

Complaint

IN THE MATTER OF

VINTON T. JAMES AND GEORGE E. JAMES, TRADING AS
J & J 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 4769. Complaint, June 4, 1942—Decision, Aug. 4, 1942

Where a firm, engaged in competitive interstate sale and distribution of candy, including certain assortments which were so packed and assembled as to involve and make use of lottery schemes and games of chance, typical one being composed of 60 uniform bars, together with a push card for use in their sale and distribution under a plan by which amounts paid, if any, ranging from 1 to 3 cents, were determined by number secured by chance—
Sold such assortments for resale to purchasers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan involving sale of chance to procure candy bars without cost or at less than their normal retail price; and thereby supplied to and placed in their hands the means of conducting lotteries;

With the result that many persons were attracted by such sales plan and the element of chance involved therein, and were thereby induced to buy and sell said candy in preference to that of competitors who do not use such methods; whereby trade was diverted from such competitors to them, to the injury of competition:

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.

Mr. J. V. Mishou and Mr. J. W. Brookfield, Jr., for the Commission.
McDougle & Ervin, of Charlotte, N. C., 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 Vinton T. James and George E. James, individually and trading as J & J Candy Co., 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Vinton T. James and George E. James, are copartners, doing business under the firm name and style of J & J Candy Co., with principal office and place of business located at 1507 West Trade Street, Charlotte, N. C. Respondents are now and for more than 2 years last past have been engaged in the business of manufacturing, distributing, and selling candies.

PAR. 2. In the course and conduct of their said business respondents cause and have caused their candies to be transported from their principal place of business in Charlotte, N. C., into the State of South Carolina, for sale in the latter State, and sell and have sold in South Carolina the candies so transported. In said business respondents are engaged in competition with other persons and corporations, located both within and without the State of South Carolina, selling candies and offering the same for sale to customers in South Carolina.

PAR. 3. Respondents accomplish the distribution and sale of their said candies by the following method, among others: Respondents transport their candies by automobile from Charlotte, N. C., to various parts of South Carolina and there place said candies in the hands of various consignees of respondents for sale on behalf of respondents at retail. Said consignees, upon selling the consigned candies and collecting the purchase price therefor (which price is fixed by respondents) retain an agreed commission as compensation for their services and pay the balance of the proceeds of such sales to respondents.

PAR. 4. A substantial portion of the candies which respondents transport to and sell in South Carolina, as aforesaid, are assorted, packed, and assembled so as to involve and make use of lottery schemes and games of chance in connection with and to promote the sale thereof to consumers. The following description of one of such candy assortments with its accompanying lottery scheme illustrates the method of sale used by respondents:

This assortment is composed of 60 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 60 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 0 to 3 inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, and 3 pay 1, 2, and 3 cents, respectively. Purchasers punching number 0 pay nothing. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondents furnish, and have furnished, various push cards to purchasers and consignees for use in connection with, and to promote, the sale and distribution of respondents' said candies by means of a game of chance or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 5. Purchasers and consignees of respondents' candies expose and sell the same to the purchasing public in accordance with the sales

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plan aforesaid. Respondents thus supply to and place in the hands of said purchasers and consignees the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth.

PAR. 6. The sale of candy to the purchasing public by the method or plan employed by respondents, as hereinabove described, involves a game of chance or the sale of a chance to procure bars of candy without cost or at prices less than the normal retail price thereof. Many persons are attracted by such a sales plan or method and in the element of chance involved therein, and are thereby induced to buy and sell respondents' candy in preference to candy of competitors of respondents who do not use the same or equivalent methods. The use of such methods by respondents has a tendency and capacity to unfairly divert trade to respondents from their said competitors who do not use the same or equivalent methods.

PAR. 7. 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 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 June 4, 1942, issued and thereafter served its complaint in this proceeding upon respondents Vinton T. James and George E. James, individuals and copartners, doing business as J & J Candy Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 8, 1942, the respondents filed their answers, 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, 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 proceedings 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, Vinton T. James and George E. James, are copartners, doing business under the firm name and style of J & J Candy Co., with their principal office and place of business located at

1507 West Trade Street, Charlotte, N. C. Respondents are now and for more than two years last past have been engaged in the business of manufacturing, distributing, and selling candies.

