

Syllabus

IN THE MATTER OF

IRA W. MINTER AND CLAYTON A. MINTER, COPARTNERS, DOING BUSINESS UNDER THE NAME AND STYLE OF MINTER BROTHERS¹

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

Docket 1785. Complaint, Apr. 28, 1930—Decision, Apr. 3, 1934

Where a firm engaged in the manufacture and sale of candy, including two types of assortments composed of, (1) 40 bars of uniform quality, size and shape, within the individual wrappers of which there was concealed a slip containing thereon the figure 1¢, 2¢, 3¢, 4¢ or 5¢, as the case might be, as the price to be paid by the consumer to the retailer, depending on former's chance selection, and (2) 48 bars of uniform quality, size and shape, within the individual wrappers of which there were similarly concealed slips containing the figures 1¢, 2¢ or 3¢, as the price to be paid, as aforesaid,

Sold such assortments, together with explanatory display cards for retailer's use in advising ultimate consumer or purchaser of sales plan, under which he might procure a bar at a price ranging from 1 cent to 5 cents, or 1 cent to 3 cents, depending upon the particular assortment, and his chance selection, to wholesalers and jobbers in competition with concerns who do not offer and place in the hands of others packages or assortments of candy available for sale and distribution, without rearrangement, by lot or chance, and in competition with candy, a substantial amount of which is sold by retailers without any such immoral feature of lot or chance connected therewith, and sale of which is adversely affected by that of candy with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase the candies of said firm in preference to those of competitors due to chance of obtaining one of the pieces therein contained at less than the maximum price of 5 cents or 3 cents, as the case might be, competitors who do not sell candy so packed and assembled that it can be resold to the public by lot or chance were put to a disadvantage, and trade was diverted from them to said firm and others using similar methods, the industry was injured, gambling, and especially among children, was encouraged, a chance or lottery, instead of candy, was merchandised, retailers were provided with the means of violating the laws or public policy of the several states in selling and distributing candy by lot or chance, the industry was injured, and freedom of legitimate competition therein was restrained and impaired:

¹ For descriptive summary of the group of candy lottery findings and/or orders made by the Commission as of the same date, and including this case, see pp. 269, 276, 277.

Complaint

18 F.T.C.

Held, That such practices, under the circumstances set forth, were to the prejudice of competitors and the public, and constituted unfair methods of competition.

Mr. Henry C. Lank and Mr. G. Ed. Rowland for the Commission.

COMPLAINT

Acting in the public interest, 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 charges that Ira W. Minter and Clayton A. Minter, copartners doing business under the firm name and style of Minter Brothers, hereinafter referred to as the respondents, have been and are using unfair methods of competition in commerce, in violation of the provisions of Section 5 of the said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondents, Ira W. Minter and Clayton A. Minter, copartners doing business under the firm name and style of Minter Brothers, have their principal office and place of business located in the city of Philadelphia, State of Pennsylvania. They are engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and cause said products when so sold to be transported from their said principal place of business in the city of Philadelphia, State of Pennsylvania, into and through other States of the United States to said purchasers thereof at their respective points of location. In the course and conduct of their said business respondents are in competition with other individuals, partnerships, and corporations engaged in the manufacture of candies and in the sale and distribution thereof in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, the respondents sell to wholesalers and jobbers certain packages or assortments of candies.

(a) One of said assortments consists of forty candy bars of a uniform quality, size, and shape, and each of said pieces of candy is contained within a wrapper. Also, within each of said wrappers is a slip of paper which has printed thereon the retail price at which said piece of candy is to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The retail prices printed on said slips are 1¢, 2¢, 3¢, 4¢, or 5¢, and these prices are those which the consumer pays the retail merchant. The ultimate consumers thus

procure pieces of candy of a uniform quality, size, and shape at a price of 1¢, 2¢, 3¢, 4¢, or 5¢, the said price being determined wholly by lot or chance.

(b) Another of said assortments of candy consists of forty-eight candy bars of a uniform quality, size, and shape, and each of said pieces of candy is contained within a wrapper. Also, within each of said wrappers is a slip of paper which has printed thereon the retail price at which said piece of candy is to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The retail prices printed on said slips are 1¢, 2¢, or 3¢, and these prices are those which the consumer pays the retail merchant. The ultimate consumers thus procure pieces of candy of a uniform quality, size, and shape at a price of 1¢, 2¢, or 3¢, the said price being determined wholly by lot or chance.

Respondents furnish with each of said packages of said candy a display card to be used by the retailer in offering said candies for sale, which display card bears a legend or statement informing the prospective purchaser that he may procure said candies for from (a) 1¢ to 5¢, or (b) 1¢ to 3¢, in accordance with the sales plans above mentioned.

