

Complaint

IN THE MATTER OF

L. L. EDWARDS

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

Docket 4797. Complaint, Aug. 6, 1942—Decision, Oct. 12, 1942

Where an individual, engaged in competitive interstate sale and distribution of assortments of nuts so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consuming public, a typical assortment consisting of 30 identical 5-cent cartons for sale under a plan by which chance purchasers secured an additional cent enclosed in five of said cartons, the 5-cent piece contained in three, and the 10-cent piece in one—

Sold such assortments to jobbers and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public in accordance with aforesaid sale plan, involving game of chance to procure a prize in addition to the nuts; 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 result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell his products in preference to those of said competitors; whereby trade was diverted unfairly 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 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 L. L. Edwards, an individual, 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, L. L. Edwards, is an individual, with his principal office and place of business located at Shelbyville, Tenn. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of nut products and candy to jobbers and retail dealers located in the various States of the United

States and in the District of Columbia. Respondent causes and has caused his products when sold to be shipped and transported from his aforesaid place of business in the State of Tennessee to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by said respondent in such food 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 his business, respondent is, and has been, in competition with other individuals and with corporations and firms engaged in the sale and distribution of like or similar 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 his business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, assortments of nuts so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing and consuming public.

One of said assortments consists of 30 small cartons of nuts packed in a display carton being the following legend:

HOW LUCKY PEANUTS

Packed by
L. L. EDWARDS
Shelbyville, Tennessee

YOU MAY FIND
1c 5c 10c

and the nuts are distributed in the following manner:

Said packages of nuts retail at 5 cents each and 5 of said small cartons have concealed in said carton 1 cent; 3 of said small cartons have a 5-cent piece concealed in each of them and one of said small cartons contains 10 cents. All of said cartons are identical and the prospective purchaser is unable to determine until after a purchase has been made whether he will receive a carton containing 1 cent, 5 cents, or 10 cents, or a carton containing nothing but nuts. The fact as to whether the purchaser of said carton of nuts receives the nuts plus 1 cent, 5 cents, or 10 cents is thus determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's said package of nuts, 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 con-

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ducting 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 products and the sale of said products 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 packages of nuts 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 a prize in addition to the nuts. Many persons, firms, and corporations who sell and distribute products in competition with respondent as above alleged, do not 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. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his 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 his competitors who do not use the same or equivalent methods. The use of said method by respondent, because of said game of chance, has tendency and capacity to unfairly divert substantial 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 and 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 August 6, 1942, issued and thereafter served its complaint in this proceeding upon respondent, L. L. Edwards, an individual, charging him with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of said act. On August 28, 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

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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, L. L. Edwards, is an individual, with his principal office and place of business located at Shelbyville, Tenn. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of nuts products and candy to jobbers and retail dealers located in the various States of the United States and in the District of Columbia. Respondent causes and has caused his products when sold to be shipped and transported from his aforesaid place of business in the State of Tennessee to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by said respondent, in such food 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 his business, respondent is, and has been, in competition with other individuals and with corporations and firms engaged in the sale and distribution of like or similar 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 his business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, assortments of nuts so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing and consuming public.

One of said assortments consists of 30 small cartons of nuts packed in a display carton bearing the following legend:

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L. L. EDWARDS

Shelbyville, Tennessee

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and the nuts are distributed in the following manner:

Said packages of nuts retail at 5 cents each and 5 of said small cartons have concealed in said carton 1 cent; 3 of said small cartons have a 5-cent piece concealed in each of them and one of said small cartons contains 10 cents. All of said cartons are identical and the prospective purchaser is unable to determine until after a purchase

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has been made whether he will receive a carton containing 1 cent, 5 cents, or 10 cents, or a carton containing nothing but nuts. The fact as to whether the purchaser of said carton of nuts receives the nuts plus 1 cent, 5 cents, or 10 cents is thus determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's said package of nuts, 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 products and the sale of said products 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 packages of nuts 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 a prize in addition to the nuts. Many persons, firms and corporations who sell and distribute products in competition with respondent as above found, do not 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. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his 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 his competitors who do not use the same or equivalent methods. The use of said method by respondent, because of said game of chance, has the tendency and capacity to unfairly divert substantial 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 and 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 upon the complaint of the Commission and the answer of respondent

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ent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives 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 respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, L. L. Edwards, an individual, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of his nuts or nut products, or any other products, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing nuts or nut products, or any other merchandise, so packed and assembled that sales of said merchandise to the public are to be made or, due to the manner in which such merchandise is packed and assembled at the time it is sold by respondent, may be made by means of a game of chance, gift enterprise, or lottery scheme;

2. Supplying to or placing in the hands of dealers, or others, assortments of packages of nuts or nut products which are to be used or, due to the manner in which such merchandise is packed and assembled at the time it is sold by respondent may be used to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of such nuts or nut products to the public;

3. Packing or assembling in the same assortment packages of nuts or nut products for ultimate sale to the public which individual packages of nuts or nut products are of uniform appearance but some of which contain coins or other United States money;

4. Selling or otherwise disposing of any merchandise by means of a lottery, game of chance or gift enterprise.

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

EDWIN TOM, TRADING AS MASTER HERB COMPANY

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

Docket 4748. Complaint, Apr. 14, 1942—Decision, Oct. 19, 1942

Where an individual, engaged in interstate sale and distribution of Chinese herbs; by means of advertisements through the mails and newspapers, directly or by implication—

Represented that his herbs constituted a cure or remedy and competent and effective treatment for various diseases and ailments, including rheumatism, arthritis, asthma, and stomach ulcers; and that the use of the herbs would renew the glands of the body, thus enabling the user to regain strength and vigor;

The facts being they possessed no therapeutic value in the treatment of said conditions in excess of affording temporary relief from the symptoms of pain associated with rheumatism and arthritis and from the paroxysms of asthma; they had no therapeutic value in the treatment of any other ailments in excess of affording temporary relief from some of the pains or symptoms which might accompany the disorders; and they would not renew the glands or enable the user to regain strength or vigor;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said herbs possessed therapeutic properties which they did not, thereby causing such public to purchase substantial quantities thereof:

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.

Mr. James I. Rooney for the Commission.

Mr. Clifford Thoms, of Los Angeles, Calif., 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 Edwin Tom, an individual, trading and doing business as Master Herb 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 public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Edwin Tom, also known as Shing Tom and Kim Fong Tom, is an individual, trading and doing business as