

Syllabus

IN THE MATTER OF
GOOD GRAPE COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 1186—April 13, 1926

SYLLABUS.

Where a corporation engaged in promoting the sale of an imitation grape beverage product, which contained substantially less than one per cent of the product of the grape, but had a pronounced grape flavor, color, and odor, artificially derived, and in the manufacture of a concentrate therefor, and sale thereof to bottling plants, to be by them made up into the aforesaid beverage, placed in six and one-half ounce bottles for final consumption, and sold to such concerns as delicatessen, drug, and soda stores, who sold the same in the bottle, or in a glass, to the ultimate consumer.

- (a) Named said beverage and concentrate "Good Grape" and advertised the former nationally under such name, without suggesting the true nature thereof;
- (b) Caused orders for labels by its bottler customers to be filled from a stock of labels designed and approved by it, bearing the name "Good Grape", and also in some cases, the phrase or slogan "Fruit of the Vine";
- (c) Supplied or caused to be supplied to customers crowns or bottle caps bearing at first only the words "Good Grape," and later, in addition thereto, in very small letters, legible only upon most careful scrutiny, the words "imitation, artificially colored flavor";
- (d) Procured the general use by customers of a bottle designed and recommended by it with the name "Good Grape" blown therein;
- (e) Supplied customers with calendars, metal signs and other advertising material with pictures of a bottle containing a purple or grape colored liquid, and with the words, "Fruit of the Vine" in many cases under the words "Good Grape", to be by them distributed among their own retail dealer customers;
- (f) Made such statements in newspaper advertisements as "Good Grape, Fruit of the Vine. Good Grape brings you the real rich flavor of sugary grapes, and there is a good reason why. This wonderful flavor is derived by an entirely new process from the fruit itself. Good Grape is a carbonated grape drink", and the statement "Cap'n. Grape Jack is a good little kid pirate who has a real treasure he wants to share with you * * *. It is known as Good Grape, a new sparkling grape drink, * * *";
- (g) Supplied customers for use in advertising said beverage, with thousands of pictures of "Cap'n Grape Jack", upon which were printed the words "Good Grape, Fruit of the Vine" and of paste board and metal signs upon which were printed the words "Good Grape" or "Drink Good Grape";

With the result that retailers and dispensers were enabled to pass off said beverage as and for a product containing a substantial amount of grape juice, and a grape drink, the ultimate purchaser was deceived into believing that he was buying grape juice or a product made from the fruit of the

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grape, and trade was diverted from manufacturers of grape juice, and from manufacturers of products similar to those herein concerned who did not use the word "Grape" or the words "Fruit of the Vine" in connection with the advertisement and sale of their products:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. E. J. Hornibrook for the Commission.

Bloodworth & Fort of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Tennessee corporation, with offices and manufacturing plant in Chattanooga, and engaged in the manufacture of a concentrate or syrup not made of the juice from the grape or the fruit thereof, though colored to simulate such juice, and known as "Good-Grape," and in the sale thereof to numerous bottling plants throughout various States and foreign countries, for use by them in manufacturing a beverage also known, advertised and sold in interstate commerce under respondent's said trade name or brand "Good-Grape"; with naming or designating its product misleadingly, advertising falsely or misleadingly and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in the following acts and practices:

Respondent, as alleged, for more than one year preceding the complaint, in its advertising matter in publications of general circulation "has published and represented to the purchasing public its product, known and sold under its trade name, brand or label "Good-Grape" in such a way and with such qualifying statements used in the advertisements thereof and in connection therewith so as to import to a substantial part of the purchasing public that the said product was the juice from the natural fruit of the grape," using in its advertising matter a picture of a junior pirate designated "Cap'n Grapejack" together with such descriptive matter as "Good-Grape brings you the real, rich flavor of the sugary grapes—and there's a good reason why, for its wonderful flavor is derived by an entirely new process from the fruit itself. * * *" "Cap'n Grapejack wants to give you, with his compliments, a cool, delicious bottle of Good-Grape 'fruit of the vine,' etc., and has caused its product to be marketed and sold its aforesaid product in bottles containing a metal crown and paper label featuring prominently its aforesaid trade name, brand or label together with its trade slogan

"Fruit of the vine," thereby tending to and directly asserting or clearly importing and implying, through the aforesaid advertising and through the aforesaid name, brand or label and the aforesaid slogan, whether used independently or in conjunction with another "to a substantial part of the purchasing public that the said product is composed of the juice from the natural fruit of the grape."

