

to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

§ 185.15 Aiding or abetting use of unfair trade practices.

It is an unfair trade practice for any person to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in §§ 185.1 to 185.14.

GROUP II

§ 185.101 Products to be sold on dry measure basis.

The industry recommends that because peat products have high moisture-absorbing qualities, such products be sold by industry members on a dry measure basis (bushels, cubic feet, cubic yards, etc.) rather than by weight: *Provided*, That such recommendation shall not be construed as disapproval by the industry of the practice of selling industry products by weight when in immediate conjunction with the stated weight the dry measurement is also shown.

PART 186—CANDY MANUFACTURING INDUSTRY

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COMMITTEE ON TRADE PRACTICES

186.201 Industry committee.

AUTHORITY: The provisions of this Part 186 issued under secs. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45, unless otherwise noted.

SOURCE: The provisions of this Part 186 appear at 15 F.R. 378, Jan. 24, 1950, unless otherwise noted.

§ 186.0 Definition.

The term "candy" as used in the rules in this part is to be understood as including all kinds and varieties of candy (exclusive only of solid or molded chocolate products) whether sold in bulk, packaged, or other form.

GROUP I

§ 186.1 Deception (general).

The practice of selling, advertising, describing, or otherwise representing candy in any manner or under any circumstances having the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to the grade, quantity, price, value, composition, ingredients, nutritional value, character, nature, size, use, preparation, manufacture, or distribution of such candy or in any other material respect, is an unfair trade practice.

NOTE: Among the inhibitions of this section is "false advertisement", as defined in section 15 of the Federal Trade Commission Act, of any "food" or other product within the scope of such section. Furthermore, nothing in the rules in this part is to be construed as relieving anyone of the necessity of complying with the provisions of the Food, Drug and Cosmetic Act in respect to labeling or any other matter coming within the purview of that act.

§ 186.2 Misrepresentation as to character of business.

It is an unfair trade practice for any member of the industry, in the course of or in connection with the distribution

or sale of candy, to misrepresent the character, extent, or type of his business.

§ 186.3 Misuse of the word "free," etc.

Use of the word "free," or any word or term of similar import, in advertising or otherwise, to designate or describe any product or service which is not in truth and in fact a gift or gratuity, or is not given to the recipient thereof without requiring the purchase of other merchandise or requiring the performance of some service inuring directly or indirectly to the benefit of the industry member using such word, is an unfair trade practice.

§ 186.4 Imitation or simulation of trade-marks, trade names, etc.

The imitation or simulation of the trade-marks, trade names, or other exclusively owned marks of identification of competitors, with the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

§ 186.5 False invoicing.

(a) It is an unfair trade practice to withhold from or insert in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the capacity and tendency or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public.

(b) It is an unfair trade practice to falsify, remove, or fail to furnish, any purchase slip, ticket, card, invoice, or other record, with the capacity and tendency or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public.

§ 186.6 False and misleading price quotations, etc.

The publishing or circulating by any member of the industry of price quotations, price lists, or terms or conditions of sale which are false or have the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

§ 186.7 Tie-in sales; coercing purchase of one product as a prerequisite to purchase of other products.

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other

products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

§ 186.8 Consignment distribution.

It is an unfair trade practice for any member of the industry to employ the practice of shipping candy on consignment or pretended consignment for the purpose and with the effect of artificially clogging or closing trade outlets and unduly restricting competitors' use of said trade outlets in getting their products to consumers through regular channels of distribution, thereby injuring, destroying, or preventing competition, or tending to create a monopoly or to unreasonably restrain trade. Nothing in this section shall be construed as restricting or preventing consignment shipping or marketing of candy in good faith where suppression of competition, restraint of trade, or undue interference with competitors' use of the usual channels of distribution, is not effected.

§ 186.9 Commercial bribery.

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase candy manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in candy of competitors or from dealing or contracting to deal with competitors.

§ 186.10 Defamation of competitors or disparagement of their products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the products of competitors in any material respect, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

§ 186.11 Unfair threats of infringement suits.

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of thereby harassing or intimidating such customers or prospective customers, or of unduly hampering, injuring, or prejudicing competitors in their business, is an unfair trade practice.

§ 186.12 Selling below cost.

(a) The practice of selling candy below the seller's cost with the intent and with the effect of injuring a competitor and where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade is an unfair trade practice. The costs, however, which are referred to in this section, are actual costs of the respective seller, determined in accordance with good accounting practice, and not some other figure or average costs in the industry determined by an industry cost survey or otherwise.

(b) This section is not to be construed as prohibiting the selling below cost of candy when spoilage thereof is imminent and cannot reasonably be avoided; nor as prohibiting such other sales below cost as are not resorted to and pursued as a monopolistic practice with the wrongful intent referred to and with the effect of substantially lessening competition, tending to create a monopoly, or unreasonably restraining trade.

§ 186.13 Combination or coercion to fix prices, suppress competition, or restrain trade.

It is an unfair trade practice for a member of the industry, or any other person:

(a) To use, directly or indirectly, any form of threat, intimidation, or coercion against any member of the industry or other person to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade; or

(b) To enter into or take part in, directly or indirectly, any agreement, understanding, combination, conspiracy, or concerted action with one or more members of the industry, or with one or more other persons, to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade.

