

IN THE MATTER OF

PETER ANASTASOFF AND JAMES ANASTASOFF,
TRADING AS PURITY CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 4872. Complaint, Nov. 23, 1942—Decision, Jan. 5, 1943*

Where two individuals, engaged in the manufacture and 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 consumer; typical assortment consisting of 20 candy bars and 130 small caramels, together with a three-section push card for use in sale and distribution of said candy under a plan, as explained thereon, by which those securing by chance certain numbers concealed within the card received for the penny paid, in addition to a caramel, one of said bars, and maker of last punch in each section received, in addition to the caramel received by all, two candy bars;

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, under which fact as to whether purchaser received one of the candy bars or one of the small caramels for his penny was determined wholly by lot or chance; and thereby supplied to and placed in the hands of others means of conducting a lottery in sale of their merchandise in accordance with aforesaid plan, involving the sale of a chance to procure candy bars at much less than their normal retail price; contrary to an established public policy of the United States Government, and in competition with many who do not use such or any method involving game of chance to win by chance, or other method contrary to public policy;

With the result that persons were attracted by said plan employed by such individuals in sale and distribution of their product and by element of chance involved therein, and were thereby induced to buy and sell their candy in preference to that of said competitors, with tendency and capacity to divert unfairly trade in commerce to them from their competitors aforesaid; to the substantial 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 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 Peter Anastasoff

and James Anastasoff, individually, and trading under the name Purity 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 and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Peter Anastasoff and James Anastasoff, are individuals, trading as copartners under the name of Purity Candy Co., with their principal office and place of business located at 1135 N. Sixth Street, St. Louis, Mo. Respondents are now and for more than 1 year last past have been engaged in the manufacture and in the sale and distribution of candy to wholesalers, jobbers, and dealers. Respondents cause and have caused said candy when sold to be shipped or transported from their aforesaid place of business in the State of Missouri 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 more than 1 year last past has been a course of trade by said 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 business respondents are and have been in competition with other individuals and with firms, and corporations 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 their business as described in paragraph 1 hereof respondents sell and have sold to dealers, wholesalers and jobbers certain assortments of the said candy so packed and assembled as to involve the use of a game of chance, gift prize or lottery scheme when said candy is sold and distributed to the consumers thereof. One of the said assortments is sold and distributed the purchasing public in the following manner:

This assortment consists of 20 candy bars and 130 small pieces of caramel candy with which is packed a device commonly called a push card. The push card is divided into three sections and each of said sections contains 50 partially perforated disks on the face of which is printed the word "Push." Concealed within each of said disks is a number which entitles the purchaser thereof to one of the candy bars without additional cost when said number corresponds with any of the numbers set out in the legend at the top of said push card. The last disk pushed out of each section also entitles the purchaser thereof to receive two candy bars. The sales are 1 cent each and those not securing a number entitling them to one of the

candy bars receives one of the pieces of caramel candy. The said card bears a legend as follows:

JOBBER'S ADVERTISER

Nos. 2, 5, 8, 11, 16, 19, 24, 27, 30, 33, 36, 39, 42, 45, Each Receive ONE CANDY BAR ALL OTHER NUMBERS RECEIVE ONE PIECE LAST PUNCH IN EACH SECTION RECEIVES 2 CANDY BARS Notice—This is not a gambling device. Every punch receives full value. Extra awards for advertising. 150-20B.

Sales of respondents' candy by means of said push card are made in accordance with the above legend. The numbers are effectively concealed until a purchase has been made and the disks separated or removed from the said card. The fact as to whether the purchaser receives one of the candy bars or one of the small caramels for his purchase price is thus determined wholly by lot or chance.

The respondents sell and distribute various assortments of candy involving lot or chance features when said assortments are sold and distributed to the purchasing public by such assortments and the methods of sale and distribution thereof are similar to the ones above described.

PAR. 3. Retail dealers and others who purchase respondents' candy directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondents thus supply to and place in the hands of others a means of conducting a lottery in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of the merchandise to the purchasing public by the method or sales plan hereinabove set forth involves a game of chance or the sale of a chance to procure candy bars at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with respondents 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. Persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their candy and by the element of chance involved therein and are thereby induced to buy and sell respondents' candy in preference to candy of said com-

petitors of respondents who do not use the same or equivalent methods.

The use of said methods of respondents because of said game of chance has a tendency and capacity to '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 and 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.

