

Complaint

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IN THE MATTER OF

WILLIAM E. BOYER AND ROBERT J. BOYER, TRADING
AS BOYER BROTHERS

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

Docket 4475. Complaint, Mar. 25, 1941—Decision, Mar. 23, 1942

Where two individuals, engaged in competitive interstate sale and distribution of assortments of candy and push cards, such as their "Round House" assortment, consisting of a number of uniform candy bars, together with a push card for use in their resale under a plan by which the purchaser received for the five cents paid 1, 2, 3, or 4 bars, in accordance with number selected by chance from card as explained thereon, and person making last push received a "large delicious candy surprise"—

Sold such assortments to wholesalers, jobbers and retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid plan; and thereby supplied to and placed in the hands of others a means of conducting lotteries in the sale of their candy in accordance with such plan, under which the number of bars of candy received for the money paid was determined wholly by lot or chance, and there was involved sale of a chance to procure additional bars without additional cost; contrary to an established policy of the Government of the United States, and in competition with many who, unwilling to use a method involving chance or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales plan and were thereby induced to buy and sell such individual's candy in preference to that of their said competitors, and that because of said game of chance, trade was unfairly diverted to them from their competitors aforesaid; to the substantial injury or 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.

Before *Mr. A. B. Duvall* and *Mr. John W. Addison*, trial examiners.
Mr. J. V. Mishou for the Commission.

Jubelirer, Jubelirer & Smith, of Altoona, Pa., for respondents.

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 William E. Boyer and Robert J. Boyer, individually and trading as Boyer Brothers, hereinafter 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, William E. Boyer and Robert J. Boyer, are individuals trading as Boyer Bros., with their principal office and place of business located at 821 Seventeenth Street, Altoona, Pa. Respondents are now and for more than 8 years last past have been engaged in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers. The respondents cause and have caused said candy when sold to be transported from their place of business in the city of Altoona, Pa., to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now and for more than eight years 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 their said business, respondents are and have been in competition with other individuals and with 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 wholesale dealers and jobbers certain assortments of candy and cause and have caused push cards which are designed to be and are used with the said assortments of candy to be transported by means of respondents' salesmen and otherwise 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. Respondents distribute, and have distributed, various push cards for use in the sale and distribution of their candy to the consuming public by means of a game of chance, gift enterprise or lottery scheme. One of said assortments is hereinafter described for the purpose of showing the method used by respondents and is as follows:

This assortment consists of a number of bars of candy of uniform size and shape together with a device commonly called a push card. The push card contains 60 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

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are 5 cents each. The following legend appears on the face of said card:

WHY REACH BEYOND GOOD TASTE?

EAT ROUND HOUSE

5 per sale

ADVERTISING MEDIUM

No. 13 Receives FOUR 5¢ Candy Bars—No. 23 Receives

THREE 5¢ Candy Bars

NUMBERS 5-10-20-25-30-40-50-60 each receive two 5¢ Candy Bars

All other numbers receive a 5¢ Candy Bar except the last number pushed which receives

A LARGE DELICIOUS CANDY SURPRISE

The sales of respondents' candy by means of said push card are made in accordance with the above-described legend or instructions. Said bars of candy are allotted to customers or purchasers in accordance with the above legend or instruction. The fact as to whether a purchaser receives one or more bars of candy for the amount of money paid is thus determined wholly by lot or chance.

Respondents sell and distribute and have 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. 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 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 method and plan hereinabove set forth involves a game of chance or the sale of a chance to procure additional bars of candy without additional cost. Many persons, firms and corporations who sell and distribute candy in competition with respondents, 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 respondents in the sale and distribution of their candy and 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 equivalent methods. The use of said method by respondents 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 respondents from their said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury is being done and has been done by respondents 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 the 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 March 25, 1941, issued and subsequently served its complaint in this proceeding upon respondent, William E. Boyer, an individual, and Robert J. Boyer, an individual, copartners trading as Boyer Bros., 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. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before an examiner of the Commission theretofore duly designated by it, and 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 said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint (respondents 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, 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, William E. Boyer, an individual, and respondent, Robert J. Boyer, an individual, are copartners trading as

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Boyer Bros., with their principal place of business located at 821 Seventeenth Street, Altoona, Pa. Respondents are now, and for a number of years last past have been, engaged in the sale and distribution of candy, including candy bars, package goods, and specialties to wholesale dealers, jobbers, and others.

