

## Syllabus

IN THE MATTER OF  
WALTER H. JOHNSON CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1817. Complaint, June 20, 1934<sup>1</sup>—Decision, Nov. 5, 1934*

Where a corporation engaged in manufacture and sale of candy, including four so-called "break and take" assortments, with explanatory display cards, composed of (1) forty bars of uniform quality, size, and shape, within the individual wrappers of which there was concealed a slip containing thereon "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, (2) forty-eight bars of uniform quality, etc., within the individual wrappers of which there was concealed a slip containing the figure "1¢", "2¢", or "3¢", as the price to be paid, as above set forth, (3) forty bars of candy, within the wrappers of ten of which there was concealed a slip bearing the word "free" and entitling the chance purchaser to such piece without payment of the 5 cents charged the purchasers of the other thirty bars; and (4) one hundred and fifty individually wrapped penny caramels, together with larger pieces to be given as prizes to chance purchasers of fifty-five of said penny pieces, the concealed centers of which were white;

Sold said various assortments and display cards so packed and assembled that they might and would be resold through such lottery or gaming devices, and could not be sold otherwise, without unpacking, disassembling, and rearranging the same to wholesalers, jobbers, and retailers, with knowledge that they would thus be resold to the consuming public, by lot or chance, in competition with concerns who regard such a method of sale and distribution as morally bad and one which encourages gambling, and especially among children and as injurious to the industry in merchandising a chance or lottery rather than candy, and providing retailers, who sell candy by such methods, with the means of violating the laws of the several States, and who refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance;

With the result that some of its competitors, who can compete on even terms only through following such practices to meet the growing demand for candy thus sold from small retailers near schools, and the preference of the largest class of purchasers and consumers of such candy, i. e., the children, were put to a disadvantage by reason of their refusal to make use thereof, and others felt constrained to adopt the same, trade was diverted from the former, to their prejudice and injury and that of the public, freedom of fair and legitimate competition in the industry concerned was restrained and harmed, gambling by children was taught and encouraged, and sales of so-called "straight goods" type with their larger pieces or better quality were decreased by the competition, principally, of the gambling or lottery feature connected with the other:

<sup>1</sup>Amended and supplemental.

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

*Mr. Henry C. Lank* for the Commission.

*Beach, Fathchild & Scofield*, of Chicago, Ill., for respondent.

## 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 heretofore on the 2nd day of May A. D. 1930, charged that Walter H. Johnson Candy Company, a corporation, hereinafter referred to as respondent, has been and was using unfair methods of competition in interstate commerce, in violation of Section 5 of said Act, and among its charges in that respect stated that respondent was then and for more than four years last past has been engaged in manufacturing candy, and selling and distributing said candy by three sales plans involving the use of a lottery or the distribution of candy by lot or chance.

Complaint aforesaid having been duly served upon respondent and respondent's answer duly filed, the matter proceeded to hearings which were had, and evidence was thereupon introduced on behalf of both the Commission and respondent before an examiner of the Federal Trade Commission theretofore duly appointed. During the course of the testimony on behalf of the Commission, it was adduced that respondent for more than one year theretofore past, and at the time of said hearings, was using a fourth sales plan by which its candy was sold and distributed to the consumer by a lottery, or by lot or chance. At the time of admitting said testimony, due notice was given by counsel for the Commission of a motion to amend the complaint in such manner as would conform to the aforesaid evidence and it was agreed by counsel for the Commission and counsel for the respondent that upon the conclusion of the taking of testimony that an amended complaint would be offered for filing, and counsel for the respondent waived its right to file answer thereto, and further agreed that the answer filed to the original complaint might stand as an answer to the amended complaint. Upon consideration of the premises and the aforesaid motion, the Commission now brings this, its amended and supplemental complaint, alleging and charging as follows, to wit:

PARAGRAPH 1. The respondent is a corporation organized under the laws of the State of Illinois, with its principal office and place

of business located in the city of Chicago, State of Illinois. It is now and for more than four years last past has been 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 causes said products when so sold to be transported from its said principal place of business in the city of Chicago, State of Illinois, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of the said business respondent is 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 its business, as described in paragraph 1 hereof, the respondent sells to wholesalers and jobbers certain packages or assortments of candy.