PAR 3. Aforesaid wholesale dealers of respondents resell said packages to retail dealers in various States of the United States, and said retail dealers expose said packages for sale in connection with the aforesaid display card and sell said candies to the purchasing public in accordance with the aforesaid plans, whereby the purchaser of said candies pays a price therefor of (a) 1¢, 2¢, 3¢, 4¢, or 5¢, or (b) 1¢, 2¢, or 3¢, said price in each case being determined wholly by lot or chance. Respondents thus supply to and place in the hands of others the means of conducting lotteries, in accordance with respondents' said sales plans.

PAR. 4. Respondents' aforesaid practices thus tend to and do induce many of the consuming public to purchase respondents' said candies in preference to the candies of respondents' said competitors because of the chance of obtaining one of said pieces of candy at a price of (a) 1¢, 2¢, 3¢, or 4¢ rather than at the maximum price of 5¢, or (b) 1¢ or 2¢ rather than at the maximum price of 3¢, which said prices in each case as to the consuming public are determined wholly by lot or chance.

PAR. 5. The above alleged acts and practices of respondents are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An

Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Ira W. Minter and Clayton A. Minter, copartners, doing business under the name and style of Minter Brothers, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

The respondents entered their appearance herein and entered into a stipulation with the chief counsel of the Federal Trade Commission whereby it was admitted that the facts set forth in the said complaint, Docket No. 1785, as to respondents' methods of competition in the sale and distribution of candy were true, and whereby it was agreed that immediately upon the affirmance by a United States Circuit Court of Appeals, or the Supreme Court of the United States, of an order to cease and desist, issued by the Commission against a respondent in a contested proceeding, involving practices or methods of sale of candy identical with or similar to those used by the respondents herein, the Federal Trade Commission might, without further proceedings of any kind, or notice to respondents, make and issue its findings as to the facts and conclusion, declaring the methods of sale and distribution as used by respondents herein to be unfair methods of competition, and issue its order requiring said respondents to cease and desist from such unfair methods of competition, and said respondents agreed to be bound by and obey said order to cease and desist. It was further agreed that said respondents admitted the facts alleged in paragraphs 1, 2, and 3 of said complaint to be true and that said stipulation might be accepted as an answer on behalf of the respondents to the charges of said complaint in lieu of any other answer to be filed by said respondents. Thereafter the Supreme Court of the United States on February 5, 1934, reviewed an order to cease and desist issued by this Commission against R. F. Keppel & Brother, Inc., and therein the said Supreme Court of the United States held methods of sale identical with or similar to those used by respondents herein to be unfair methods of competition. [291 U. S. 304.]

Thereupon this proceeding came on for final hearing on the complaint and stipulation above referred to, and the Commission having duly considered the record, and being 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, Ira W. Minter and Clayton A. Minter, are copartners doing business under the firm name and style of Minter Brothers and have their principal office and place of business in the city of Philadelphia in the State of Pennsylvania. Respondents are now, and for more than five years last past, have been engaged in the manufacture of candy in said city and State and in the sale and distribution of said candy to wholesalers and jobbers in the State of Pennsylvania and other States of the United States. They cause the said candy, when sold, to be shipped or transported from their principal place of business in the State of Pennsylvania to purchasers thereof in the States of the United States other than the State of Pennsylvania. In so carrying on said business respondents are and have been engaged in interstate commerce, and are and have been in active competition with other corporations, partnerships, and individuals engaged in the manufacture of candy, and in the sale and distribution of the same, in interstate commerce.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, the respondents sell to wholesalers and jobbers certain packages or assortments of candies.

(a) One of said assortments consists of forty candy bars of a uniform quality, size, and shape, and each of said pieces of candy is contained within a wrapper. Also, within each of said wrappers is a slip of paper which has printed thereon the retail price at which said piece of candy is to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The retail prices printed on said slips are 1¢, 2¢, 3¢, 4¢, or 5¢, and these prices are those which the consumer pays the retail merchant. The ultimate consumers thus procure pieces of candy of a uniform quality, size, and shape at a price of 1¢, 2¢, 3¢, 4¢, or 5¢, the said price being determined wholly by lot or chance.

(b) Another of said assortments of candy consists of forty-eight candy bars of a uniform quality, size, and shape, and each of said pieces of candy is contained within a wrapper. Also, within each of said wrappers is a slip of paper which has printed thereon the retail price at which said piece of candy is to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The retail prices printed on said slips are 1¢, 2¢, or 3¢, and these prices are those which the consumer pays the retail merchant. The ultimate consumers thus procure pieces of candy of a uniform quality, size, and shape

at a price of 1¢, 2¢, or 3¢, the said price being determined wholly by lot or chance.

