

Complaint

IN THE MATTER OF

BEN LEVY, AND FRANCES LEVY, TRADING AS
GOLDWYN COMPANY AND JOHN BAKER COMPANY

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

Docket 5417. Complaint, Jan. 24, 1946—Decision, May 15, 1946

Where two partners engaged in competitive interstate sale and distribution of candy and novelty merchandise 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 consisting of 18 boxes of candy in a cedar chest, along with a 6-section punch board for use in their sale and distribution under a plan by which chance selection of certain numbers entitled customers to a box of candy, as did last sale in each of the first 5 sections, and maker of last punch received the chest—

Sold such assortments to wholesalers, jobbers, and retailers, by whom they were exposed and sold to the purchasing public in accordance with the aforesaid sales plan, involving a game of chance or sale of a chance to procure candy and merchandise assortments 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 sale thereof, contrary to an established public policy of the United States Government and in competition with many who do not use a sales method 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 their candy and merchandise assortments in preference to those of said competitors, and with tendency and capacity thereby to unfairly divert trade in commerce to them from said competitors:

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

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

Smith, Bundeson, White & Raynor, of Chicago, Ill., 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 Ben Levy and Frances Levy, individuals and copartners trading as Goldwyn Co. and John Baker Co., 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

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public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Ben Levy and Frances Levy are individuals and partners, trading and doing business as Goldwyn Co. and John Baker Co., with their office and principal place of business located at 731 Plymouth Court, Chicago, Ill. Respondents are now, and for more than 1 year last past, have been engaged in the sale and distribution of candy and novelty merchandise to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondents caused, and have caused, said merchandise when sold, to be transported from their place of business in the city of Chicago, Ill., to purchasers thereof at their respective points of location in various States of the United States other than Illinois, and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by respondents in said 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 their said business, respondents are and have been in competition with corporations and with partnerships and individuals engaged in the sale and distribution of similar merchandise 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 wholesale dealers, jobbers and retail dealers certain assortments of candy and merchandise so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes when sold and distributed to the purchasing and consuming public. One of said assortments is hereinafter described for the purpose of showing the method used by respondents, and is as follows:

This assortment includes 18 boxes of candy, a cedar chest filled with candy and a punch board. Appearing on the face of the punch board is the following legend:

5¢ Per Sale

GIFT PACKAGE CHOCOLATES
AND CEDAR CHEST ASSORTMENT

5¢ Per Sale

NUMBERS 125, 135, 145, 155, 175, 185, 195, 225, 255, 275, 295, 325, 345.
EACH RECEIVE ONE-POUND GIFT PACKAGE DELICIOUS CHOCOLATES.
LAST SALE IN EACH OF FIRST FIVE SECTIONS FINISHED RECEIVES
BEAUTIFUL ONE-POUND FLORAL PACKAGE DELICIOUS CHOCOLATES.
LAST SALE ON BOARD RECEIVES BEAUTIFUL 2-LB. FILLED CEDAR
CHEST.

Said candy is distributed to the purchasing public in accordance with the foregoing legend in the following manner: Sales of punches are 5 cents each and when a punch is made a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on said board but the numbers are not arranged in numerical sequence. Said punches and numbers are arranged in six sections. The board bears a statement informing the purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a box of candy and the last sale in each of the first five sections completely sold entitled the purchaser of that punch to receive a box of candy and the purchaser of the punch on the board receives a cedar chest filled with candy. The customer who does not qualify by obtaining one of the specified numbers or the last punch in a section or the last punch on the board, receives nothing for his money. The boxes of candy are worth more than 5 cents each and the purchaser who punches a number calling for one of the boxes of candy, receives the same for 5 cents. The numbers are evidently concealed from purchasers and prospective purchasers until a punch or selection has been made, and the particular punch separated from the board. The candy is thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondents furnish and have furnished various punch board candy and merchandise assortments for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise or lottery scheme. Such punch board candy and merchandise assortments are similar to the one herein described and vary only in detail.

3. Retail dealers who purchase respondent's candy and merchandise assortments, directly or indirectly, 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 candy and merchandise assortments and the sales of said candy and merchandise assortments 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 candy and merchandise assortments 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 candy and merchandise assortments at prices much less than the normal retail price

thereof. Many persons, firms, and corporations who sell and distribute candy and merchandise assortments in competition with respondents, as above alleged, do not use any method or methods 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 respondents in the sale and distribution of their candy and merchandise assortments and in the element of chance involved therein and are thereby induced to buy and sell respondent's candy and merchandise assortments in preference to the candy and merchandise assortments of said competitors who do not use the same or equivalent methods. The use of said method 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.