PAR. 2. In the course and conduct of their said business respondents cause, and have caused, candy, when sold, to be transported from their place of business in Altoona, Pa., to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. There is now, and for a number of years last past has been, a course of trade by respondents in such candy in commerce between and among various States of the United States and in the District of Columbia. In the course of their said business respondents are, and have been, in competition with other individuals and 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. 3. In the course and conduct of their aforesaid business, respondents sell, and have sold, to wholesale dealers, jobbers, and others certain assortments of candy, and have furnished, or caused to be furnished, in connection therewith push cards designed to be used with said assortments of candy in the resale thereof. One of said assortments, known as the "Round House" assortment, is hereinafter described for the purpose of showing the methods used, as follows:

The "Round House" assortment consists of a number of bars of candy of uniform size and shape, together with a device commonly called a push card. The push card contains 60 partially perforated disks on the face of each of which is printed the word "Push." Within said disks are numbers which are effectively concealed from purchasers and prospective purchasers until a push or selection has been made and the disk so selected has been pushed or separated from the card. Sales are 5 cents each. The following legend appears on the face of said push card:

Why Reach Beyond Good Taste?

CANDY

is

Delicious Food

Enjoy Some Every Day

Eat ROUND HOUSE

 Advertising Medium

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Per Sale

No. 13 Receives FOUR 5¢ Candy Bars.

No. 23 Receives THREE 5¢ Candy Bars.

Nos. 5-10-20-25-30-40-50-60 each receive two 5¢ Candy Bars.

All other numbers receive a 5¢ CANDY BAR except the last number pushed which receives A LARGE DELICIOUS CANDY SURPRISE

Sales of respondents' candy by means of said push card are made in accordance with the above instructions and said candy is allotted to customers or purchasers in accordance with the above instructions. The fact as to whether a purchaser receives one or more bars of candy for the amount of money paid is thus determined wholly by lot or chance.

PAR. 4. Retail dealers who directly or indirectly purchase respondents' said candy expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others a means of conducting lotteries in the sale of their candy. 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. 5. 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 bars of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with respondents are unwilling to adopt and use a 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 respondents in the sale and distribution of their candy 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 equivalent methods. The use of said method by respondents, because of said game of chance, has the tendency and capacity to, and does, unfairly divert trade in commerce between and among various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury is being done, and has been done, by respondents to competition in commerce between and among various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of respondents' competitors and

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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, testimony, and other evidence in support of and in opposition to the allegations of said complaint taken before an examiner of the Commission theretofore duly designated by it, and brief in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, William E. Boyer, an individual, and respondent, Robert J. Boyer, an individual, jointly or severally, 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 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 push or pull cards, punch boards, or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, punch boards, 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 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.

Syllabus

IN THE MATTER OF

FOLDING FURNITURE WORKS, INC., ALSO DOING BUSINESS AS COAST TO COAST DISTRIBUTORS AND MANUFACTURERS AND NATIONAL MERCANTILE REPORTERS

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

Docket 4611. Complaint, Oct. 9, 1941—Decision, Mar. 23, 1942

Where a corporation, engaged in manufacture of children's cribs and bassinets; tables, and other furniture, and in interstate sale and distribution thereof from its factory and place of business in Wisconsin, and maintaining an address in Chicago for the receipt and dispatch of mail under the trade names "Coast to Coast Distributors and Manufacturers" and "National Mercantile Reporters"—

(a) Made such typical statements in circulars and by its salesmen as "An Annual Production Capacity of One-Hundred-Thousand Children's Cribs," "The largest manufacturer of low price children's cribs in the world," and the "Largest exclusive manufacturers of children's cribs and beds in the world"; and

(b) Represented that its business was so large and the quantity of its production such as to require warehouses and branch offices which it maintained at convenient locations throughout the United States;

The facts being that its annual production capacity was substantially less than that claimed above, it did not maintain offices at any other place than its Wisconsin place of business, and other representations, above set out, were false;

(c) Represented that "Coast to Coast Distributors and Manufacturers" was separate and distinct from, and in nowise connected with, the business conducted by it under its corporate name; and

(d) Represented that "National Mercantile Reporters" maintained an office and place of business in Chicago, Ill., and branch offices at various other points, preparing accurate reports on paying ability, unpaid accounts, and trade experience, and making collections of mercantile accounts for various manufacturers, and was an independent bona fide collection business in nowise connected with its business;

The facts being that said supposed separate businesses were, as noted above, mere trade names employed by it, the latter, i. e., National Mercantile Reporters, being used by it to force collection on accounts of merchandise shipped on "padded" orders;

(e) Made use of said latter trade name to collect from customers, through use of threats to sue and other intimidation, price of unordered goods which it shipped to them under its practice of "padding" orders by shipping to customers goods greatly in excess of the quantity ordered; advising said customers "under no circumstances to return the shipment or any part thereof as that would only mean an unnecessary expense and which you probably then would not care to assume"; and