

Complaint

IN THE MATTER OF
JAMES J. REISS COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4502. Complaint, May 13, 1941—Decision, June 30, 1942*

Where a corporation, engaged in the competitive interstate sale and distribution of candy, including certain assortments which were 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, typical assortments consisting of a number of uniform small, individually wrapped pieces, together with a number of larger pieces or bars, secured without further charge by those purchasers of the small penny candies who obtained by chance a piece of different color from the majority; and of 150 uniform pieces of penny candy, together with some 18 to 35 larger candy bars, with a push card for use in sale thereof under a plan by which purchasers of the penny candy who punched from said card one of several numbers listed thereon received, in addition, his choice of one of the larger bars;

Sold such assortments to wholesalers, jobbers and retailers by whom, as direct or indirect purchasers, 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 means of conducting lotteries in the sale of its product, in competition with those who do not use any such plan or method;

With the result that many persons were attracted by its said sales plan because of element of chance involved, and purchased its candy in preference to that of its aforesaid competitors, whereby trade was unfairly diverted to it from them:

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

Before *Mr. William C. Reeves*, trial examiner.

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

Henican, Carriere & Cleveland, of New Orleans, La., 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 James J. Reiss Co., Inc., a corporation, 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 public interest,

hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, James J. Reiss Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 417-423 Decatur Street, New Orleans, La. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of candy to wholesale dealers, jobbers, and retailers 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 place of business in the City of New Orleans, La., to purchasers thereof at their respective points of location in the various States of the United States other than Louisiana, and in the District of Columbia. There is now and has been for more than 1 year last past, a course of trade by 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 has been, in competition with other corporations, and with individuals and firms 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 said candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said candy is sold and distributed to the consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner. This assortment consists of a number of small pieces of candy of uniform size and shape, and a number of larger pieces of candy or candy bars. The said larger pieces of candy are to be given as prizes to purchasers of certain of said small pieces of candy as follows; the majority of said small pieces of candy of uniform size and shape are of a certain color, but a small minority of said pieces of candy, of uniform size and shape and otherwise similar to the others, are of a different color. All of said pieces of candy retail at 1-cent each and are similarly wrapped so that the purchaser is unable to determine which color candy is secured by his purchase until the same has been unwrapped. Purchasers procuring one of said minority pieces of candy are entitled to and receive without additional charge one of the said larger pieces of candy as prizes. The said larger pieces of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes various assortments of candy involving lot or chance features when said assortments are sold to the consuming public, and such assortments and the methods of sale and distribution thereof, while varying as to detail, all involve lottery or chance features.

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 plans aforesaid. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its products, and the sale of said products 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.

PAR. 4. The sale of candy to the purchasing public by the methods or sales plans hereinabove set forth involves a game of chance, or the sale of a chance to procure candy without cost or at prices less than the retail regular prices of said candy. Many persons, firms, and corporations who sell and distribute products in competition with 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 which is 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 products and by the element of chance involved therein, and are thereby induced to buy and sell respondent's products in preference to products of said competitors of respondent who do not use the same or equivalent methods. The use of said methods 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 its 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 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 13th day of May A. D. 1941,

issued and thereafter served its complaint in this proceeding upon the respondent, James J. Reiss Co., Inc., 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 the complaint and the filing of respondent's answer thereto, a stipulation of facts was entered into on the record between attorneys for the Commission and for the respondent, which stipulation was approved by the Commission. The attorney for respondent waived filing of the trial examiner's report and oral argument.

Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, stipulation, and briefs in support of, and in opposition to 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, James J. Reiss Co., Inc., is a corporation, organized under the laws of the State of Louisiana, with its principal place of business located in New Orleans, La.

PAR. 2. Respondent, since some time prior to the year 1935 has been, and now is, engaged in the sale and distribution of candy to wholesale dealers, jobbers and retailers, and causes its products, when sold, to be shipped from its principal place of business to purchasers thereof located in the States of Louisiana and Mississippi. For more than 7 months preceding the issuance of the complaint herein, respondent has maintained and now maintains a course of trade in its product in commerce between the States of Louisiana and Mississippi, and during all of said time has been, and now is, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy in commerce between the States of Louisiana and Mississippi.

