

Complaint

42 F. T. C.

IN THE MATTER OF

LOUIS GARTNER TRADING AS HAWTHORNE CANDY
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5287. Complaint, Mar. 5, 1945—Decision, May 29, 1946*

Where an individual engaged in the competitive interstate sale and distribution of assortments of candy and merchandise so packed and assembled as to involve the use of a lottery scheme or game of chance when sold and distributed to the purchasing public, a typical assortment consisting of 160 pieces of candy and 15 articles of merchandise together with a 160-hole push card, for use in sale and distribution of aforesaid products under a plan by which, at a cost of 1 cent, the chance selection of certain numbers and last sale in first two sections of the card entitled the customer to choice of "small winners," and number 100 and last sale on card received "BIG WINNERS"—

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 merchandise at less than its normal retail price, and under which whether or not a purchaser received one of the articles in question—some of which had a normal retail value in excess of 1 cent—and a piece of candy, or a piece of candy alone, was determined wholly by lot or chance; and thereby—

Supplied to and placed in the hands of others means of conducting a lottery in the sale of merchandise, contrary to an established public policy of the United States Government, and in competition with many who did not use methods involving chance or otherwise contrary to public policy;

With the result that many purchasers were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell said products in preference to those of said competitors; and with tendency and capacity thereby unfairly to divert trade in commerce to him from his said competitors, 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 his competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. John P. Bramhall*, trial examiner.

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

Mr. Harry M. Kroon, of Chicago, Ill., 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 Louis Gartner, an

individual trading as Hawthorne Candy 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, Louis Gartner, is an individual trading and doing business as Hawthorne Candy Co., with his office and principal place of business located at 1664 West Division Street, Chicago, Ill. Respondent is now and for 2 years last past has been engaged in the sale and distribution of candy and other merchandise to purchasers thereof located in the various States of the United States, and in the District of Columbia. Respondent causes and has caused the said merchandise, when sold, to be transported from his said place of business in the State of Illinois to purchasers thereof at their respective points of location in the various other States of the United States, and in the District of Columbia.

In the course and conduct of his business, respondent is and has been engaged in competition with other individuals, firms, and corporations, engaged in the sale of candy in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retailers certain assortments of candy and merchandise so packed and assembled as to involve the use of a lottery scheme or game of chance when sold and distributed to the purchasing public. One of said assortments consists of 160 pieces of candy, 15 articles of merchandise and a device commonly known as a push card. Said push card has 160 partially perforated disks on the face of which is printed the word "PUSH." Concealed within the said disks are numbers ranging from 1 to 160. When the disks are pushed or separated from the card, a number is disclosed. On its face the push card bears the following legend:

BIG WINNER

Nos. 5—10—15—20—25—30—35—40—45—50—55

Receive Choice of SMALL WINNERS

No. 100 Receives Choice of BIG WINNERS

Last Sale in 1st Two Sections Receives Choice of SMALL WINNERS

LAST SALE ON CARD RECEIVES BIG WINNER

Complaint

42 F. T. C.

Sales to the purchasing public by means of push card are made in accordance with the above legend, purchasers paying 1 cent each, and the candy and merchandise are distributed in accordance with the legend. Purchasers who push one of the disks which conceals a designated number, in addition to receiving a piece of candy, also receive one of the articles of merchandise. A number of the articles of merchandise have a normal retail value in excess of 1 cent. Those who push any of the other numbers receive nothing but one piece of candy for their purchase money. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. Whether or not a purchaser receives one of the articles of merchandise and a piece of candy, or piece of candy alone, is thus determined wholly by lot or chance. Respondent sells and distributes, and has sold and distributed, various other assortments of candy involving a lot or chance feature, but the sales plans or methods by which said candy is distributed are similar to the one above described, varying only in detail.

PAR. 3. Retail dealers and others who purchase respondent's candy and merchandise, directly or indirectly, expose and sell same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others a means of conducting a lottery in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise and the sale of said merchandise 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 products 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 which is contrary to public policy. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of his products and by the element of chance involved therein, and are thereby induced to buy and sell respondent's products in preference to products of said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent because of said game of chance has a tendency and capacity to unfairly divert trade in commerce between

Findings

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 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 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 March 5, 1945, issued and thereafter served its complaint in this proceeding upon respondent, Louis Gartner, an individual trading as Hawthorne Candy Co., charging him 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 motion for permission to withdraw said answer and to substitute therefor an answer admitting all of 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, Louis Gartner, is an individual trading and doing business as Hawthorne Candy Co., with his office and principal place of business located at 1664 West Division Street, Chicago, Ill. Respondent is now, and for 2 years last past has been, engaged in the sale and distribution of candy and other merchandise to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, the said merchandise, when sold, to be transported from his said place of

