

Complaint

IN THE MATTER OF

MRS. ALMA LOUGHRAN AND LEE R. LOUGHRAN, TRADING AS ALMA'S HOME MADE CANDIES

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

Docket 4409. Complaint, Dec. 9, 1940—Decision, June 16, 1943

Where two individuals engaged in the manufacture and competitive interstate sale and distribution, to wholesalers and jobbers, of candy—

Sold a 2-pound box of chocolates packed in a miniature cedar chest along with push cards, which they supplied therewith in some instances and in others forwarded separately to wholesalers and jobbers, for use under a plan by which the customer selecting by chance from the 50 feminine names displayed on the card the name corresponding to that concealed under the card's master seal, received the candy and chest, and paid for the chance the amount indicated by the number concealed by the disc below the names selected; and Thereby supplied to and placed in the hands of dealers means of conducting lotteries in the sale of their aforesaid products under said plan, involving a game of chance to obtain merchandise at much less than its normal retail price, contrary to an established policy of the United States Government, and in competition with those who do not use any such method;

With result that many persons were attracted by their said sales plan and the element of chance involved therein, and were thereby induced to buy and sell their products in preference to those of their aforesaid competitors, whereby substantial trade was diverted unfairly from them to individuals aforesaid:

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 acts and practices therein.

Before *Mr. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

Mr. L. P. Allen, Jr., *Mr. J. V. Mishou*, and *Mr. J. W. Brookfield, Jr.*, for the Commission.

Mr. J. R. Mulliner, of Salt Lake City, Utah, 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 Mrs. Alma Loughran and Lee R. Loughran, individually, and trading as Alma's Home Made Candies, 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 thereto would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

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PARAGRAPH 1. Mrs. Alma Loughran and Lee R. Loughran are individuals, trading as Alma's Home Made Candies, with their principal office and place of business located at 2737 West Madison Street, Chicago, Ill. Respondents are now, and for more than 3 years last past have been, engaged in the sale and distribution of candy, confectionery products, and other merchandise to wholesale dealers, jobbers, and retail dealers. The respondents cause, and have caused, said products when sold to be transported from their principal place of business in the city of Chicago, Ill., to purchasers thereof, at their respective points of location, in the various States of the United States other than Illinois and in the District of Columbia. There is now, and for more than 3 years last past has been, a course of trade by respondents in such 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 said business, respondents are, and have been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar products 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 wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed or assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondents and is as follows:

This assortment consists of a cedar chest with two pounds of chocolates therein together with a device commonly called a push card. The said push card bears 50 feminine names with ruled columns on the face thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 50 partially perforated disks, on the face of each of which is printed the word "push." Each of such disks is set under one of the aforesaid feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The purchaser pays in cents the amount of the number punched from the said card up to and including the number 10. Purchasers punching numbers over 10 pay only 10 cents. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives the said cedar chest filled with chocolate candy. The push card bears a legend or instructions as follows:

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L—U—C—K—Y ?

This beautiful Cedar Chest full to the brim with 2 lbs. of Alma's delicious home made chocolates. Practical for a hundred different uses and a most attractive gift article.

Pick your favorite girls name and if it corresponds with name under seal you are the winner.

Nos. 1 to 10, Pay amount of number drawn

Nos. higher than 10 pay only 10¢.

The sales of respondents' products by means of said push card are made in accordance with the above-described legend or instructions. The amount said purchasers are to pay for, and who is to receive, said cedar chest are thus determined wholly by lot or chance.

Respondents furnish and have furnished various other push cards for use in the sale and distribution of their products by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said products by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondents' said products 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, others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their 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 and in violation of the criminal laws.

PAR. 4. The sale of candy or other merchandise to the purchasing public by the method and plan hereinabove set forth involves a game of chance or the sale of a chance to procure boxes of candy and other merchandise at prices which are much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy or other merchandise in competition with respondents, as above alleged, are unwilling to adopt and 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 contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their products and the element of chance involved therein, and are thereby induced to buy and sell respondents' products in preference to the products of said competitors of respondents who do not use the same or equivalent methods. The use of said

methods by respondents, because of said games of chance has a tendency and capacity to and does unfairly divert trade in commerce between and among the 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. As a result thereof, substantial injury is being and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of the 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 and unfair and deceptive 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 December 9, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Mrs. Alma Loughran and Lee R. Loughran, individually, and trading as Alma's Home Made Candies, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. No answer was filed by respondents. Subsequently, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondents, before trial examiners of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, testimony, and other evidence, report of the trial examiners upon the evidence, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); 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. The respondents, Mrs. Alma Loughran and Lee R. Loughran, are individuals, trading as Alma's Home Made Candies, with their principal office and place of business located at 2737 West

Madison Street, Chicago, Ill. Respondents are now and since November 1937 have been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers and jobbers.

PAR. 2. Respondents cause and have caused their products, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Respondents maintain and have maintained a course of trade in their products in commerce among and between various States of the United States.

