

Complaint

45 F. T. C.

IN THE MATTER OF

JOHN E. HAYNES, TRADING AS ARKANSAS PEANUT
COMPANY

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

Docket 5503. Complaint, June 20, 1947—Decision, Nov. 1, 1948 .

Where a corporation engaged in processing, roasting and packing peanuts, and in interstate sale and distribution thereof, including certain assortments which were so packed and assembled as to involve use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consuming public, a typical assortment consisting of a carton of thirty 5-cent packages, described by it as "Chuck-O-Luck Peanuts," which displayed the legend "full value and you may find 5¢, 10¢, 25¢, 50¢, \$1.00," upon the cartons and packages, within a few of which were concealed one of the above named sums—
Sold such assortments to dealers by whom they were exposed and sold at retail to the public in accordance with the aforesaid sales plan, involving a game of chance or sale of chance to procure one of the aforesaid sums; and thereby
Supplied to and placed in the hands of others the means of conducting lotteries in the sale of its product, contrary to established public policy and the public interest;

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 his said product:

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

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

Mr. William P. Smith, of Washington, D. C., 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 John E. Haynes, an individual trading as Arkansas Peanut 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, John E. Haynes, is an individual trading and doing business as the Arkansas Peanut Co., with his principal office and place of business located at 327 Ouichita Avenue, Hot Springs, Ark. Respondent is now, and for several years 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 his said peanuts, when sold, to be shipped or transported from his aforesaid principal place of business in the State of Arkansas to purchasers thereof at their various points of location in the various States of the United States and in the District of Columbia. There is now, and has been for several years last past, a course of trade by said respondent in such peanuts 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, the respondent sells and has sold to dealers certain assortments of said peanuts so packed and assembled as to involve the use of a game of chance, gift enterprise or lottery scheme when sold and distributed to the purchasing and consuming public.

One of said assortments of peanuts is composed of a number of small packages of peanuts which retail to the consuming public at 5 cents per package. This assortment is designated by respondent as "Chuck-O-Luck Peanuts." Thirty of said packages of peanuts are packed in a carton. Printed on each of the packages and the carton is the following legend:

Full value and you may find 5¢, 10¢, 25¢, 50¢, \$1.00

Sealed within a small number of said 5-cent packages is either 5, 10, 25, 50 cents, or \$1, but ultimate purchasers cannot ascertain which packages contain one of the above-named sums until a selection and purchase has been made and the individual package opened. The aforesaid purchasers of said individual packages of peanuts who procure one of 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 plans 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 in the manner above alleged involves a game of chance, gift, enterprise; or lottery to procure one of the said sums of money, and many persons are attracted by said sales plan or method used by respondent, and the element of chance involved therein, and are thereby, induced to buy and sell respondent's peanuts.

The use by respondent of a sales plan or method involving distribution of merchandise by means of chance, lottery, or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and constitute 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 June 20, 1947, issued and subsequently served its complaint in this proceeding upon respondent, John E. Haynes, an individual trading as Arkansas Peanut Co., charging him with the use of 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 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 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, John E. Haynes, is an individual trading and doing business as the Arkansas Peanut Co., with his principal office and place of business at 327 Ouachita Avenue, Hot Springs, Ark. He is now, and for several years last past has been, engaged in processing, roasting, and packing peanuts and in the sale and distribution thereof to dealers.

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

PAR. 3. In carrying on his business as aforesaid, respondent sells, and has sold, to dealers certain assortments of peanuts so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the purchasing and consuming public. One of the assortments of peanuts thus sold by respondent is composed of a number of small packages of peanuts which retail to the consuming public at 5¢ per package. This assortment, consisting of thirty of such packages of peanuts packed in a carton, is designated by respondent as "Chuck-O-Luck Peanuts." Printed on each of the packages and upon the carton is the following:

Full Value and You May Find 5¢ 10¢ 25¢ 50¢ \$1.00

Sealed within a small number of the 5-cent packages is 5, 10, 25, 50 cents, or \$1. Ultimate purchases of such 5-cent packages cannot ascertain which of the packages contain one of the above-named sums of money until a selection and purchase has been made and the package opened. Purchasers of the said packages of peanuts who procure one of said sums of money thus procure it wholly by lot or chance. Respondent also sells and distributes various other assortments of peanuts involving the chance or lot feature, as aforesaid, but the sales plan used in connection with each of said assortments is similar to the one just described and varies only in detail.

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PAR. 4. Retail dealers who directly or indirectly purchase respondent's said assortment of peanuts expose and sell the same to the purchasing public in accordance with the sales plans heretofore described. 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 such sales plans. The use by respondent of such plans or methods in the sale of his peanuts, and the sale of such peanuts by and through or with the aid of such sales plans or methods, is a practice contrary to an established public policy of the Government of the United States.

PAR. 5. The sale of peanuts to the purchasing public in the aforesaid manner involves a game of chance, gift enterprise, or lottery to procure one of the said sums of money, and many persons are attracted by said sales plan or methods and the element of chance involved therein and are thereby induced to buy and sell respondent's peanuts. The use by respondent of sales plans or methods involving distribution of merchandise by means of chance, lottery, or gift enterprise is contrary to the public interest.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and constitute 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 respondent, in which answer respondent admits all the material allegations of fact set forth in the complaint and 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 respondent, John E. Haynes, an individual trading as Arkansas Peanut Co., 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 or assembled that sales of such 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 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 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.

Order

45 F. T. C.

IN THE MATTER OF
MORTON SALT COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 4319. Nov. 2, 1948

Modified order, in proceeding in question, in which (1) the original findings as to the facts, conclusion, and order to cease and desist issued on July 28, 1944, 39 F. T. C. 35; (2) modified findings and order, following remand of the case by the Circuit Court of Appeals for further consideration of the Commission, issued on April 14, 1945, 40 F. T. C. 388; and (3) the Circuit Court of Appeals on July 8, 1948, 45 F. T. C., entered a final decree further modifying the aforesaid order to cease and desist, pursuant to the opinion announced on May 3, 1948, by the Supreme Court of the United States, 334 U. S. 37, 44 F. T. C. 1499.

Requiring respondent, its officers, etc., in the sale of its "Free Running Table Salt, plain or iodized" or other grades of table salt in commerce, to cease and desist from discriminating directly or indirectly in the price of such products of like grade and quality as among wholesale or retail dealers purchasing said salt when the differences in price are not justified by difference in cost of manufacture, sale, or delivery, resulting from differing methods or quantities in which such products are sold or delivered, as in said order in detail below set forth.

Before *Mr. James A. Purcell*, trial examiner.

Mr. Donovan R. Divet for the Commission.

McBride & Baker, of Chicago, Ill., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony, and other evidence in support of the allegations of said complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel, the Commission, having considered the matter, made and issued its findings as to the facts, conclusion, and order to cease and desist on July 28, 1944;

Thereafter, said cause was remanded by the Circuit Court of Appeals for the further consideration of the Commission, and the Commission, having reconsidered the matter and the record herein, made and issued on April 14, 1945, its modified findings as to the facts, its conclusion that respondent has violated the provisions of subsection