

Order

IN THE MATTER OF
LEE BOYER'S CANDY

MODIFIED CEASE AND DESIST ORDER

Docket 4265. Order, April 28, 1943

Modified order, pursuant to provisions of section 5 (i) of the Federal Trade Commission Act, and in accordance with decree below referred to, in proceeding in question, in which original order issued on August 6, 1941, 33 F. T. C. 881, and in which Circuit Court of Appeals for Ninth Circuit, on May 25, 1942, in *Lee Boyer's Candy v. Federal Trade Commission*, 128 F. (2d) 261, 34 F. T. C. 1857, rendered its opinion and on said date issued also its final decree modifying said order of the Commission in certain particulars and affirming the same as modified—

Requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of candy, to cease and desist from selling the same through lottery schemes, push or pull cards, punchboards, etc., as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on August 6, 1941, the Commission made its findings as to the facts herein and concluded therefrom that the respondent, Lee Boyer's Candy, a corporation, has violated the provisions of section 5 of the Federal Trade Commission Act, and issued and subsequently served its order to cease and desist; and it further appearing that on May 25, 1942, the United States Circuit Court of Appeals for the Ninth Circuit rendered its opinion, and on May 25, 1942, issued its final decree affirming the aforesaid order of the Commission by modifying said order in certain particulars.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said decree.

It is ordered, That the respondent, Lee Boyer's Candy, a corporation, its officers, 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 any merchandise so packed and assembled that sales of said merchandise to the public are to be made by means of a game of chance, gift enterprise or lottery scheme;

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(2) Supplying to or placing in the hands of others assortments of any merchandise, together with push or pull cards, punchboards or other devices, which said push or pull cards, punchboards or other devices are to be used or may be used in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise or lottery scheme;

(3) Supplying to or placing in the hands of others push or pull cards, punchboards or other devices, which said push or pull cards, punchboards or other devices are to be used or may be used in the sale or distribution of said merchandise to the public at retail;

(4) 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 30 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.

Syllabus

IN THE MATTER OF
JOHN F. TROMMER, INC.

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

Docket 4689. Complaint, Jan. 29, 1942—Decision, Apr. 28, 1943

Where a corporation engaged in the brewing of beer and in the competitive interstate sale and distribution thereof, including its "White Label" beer sold by it to retail at 10 cents in a "no deposit" bottle in the common 12-ounce size; having decreased the content an ounce as a means of retaining the "even price" of 10 cents as a strong selling point, following the effective date of the new Federal tax of 1 dollar per barrel on malt beverages, and adopted an 11-ounce bottle similar to the 12-ounce theretofore employed, though labeled inconspicuously with the true content—

Represented or implied in trade paper advertisements—irrespective of captions "TROMMER ABSORBS NEW DEFENSE TAX" and "TROMMER ABSORBS TAX ON SOME WHITE LABEL," responsibility for which it disclaimed—that there had been no increase in the price of said beer and that dealers and consumers would continue to obtain the same quantity they had been receiving before the new tax, through statement "There has been no increase in wholesale or retail prices of Trommer's White Label beer as a result of the Federal Tax bill * * * The * * * 'Family Pak,' a carton of 10 no-deposit bottles of White Label, continues to sell at \$1 with the price to the retailer also remaining unchanged" and statement in ensuing issue "The consumer price of * * * White Label beer in the no-deposit bottle has remained at 10 cents in grocery stores in spite of the Federal rearmament tax * * * The price of this package has not been increased to the retailer," and "The * * * 'Family Pak' * * * continues to sell at \$1, the price in the metropolitan area before the new * * * tax, and the price to the retailer on this package also remains unchanged";

With result, contributed to through use of bottles which to casual observer were indistinguishable from the former 12-ounce container, expected by many dealers and members of the public in the absence of information to the contrary—and notwithstanding label on the new bottle and inconspicuous changes in advertising cards, cartons, and cases and on order blanks and envelopes, which did not serve adequately to correct the erroneous impression created, as aforesaid, and in the case of said blanks and invoices reached only dealers—that a substantial number thereof and portion of the public were led to believe that it was in fact absorbing the said new tax, and with tendency and capacity to mislead said dealers and public with respect to the actual price of its beer and the quantity obtainable for the price paid, and to cause them to purchase substantial quantities as a result of the mistaken belief so engendered, whereby substantial trade was diverted unfairly to it from its competitors, among whom were those who did not engage in such acts or practices;

Held, That such acts and practices, under the circumstances above set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition.