

IN THE MATTER OF

NEWTON E. WENTZ AND FRITZ O. LEE, DOING
BUSINESS AS DAVENPORT CANDYCRAFTS

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

Docket 5083. Complaint, Nov. 17, 1943—Decision, Sept. 14, 1944

Where two partners engaged in the competitive interstate sale and distribution of assortments of candy which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consuming public, a typical assortment including 28 packages of fudge candy and a 1,000 hole punchboard for use in its sale, as explained on board, under a plan by which the number punched by chance determined whether or not the customer received candy and the amount paid therefor, if any, the maker of the last punch on the board being also entitled, as announced, to box thereof;

Sold such assortments to dealers including retailers, by whom as direct or indirect purchasers they were exposed to the purchasing public in accordance with aforesaid plan, involving a game of chance or sale of a chance to secure merchandise at much less than its normal retail price, and thereby supplied to and placed in the hands of others means of conducting a lottery in the sale of their products, contrary to an established public policy of the United States Government and in competition with many who do not use methods involving chance or contrary to public policy;

With result that persons were attracted by said sales plans or methods and the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that of aforesaid competitors who do not use such methods, and with tendency and capacity thereby unfairly to divert trade in commerce to them from their competitors aforesaid; to the substantial injury of competition in commerce:

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 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 Newton E. Wentz and Fritz O. Lee, individually, and trading under the name of Davenport Candycrafts, 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Newton E. Wentz and Fritz O. Lee, are individuals, trading as copartners under the name of Davenport Candy-

crafts, with their principal office and place of business located at 168 South Division Street, Spokane, Wash. Respondents are now, and for more than six months last past have been, engaged in the sale and distribution of candy to dealers. Respondents cause and have caused their said candy, when sold, to be shipped or transported from their aforesaid place of business in the State of Washington 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 has been for more than six months last past a course of trade by 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 said business, respondents are and have been in competition with other individuals and with corporations and partnerships engaged in the sale and distribution of candy 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 certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprise or lottery scheme when sold and distributed to the consuming public. Typical of said assortments is one hereinafter described for the purpose of showing the methods used by respondents, and is as follows: This assortment includes a punchboard and 28 packages of fudge candy. On the face of the punchboard appears a legend to the following effect:

NUMBERS Ending "0" are FREE
NUMBERS Ending "1" pay 1 cent
NUMBERS Ending "2" pay 2 cents
NUMBERS Ending "3" pay 3 cents
NUMBERS Ending "4" pay 4 cents
NUMBERS Ending "5" pay 5 cents
NUMBERS Ending "9" pay 5 cents

LAST PUNCH ON THE BOARD RECEIVES $2\frac{1}{4}$ lb. Tub Chocolate Fudge.

and a legend stating that certain numbers win either a 1 lb. or a $2\frac{1}{2}$ lb. tub of candy. Candy is distributed to the purchasing public in accordance with the foregoing legend and in the following manner: The punchboard contains 1,000 punches, each concealing a number. Said numbers are not arranged in numerical sequence. Whether a purchaser pays 1¢, 2¢, 3¢, 4¢ or 5¢, or receives his punch free, is determined by the last digit of the number of the slip punched by him from the punchboard, and whether he receives a box of candy or nothing for his money is determined by the number appearing on the slip punched by him from said board. Persons who qualify by punching a slip containing one of the designated numbers receive a box of candy. Persons not obtaining one of the designated numbers receive nothing. The numbers are effectively concealed from purchasers and prospective purchasers until a punch selection has been made and a particular punch separated from the board. The candy is thus distributed to purchasers of punches from the board wholly by lot or chance, the amount to be paid for each punch or purchase is determined wholly by

lot or chance, and whether or not a purchaser of a punch from the board receives a package of candy or nothing for his purchase money is also determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondents' candy directly or indirectly expose and sell 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 the respondents of said sales plan or method in the sale of candy and the sale of said candy 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 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 merchandise at a price much less than the normal retail price thereof. Many persons, firms and corporations who sell and distribute merchandise 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 by 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 merchandise and by the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise 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 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, and as a result thereof substantial injury is being done 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 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 November 17, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint, respondents filed answer thereto admitting all the material allegations of fact set forth in said complaint and waiving 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, Newton E. Wentz and Fritz O. Lee, are individuals, trading as copartners under the name of Davenport Candycrafts, with their principal office and place of business located at 168 South Division Street, Spokane, Wash. Respondents are now, and for more than six months last past have been, engaged in the sale and distribution of candy to dealers. Respondents cause, and have caused, their said candy, when sold, to be shipped or transported from their aforesaid place of business in the State of Washington 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 has been for more than six months last past, a course of trade by 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 said business respondents are, and have been, in competition with other individuals and with corporations and partnerships engaged in the sale and distribution of candy 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 thereof, respondents sell, and have sold, to dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consuming public. Typical of said assortments is one hereinafter described for the purpose of showing the methods used by respondents. Said assortment includes 28 packages of fudge candy and a punchboard, on the face of which appeared a legend to the following effect:

NUMBERS Ending "0" are FREE
 NUMBERS Ending "1" pay 1 cent
 NUMBERS Ending "2" pay 2 cents
 NUMBERS Ending "3" pay 3 cents
 NUMBERS Ending "4" pay 4 cents
 NUMBERS Ending "5" pay 5 cents
 NUMBERS Ending "9" pay 5 cents

LAST PUNCH ON THE BOARD RECEIVES $2\frac{1}{4}$ lb. Tub Chocolate Fudge.

and also a legend stating that certain numbers win either a 1-pound or a $2\frac{1}{2}$ -pound tub of candy. Candy is distributed to the purchasing public in accordance with the foregoing legend and in the following manner: The punchboard contains 1,000 punches, each concealing a number. Said numbers are not arranged in numerical sequence. Whether a purchaser pays 1¢, 2¢, 3¢, 4¢, or 5¢, or receives his punch free, is determined by the last digit of the number of the slip punched by him from the punchboard, and

whether he receives a box of candy or nothing for his money is determined by the number appearing on the slip punched by him from said board. Persons who qualify by punching a slip containing one of the designated numbers receive a box of candy. Persons not obtaining one of the designated numbers receive nothing. The numbers are effectively concealed from purchasers and prospective purchasers until a punch selection has been made and a particular punch separated from the board. The candy is thus distributed to purchasers of punches from the board wholly by lot or chance; the amount to be paid for each punch or purchase is determined wholly by lot or chance; and whether or not a purchaser of a punch from the board receives a package of candy or nothing for his purchase money is also determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondents' candy, directly or indirectly, expose and sell 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 the respondents of said sales plan or method in the sale of candy, and the sale of said candy 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 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 merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise 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 merchandise and by the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise 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 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, and as a result thereof substantial injury to competition is being done, and has been done by respondents in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, 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.

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 admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Newton E. Wentz and Fritz O. Lee, jointly or severally, trading under the name of Davenport Candycrafts, or under any other name, 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. Selling or distributing candy or any 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.

2. Supplying to or placing in the hands of others punchboards, push or pull cards, or other lottery devices, either with assortments of candy or other merchandise or separately, which said punchboards, push or pull cards, or other lottery devices are to be used, or may be used, in selling or distributing such candy or other merchandise to the public.

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.

Complaint

39 F. T. C.

IN THE MATTER OF

HARRY GREENBERG, TRADING AS PIONEER SPECIALTY
COMPANY AND CANDYLAND COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5128. Complaint, Feb. 5, 1944—Decision, Sept. 14, 1944*

Where an individual engaged in interstate sale and distribution of candy to dealers, including its "General MacArthur" packages which retailed for 5¢, and its "U. S. Navy Warships," "U. S. Warplanes" or "Remember Pearl Harbor" which retailed at 1¢ each—

Offered and sold said packages in cartons of substantially greater size than necessary and which, in case of first, with dimensions of 1" × 3" × 5" included several pieces of candy taffy and a toy of infinitesimal value, and in the other cases, with dimensions of 1½" × 2" × 3", contained a few pieces of candy of the size of a small bean and a toy or novelty of no appreciable value;

With effect, through such employment of said "slack filling" practice, of misleading and deceiving a substantial portion of the buying public into the erroneous belief that said packages or containers were filled to capacity and contained the quantity of candy indicated by their capacity, and into the purchase of said candy in reliance upon such erroneous belief, and of placing in the hands of retail sellers the means whereby to mislead and deceive members of the purchasing public:

Held, That said acts and practices, under the circumstances above set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. I. Zimmerman, of New York City, 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 Harry Greenberg, an individual, trading and doing business under the name of Pioneer Specialty Co. and Candyland 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Harry Greenberg, is an individual, trading and doing business under the names of Pioneer Specialty Co. and Candyland Co. with his principal office and place of business located at 38 Crosby Avenue, Brooklyn, N. Y. Respondent is now and for more than one year last past has been engaged in the sale and distribution of candy to dealers. Respondent causes and has caused his said candy when sold to be shipped or transported from his aforesaid place of business in the State of New York to purchasers thereof at their respective points of location in various