PAR. 5. The aforesaid acts and practices of respondents 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 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 January 24, 1946, issued and thereafter served its complaint in this proceeding upon respondents, Ben Levy and Frances Levy, individuals and copartners trading as Goldwyn Co. and John Baker Co., charging them with the use of unfair methods of competition in commerce 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 respondents' answer the Commission by order entered herein granted respondents' motion 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 said 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. Respondents, Ben Levy and Frances Levy, are individuals and partners, trading and doing business as Goldwyn Co. and John Baker Co., with their office and principal place of business located at 731 Plymouth Court, Chicago, Ill. Respondents are now, and for more than 1 year last past, have been engaged in the sale and distribution of candy and novelty merchandise to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondents caused, and have caused, said merchandise when sold, to be transported from their place of business in the city of Chicago, Ill., to purchasers thereof at their respective points of location in various States of the United States other than Illinois, and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by respondents in said 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 their said business, respondents are and have been in competition with corporations and with partnerships and individuals engaged in the sale and distribution of similar merchandise 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 wholesale dealers, jobbers, and retail dealers certain assortments of candy and merchandise so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing and consuming public. One of said assortments is hereinafter described for the purpose of showing the method used by respondents, and is as follows:

This assortment includes 18 boxes of candy, a cedar chest filled with candy and a punchboard. Appearing on the face of the punchboard is the following legend:

5¢ Per Sale	GIFT PACKAGE CHOCOLATES AND	5¢ Per Sale
	CEDAR CHEST ASSORTMENT	

NUMBERS 125, 135, 145, 155, 175, 185, 195, 225, 255, 275, 295, 325, 345.

EACH RECEIVE ONE POUND GIFT PACKAGE DELICIOUS CHOCOLATES.

LAST SALE IN EACH OF FIRST FIVE SECTIONS FINISHED RECEIVES BEAUTIFUL ONE-POUND FLORAL PACKAGE DELICIOUS CHOCOLATES.

LAST SALE ON BOARD RECEIVES BEAUTIFUL 2-LB. FILLED CEDAR CHEST.

Said candy is distributed to the purchasing public in accordance with the foregoing legend in the following manner: Sales of punches are 5 cents each and when a punch is made a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on said board but the numbers are not arranged in numerical sequence. Said punches and numbers are arranged in six sections. The board bears a statement informing the purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a box of candy and the last sale in each of the first five sections completely sold entitled the purchaser of that punch to receive a box of candy and the purchaser of the punch on the board receives a cedar chest filled with candy. The customer who does not qualify by obtaining one of the specified numbers or the last punch in a section or the last punch on the board, receives nothing for his money. The boxes of candy are worth more than 5 cents each, and the purchaser who punches a number calling for one of the boxes of candy receives the same for 5 cents. The numbers are evidently concealed from purchasers and prospective purchasers until a punch or selection has been made, and the particular punch separated from the board. The candy is thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondents furnish and have furnished various punchboard candy and merchandise assortments for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such punchboard candy and merchandise assortments are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's candy and merchandise assortments, directly or indirectly, 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 candy and merchandise assortments and the sales of said candy and merchandise assortments 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 candy and merchandise assortments 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 candy and merchandise assortments at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute

candy and merchandise assortments in competition with respondents, as above found, do not use any method or methods 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 respondents in the sale and distribution of their candy and merchandise assortments and in the element of chance involved therein and are thereby induced to buy and sell respondents' candy and merchandise assortments in preference to the candy and merchandise assortments of said competitors who do not use the same or equivalent methods. The use of said method 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.

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 substitute answer of the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Ben Levy and Frances Levy, individuals and copartners, trading as Goldwyn Co. and John Baker Co. or any other trade name or names, and 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, novelties or any other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing any candy, novelties, or any other merchandise so packed and assembled that sales of such merchandise to

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the public are to be made, or due to the manner in which such 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 push or pull cards, punch boards or other lottery devices either with assortments of candy or other merchandise or separately, which said push or pull cards, punch boards or other lottery devices are to be used or may be used in selling or distributing said 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

IN THE MATTER OF

EDWARD H. HAMLIN DOING BUSINESS AS E. H. HAMLIN
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5189. Complaint, July 15, 1944—Decision, May 16, 1946

Where an individual engaged through his corporation in interstate sale and distribution of canned salmon and other seafood products to certain buyers who, though they purchased in their own names and for their own accounts, and were in some cases large scale buyers and sellers under their own private brands, shopped the market, filed claims in their own names and collected damages from carriers for their own accounts, and warehoused their goods and borrowed thereon, customarily designated themselves as "brokers," "merchandise brokers," or "primary distributors," solely to color their operations in order to collect commission fees from sellers, and operated by placing orders with those sellers only who would grant and pay them commissions or brokerage fees on their own purchases;

Paid and granted commissions, brokerage, or other compensation or allowances or discounts in lieu thereof to such buyers on purchases made in their own names and for their own accounts for resale:

Held, That such paying and granting by said individual, directly or indirectly, of commissions, brokerage, etc., to buyers who purchased his products in their own names and for their own accounts for resale, were in violation of subsection (c) of section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Padden & Moriarty, of Seattle, Wash., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Edward H. Hamlin, is an individual engaged in the business of distributing and selling canned salmon and other sea-food products under the name and style of E. H. Hamlin Co., a corporation organized by the respondent Edward H. Hamlin and existing under the laws of the State of Washington, with his principal office and place of business located in the Mutual Life Building, in Seattle, Wash. The respondent Edward H. Hamlin is the sole owner