

Complaint

36 F. T. C.

IN THE MATTER OF
ALBERT GEORGE, TRADING AS GEORGE & THOMAS
CONE COMPANY

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

Docket 4837. Complaint, Sept. 17, 1942—Decision, Jan. 13, 1943

Where an individual, engaged in the manufacture and competitive interstate sale and distribution of ice cream cones which he assembled in 100-cone boxes or cartons—

Sold his said products to dealers, jobbers and ice cream manufacturers packed in boxes or cartons as aforesaid, concealed within each of which was enclosed by him, together with explanatory notice captioned "Save This Coupon," a black, red or green coupon, respectively redeemable for 5, 500, or 1,000 cones without further charge; and thereby

Supplied to and placed in the hands of others means of conducting lotteries, gift enterprises, or games of chance in the sale of his products in accordance with aforesaid plan, under which fact as to whether a dealer would receive a coupon good for 5, 500, or 1,000 additional cones was thus determined wholly by lot or chance; contrary to an established public policy of the United States Government, and in competition with many who do not use any such plan or method;

With the result that many persons were attracted by his method or plan and element of chance involved therein, and thereby induced to buy and sell his merchandise in preference to that offered and sold by his aforesaid competitors; and with tendency and capacity, through use of such method and because of said game of chance, to divert, unfairly, trade to him from his competitors aforesaid:

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 Albert George, an individual, trading and doing business as George & Thomas Cone 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, Albert George, is an individual, trading and doing business as George & Thomas Cone Co., with his principal

office and place of business located at 836-838 South Irvine Avenue, Sharon, Pa. Respondent is now and for sometime last past has been engaged in the manufacture of ice cream cones and in the sale and distribution thereof to dealers, jobbers, and ice cream manufacturers in commerce between and among 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 aforesaid place of business in Sharon, Pa., to purchasers thereof at their respective points of location in the various States of the United States other than the State of Pennsylvania and in the District of Columbia. There is now and has been for some time last past a course of trade by respondent in said ice cream cones 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 now and has 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 his business as described in paragraph 1 hereof, respondent has sold and distributed, and does sell and distribute, his said ice cream cones by means of a lottery scheme, game of chance, or gift enterprise. Respondent sells and assembles certain of his cones in boxes or cartons containing 100 cones. Packed in each box or carton of said cones is a coupon; one of said coupons printed in black ink bears the following legend:

SAVE THIS COUPON

One coupon free with each 100 cones.

20 coupons good for 100 cones.

Green coupons good for 1000 cones.

Red coupons good for 500 cones.

All coupons redeemable by your own dealer.

Respondent in other boxes of his cones packs coupons printed in green ink bearing the legend:

SAVE THIS COUPON

Return to your dealer and get 1000

Hi-Top cake cones free;

and in other cartons are packed coupons printed in red ink bearing the legend:

SAVE THIS COUPON

Return to your dealer and get 500

Hi-Top cake cones free,

The coupons are sealed in the cartons of cones and retail dealers who purchase said cones cannot ascertain whether they will receive a coupon good for five cones or one good for 1,000 or 500 cones until the cartons have been delivered and opened. Whether a dealer will receive a coupon good for 5, 500, or 1,000 additional cones is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells the above-described cartons of ice cream cones containing the coupons resell such carton of cones as packed by respondent to retail dealers and redeem the said coupons in accordance with the above-described legends. The respondent thus supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance 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 and distribution of his merchandise 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 said ice cream cones in the manner above-described involves a game of chance, gift enterprise, or lottery scheme. Many individuals, firms, and corporations who manufacture, sell, or distribute merchandise in competition with the respondent as above alleged do not use the above sales plan or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other sales plan or method that is contrary to public policy. Many dealers are attracted by respondent's said method and sales plan and by the element of chance involved therein and have been and are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plan or method by respondent because of said game of chance or gift enterprise 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 sales plans or methods.

PAR. 5. The aforesaid acts and practices of respondent as hereinabove 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 September 17, 1942, issued and thereafter served its complaint in this proceeding upon respondent, Albert George, trading as George & Thomas Cone Co., charging him with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of the said act. On November 5, 1942, the respondent filed his answer, in which answer he admitted all the material allegations of facts 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 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, Albert George, is an individual, trading and doing business as George & Thomas Cone Co., with his principal office and place of business located at 836-838 South Irvine Avenue, Sharon, Pa. Respondent is now and for sometime last past has been engaged in the manufacture of ice cream cones and in the sale and distribution thereof to dealers, jobbers, and ice cream manufacturers in commerce between and among 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 his aforesaid place of business in Sharon, Pa., to purchasers thereof at their respective points of location in the various States of the United States other than the State of Pennsylvania and in the District of Columbia. There is now and has been for some time last past a course of trade by respondent in said ice cream cones 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 now and has 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 his business as described in paragraph 1 hereof, respondent has sold and distributed, and does sell and distribute, his said ice cream cones by means of a lottery scheme, game of chance, or gift enterprise. Respondent sells and

Findings

36 F. T. C.

assembles certain of his cones in boxes or cartons containing 100 cones. Packed in each box or carton of said cones is a coupon; one of said coupons printed in black ink bears the following legend:

SAVE THIS COUPON

One coupon free with each 100 cones.

20 coupons good for 100 cones.

Green coupons good for 1000 cones.

Red coupons good for 500 cones.

All coupons redeemable by your own dealer.

Respondent in other boxes of his cones packs coupons printed in green ink bearing the legend:

SAVE THIS COUPON

Return to your dealer and get 1000

Hi-Top cake cones free;

and in other cartons are packed coupons printed in red ink bearing the legend:

SAVE THIS COUPON

Return to your dealer and get 500

Hi-Top cake cones free.

The coupons are sealed in the cartons of cones and retail dealers who purchase said cones cannot ascertain whether they will receive a coupon good for 5 cones or one good for 1,000 or 500 cones until the cartons have been delivered and opened. Whether a dealer will receive a coupon good for 5, 500, or 1000 additional cones is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells the above-described cartons of ice cream cones containing the coupons resell such cartons of cones as packed by respondent to retail dealers and redeem the said coupons in accordance with the above-described legends. The respondent thus supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance 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 and distribution of his merchandise by and through the use thereof and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of said ice cream cones in the manner above described involves a game of chance, gift enterprise, or lottery scheme. Many individuals, firms, and corporations who manufacture, sell, or distribute merchandise in competition with the respondent as above

found do not use the above sales plan or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other sales plan or method that is contrary to public policy. Many dealers are attracted by respondent's said method and sales plan and by the element of chance involved therein and have been and are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plan or methods by respondent because of said game of chance or gift enterprise 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 sales plans or methods.

CONCLUSION

The aforesaid acts and practices of respondent as hereinabove 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, 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 hearings 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, Albert George, trading as George and Thomas Cone Co., or 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 ice cream cones or other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from.

1. Selling or distributing ice cream cones or other merchandise so packed and assembled that sales of such cones or other merchandise are to be made or, due to the manner in which such cones or other merchandise is packed and assembled at the time it is sold by the

Order

36 F. T. C.

respondent, may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Selling or distributing ice cream cones or other merchandise together with coupons so designed or printed that the use of said coupons in the sale or distribution of said cones or other merchandise constitutes the operation 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 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.

Complaint

IN THE MATTER OF

THE LEONARD CUSTOM TAILORS CO., ETC.

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

Docket 4845. Complaint, Oct. 2, 1942—Decision, Jan. 14, 1943

Where a corporation, engaged in the manufacture and interstate sale and distribution of men's clothes; in advertisements in pamphlets, newspapers, magazines, and other periodicals of interstate circulation—

Represented that its product was benchmade, or made strictly by hand, from woolen materials which were exclusive to it and could not be obtained elsewhere;

Facts being that it was not so made, and men's clothing manufactured from identical woolens could be purchased from other dealers;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such misrepresentations were true, because of which it purchased said product:

Held, That such acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. R. P. Bellinger 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 The Leonard Custom Tailors Co., a corporation, also trading as Leonard Custom Tailors Co., as Leonard Custom Tailors, and as Avon Park Clothes, hereinafter referred to as the 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 in that respect as follows:

PARAGRAPH 1. Respondent, The Leonard Custom Tailors Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio, having its office and principal place of business in the Textile Building, Cincinnati, Ohio. Respondent is now and for some time last past has been engaged in the manufacture, sale, and distribution of men's clothes, under its corporate name and under the trade names Leonard Custom Tailors Co., Leonard Custom Tailors and Avon Park Clothes.

PAR. 2. In the course and conduct of its said business respondent, in its own name, or one of its aforesaid trade names, has transported