The complaint alleged that the use by respondent "of its trade name, brand or label 'Good-Grape' in connection with its product, without additional words of explanation—to the effect that said product is not made of the juice from the natural fruit of the grape—has the capacity and tendency to mislead or deceive the purchasing public into the erroneous belief that such product is made of the juice of the grape, or the fruit of the same, and that said purchasing public buys respondent's product on the strength of such misleading and deceptive trade name, brand or label," and that respondent's advertising, labels, trade name or brand and slogan used either independently or in connection or in conjunction each with the other "are calculated to and have the effect of stifling and suppressing competition in the sale of beverages made in whole or in part from the juice from the natural fruit of the grape and further in diverting trade from truthfully marked goods"; to the prejudice of the public and of respondent's competitors, a considerable number of whom are engaged in the manufacture and sale of beverages composed in whole or in part of the juice from the natural fruit of the grape.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondent, Good-Grape Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer to the complaint herein, hearings were had and evidence was introduced on behalf of the Commission and of the respondent, before William F. Dinnen, an examiner of the Federal Trade Commission theretofore duly appointed, and the said examiner having filed his findings of fact herein, and the respondent having filed its exceptions thereto:

Thereupon, this proceeding came on for final decision on the record herein, and briefs and oral arguments having been filed and made in

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behalf of the Commission and the respondent, and the Commission, being fully advised in the premises, makes this, its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, the Good-Grape Co., is a corporation organized and existing under and by virtue of the laws of the State of Tennessee, with its principal offices and a manufacturing plant located in the city of Chattanooga, State of Tennessee. It was incorporated October 10, 1922. It has an authorized capital stock of \$400,000, \$280,000 of which has been sold. It does an annual business of \$300,000. It is now, and has been for more than two years last past, engaged in the manufacture of a concentrate or syrup called by it "Good-Grape Concentrates," and in the sale of the same in interstate commerce to numerous bottling plants located in several States of the United States. These bottling plants are hereinafter referred to as "customers." This said "Good-Grape" concentrate, when so sold to such customers, is shipped to them by the respondent from its said place of business in Chattanooga, Tenn., to the various points of location of the said customers, outside the State of Tennessee. Said concentrate, or syrup, is used by said customers for the purpose of manufacturing a beverage known to the trade and ultimate consumers thereof as "Good-Grape." Good-Grape is respondent's trade name for said beverage. Said beverage is sold by the said customers of respondent under respondent's trade name, "Good-Grape." This beverage is nationally advertised by the respondent under the name "Good-Grape"; respondent having spent more than \$250,000 in nationally advertising the same under said trade name in different States of the United States. Respondent's said concentrate is sold and shipped to its said customers located throughout the different States of the Union in two parts, each part contained in a gallon jar numbered by respondent as "No. 1" and "No. 2." The contents of these two jars are mixed by its said bottling customers according to directions placed by respondent upon said jars No. 1 and No. 2, and sold as a beverage by such customers to retailers under the name of "Good-Grape." This beverage is, in turn, sold by such retailers to ultimate consumers under the name of "Good-Grape."

PAR. 2. The beverage, Good-Grape, is usually sold at the counters of delicatessen, drug and soda stores. The custom of this trade, in serving this beverage, is to remove the cap, or crown, and serve the same in a bottle or in a glass. The cap, or crown, is not usually seen by the consumer.

