

Complaint

34 F. T. C.

IN THE MATTER OF

J. D. FINE, TRADING AS J. D. FINE 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 4709. Complaint, Feb. 13, 1942—Decision, Apr. 13, 1942

Where an individual, engaged in the manufacture and competitive interstate sale and distribution of assortments of candy so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers, a typical assortment being composed of 72 uniform pieces of candy together with a push card for use in their sale under a plan by which purchaser of 1 for 5 cents became entitled to a push and, if he pushed one of certain numbers, was entitled to exchange his candy piece for from 2 to 4 of said pieces—

Sold such assortments to wholesalers, jobbers and retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan involving game of chance or sale of chance to procure candy at prices much less than its normal retail price; and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his products, contrary to an established public policy of the United States Government, and in competition with many who do not use any method involving chance or contrary to public policy;

With the result that many persons were attracted by such sales plan and thereby induced to buy and sell his products in preference to those of said competitors, with tendency and capacity thereby to unfairly divert trade to him from them:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and his competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. D. G. Johnson, of Oklahoma City, Okla., 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 J. D. Fine, an individual trading as J. D. Fine 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. Respondent, J. D. Fine, is an individual trading and doing business under the name of J. D. Fine Candy Co., with his

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office and principal place of business located at 222 Northwest Fourth Street, Oklahoma City, Okla. Respondent is now, and for more than 6 months last past has been, engaged in the manufacture and in the sale and distribution of candy 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 candy, when sold, to be transported from his place of business in Oklahoma City, Okla., to purchasers thereof at their respective points of location in various States of the United States other than Oklahoma and in the District of Columbia. There is now, and has been for more than 6 months last past, a course of trade by respondent 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 respondent is and has 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 his 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 games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment includes 72 pieces of candy of like size and shape and a push card. Appearing on the face or the push card is the following legend:

KREMY DIP

GOOD
CANDY
IS
HEALTHFUL

ADVERTISING
MEDIUM

5¢

You Buy A Five Cent Kremy
Dip And Get One Push FREE

If you push out One of the Following Numbers or Last Push you can exchange (without extra cost) The 5¢ KREMY DIP for the MERCHANDISE INDICATED.

No. 13, Four 5¢ Kremy Dips

No. 23, Three 5¢ Kremy Dips

Numbers 5, 10, 20, 25, 30, 40, 50, 60----- Two 5¢ Kremy Dips

LAST PUSH, LARGE BOX HAND ROLLED CHOCOLATES

Said candy is distributed to the purchasing public in accordance with the foregoing legend and in the following manner: Push card

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contains 60 pushes, each concealing a number. Said numbers are not therein arranged in numerical sequence. Each purchaser of a "Kremy Dip" candy is entitled to a push. If he pushes 1 of the numbers designated on the card, he receives 2 or more additional pieces of candy without the payment of any additional sum. If he pushes 1 of the other numbers, he receives only the 1 Kremy Dip. The numbers are effectively concealed from purchasers and prospective purchasers until a push selection has been made and a disk separated from the board. The fact as to whether a purchaser of the candy and push receives 1 or more than 1 piece of candy for his purchase price is thus determined wholly by lot or chance.

The respondent furnishes and has furnished various push board and candy assortments for use in the sale and distribution of his candy by means of a game of chance, gift enterprise, or lottery scheme. Such push boards or push cards and candy assortments are similar to the one herein described and vary 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 sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products, in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 or plan hereinabove set forth involves a game of chance or the sale of a chance to procure candy at prices much less than the normal retail price thereof. Many persons, firms and corporations who sell and distribute candy in competition with respondent, as above alleged, do not use said method or any method involving a game of chance and the selling of a chance to win something by chance, or any other method contrary to public policy. Many persons are attracted by said sales plan or method employed by respondent in the sale or distribution of his candy and in 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 method by respondent, 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 and in the District of Columbia to respondent

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from his said competitors who do not use the same or equivalent methods.

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 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 February 13, 1942, issued and subsequently served its complaint in this proceeding upon respondent, J. D. Fine, an individual, trading as J. D. Fine Candy Co., charging him with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of said act. On March 16, 1942, the respondent filed his answer, in which answer he 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, J. D. Fine, is an individual, trading and doing business under the name of J. D. Fine Candy Co., with his office and principal place of business located at 222 Northwest Fourth Street, Oklahoma City, Okla. Respondent is now, and for more than 6 months last past has been, engaged in the manufacture and in the sale and distribution of candy 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 candy, when sold, to be transported from his place of business in Oklahoma City, Okla., to purchasers thereof at their respective points of location in various States of the United States other than Oklahoma and in the District of Columbia. There is now, and has been for more than 6 months last past, a course of trade by respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia.

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In the course and conduct of said business respondent is and has 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 his 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 games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

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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 sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products, in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 or plan hereinabove set forth involves a game of chance or the sale of a chance to procure candy at prices much less than the normal retail price thereof. Many persons, firms and corporations who sell and distribute candy in competition with respondent, as above found, do not use said method or any method involving a game of chance and the selling of a chance to win something by chance, or any other method contrary to public policy. Many persons are attracted by said sales plan or method employed by respondent in the sale or distribution of his candy and in 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 method by respondent, 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 and in the District of Columbia to respondent from his said competitors who do not use the same or equivalent methods.

CONCLUSION

The aforesaid acts and practices of 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 on the complaint of the Commission and the answer of respondent,

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ent, in which answer respondent admits all of the material allegations of fact set forth in said complaint, and states that he waives all intervening proceeding 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 respondent, J. D. Fine, individually, and trading as J. D. Fine Candy Co., or trading under any other name or names, his 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 candy, or any other merchandise, so packed or assembled that sales of such candy or other merchandise to the general 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, punchboards, or other lottery devices, either with assortments of candy or other merchandise or separately, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling or distributing such candy or other 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 him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF

HOUBIGANT, INC., CHERAMY, INC., AND HOUBIGANT
SALES CORPORATION

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

Docket 3343. Complaint, Mar. 2, 1933—Decision, Apr. 16, 1942

Where three corporations, with a common New York address, engaged in manufacture and competitive interstate sale and distribution of perfumes, colognes, cosmetics, and toilet preparations—

Represented that certain of their products were made or compounded in France and imported into the United States through use upon labels, markers, and containers of words "Houbigant—Paris—New York" and "Cheramy—Paris—New York—France," and on bottom of glass bottles of words "Houbigant—Paris—New York"; and made use also of trade names of French origin, such as "Quelques Fleurs," "Rose de France," and others, for their various products;

The facts being their said products were not made or compounded in France by La Parfumerie Houbigant, old and long and favorably known manufacturer of such products, as represented by use of trade name "Houbigant," but were made of imported ingredients to which was added domestic alcohol; and, excepting about 10 percent of the products of one, which did consist of imported perfumes brought in in finished condition in bulk and bottled in the United States, their said products were not the higher priced preferred perfumes, colognes, and toilet preparations made or compounded in France and imported into the United States;

With effect of misleading a substantial part of the purchasing public into the mistaken belief that said products were manufactured or compounded in France and imported into the United States, thereby inducing it to purchase substantial quantities thereof, and with result of unfairly diverting trade to them from their competitors who truthfully represent the place of origin of their products:

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.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. S. Brogdyne Tew, II, and *Mr. Gerard A. Rault* for the Commission.

Mock & Blum and *Miller, Owen, Otis & Bailly*, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal