

Complaint

IN THE MATTER OF
IMPERIAL CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5046. Complaint, Sept. 11, 1943—Decision, Nov. 29, 1944*

Where a corporation engaged in the competitive interstate sale and distribution of certain assortments of peanuts so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes when sold and distributed to the consumer—typical assortments including (1) 36 one-half pound tins, together with a 400-hole punchboard for use under a plan, as thereon announced, under which a customer paid from 1¢ to 5¢ or nothing, and received one of said tins or nothing depending on the number he punched, and the person making the last punch also received a tin; and (2) 36 one-half pound packages of peanuts together with a device known as a "Whirling Derby" containing a number of slips with concealed numbers, for use under a scheme, as announced by a placard attached thereto, under which customers receiving certain numbers received a package free, the others paying 10¢ and the last sale receiving two packages—

Sold such assortments so packed and assembled to wholesalers, jobbers and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public in accordance with the aforesaid sales plan involving a game of chance or sale of chance to procure nuts at much less than their normal retail price; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products in accordance with the aforesaid sales plan, contrary to an established public policy of the United States Government and in competition with many who do not use any sales method involving chance or otherwise contrary to public policy;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell its nuts in preference to those of said competitors, and with tendency and capacity to unfairly divert interstate trade to it from its said competitors, whereby substantial injury was done by it to 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 of its competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

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

Skeel, McKelvy, Henke, Evenson & Uhlmann, of Seattle, Wash., 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 Imperial Candy Co., a corporation, hereinafter referred to as respondent, 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, Imperial Candy Co., is a corporation, organized and doing business under and by virtue of the laws of the State of Washington with its office and principal place of business located at 800 Western Avenue, Seattle, Wash. Respondent is now, and for more than six months last past, has been, engaged in the sale and distribution of peanuts and other products to wholesale dealers, jobbers and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said peanuts and other products, when sold, to be transported from its place of business in the city of Seattle, Wash., to purchasers thereof at their respective points of location in various States of the United States other than Washington and in the District of Columbia. There is now and has been for more than six months last past a course of trade by respondent in such merchandise 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 corporations and with partnerships and individuals engaged in the sale and distribution of peanuts and nut 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 its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers and retail dealers certain assortments of peanuts so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes when sold and distributed to the consumers thereof. Typical of said assortments, are the ones hereinafter described, for the purpose of showing methods used by respondent, and are as follows: One of said assortments includes 36 one-half pound tins of peanuts and a punchboard. Appearing on the face of the punchboard is the following legend:

SALTED SOCIETE PEANUTS

Pay What You Punch

1¢ to 5¢		1¢ to 5¢	
[Picture of tin of Peanuts]	All numbers ending in	1 pay 1¢	[Picture of tin of Peanuts]
	All numbers ending in	2 pay 2¢	
	All numbers ending in	3 pay 3¢	
	All numbers ending in	4 pay 4¢	
	All numbers ending in	5, 6, 7, 8, 9 pay 5¢	
	All numbers ending in	"0" ARE FREE	

Numbers 11-22-33-44-55-66-77 Each Receive

$\frac{1}{2}$ lb. Tin "Societe" Blanched Salted Peanuts

Numbers 111-122-133-144-155-166-177 Each Receive

$\frac{1}{2}$ lb. Tin "Societe" Blanched Salted Peanuts

Numbers 211-222-233-244-255-266-277 Each Receive

$\frac{1}{2}$ lb. Tin "Societe" Blanched Salted Peanuts

Numbers 311-322-333-344-355 Each Receive

$\frac{1}{2}$ lb. Tin "Societe" Blanched Salted Peanuts

LAST SALE IN EACH SECTION RECEIVES

$\frac{1}{2}$ lb. TIN OF "SOCIETE" BLANCHED SALTED PEANUTS.

Said peanuts are distributed to the purchasing public in accordance with the foregoing legend and in the following manner: The punchboard contains 400 punches, each concealing a number. Said numbers are not arranged in numerical sequence. Whether the purchaser pays 1, 2, 3, 4, or 5 cents or receives his chance free is determined by the last digit of the number of the slip punched by him from the punchboard, and whether he receives a can of peanuts or nothing for his money is determined by the number appearing on the slip punched by him from said board. Persons who qualify by receiving one of the designated numbers receive a tin of peanuts. 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 peanuts are thus distributed to purchasers of punches from the board wholly by chance and the amount to be paid for each punch or purchase is determined wholly by chance.

Another assortment sold and distributed by respondent consists of 36 one-half pound packages of peanuts and a device known as a Whirling Derby. This device consists of a number of slips of paper, each containing a concealed number, the numbers running from 1 to 1000, but not consecutively. The slips are attached to a stand so that they may be easily removed by a purchaser or prospective purchaser, and the numbers concealed from such purchaser until one of the slips has been pulled from the stand. Attached to the stand is a placard containing the following legend:

SALTED SOCIETE PEANUTS

$\frac{1}{2}$ -lb. Packages Blanched Nuts

800 FREE NUMBERS

Numbers ENDING 3 and 9 Pay 10 CENTS—All Others FREE

Numbers 10, 20, 30, 40, 50, 60, 70, 80, 90, 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260, 270, 280, 290, 300, 310, 320, 330, 340, Each Receives $\frac{1}{2}$ -lb. Package Societe Salted Peanuts

Last Sale Receives 2 Packages Societe Peanuts

The peanuts are distributed to the purchasing public by means of the device containing the sealed numbers in accordance with the above legend. The peanuts are thus distributed to purchasers of slips from the device wholly by chance, and the amount to be paid for each slip or purchase is also determined wholly by chance.

PAR. 3. Retail dealers who purchase respondent's nuts, directly or indirectly, 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 its products in accordance with the sales plan, hereinabove set forth. The use by respondent of said sales plan or method in the sale of its nuts and the sales of said nuts 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 nuts to the purchasing public by the method or plan, hereinabove set forth, involves a game of chance or the sale of a

chance to procure nuts at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute nuts in competition with respondent, 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 any other method contrary to public policy. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its nuts and in the element of chance involved therein, and are thereby induced to buy and sell respondent's nuts in preference to nuts of said competitors of respondent who do not use the same or equivalent methods. 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 its said competitors who do not use the same or equivalent methods, and 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 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 11, 1943, issued and thereafter served its complaint in this proceeding upon respondent, Imperial Candy Co., a corporation, charging it with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission by order entered herein granted respondent's request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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, Imperial Candy Co., is a corporation, organized and doing business under and by virtue of the laws of the State of Washington with its office and principal place of business located at 800 Western Avenue, Seattle, Wash. Respondent is now, and for more than six months last past, has been, engaged in the sale and distribution of peanuts and other products to wholesale dealers, jobbers and retail dealers

located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said peanuts and other products, when sold, to be transported from its place of business in the city of Seattle, Wash., to purchasers thereof at their respective points of location in various States of the United States other than Washington and in the District of Columbia. There is now and has been for more than six months last past a course of trade by respondent in such merchandise 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 corporations and with partnerships and individuals engaged in the sale and distribution of peanuts and nut 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 its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers and retail dealers certain assortments of peanuts so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes when sold and distributed to the consumers thereof. Typical of said assortments are the ones hereinafter described for the purpose of showing methods used by respondent, and are as follows: One of said assortments includes 36 one-half pound tins of peanuts and a punchboard. Appearing on the face of the punchboard is the following legend:

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number of the slip punched by him from the punchboard, and whether he receives a can of peanuts or nothing for his money is determined by the number appearing on the slip punched by him from said board. Persons who qualify by receiving one of the designated numbers receive a tin of peanuts. 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 peanuts are thus distributed to purchasers of punches from the board wholly by chance and the amount to be paid for each punch or purchase is determined wholly by chance.

Another assortment sold and distributed by respondent consists of 36 one-half pound packages of peanuts and a device known as a Whirling Derby. This device consists of a number of slips of paper, each containing a concealed number, the numbers running from 1 to 1000, but not consecutively. The slips are attached to a stand so that they may be easily removed by a purchaser or prospective purchaser, and the numbers concealed from such purchaser until one of the slips has been pulled from the stand. Attached to the stand is a placard containing the following legend.