PAR. 3. Respondents are and have been in substantial competition with other individuals, and with partnerships and corporations, engaged in the sale and distribution of candy in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their business, respondents sell and have sold to wholesale dealers and jobbers an assortment of candy involving the use of a game of chance, gift enterprise, or lottery scheme when such candy is sold and distributed by the retail dealer to the consuming public. This assortment consists of a 2-pound box of chocolates packed in a miniature cedar chest. In connection with this package of candy, respondents supply a device commonly known as a push card. In some instances the push cards are packed with the candy, and in other instances are forwarded by respondents to the wholesalers or jobbers in a separate shipment.

The push card bears 50 feminine names, and under each name is a partially perforated disk, on the face of which is printed the word "Push." Concealed within each disk is a number, which is disclosed only when the disk is pushed or separated from the card. The amount paid by each person who pushes one of the disks is determined by the number concealed within the disk. For example, a person pushing a disk revealing the number 8 would pay 8 cents. Persons pushing numbers higher than 10, however, pay only 10 cents. The push card also has a large master seal, under which is concealed a feminine name corresponding to one of the names appearing on the face of the card. After all of the disks have been pushed, the master seal is removed or broken, and the person who selected the name corresponding to the name under the master seal receives the box of chocolates and the cedar chest. The amount to be paid by each person pushing a disk and the question as to which of such persons receives the candy and cedar chest are thus determined wholly by lot or chance.

PAR. 5. Retail dealers who purchase respondents' products from wholesalers and jobbers sell such products to the consuming public in accordance with the sales plan or method described above. Respondents thus supply to and place in the hands of others the means of

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conducting lotteries in the sale of their products. The use by respondents of this sales plan or method to promote the sale of their products, and the sale of such products by dealers to the consuming public through the use and by the aid of such sales plan or method, are practices of a sort which are contrary to an established public policy of the Government of the United States.

PAR. 6. The sale of candy to the consuming public by the plan or method described above involves a game of chance or the sale of a chance to obtain merchandise at prices which are much less than the normal retail price of such merchandise. Among respondents' competitors are those who do not use such method, or any method involving a game of chance or lottery scheme. Many persons are attracted by the sales plan or method employed by respondents and by the element of chance involved therein, and are thereby induced to buy and sell respondents' products in preference to the products of respondents' competitors who do not use the same or any equivalent method. The use of such method by respondents has the tendency and capacity to divert, and has diverted, substantial trade unfairly to respondents from such competitors.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (no answer having been filed by respondents), testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Mrs. Alma Loughran and Lee R. Loughran, individually, and trading as Alma's Home Made Candies, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution

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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 cards or other lottery devices, either with merchandise or separately, which are to be used or may be used in the sale or distribution of respondents' merchandise or any merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Selling or distributing candy or other merchandise so packed and assembled that sales of such candy or other merchandise to the public are to be made or, due to the manner in which such candy or other 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.

IN THE MATTER OF

KAIDEN-KAZANJIAN STUDIOS, INC., ALSO TRADING AS
KEYSTONE NEWS & PHOTO SERVICE, FRANCES
KAIDEN, AND ARAM KAZANJIAN

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

Docket 4812. Complaint, Aug. 14, 1942—Decision, June 16, 1943

Where a corporation and the two officers in control of its sales policies and practices, engaged in interstate sale and distribution of photographs and so-called "Goldtone Miniatures" made therefrom—

- (a) Made use of words "News and Photo Service" in their trade name which they displayed on their letter heads, together with legend "Supplying Photographs to Newspapers, Magazines, and Trade Publications, including" a list of nearly 60 newspapers published in various cities, and on cards supplied their representatives set forth aforesaid trade name and statement "Photographers of National Personalities," and requested persons, through their agents, on occasion, to sit for photographs which they assertedly desired to have available for publicity purposes;

The facts being they were not one of those associations variously known as "Press," "Press Service," "News Service," etc., which perform distinct and notable public service in the gathering and dissemination of news, and possess valuable good-will and high prestige, and many of which operate photographic departments in connection with their news-gathering functions, but employed aforesaid trade name as a means of enabling them to make contact with prospective purchasers; while they sold glossy prints or supplied them to publications from their "library," said business amounted to only approximately 5 percent of their gross business, was incidental only to business of corporation, i. e., sale of photographs and miniatures to general public, and would not warrant representation they were engaged in business or service of obtaining photographs for use with news articles or publicity items for newspapers or periodicals; and their use on printed matter of names of newspapers was without permission; and

- (b) Represented to prospective purchasers, through letters and circulars, that they had made a "Goldtone Miniature" from one of prospect's negatives, admirably suited for said purpose, which had been entered in an exhibit conducted by the corporation, and that said exhibit having been concluded, miniature in question—regularly priced at \$50—could be purchased for \$12.50;

The facts being that their so-called "Goldtone Miniature" was not a genuine "Goldtone" print, produced by use of a toning paint employing salts of chloride of gold, considerably more expensive than the black and white sepia process; the so-called exhibit consisted of a hundred or more miniatures kept on display in their waiting room, open to the public on Saturday mornings in spring and fall, two larger "exhibitions" including no miniatures of prospective purchasers in other states to whom letters and circulars were mailed; their negatives were largely suitable for miniatures, and those concerned were made to sell, not for \$50, but for \$12.50, their regular price;