PAR. 2. In the course and conduct of their said business respondents cause and have caused their candies to be transported from their principal place of business in Charlotte, N. C., into the State of South Carolina, for sale in the latter State, and sell and have sold in South Carolina the candies so transported. In said business respondents are engaged in competition with other persons and corporations, located both within and without the State of South Carolina, selling candies and offering the same for sale to customers in South Carolina.

PAR. 3. Respondents accomplish the distribution and sale of their said candies by the following method, among others: Respondents transport their candies by automobile from Charlotte, N. C., to various parts of South Carolina and there place said candies in the hands of various consignees of respondents for sale on behalf of respondents at retail. Said consignees, upon selling the consigned candies and collecting the purchase price therefor (which price is fixed by respondents), retain an agreed commission as compensation for their services and pay the balance of the proceeds of such sales to respondents.

PAR. 4. A substantial portion of the candies which respondents transport to and sell in South Carolina, as aforesaid, are assorted, packed and assembled so as to involve and make use of lottery schemes and games of chance in connection with and to promote the sale thereof to consumers. The following description of one of such candy assortments with its accompanying lottery scheme illustrates the method of sale used by respondents:

This assortment is composed of 60 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 60 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 0 to 3, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, and 3 pay 1, 2, and 3 cents, respectively. Purchasers punching number 0 pay nothing. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondents furnish, and have furnished, various push cards to purchasers and consignees for use in connection with, and to promote, the sale and distribution of respondents' said candies by means of a game of chance or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

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PAR. 5. Purchasers and consignees of respondents' candies 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 said purchasers and consignees the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth.

PAR. 6. The sale of candy to the purchasing public by the method or plan employed by respondents, as hereinabove found, involves a game of chance or the sale of a chance to procure bars of candy without cost or at prices less than the normal retail price thereof. Many persons are attracted by such a sales plan or method and in the element of chance involved therein, and are thereby induced to buy and sell respondents' candy in preference to candy of competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents, because of said game of chance, has a tendency and a capacity to, and does, unfairly divert trade in commerce between and among various States of the United States to respondents from their said competitors who do not use the same or equivalent methods. As a result thereof, injury is being, and has been, done by respondents to competition in commerce between and among various States of the United States.

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 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 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, Vinton T. James and George E. James, individually and as copartners trading as J & J Candy Co., or trading under any other name, 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

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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 merchandise so packed and 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 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 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.

Complaint

IN THE MATTER OF

THE RUDOLPH WURLITZER COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4525. Complaint, June 26, 1941—Decision, Aug. 5, 1942*

Where a corporation, engaged in the manufacture and interstate sale and distribution at wholesale of pianos covered or finished in whole or in part with a material, made exclusively for it, and designated by it "Kordevon"—
Represented or implied, through use of aforesaid, commonly pronounced "Cordovan," term, in advertisements of its said products and in the labels attached thereto, that said "Kordevon" was Cordovan leather;

The facts being that the material in question was a closely woven cotton fabric with several coats of pyroxylin plastic deposited thereon, the appearance, texture and feel of which was such as to induce the public into the belief that it was genuine leather; and subsequent use in advertising of words "Plastic Fabric," immediately after word "Kordevon," on its labels of words, parenthetically, "A plastic fabric" in small print, and on the back of each piano, the statement, "In the manufacture of the covering for this piano, 10 coats of pyroxylin plastic are used" were insufficient to correct aforesaid erroneous impression;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that the covering or finishing material on said pianos was genuine Cordovan leather; and of thereby causing it to purchase substantial quantities of said pianos, because of such mistaken belief, whereby trade was diverted to it from its competitors:

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 and unfair and deceptive acts and practices therein.

Mr. Eldon P. Schrup for the Commission.

Harmon, Colston, Goldsmith & Hoadly, of Cincinnati, Ohio, and
Mr. Ike Lanier and *Mr. Elden McFarland*, of Washington, D. C., 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 The Rudolph Wurlitzer Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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. The respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of