PAR. 3. As a means of inducing the public to purchase this beverage, respondent, for more than two years last past, at its own expense, has caused advertisements to be inserted in publications of general circulation throughout the several States of the United States, and by means of this and other advertising matter which it circulates in interstate commerce, has represented to the purchasing public that this beverage is the juice from the natural fruit of the grape.

PAR. 4. Said beverage is not made from the natural fruit of the grape, but is an imitation grape product, artificially colored and flavored.

PAR. 5. The bottling of the beverage Good-Grape, and the labeling of the bottles containing the same, when the same are labeled, is done by respondent's customers. All of the labels used by such customers in the bottling of the beverage Good-Grape bear the name "Good-Grape," and some of these labels have, in addition, printed thereon the phrase or slogan, "Fruit of the vine." The respondent does not print these labels. When said customers order bottle labels from respondent, the order is referred by respondent to a printer who has a stock of labels which have been designed and approved by respondent, and the order is filled by the printer. These said labels are shipped to respondent's customers for use in the bottling, sale and marketing of said beverage, and are sometimes used in such bottling, sale and marketing, in States outside of the State of Tennessee, with the consent and approval of respondent.

PAR. 6. Crowns, or bottle caps, bearing the words "Good-Grape," upon an order therefor, are furnished by respondent and used by its customers in different States of the Union in the bottling of Good-Grape. Prior to June, 1923, the crowns so furnished by respondent had simply the words "Good-Grape" printed thereon. Since June, 1923, the crown furnished by respondent and used by its customers, has the words printed upon it, in addition to the words "Good-Grape"; "Imitation, artificially colored and flavored," in very small letters. The said words, "Imitation, artificially colored and flavored," can be read only by most careful scrutiny. The words "Good-Grape" are printed in much larger letters and can be read at a glance. "Good-Grape" crowns exactly like the one last described are also manufactured in Baltimore, New York, and Philadelphia, and can be ordered by customers of the respondent directly from the manufacturers thereof, but will not be delivered to such customers without permission on the part of the respondent. The design of these last named crowns has been approved by this respondent. Ultimate purchasers of the finished beverage, Good-Grape, are not placed on notice that the beverage is an imitation,

artificially colored and flavored, by the small letters spelling the words to that effect appearing upon the crown now used as aforesaid upon the bottles containing the beverage Good-Grape.

PAR. 7. Respondent recommends the use, on the part of its aforesaid customers, in the bottling of said beverage, of a bottle which has the name "Good-Grape" blown therein. Said bottle was designed by this respondent, but is not manufactured by it. This bottle is in general use by the said customers and by their retail customers, in the bottling, marketing and sale of said beverage.

PAR. 8. In all of respondent's advertising, and on the bottles so suggested for use, no reference is made to the beverage being an imitation, or that it is artificially colored and flavored, except on the crown, as aforesaid.

PAR. 9. The labels appearing upon concentrates "No. 1" and "No. 2" as aforesaid, bear the following instructions as to the making of the finished beverage:

Pour 72 ounces of No. 1 and 72 ounces of No. 2 over 100 pounds of sugar. Add $16\frac{1}{2}$ gallons of water. Mix thoroughly. Throw 2 ounces of this light syrup to a $6\frac{1}{2}$ ounce bottle. Carbonate it 25 to 30 pounds.

By following the directions set forth last above, these two jars of concentrates will make, and do make, 290 gallons of the finished beverage, which will fill approximately 5,000 $6\frac{1}{2}$ -ounce bottles with the beverage Good-Grape. Good-Grape is sold only in $6\frac{1}{2}$ -ounce bottles.