§ 186.14 Prohibited discrimination.¹

(a) *Prohibited discriminatory prices or rebates, refunds, discounts, credits, etc., which effect unlawful price discrimination.* It is an unfair trade practice for any member of the industry engaged in commerce, in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential (whether in the guise of samples, so-called free deals, allowances on inventory or floor stock, or otherwise) where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce, and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however,*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing contained in this paragraph shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing contained in this paragraph shall prevent persons engaged in selling goods, ware, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing contained in this

¹ As used in this section, the word "commerce" means "trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States."

paragraph shall prevent price changes from time to time where made in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited brokerage and commissions.* It is an unfair trade practice for any member of the industry engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited advertising or promotional allowances, etc.* It is an unfair trade practice for any member of the industry engaged in commerce to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited discriminatory services or facilities.* It is an unfair trade practice for any member of the industry to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such

commodity so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

(e) *Inducing or receiving an illegal discrimination in price.* It is an unfair trade practice for any member of the industry engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by paragraphs (a) to (d) of this section.

(f) *Exemptions.* The inhibitions of this section shall not apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.

§ 186.15 Discriminatory returns.

It is an unfair trade practice for any member of the industry engaged in commerce to discriminate in favor of one customer-purchaser against another customer-purchaser of candy, bought from such member for resale, by contracting to furnish, or furnishing in connection therewith, upon terms not accorded to all competing customer-purchasers on proportionally equal terms, the service or facility whereby such favored purchaser is accorded the privilege of returning products so purchased and receiving therefor credit or refund of purchase price: *Provided, however,* That nothing in any of the rules in this part shall prohibit or be used to prevent the return of candy by purchasers, for credit or refund of purchase price, when and because such merchandise has been falsely or improperly labeled, branded, or represented, or when and because the merchandise is defective contrary to warranty or purchase contract.

§ 186.16 Inducing breach of contract.

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers, or their suppliers, by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their business, is an unfair trade practice.

§ 186.17 Enticing away employees of competitors.

It is an unfair trade practice for any member of the industry wilfully to entice away employees of competitors with the intent and effect of

thereby unduly hampering or injuring competitors in their business and destroying or substantially lessening competition: *Provided*, That nothing in this section shall be construed as prohibiting employees or agents from seeking or obtaining more favorable employment.

§ 186.18 Advertising of candy sold in slack-filled or short-weight containers.

It is an unfair trade practice to advertise candy packed in slack-filled or short-weight containers by any depiction or by other representation which has the capacity and tendency or effect of thereby causing such advertising to be misleading or deceptive to purchasers, prospective purchasers, or the consuming public.

§ 186.19 Exclusive deals.

It is an unfair trade practice for any member of the industry to contract to sell or sell any candy or other product, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in the products of a competitor or competitors of such industry member, where the effect of such sale or contract for sale, or of such condition, agreement, or understanding, may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

§ 186.20 Marketing of candy through lottery or game of chance.

(a) It is an unfair trade practice for any member of the industry to sell or promote the sale of candy by means of a game of chance, gift enterprise, or lottery scheme.

(b) The inhibitions of this section shall be understood as also extending to the marketing of candy which is specially packaged or arranged so as to facilitate its resale or distribution by a customer of an industry member to the public by means of a game of chance or lottery scheme, and to the marketing or supplying of any lottery device by an industry member to his customer either separately or in conjunction with candy.

§ 186.21 Aiding or abetting use of unfair trade practices.

It is an unfair trade practice for any person, firm, or corporation (whether engaged as manufacturer, seller, buyer, or otherwise) to aid, abet, coerce, or induce another, directly

or indirectly, to use or promote the use of any unfair trade practice specified in §§ 186.1 to 186.20.

GROUP II

§ 186.101 Recording of trade-marks, trade names, etc., to avoid confusion.

To avoid confusion, the industry recommends that each industry member voluntarily file with some person designated by the industry all trade-marks, trade names, labels, or brands which are distinctive of such member's products and exclusively used by him in promoting the sale thereof, and that such information be made equally available to all members of the industry and to the public. (See also § 186.4 and § 186.11.)

§ 186.102 Statistics.

The industry records its approval of the compilation and distribution of all proper and lawful statistics, subject, however, to the prohibitions and limitations set forth in the provisions of §§ 186.13 and 186.21.

§ 186.103 Dissemination of credit information.

The industry records its approval of distributing to its members information covering delinquent and slow accounts insofar as this may be lawfully done.

§ 186.104 Price lists.

(a) The industry approves the practice of each individual member of the industry independently publishing and circulating to the purchasing trade his own price lists.

(b) The industry approves the practice of making the terms of sale a part of all published price schedules.

§ 186.105 Policy as to disclosure of quality guarantee and return of candy.

The industry approves the practice of members of the industry stating on their purchase orders and invoices their terms of quality guarantee and their policy as to terms applicable to the return of candy by purchasers to the industry members.

COMMITTEE ON TRADE PRACTICES

§ 186.201 Industry committee.

The provisions of § 16.1 of this subchapter shall be applicable to an industry committee established under this part. [21 F.R. 1174, Feb. 21, 1956]