for more than 6 years last past has been, a course of trade

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by respondent in such candy and confectionery 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 in commerce, as aforesaid, respondent has sold to wholesale dealers certain assortments of candy packed and assembled in a manner designed and intended for use in the resale thereof to the consuming public by means of a game of chance, gift enterprise, or lottery scheme. Respondent has also distributed various push cards and punchboards designed for use in the sale and distribution of its said assortments of candy to the consuming public by means of a game of chance, gift enterprise, or lottery scheme. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondent.

One assortment consisted of a number of bars of candy of uniform size and shape and a number of boxes of candy, together with a device commonly called a push card. The push card contained 60 partially perforated disks and on the face of each of said disks the word "Push" was printed. Concealed within the said disks were numbers which were effectively concealed from purchasers or prospective purchasers until a push or selection had been made and the selected disk pushed or separated from the card. Sales were 5 cents each. The following legend appeared on the face of said card:

5¢ *Fairplay Assortment* 5¢

Nos. 5-10-15 take One Box Delicious Chocolates.

Nos. 20-25-30-35-40 take Two 5¢ Bars.

Nos. 45-50 take Three 5¢ Bars.

Last punch in first section takes One Box Chocolates.

Last punch on board takes Large Box Chocolates.

All other numbers take 5¢ Bar.

Respondent has sold and distributed various other assortments of candy with push cards involving a lot or chance feature, but such assortments were similar to the one above described and varied only in detail.

Another of the assortments sold and distributed by respondent consisted of a number of boxes of candy, together with a device commonly called a punchboard. When a punch was made from the board a number was disclosed. The numbers began with 1 and continued to the number of punches there were on the board, but the numbers were not arranged in numerical sequence. Sales were

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Conclusion

5 cents each. The board was divided into three sections and bore a statement which provided that the person who punched the last number in each of the three sections received one of said boxes of candy and that certain specified numbers entitled the purchaser thereof to receive one of said boxes of candy. It was further provided that a purchaser who did not qualify by obtaining one of the lucky numbers or the last punch in one of said sections received nothing for his money other than the privilege of punching a number from the board. The said boxes of candy were worth more than 5 cents each and a purchaser who obtained one of the numbers calling for a box of candy or the last punch in one of said sections received same for the price of 5 cents. The numbers were effectively concealed until a punch or selection had been made and the said punch separated from the board. The plan or design thus provided for the distribution of said candy wholly by lot or chance to purchasers of punches from the board. Respondent has sold and distributed various other assortments of candy along with punchboards involving a lot or chance feature, but such assortments were similar to the one hereinabove described and varied only in detail.

PAR. 3. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of its candy in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its candy is a practice of a sort which is contrary to an established public policy of the Government of the United States. Many persons and corporations who sell and distribute candy and confectionery products in competition with respondent do not adopt and use said methods, or any method involving a game of chance or the sale of a chance to win something, or any other method contrary to public policy. The use of said methods by respondent, because of said games 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 competitors who do not use the same or equivalent methods.

CONCLUSION

The aforesaid acts and practices of respondent 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, the answer of respondents, certain facts stipulated in the record and other evidence, and briefs in support of the complaint (respondent not having filed brief and oral argument not having been requested), and the Commission having 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 respondent Schuler Chocolates, Inc., a corporation, also trading as Schuler Candy Co., or under any other name, its officers, representatives, agents, and employees, 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, do forthwith cease and desist from:

1. Selling or distributing any merchandise so packed or assembled that sales of such 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 punchboards, push or pull cards, pull tabs, or other lottery devices, either with assortments of merchandise or separately, which said punchboards, push or pull cards, pull tabs, or other lottery devices are to be used, or may be used, in selling or distributing said 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.

Complaint

IN THE MATTER OF

OZON CHEMICAL COMPANY, INC., ALSO TRADING AS
DUNCAN CHEMICAL CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4421. Complaint, Dec. 17, 1940—Decision, Sept. 5, 1941*

Where a corporation engaged in interstate sale and distribution of its "Duncan's Ozon"; by means of newspaper advertisements and circular letters, directly or by implication—

Represented that its said preparation constituted a cure or remedy and competent and effective treatment for colds, coughs, sore throat, athlete's foot, and poison ivy, and that it was an effective preventive of coughs and sore throat, facts being the product in question, which was made from a variety of pine oil and was a counter-irritant and aromatic, possessing slight expectorant and antiseptic properties, was of no therapeutic value in the treatment of poison ivy, athlete's foot, or sore throat, was not an effective preventive thereof or of coughs, and did not constitute a cure for colds, although capable of affording some relief from the symptoms thereof because of such expectorant properties;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that its said preparation possessed therapeutic properties which it did not in fact possess, and to cause it to purchase substantial quantities of said preparation as a result of such belief:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Charles S. Cox 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 Ozon Chemical Co., Inc., a corporation, also trading as Duncan Chemical Co., 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, Ozon Chemical Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, and having its principal place of business at 607 Delmonte Way, St. Louis, Mo. Respondent also trades from said address as Duncan Chemical Co.