PAR. 10. There is not to exceed 93% of grape wine in concentrate No. 1. There is no other grape product in concentrate No. 1. Grape wine is not the juice from the natural fruit of the grape, nor is it grape juice, nor is it the fruit of the vine. Grape wine is manufactured from grape juices by a process of fermentation, by means of yeast. This process is such that the juice is entirely changed in chemical and physical characteristics from grape juice. The product known to the trade and public as "Grape Juice" contains nothing but the grape itself, except in years when the sugar content of the grape is low, and in such years a small percentage of sugar is added. The term "Fruit of the vine," as used by respondent and its customers, means the grape itself. There is no grape juice or grape wine or fruit of the grape in concentrate No. 2. These said concentrates contain a number of ingredients that are found in grape juice, such as sugar, methyl anthranilate and tartaric acid, but these ingredients as used by respondent are commercial products obtained from sources other than grapes.

PAR. 11. The finished beverage Good-Grape has a pronounced grape flavor and is very near the color of the Concord grape. The

flavor of this beverage is derived from artificial flavoring and the color from coal tar dyes obtained from concentrates No. 1 and No. 2. The principal flavor of the beverage Good-Grape is derived from the ingredient methyl anthranilate. The methyl anthranilate in concentrate No. 1 equals the methyl anthranilate from 350 gallons of grape juice. 350 gallons of grape juice would cost at wholesale the sum of \$313. The wholesale cost of all ingredients in Good-Grape concentrates is \$4.72. Good-Grape beverage is mixed by said bottling customers according to the direction placed upon said jars by respondent. When so mixed, said beverage contains less than seven-tenths of 1 per cent of the product of the grape. This is not sufficient either to color or flavor the beverage. The beverage as sold to the consumer is not grape juice, nor does it contain juice from the natural fruit of the grape, nor does it contain the fruit of the grape.

PAR. 12. Both Good-Grape concentrates and the bottled beverage, Good Grape, are sold in competition with Grape-Juice and other grape products and imitation grape products sold by other individuals, firms, partnerships, and corporations in interstate commerce. There are other individuals, partnerships and corporations manufacturing concentrates similar to those manufactured by this respondent, used in the bottling of an imitation grape beverage similar to the beverage Good-Grape, which concentrates and beverages are in competition in interstate commerce with the concentrates of the respondent and the beverage Good-Grape. Some of these last named individuals, partnerships and corporations do not use or suggest the use of the word "grape" in connection with the bottling, branding, marketing or sale of such concentrates or such beverages.

PAR. 13. The beverage Good-Grape is sometimes sold by retailers and dispensers thereof, and purchased by consumers thereof, as and for grape juice, and often so sold and purchased as a product containing a substantial amount of grape juice, and very often so sold and purchased as a grape drink. Said beverage is not grape juice, does not contain more than seven-tenths of 1 per cent of the product of the grape, and is not a grape drink. Such retailers and dispensers are enabled to pass off said beverage as and for grape juice, a product containing a substantial amount of grape juice and a grape drink, as aforesaid, because of the color and odor of the same, the bottle and crown used as aforesaid, and the advertising of the respondent as herein particularly described.

PAR. 14. Respondent has caused its said calendars, metal signs and other advertising material to be transported from the place where manufactured to customers who are located in States other than the

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State wherein the same are manufactured. These customers, under the instructions of respondent, then distribute said advertising materials among their customers who sell Good-Grape beverage to the consumer. In all of its advertising where colors are used, the picture of a bottle as containing a purple or grape-colored liquid is printed. In many of its advertisements, under the words "Good-Grape," appear the words "Fruit of the Vine."

PAR. 15. The respondent, at its own cost, caused to be published in newspapers in several of the States of the United States, advertisements which read as follows:

Good-Grape, Fruit of the Vine. Good-Grape brings you the real rich flavor of sugary grapes, and there is a good reason why, for this wonderful flavor is derived by an entirely new process from the fruit itself. Good-Grape is a carbonated grape drink, full of life and snap and pep.

Cap'n Grape Jack is a good little kid pirate who has a real treasure he wants to share with you. His treasure comes in bottles—and you are going to like it immensely. It is known as Good-Grape—a new, sparkling grape drink, unlike any beverage you have ever before heard of or tasted.