PAR. 5. The aforesaid acts and practices 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 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 November 23, 1942, issued and thereafter served its complaint in this proceeding upon respondents, Peter Anastasoff and James Anastasoff, individuals, trading as Purity Candy Co., charging them with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of said act. On December 18, 1942, the respondents filed their answer, 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 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. Respondents, Peter Anastasoff and James Anastasoff, are individuals, trading as copartners under the name of Purity Candy Co., with their principal office and place of business located at 1135 N. Sixth Street, St. Louis, Mo. Respondents are now and for more than 1 year last past have been engaged in the manufacture and in the sale and distribution of candy to wholesalers, jobbers, and dealers. Respondents cause and have caused said candy when sold to be shipped or transported from their aforesaid place of business

in the State of Missouri 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 more than 1 year last past has been a course of trade by said 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 business respondents are and have been in competition with other individuals and with firms and corporations 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 their business as described in paragraph 1 hereof respondents sell and have sold to dealers, wholesalers, and jobbers certain assortments of the 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 20 candy bars and 130 small pieces of caramel candy with which is packed a device commonly called a push card. The push card is divided into three sections and each of said sections contains 50 partially perforated disks on the face of which is printed the word "Push." Concealed within each of said disks is a number which entitles the purchaser thereof to one of the candy bars without additional cost when said number corresponds with any of the numbers set out in the legend at the top of said push card. The last disk pushed out of each section also entitles the purchaser thereof to receive two candy bars. The sales are 1 cent each and those not securing a number entitling them to one of the candy bars receive one of the pieces of caramel candy. The said card bears a legend as follows:

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Sales of respondents' candy by means of said push card are made in accordance with the above legend. The numbers are effectively concealed until a purchase has been made and the disks separated or removed from the said card. The fact as to whether the purchaser receives one of the candy bars or one of the small caramels for his purchase price is thus determined wholly by lot or chance.

The respondents sell and distribute various assortments of candy involving lot or chance features when said assortments are sold and distributed to the purchasing public, but such assortments and the methods of sale and distribution thereof are similar to the ones above described.

PAR. 3. Retail dealers and others who purchase respondents' candy directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondents thus supply to and place in the hands of others a means of conducting a lottery in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of the merchandise to the purchasing public by the method or sales plan hereinabove set forth involves a game of chance or the sale of a chance to procure candy bars at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with respondents, 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. Persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their candy and by 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 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 capacity to 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, and 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 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 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, Peter Anastasoff and James Anastasoff, individually, and trading as Purity Candy Co., or trading under any other name, and 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 other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. 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, with 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.

2. Selling or distributing candy or any merchandise so packed and assembled that sales of said candy or other 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 respondents, may be made by means of a game of chance, gift enterprise or lottery scheme.

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
THE SHERWIN-WILLIAMS CO., THE LOWE BROTHERS
COMPANY, AND JOHN LUCAS & COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED
BY ACT OF JUNE 19, 1936

Docket 3965. Complaint, Dec. 8, 1939—Decision, Jan. 8, 1943

Where three corporations, namely, the parent company and two subsidiaries, engaged in the manufacture and competitive interstate sale and distribution of paints and paint products which, in the case of said parent concern, were advertised, known, and sold on a Nation-wide scale through its extensive organization, and, in the case of the other two, on a more restricted scale in different sections of the country;

Selling their said products through separate organizations which, while competitive to some extent, reflected their relationship through one or more common officers or directors; doing a business running into many millions of dollars and selling and distributing through and to thousands of authorized dealers and many chain or line lumber yards and wholly owned retail stores; and making use, as respects matters herein concerned, of their "1938 plan" under which discounts off dealers' list of from 6 to 14 percent were contingent upon quantities ordered, ranging from 24 gallons up to carloads and truckloads, and of their "1939 plan" under which total dollar purchases for a given year determined the discount for the year ensuing—

- (a) Discriminated in price against independent dealer purchasers under the 1938 plan through extending to their chain lumberyard customers and to other customers operating two or more stores, the privilege of pooling the orders placed by their unit stores; and granting and allowing on the total gallonage the 10-, 8-, and 6-percent discounts off dealers' list prices for the combined orders, which, in other respects, were treated and delivered as separate orders; and

Where said parent concern—

- (b) Discriminated in price, as aforesaid, by granting and allowing to some of its chain lumberyard customers a flat 10 percent discount off dealers' list prices on all their purchases of trade sale items, irrespective of size;

With the result that the customers concerned, through taking advantage of said pooling privilege or 10 percent flat discount, received better prices for their unit stores—which generally received as much attention in sales and other assistance as did independents with comparable business in the same territory—than their independent dealer competitors whose "per order" purchases might have been even greater than those of said unit stores, the resulting differentials oftentimes amounting to as much as 10 percent; and

- (c) Discriminated in price in favor of certain of its dealers and distributors through accumulating their orders for a week, or sufficiently long period to enable the purchaser to earn the maximum quantity discounts, and granting and allowing to them, under the 1938 plan, the 10-, 8-, and 6-percent discounts off dealers' list prices which resulted from the gallonage represented by the orders thus accumulated; and