Respondents furnish with each of said packages of said candy a display card to be used by the retailer in offering said candies for sale, which display card bears a legend or statement informing the prospective purchaser that he may procure said candies for from (a) 1¢ to 5¢, or (b) 1¢ to 3¢, in accordance with the sales plans above mentioned.

PAR. 3. Aforesaid wholesale dealers of respondents resell said packages to retail dealers in various States of the United States, and said retail dealers expose said packages for sale in connection with the aforesaid display card and sell said candies to the purchasing public in accordance with the aforesaid plans, whereby the purchaser of said candies pays a price therefor of (a) 1¢, 2¢, 3¢, 4¢, or 5¢, or (b) 1¢, 2¢, or 3¢, said price in each case being determined wholly by lot or chance. Respondents thus supply to and place in the hands of others the means of conducting lotteries whereby the price to be paid for one of the aforesaid pieces of candy by the purchasing public is determined wholly by lot or chance, in accordance with respondents' said sales plans.

PAR. 4. Among the competitors of respondents are many who sell candy at wholesale and who do not offer and place in the hands of others, any packages or assortments of candies which may be sold and distributed without rearrangement by lot or chance. Respondents' aforesaid practices thus tend to and do induce many of the consuming public to purchase respondents' said candies in preference to the candies of respondents' said competitors because of the chance of obtaining one of said pieces of candy at a price of (a) 1¢, 2¢, 3¢, or 4¢ rather than at the maximum price of 5¢, or (b) 1¢ or 2¢ rather than at the maximum price of 3¢, which said prices in each case as to the consuming public are determined wholly by lot or chance. For about eight years last past respondent has engaged in the acts and practices under the conditions and circumstances and with the results all hereinbefore set out.

PAR. 5. The sale and distribution of candy by the retailers by the methods described herein is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device. A substantial amount of candy is sold by retailers without any feature of lot or chance and not as a lottery or gaming device, and the sale of candy by lot or chance, as used by the respondents, is in direct competition with candy which is sold without any lot or chance feature, and the sale of candy without a lottery or gaming feature in connection

therewith is adversely affected by the sale of candy with the lottery or gaming feature.

PAR. 6. The Commission finds that the methods of selling and distributing candy as above described are morally bad and encourage gambling, especially among children; are injurious to the candy industry because they result in the merchandising of a chance or lottery instead of candy; and provide retail merchants with the means of violating the laws of the several States. As stated above, many competitors of respondents do not sell candy so packed and assembled that it can be resold to the public by lot or chance. The Commission finds that these competitors are therefore put to a disadvantage in competing, and that trade is diverted to respondents and others using similar methods, from said competitors. The use of such methods by respondents in the sale and distribution of candy is prejudicial and injurious to the public and their competitors, and has resulted in the diversion of trade to respondents from their said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 7. The sale and distribution of candy by lot or chance is against the public policy of many of the several States of the United States, and some of said States have laws making lotteries and gaming devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondents, Ira W. Minter and Clayton A. Minter, copartners, doing business under the name and style of Minter Brothers, under the conditions and circumstances set forth in the foregoing findings of facts, are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce and constitute a violation of Section 5 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".

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission upon the complaint of the Commission, the stipulation entered into between the respondents and the chief counsel for the Federal Trade Commission, and the Commission having made its findings as to the facts and conclusion drawn therefrom that the respondents have violated the provisions of an Act of Congress

Order

18 F.T.C.

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 now ordered, That the respondents, Ira W. Minter and Clayton A. Minter, copartners, doing business under the name and style of Minter Brothers, their agents, representatives, and employees, in the manufacture, sale and distribution in interstate commerce of candy and candy products do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages or assortments of candy which are used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size, shape and quality containing within their wrappers tickets bearing different prices.

(4) Furnishing to wholesale dealers, jobbers and retail dealers display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend, or legends, or statements, informing the purchaser that the candy or candy products are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(5) Furnishing to wholesale dealers, jobbers and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public:

(a) That certain bars of candy of uniform size, shape and quality will be obtained for a price of 1¢, 2¢, 3¢, 4¢, or 5¢, depending upon the price tag enclosed in the wrapper of the piece of candy selected by the purchaser.

(b) That certain bars of candy of uniform size, shape and quality will be obtained for a price of 1¢, 2¢, or 3¢, depending upon the price tag enclosed in the wrapper of the piece of candy selected by the purchaser.