PAR. 16. Respondent has furnished and circulated among its various customers, between October 10, 1922, and June, 1923, for use in advertising Good-Grape beverage, and which were so used by said customers, 100,000 of the caricature of a boy pirate, which it named "Cap'n Grape Jack," upon which was printed the words "Good-Grape, Fruit of the Vine."

PAR. 17. Respondent has distributed between October 10, 1922, and May 27, 1924, among its customers, for use in advertising the beverage Good-Grape, some 60,000 pasteboard and metal signs, upon which were printed the words "Good-Grape," or "Drink Good-Grape," without any explanation or statement that the beverage was artificially colored and flavored. These signs are used by said customers in advertising the beverage Good-Grape.

PAR. 18. Respondent's advertising, as aforesaid, and the said wording on said crowns, labels, bottles and signs, the name "Good-Grape," the coloration of the beverage and slogan "Fruit of the vine," as aforesaid, are misleading and false and the aforesaid use of the same has the tendency and capacity to and does deceive the ultimate purchaser of Good-Grape beverage into the belief that he is buying grape juice or a product made from the fruit of the grape.

PAR. 19. The use by respondent of its aforesaid advertising matter, and the use of the crowns, labels, bottles and signs, and the name "Good-Grape" and the coloration and odor of the beverage, as aforesaid, divert trade from the manufacturers of grape juice and from those who manufacture a product similar to that of respondent, and

who do not use the word "Grape" or the words "Fruit of the vine" in connection with the advertising and sale of their product.

PAR. 20. The above-described advertisements, as a whole, clearly tend to create in the minds of those who read them, the impression that Good-Grape is made entirely from the fruit of the grape and is grape juice. The name "Good-Grape" itself tends to and does create that impression, and unless accompanied in every instance by an explanation that Good-Grape is an imitation grape beverage, and is not grape juice, will continue so to do. In order to be effective in preventing such deception, such explanation should be in letters sufficiently large and prominent to insure being easily read at the same time as the words "Good-Grape" which it accompanies. Such letters should be at least one-half as high and one-half as wide as the letters in the word "Good-Grape" accompanying them, and of the heaviness of color, style and lettering which will render them at least equally as conspicuous in proportion to their height as the letters in the word "Good-Grape."

CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and respondent's competitors and are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony in support of the complaint and in opposition thereto, and on brief and argument of counsel, and the Commission having made its findings as to the facts, with its conclusion that the respondent has and is violating the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is ordered, That the respondent, Good-Grape Co., its officers, representatives, agents, servants, and employees, do cease and desist from directly or indirectly:

(1) Using or authorizing the use of the name "Good-Grape" whether on advertising matter relating to the concentrate "Good-Grape" or the beverage "Good-Grape" or on bottles or other con-

tainers thereof, or on labels, or crowns, or stoppers of such bottles or containers, or otherwise, unless and until the name "Good-Grape" is in every instance accompanied with an explanation in close proximity to the name "Good-Grape" in letters at least one-half as high and one-half as wide as the letters used in the accompanying name "Good-Grape," and of heaviness of color and style of lettering which will render them at least equally as conspicuous in proportion to their height and width as the letters in the accompanying name "Good-Grape," which explanation shall contain the statement that the concentrate "Good-Grape" or the beverage "Good-Grape" is an imitation and is not grape juice. The following may be used for this explanation: "Imitation grape—not grape juice."

(2) Using or authorizing the use by others in advertising or upon business stationery or on bottles or other containers or on labels, crowns, stoppers, or otherwise, or at all, the phrase or slogan "Fruit of the vine," in connection with the sale of (a) a concentrate or concentrates not made from grapes and not containing the juice from the natural fruit of grapes from which a beverage is made, or (b) a beverage, not made from grapes and not containing juice from the natural fruit of grapes.

(3) Using or authorizing the use by others in advertising or upon business stationery or on bottles or other containers or on labels, crowns, stoppers, or otherwise, or at all, any word or words, pictures or symbols falsely representing or suggesting (a) that a concentrate or concentrates from which a beverage is made, is made from grapes and contains the juice from the natural fruit of grapes, or (b) that a beverage, is made from grapes and contains the juice from the natural fruit of grapes.