PAR. 3. Respondent, in the sale and distribution of its candy, until about the year 1935, but not since that date, sold and distributed to purchasers in the State of Mississippi 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. One of said assortments consisted of a number of small pieces of candy of uniform size and shape, and a

number of larger pieces of candy, or candy bars. The majority of the small pieces of candy were all of one certain color, but a small minority were of a different color. All the small pieces of candy were similarly wrapped, and were-retailed at 1 cent each, and the purchaser was unable to determine the color of the candy until it was unwrapped. A purchaser procuring one of the minority pieces of candy was entitled to and did receive without additional charge, one of the larger pieces of candy as a prize. These larger pieces of candy were thus distributed to the purchasing public wholly by lot or chance.

PAR. 4. Respondent, since some time prior to the issuance of the complaint herein, has sold and distributed to retail dealers in the State of Mississippi, an assortment of candy consisting of 150 small pieces of candy of uniform size and color, and from 18 to 35 larger pieces of candy or candy bars, together with a push card. This push card has 150 disks bearing upon their faces the word "Push." The small pieces of candy are sold for 1 cent each, which also entitles the purchaser to punch or push out one of the disks on the push card. If the number appearing on the disk, which is revealed only after the punch has been made, is the same as one of the several numbers listed on the heading of the card, the purchaser receives his choice of one of the larger pieces or bars of candy; said larger pieces or bars of candy are thus distributed to the purchasers wholly by lot or chance.

The retail dealers who purchase respondent's candy expose and sell same to the purchasing public in accordance with the sales plan herein mentioned. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its product, in accordance with the sales plan herein set forth.

PAR. 5. Many persons are attracted by respondent's sales plan because of the element of chance involved, and purchase respondent's candy in preference to that of its competitors who do not use such sales plan or any other sales method involving a game of chance, gift enterprise or lottery scheme, and, as a result, trade has been unfairly diverted to respondent from such competitors.

PAR. 6. Respondent's total sales in the State of Mississippi during the year ending June 30, 1941, amounted to \$6,352, or approximately 1½ percent of its total sales for that period. Of this amount only \$28.30 was for the assortment described in paragraph 4 hereof, and \$100. was for the sale in Mississippi of other punchboard assortments. The figures are approximately the same for each of the years mentioned herein.

Order

34 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondent's competitors, are contrary to the 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 answer of respondent, the stipulation of facts entered into between attorneys for the Commission and for the respondent, and approved by the Commission, and briefs in support of and in opposition to the complaint: And the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, James J. Reiss Co., Inc., a corporation, its officers, directors, 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 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 device, either with assortments of candy or other merchandise, or separately, which said push or pull cards, punchboards or other device, 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 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 from the 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

MRS. ANN B. GOLDSTEIN, TRADING AS CHAMPION
SPECIALTY COMPANY

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

Docket 4723. Complaint, Mar. 6, 1942—Decision, June 30, 1942

Where an individual, engaged in the competitive interstate sale and distribution of drug sundries, notions, novelties, and premium merchandise, including certain assortments which were so packed or assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed, a typical one including 12 pocket knives of equal value and a push card with 12 feminine names thereon for use in sale and distribution of said knives under a plan by which number concealed under particular name selected determined what amount, from 1 to 30 cents, purchaser should pay;

Sold such assortments to retailers and others, by whom they were exposed and sold to the purchasing public in accordance with aforesaid plan involving a game of chance to procure merchandise at much less than its normal retail price, and thereby supplied to and placed in the hands of others means of conducting a lottery, contrary to an established public policy of the United States Government, and in competition with many who are unwilling to use a method contrary to public policy and refrain therefrom; With the result that many persons were attracted by her said sales plan because of the element of chance involved, and purchased her products in preference to those of said competitors, whereby trade was diverted unfairly to her from them, to the injury of 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.

Mr. J. W. Brookfield, Jr. 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 Mrs. Ann B. Goldstein, individually, and trading as Champion Specialty 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, Mrs. Ann B. Goldstein, is an individual, trading and doing business as Champion Specialty Co., with her