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The peanuts are distributed to the purchasing public by means of the device containing the sealed numbers in accordance with the above legend. The peanuts are thus distributed to purchasers of slips from the device wholly by chance, and the amount to be paid for each slip or purchase is also determined wholly by chance.

PAR. 3. Retail dealers who purchase respondent's nuts, directly or indirectly, 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 its products, in accordance with the sales plan, hereinabove set forth. The use by respondent of said sales plan or method in the sale of its nuts and the sales of said nuts 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 nuts to the purchasing public by the method or plan, hereinabove set forth, involves a game of chance or the sale of a chance to procure nuts at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute nuts in competition with respondent, 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 contrary to public policy. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its nuts and in the element of chance

involved therein, and are thereby induced to buy and sell respondent's nuts in preference to nuts of said competitors of respondent who do not use the same or equivalent methods. 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 its said competitors who do not use the same or equivalent methods, and 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.

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 and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives 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 the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Imperial Candy Co., a corporation, and 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 peanuts 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 peanuts or any merchandise so packed and assembled that sales of such peanuts or other merchandise to the general public are to be made or 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, Whirling Derbies, or other lottery devices, either with assortments of peanuts or other merchandise or separately, which said punchboards, push or pull cards, Whirling Derbies, or other lottery devices are to be used or may be used in selling or distributing such peanuts or other merchandise to the public.

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

It is further ordered, That the respondent shall, within 60 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.

IN THE MATTER OF
GRAPHIC ARTS CLUB OF CHARLOTTE, INC. ET AL.

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

Docket 4517. Complaint, June 6, 1941—Decision, Dec. 2, 1944

Where a membership corporation, the "active" or "regular" members of which included, with some three or four exceptions, all of the commercial printing concerns in Charlotte, N. C., and the "associate" members of which (with no voice in the conduct and operation of said "club") included those there engaged in engraving; various individuals who served as officers, directors, or executive secretary thereof; and its said active or regular members who were in substantial competition with one another and with other commercial printers in the sale and distribution of printing and printed materials in commerce except in so far as such competition had been restrained and suppressed as below described, and who in the conduct of their respective businesses made use of the loose-leaf "Franklin Printing Catalog" handbook, leased to subscribers on an annual rental basis, to assist printers in arriving at a price for a given job of printing, and in which, while the word "price" was not used, the figures quoted—"value," "economic value" and "correct value"—did in fact make allowance for a reasonable profit;

- (a) Took definite and cooperative action toward achieving, through the use of said catalog, uniformity in the prices to be charged by the members for printing, through resolutions agreeing on one of their number to act as an official "for giving out prices on ruling and binding because of the difficulty in figuring out these prices," making arrangement for bringing before the board "jobs requiring the meeting of out-of-town prices or unfriendly competitors' prices," and making use of their bulletins, prepared by the club's executive secretary and distributed among the members, for instructions for finding the price in particular cases, such as where the customer furnishes the stock;
- (b) Similarly agreed upon discounts to apply with respect to various situations, including work for the city and county and power company, and upon various terms and conditions of sale such as procedure in the event of standard forms held by the printer, the grading of all work by the ream, carton or four-carton price for the exact amount of stock to be used on the job and in accordance with the price as established by the local paper dealers, and limitations on the amount of advertising to be done by the printer in quoting for printing programs, and brokerage to dealer; and

Where said members, pursuant to and in furtherance of such agreements—

- (c) Filed their proposed bids and price quotations with the executive secretary of the club, by whom each one was checked against the catalog; and usually revised bids found not to be in conformity therewith under procedure by which all bids and quotations filed were available to all members; and
- (d) Frequently requested said executive secretary, who was more skilled in the use of said catalog than the members, to calculate prices on particular jobs, which were given to all members requesting the same;

With the result that through such means and filing, urged upon the members through the club bulletin and comment therein, general uniformity in prices was achieved; and