It is further ordered, That the respondents above named within 30 days after the service upon them of this order shall file with the

Memoranda

Commission a report in writing, setting forth in detail the manner in which this order has been complied with and conformed to.

MEMORANDA

The Commission as of the same date made nine other findings and/or orders, involving the use of the same scheme set forth in the *Minter Brothers case* above, namely, sale of assortments in which there is concealed within the individual wrappers enclosing the separate bars or other pieces of candy, a slip containing the figure 1¢, 2¢, 3¢ (and also, in case of some, 4¢, or 5¢) as the price to be paid by the consumer to the retailer, depending on former's chance selection.

Of the nine cases above referred to, five involve findings and orders, of which findings and orders three are based upon respondents' stipulations consenting thereto, (as set forth in the second paragraph of the findings in the *Minter Brothers case*, *supra*, on page 290, *supra*) in event of court decision holding the practice an unfair method of competition, as was decided in the *Keppel case*, 291 U. S. 304, and two are based upon defaults under the provisions of Section 3 of Rule III of the Commission's Rules of Practice, the remaining four cases involving consent orders and all the orders being similar except as required to take care of slight variations in the nature of the assortments, and, subject to such qualifications, similar to that set forth in the *Minter Brothers case* above.

Notes of the five findings and orders referred to, together with dates on which complaints issued, follow:

Schwarz & Son, Inc., Docket 1793—Complaint, April 29, 1930.—Respondent manufacturer, with principal office and place of business in Newark, N. J., sells to wholesalers and jobbers, packages or assortments composed of forty pieces of hard candy of uniform quality, size and shape, within the individual wrapper of each of which there is concealed a slip of paper bearing the figure 1¢, 2¢, 3¢, 4¢, or 5¢, as the amount to be paid by the consumer purchaser to the retailer, depending on his chance selection, and furnishes to wholesale dealers and jobbers, with each of such packages or assortments, explanatory display cards for retailer's use in offering said candies to the public.²

Euclid Candy Co., Docket 1794—Complaint, April 29, 1930.—Respondent manufacturer, with principal office and place of business in New York City, and with places of business also in Cleveland and San Francisco, sells to wholesalers and jobbers assortments similar to those described in the *Schwarz case* above, and furnishes to said

² Findings and order pursuant to stipulation referred to in second paragraph of "memoranda", above.

wholesalers and jobbers explanatory display cards as hereinabove described.³

D. L. Clark Co., Docket 1797.—Complaint, April 30, 1930.—Respondent manufacturer, with principal office and place of business in Pittsburgh, sells to wholesalers and jobbers, forty-bar assortments of candy, of uniform quality, etc., similar to those hereinbefore described, except that it is set forth that one half of the forty pieces contain within their individual wrappers, 5¢ slips, and furnishes with each of the packages explanatory display cards as hereinbefore described.⁴

Charms Co., Docket 1800.—Complaint, April 30, 1930.—Respondent manufacturer, with principal office and place of business in Newark, N. J., sells forty-piece assortments of hard candies of assorted flavors, and of uniform quality, etc., containing within the individual wrappers thereof, slips with the figure 1¢, 2¢, 3¢, 4¢, or 5¢, as the price to be paid by the ultimate consumer purchaser to the retailer, as hereinbefore explained, and supplies to wholesale dealers and jobbers for retailer's use in offering said candies to the public, display cards which contain, in addition to necessary explanatory matter, the legends "You have a 50-50 chance", "Every other Pop sold at less than 5¢", and, "If you are lucky you can get one for 1¢".⁴

George H. Ruth Candy Co., Inc., Docket 1869.—Complaint October 30, 1930.—Respondent manufacturer, with principal office and place of business in New York City, sells to wholesalers and jobbers, packages or assortments composed of a number of bars of candy of uniform quality, size, etc., containing within the individual wrappers of each, slips as hereinbefore described, and furnishes to said wholesalers and jobbers, explanatory display cards with each package or assortment, for retailer's use as hereinabove set forth.⁵

Notes of the four cases involving consent orders, together with dates on which complaints issued, follow:

The Blackhawk Candy Co., Docket 1791.—Complaint, April 29, 1930.—Respondent manufacturer, with principal office and place of business in Davenport, Iowa, sells to wholesalers and jobbers, certain packages or assortments, consisting of 48 chocolate malted milk bars, of uniform quality, size and shape, within the individual wrappers of each of which there is contained a slip bearing the figure 1¢, 2¢, or 3¢, as the price to be paid by the consumer to the

³ Default findings and order as explained in second paragraph of memoranda.