Findings

42 F. T. C.

business in the State of Illinois to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. In the course and conduct of his business, respondent is, and has been, engaged in competition with other individuals, firms, and corporations engaged in the sale 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 his business, as described in paragraph 1 hereof, respondent sells, and has sold, to wholesale dealers, jobbers, and retailers certain assortments of candy and merchandise so packed and assembled as to involve the use of a lottery scheme or game of chance when sold and distributed to the purchasing public. One of said assortments consists of 160 pieces of candy, 15 articles of merchandise, and a device commonly known as a push card. Said push card has 160 partially perforated disks on the face of which is printed the word "PUSH." Concealed within the said disks are numbers ranging from 1 to 160. When the disks are pushed or separated from the card, a number is disclosed. On its face the push card bears the following legend:

BIG WINNER

Nos. 5—10—15—20—25—30—35—40—45—50—55

Received Choice of SMALL WINNERS

No. 100 Receives Choice of BIG WINNERS

Last Sale in 1st Two Sections Receives Choice of SMALL WINNERS

LAST SALE ON CARD RECEIVES BIG WINNER

Sales to the purchasing public by means of the push cards are made in accordance with the above legend, purchasers paying 1 cent each, and the candy and merchandise are distributed in accordance with the legend. Purchasers who push one of the disks which conceals a designated number, in addition to receiving a piece of candy, also receive one of the articles of merchandise. A number of the articles of merchandise have a normal retail value in excess of 1 cent. Those who push any of the other numbers receive nothing but one piece of candy for their purchase money. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. Whether or not a purchaser receives one of the articles of merchandise and a piece of candy, or a piece of candy alone, is thus determined wholly by lot or chance. Respondent

sells and distributes, and has sold and distributed, various other assortments of candy involving a lot or chance feature, but the sales plans or methods by which said candy is distributed are similar to the one above described, varying only in detail.

PAR. 3. Retail dealers and others who purchase respondent's candy and merchandise, directly or indirectly, expose and sell same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others a means of conducting a lottery in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise, and the sale of said merchandise 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 on 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 products 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 which is contrary to public policy. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of his products and by the element of chance involved therein, and are thereby induced to buy and sell respondent's products in preference to products of said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent, because of said game of chance, has a tendency and capacity unfairly to 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 equivalent methods, and as a result thereof substantial injury is being done, 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

42 F. T. C.

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

It is ordered, That the respondent, Louis Gartner, an individual trading as Hawthorne Candy Co., or trading under any other name or names, his 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. Supplying to or placing in the hands of others push cards, pull cards, punch boards, or other lottery devices, either with assortments of candy or other merchandise or separately, which said push cards, pull cards, punch boards, or other lottery devices are to be used, or may be used, in selling and distributing such candy or merchandise to the public.

2. Selling or distributing candy or any other merchandise so packed and assembled that sales of said candy or other merchandise to 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 the respondent, 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 respondent shall, within 60 days after 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

HENRY J. HANDELSMAN, JR., BIRDYE HANDELSMAN,
AND WILLIAM HANDELSMAN, TRADING AND DOING
BUSINESS AS THE CAMERA MAN, AND HENRY J. HAN-
DELSMAN, JR., INC.

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

Docket 5386. Complaint, Oct. 3, 1945—Decision June 7, 1946

Where three individuals engaged in interstate sale and distribution at retail of cameras and other merchandise, and their advertising agency, through advertisements in newspapers and magazines—

- (a) Falsely represented that their cameras were equipped with fast lenses, and would take sharp, clear pictures of persons and things in motion or still; had the appearance, performance, and durability of much higher-priced cameras; would take pictures in color with ordinary films; were nationally advertised by the manufacturers; and that a simulated leather carrying case was given free with each camera;

The facts being that the reproduction of color is a property of the color film and not the camera, and almost any camera can be used for taking color pictures; charge for the case was included in the price of the camera; and other aforesaid claims were likewise false;

- (b) Falsely represented that the prices for which they offered their cameras were special prices; and

- (c) Represented that the purchase price would be refunded immediately without question to dissatisfied customers and that the cameras were guaranteed to give a lifetime of service, notwithstanding which they failed and refused to make such refunds and to replace broken and defective cameras;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby into the purchase of a substantial number of their said products:

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

Mr. Joseph Callaway for the Commission.

Mr. Joseph J. Merensky, of Chicago, Ill., and *Mr. John L. Ingoldsby, Jr.*, of Washington, D. C., 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 Henry J. Handelsman, Jr., Birdye Handelsman, and William Handelsman, individually and as copartners, trading and doing business as The Camera Man