It is further ordered, That respondent shall within sixty days after the 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 the order to cease and desist hereinbefore set forth.

Dissent by Commissioner Thompson to the form of the order in the case of the Federal Trade Commission v. The Good-Grape Co.

Commissioner Houston Thompson dissents from the form of the order made in the case of the *Commission v. The Good-Grape Co.*, for the following reasons:

He is opposed to any description of a commodity on a bottle, carton, or package which contains a statement that is not a true

description, as for example, when in the present case the beverage is labelled as "Good-Grape" and put up in a bottle, when in fact the beverage contains practically no fruit or fruit juices of the grape, but is an artificially colored and flavored substitute for grape.

Commissioner Thompson further dissents from the method adopted by the Commission in its attempt to correct the false use of the words "Good-Grape" or "Fruit of the vine," wherein it requires the respondent to place in close proximity to the words Good-Grape the following statement: "Imitation Grape—Not Grape Juice," even though the letters of the latter statement are one-half as high as those used in the phrase "Good Grape," since the two statements form an anomaly with the one contradicting the other even though it may attempt to explain it. More important than this, however, is the fact that when the substitute Good-Grape is colored like grape juice and revealed to the eye through the glass bottle, there is too much opportunity for either intentional or unintentional deception on the part of the seller, since the fluid, when poured into a glass, flows from an inverted bottle with the language of the explanation so reversed that it is impossible to read it under such conditions. In addition to this circumstance it is very likely that the explanation would be unintentionally covered by the hand of the clerk or distributor who was pouring the Good-Grape. The selection and use of such a name as Good-Grape, under the conditions that appear in this case, was so obviously for the purpose of deceiving the public into believing that it was getting the fruit of the vine when in fact it was purchasing a synthetic article, that the misrepresentation cannot be defended, while the correction to be sought by the order in this case is obviously impracticable.

Commissioner Thompson is of the opinion that in this case as well as in all others of a similar character, the label should either state that which the bottle actually contains, or refrain from making any statement in the description that is misleading or untrue, even though it is sought to explain the contents somewhere else on the bottle, carton, or article by other language.

IN THE MATTER OF
REINHART & NEWTON COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER
26, 1914

Docket 1304—April 13, 1926

SYLLABUS.

Where a corporation engaged in the manufacture of candy, and in the sale thereof to wholesale and retail dealers; advertised and sold assortments composed of a display card for the use of the retailer, and a large number of "marshmallow drops" to retail at one cent each, a few "five cent bars", and a base ball and glove, designed to be sold, and sold, at retail under a merchandising plan by which the chance selection and purchase by the ultimate consumer of one of a few pink center drops therein contained entitled him to a five cent bar, and the purchase of the last piece entitled him to the ball and glove, and by which the attention of the prospective purchaser was invited by the legend "PICK A PINK CENTER AND GET A FIVE CENT BAR OF CANDY FREE—THE LAST MARSHMALLOW DROP RECEIVES THE BASE BALL AND GLOVE—WAIT FOR THE FINISH", contained on the aforesaid card; with the result that the chance of winning one of the prizes thus offered induced many of the consuming public to purchase such "drops" to the prejudice of competitors who did not place in the hands of wholesale and retail dealers merchandise to be delivered to members of the general purchasing public, in addition to the candy sold them and without further charge, in accordance with a scheme or device of lot or chance:

Held, That such a practice, under the circumstances set forth, constituted an unfair method of competition.

Mr. William A. Sweet for the Commission.

Morrow, Dickerson & Kittering, of Cincinnati, Ohio, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Ohio corporation engaged in the manufacture of candies and sale thereof to wholesale and retail dealers, with principal office and place of business in Cincinnati, with using a lottery scheme in merchandising its product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in the following acts and practices:

Respondent, as alleged, for more than a year preceding the complaint supplied to its dealer vendees a package and assortment of