⁴ Findings and order pursuant to stipulation referred to in second paragraph of "memoranda", above.

⁵ Default findings and order as explained in second paragraph of memoranda.

retail merchant, as hereinbefore explained, and furnishes to said wholesalers and jobbers explanatory display cards for retailer's use in offering said candies for sale.

Shotwell Manufacturing Co., Docket 1796.—Complaint, April 29, 1930.—Respondent manufacturer, with principal office and place of business in Chicago, and with places of business also in San Francisco and New York City, sells to wholesalers and jobbers, certain packages or assortments composed of 40 bars of candy of uniform quality, etc., within the individual wrappers of each of which there is a slip containing the figure 1¢, 2¢, 3¢, 4¢, or 5¢, as the price to be paid by the consumer to the retailer, as hereinbefore set forth, and furnishes to said wholesalers and jobbers, explanatory display cards for the retailer's use in offering said candies to the public.

Overland Candy Co., Docket 1822.—Complaint, May 3, 1930.—Respondent manufacturer, with principal office and place of business in Chicago, sells to wholesalers and jobbers, certain packages or assortments, similar to those described in the Shotwell case above, and furnishes as hereinbefore set forth, explanatory cards for retailer's use.

Rubay Candy Co., Docket 1863.—Complaint, August 12, 1930.—Respondent manufacturer, with principal office and place of business in Cleveland, sells to wholesalers and jobbers, forty-eight-bar assortments of candy of uniform quality, etc., within the individual wrappers of each of which there is a slip containing the figure 1¢, 2¢, or 3¢, as the price to be paid by the consumer to the retailer, as hereinbefore explained, and furnishes to said wholesalers and jobbers, with each of said packages, explanatory display cards for retailer's use in offering said candies to the public.

The appearances in the foregoing nine cases were as follows:

Mr. Henry C. Lank and *Mr. G. Ed. Rowland* for the Commission.
Saul and Joseph E. Cohn and *Mr. Joseph Susskind*, of Newark, N. J., for Schwarz & Son, Inc.

Mr. M. F. Donegan, of Davenport, Iowa, for The Blackhawk Candy Co.

Gallagher, Rinaker, Wilkinson & Hall, of Chicago, Ill., for Shotwell Manufacturing Co.

Edelson & Paullin, of Chicago, Ill., and *Mr. W. Parker Jones*, of Washington, D. C., for Overland Candy Co.

IN THE MATTER OF
ADVANCE CANDY COMPANY, INC.¹

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

Docket 1792. Complaint, Apr. 29, 1930—Decision, Apr. 3, 1934

Where a corporation engaged in the manufacture and sale of candy, including assortments composed of (a) a number of individually wrapped, penny pieces of hard candy of uniform quality, size and shape, and, (b) a small number of 5-cent packages of such candies, acquisition of which as prizes, and at no additional charge, was determined by the purchaser's chance selection of one of a relatively few of said penny pieces, included with the others, within the individual wrapper of which there was concealed a slip of paper so stating, and (c) a 10-cent package of such candies awarded as a prize, without additional charge, to the purchaser of the last one of the aforesaid penny pieces in the assortment,

Sold said assortments, together with explanatory display cards for retailer's use in advising prospective purchasers of the aforesaid merchandise plan, to wholesalers and jobbers in competition with concerns who do not offer and place in the hands of others additional candies or other merchandise to be given to purchasers by lot, chance or otherwise, and in competition with candy, a substantial amount of which is sold by retailers without any such immoral scheme or device connected therewith, and sale of which is adversely affected by that of the candy with the lottery or gaming features;

With result that many of the consuming public were induced to purchase its said candies in preference to those of competitors because of the chance of obtaining as a prize a 5-cent package, or 10-cent package, of candy, competitors who do not sell candy so packed and assembled that it can be resold to the public by lot or chance, were put to a disadvantage, and trade was diverted from them to it and others using similar methods, gambling, and especially among children, was encouraged, a chance or lottery, instead of candy, was merchandised, retailers were provided with the means of violating the laws or public policy of many of the states in selling and distributing candy by lot or chance, the industry was injured, and freedom of fair and legitimate competition therein was restrained and impaired:

Held, That such practices, under the circumstances set forth, were to the prejudice of competitors and the public, and constituted unfair methods of competition.

Mr. Henry C. Lank and Mr. G. Ed. Rowland for the Commission.

¹For descriptive summary of the group of candy lottery findings and/or orders made by the Commission as of the same date, and including this case, see pp. 269, 276, 277.