

IN THE MATTER OF

WILLIAM PARRISH BENNETT, TRADING AS FORT WORTH
PEANUT COMPANY AND BILL'S PEANUT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4544. Complaint, July 21, 1941—Decision, May 18, 1944*

Where an individual engaged in the roasting of peanuts in the interstate sale and distribution thereof in shipping cases of 20 thirty-package cartons under a sales plan pursuant to which he included in one of each 15 five-cent packages a five-cent piece, and in about one out of each 600, a twenty-five-cent piece, and occasionally placed in one package as much as a dollar, and under which plan the individual packages were labeled "MONY-BAK PEANUTS You May Find 5¢ 25¢ 50¢ \$1.00 AS AN ADVERTISEMENT" or "MYSTERY PEANUTS THERE HAS BEEN FOUND 5¢—25¢—50¢—\$1.00 AS AN ADVERTISEMENT";

Sold such assortments of peanuts to dealers, and thereby supplied to and placed in their hands means of conducting lotteries in the sale thereof to the purchasing public, involving sale of a chance to procure a sum of money of greater value than the amount paid therefor, contrary to an established public policy of the United States government and in competition with some who do not use such or other method contrary to public policy;

With capacity and tendency to induce dealers to buy and sell his products in preference to those of said competitors and thereby to unfairly divert trade in commerce to him from them:

Held, That such acts and practices, as above 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.

Before *Mr. Arthur F. Thomas* and *Mr. Lewis C. Russell*, trial examiners.
Mr. Edw. W. Thomerson, *Mr. J. W. Brookfield, Jr.* and *Mr. Jesse D. Kash* for the Commission.

Mr. Frank Holaday, of Dallas, Tex., 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 William Parrish Bennett, individually, and trading under the names of Fort Worth Peanut Company and Bill's Peanut Company, 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, William Parrish Bennett, is an individual, doing business under the trade names of Fort Worth Peanut Company and Bill's Peanut Company, with his principal office and place of business located at 1001 Bryan Street, Fort Worth, Tex. Respondent is now, and for more than one year last past, has been engaged in processing, roasting and packing peanuts and in the sale and distribution thereof to dealers. Respondent causes and has caused its said peanuts, when sold,

to be shipped or transported from its aforesaid principal place of business in the State of Texas to purchasers thereof in the various States of the United States and in the District of Columbia at their respective points of location. There now is and for more than one year last past has been a course of trade by said respondent in such peanuts 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 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, the respondent sells and has sold to dealers certain assortments of said peanuts so packed and assembled as to involve the use of game of chance, gift enterprise or lottery scheme when sold and distributed to the consumers thereof.

One of said assortments of peanuts is composed of a number of small sealed cartons of peanuts which retail to the ultimate consumer at 5¢ per carton. This assortment is designated by respondent as "Mony-Bak Peanuts" and on the outside of each of said cartons in said assortment there appears the statement "You may find 5¢, 25¢, 50¢, \$1.00." Sealed within a small number of said cartons are 5¢, 25¢, 50¢, or \$1.00, but ultimate purchasers cannot ascertain which cartons contain one of the above named sums until a selection has been made and the individual carton broken open. The aforesaid purchasers of said individual cartons of peanuts who procure said sums of money thus procure the same wholly by lot or chance.

Respondent sells and distributes various assortments of peanuts involving the chance or lot feature as aforesaid, but the sales plan in connection with each of said assortments is similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said peanuts 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 product in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his peanuts and the sale of said peanuts 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 peanuts to the purchasing public by the sales plan or method hereinabove set forth involves a game of chance or the sale of a chance to procure a sum of money of greater value than the amount to be paid therefor. Many persons, firms and corporations who sell and distribute products in competition with respondent as above alleged are unwilling to adopt or use said method or any method involving a game of chance or a sale of a chance to win something by chance or any other method which is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his peanuts and by the element of chance involved therein and are, therefore, induced to buy and sell respondent's peanuts in preference

to like or similar products of said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, 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 an equivalent method.

As a result thereof, substantial injury is being and has been done by respondent 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 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 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 July 21, 1941, issued and subsequently served its complaint in this proceeding upon respondent, William Parrish Bennett, charging him with the use of unfair methods of competition in commerce and the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before examiners of the Commission theretofore duly designated by it, and said 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 said complaint, the answer thereto, testimony and other evidence, report of the trial examiners, and brief in support of the complaint (respondent not having filed brief 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. Respondent, William Parrish Bennett, is an individual, trading as Fort Worth Peanut Company and as Bill's Peanut Company, with his principal office and place of business located at 1001-5 Bryan Avenue, Fort Worth, Tex. Respondent is now, and for several years last past has been, engaged in roasting, packaging, selling, and distributing peanuts.

PAR. 2. In the course and conduct of the aforesaid business respondent causes his said peanuts, when sold, to be shipped or transported from his place of business in the State of Texas to purchasers thereof at their points of location in the various States of the United States and in the District of Columbia, and maintains and has maintained a course of trade in such peanuts in commerce between and among the various States of the United States and in the District of Columbia. In the

conduct of his aforesaid 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. 3. Respondent packages his peanuts for sale and sells them to dealers in shipping cases, each of which contains 20 cartons. In each carton there are 30 pasteboard packages of peanuts, each of which contains a little more than an ounce of peanuts. These small packages of peanuts are intended to be sold to the ultimate consumer at 5¢ per package. In one out of each 15 of the 5¢ packages of peanuts respondent includes a 5¢ piece. In one of the 5¢ packages among approximately 600 respondent places a 25¢ piece, and occasionally he places as much as \$1 in one of the 5¢ packages. The 5¢ packages are sealed and the ultimate purchaser has no means of knowing which of such packages contain money in addition to peanuts until a selection has been made and the package opened. Each of the 5¢ packages bears a label:

Toasted and Salted
Crisp and Delicious

M O N Y — B A K
P E A N U T S

Cooked in Coconut Oil

You May Find
5¢ 25¢ 50¢ \$1.00

AS AN
ADVERTISEMENT

and each of the cartons containing 30 of the 5¢ packages bears a similar label.

Another assortment of peanuts sold and distributed by respondent is in all material particulars similar to the one described above except that the labels used on the packages read as follows:

M Y S T E R Y
P E A N U T S

THERE
HAS BEEN
FOUND

5¢—25¢—50¢—\$1.00

AS AN
ADVERTISEMENT

PAR. 4. Through the sale and distribution of peanuts packaged, assembled, and labeled in the manner described above, respondent supplies to and places in the hands of others the means of conducting lotteries in the sale of said peanuts. The use by respondent of said sales plan in the sale of his peanuts, and the sale of said peanuts 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.

When said peanuts are sold to the purchasing public by means of the sales plan described, such sales involve a game of chance or the sale of a chance to procure a sum of money of greater value than the amount to

Order

38 F. T. C.

be paid therefor. Some of respondent's competitors have not adopted and do not use a method involving a game of chance or the sale of a chance to win something by chance, or other methods contrary to public policy. By reason of respondent's sales plan and the element of chance involved therein, said plan has the capacity and tendency to induce dealers to buy and sell respondent's peanuts in preference to like or similar products of competitors who do not use the same or an equivalent method, and to unfairly divert trade in commerce to respondent from his competitors who do not use the same or an equivalent method.

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, the answer of respondent, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before examiners of the Commission theretofore duly designated by it, report of the trial examiners, and brief in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, William Parrish Bennett, an individual, trading as Fort Worth Peanut Company, Bill's Peanut Company, or under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of peanuts 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 peanuts or other merchandise so packed and assembled that sales of such peanuts or other merchandise to the public are to be made or, due to the manner in which such peanuts or other articles of merchandise are packed or assembled at the time they are sold by respondent, may be made by means of a game of chance, gift enterprise, or lottery scheme.

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

It is further ordered, That respondent shall, within 60 days after the 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

ROSE GREENBERG, TRADING AS CENTRAL STATES SUPPLY COMPANY

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

Docket 3845. Complaint, July 11, 1939—Decision, May 31, 1944

Where an individual engaged in interstate sale and distribution of fishing tackle, silverware, rifles, radios, cups, blankets and other articles; in soliciting the sale of and in selling her said merchandise—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises or lottery schemes and distribution of push cards and circulars explaining her said plan, under which, as typical, the purchaser of a chance selecting that one of forty-four feminine names on the card corresponding to that concealed under a master seal, received a suede outing jacket, the three customers punching out certain numbers and the maker of the last punch each received a pair of "Solid Copper Nip cups," and the amount paid for a chance was determined by the particular number punched; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of her merchandise, in accordance with aforesaid sales plan involving a chance to procure an article at much less than its normal retail price, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who refrain from use of such methods;

With the result that many persons were attracted by said plan and the element of chance involved therein, and were thereby induced to buy her merchandise in preference to that of said competitors, whereby trade was unfairly diverted to her from them:

Held, That said acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and her competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. Miles J. Furnas* and *Mr. J. E. Cox*, trial examiners.

Mr. L. P. Allen, Jr. and *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 Rose Greenberg, individually, and trading as Central States Supply Company, has violated the provisions of the 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, Rose Greenberg, is an individual, trading under the name of Central States Supply Company, with her principal office and place of business located at 537 South Dearborn Street, Chicago, Ill. Respondent is now, and for some time last past has been engaged in the sale and distribution of fishing tackle, silverware, rifles, radios, cups, blankets, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused, said merchandise, when