(a) Certain of said assortments of candies are composed of a number of candy bars of uniform size, shape, and quality and each of said bars is contained within a wrapper. The said bars of candy retail at the price of 5 cents each, but ten of the said bars have within the wrapper a printed slip of paper advising the purchaser thereof that the said bar is free. The said printed slip is effectually concealed from the consumer until he has removed the wrapper. The aforesaid purchasers of said bars of candy who procure a bar of candy containing one of the said printed slips thus procure the same free of charge rather than at the regular retail price of 5 cents each. The fact of whether the purchasers of said bars of candy in said assortments procure the same free of charge or pay the regular price of 5 cents each, therefore, is thus determined wholly by lot or chance.

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

(c) Certain of said assortments of candy are composed of a number of bars of candy of uniform size, shape, and quality and

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each of said bars 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 the said bars of candy are to be sold to the consuming public. Said printed slip is effectually concealed from the consumer until he has removed the said wrapper. The prices printed on said slips are 1¢, 2¢, 3¢, 4¢, or 5¢, and these are the prices which the consumer pays the retail merchant. The ultimate consumers thus procure bars of candy of uniform size, shape, and quality at a price of 1¢, 2¢, 3¢, 4¢, or 5¢, the same being determined wholly by lot or chance.

(d) Certain of said assortments of candies are composed of a number of pieces of caramel candies of uniform size, shape, and quality, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said caramel candies in the following manner:

The majority of the said caramel candies in said assortments are of the same color throughout, but a small number of said caramel candies have white centers. The said pieces of candy of uniform size, shape, and quality in said assortments retail at the price of 1 cent each, but the purchasers who procure one of said candies having a white center are entitled to receive, and are to be given free of charge, one of the said larger pieces of candy hereinbefore referred to. The aforesaid purchasers of said candies who procure a candy having a white center thus procure one of the said larger pieces of candy wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with said assortments of candies display cards to be used by retailers in offering said candies for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candies are being sold in accordance with the sales plans above mentioned.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in various States of the United States and said retail dealers expose said assortments for sale in connection with the aforesaid display cards and sell said candies to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the respondent's sales plans hereinabove set forth.

PAR. 4. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase respondent's said candies in preference to candies of respondent's competitors because of (a) the chance of obtaining certain bars of candy free of charge

rather than at the price of 5 cents each, or, (b) the chance of obtaining one of said bars of candy at a price of 1 cent or 2 cents rather than at the maximum price of 3 cents, or, (c) the chance of obtaining one of said bars of candy at a price of 1 cent, 2 cents, 3 cents, or 4 cents rather than at the maximum price of 5 cents, or, (d) the chance of obtaining said larger pieces of candy free of charge.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's 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, 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 a complaint and an amended and supplemental complaint upon the respondent, Walter H. Johnson Candy Company, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent filed its answer to the original complaint and it was agreed that such answer might stand as an answer to the amended and supplemental complaint. The case was set down for the taking of testimony before an examiner of the Commission and evidence was offered by counsel for the Commission and by counsel for the respondent.

Thereupon, this proceeding came on for hearing on the briefs of counsel for the Commission and for the respondent and upon the record. The Commission, now having considered the matter 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. Respondent, Walter H. Johnson Candy Company, is a corporation organized under the laws of the State of Illinois with its principal office and place of business in the city of Chicago, State of Illinois. Respondent is now, and for more than eight years last past, has been engaged in the manufacture of candy in Chicago, Ill., and in the sale and distribution of said candy to wholesalers and job-

bers in the State of Illinois and other States of the United States. It causes the said candy, when sold, to be shipped or transported from its principal place of business in the State of Illinois to purchasers thereof in Illinois and in the States of the United States other than the State of Illinois. In so carrying on said business, respondent is and has been engaged in interstate commerce, and is and has 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. Among the candies manufactured and sold by respondent was an assortment of candy consisting of forty candy bars of a uniform quality, size and shape, and with each of said candy bars contained within a wrapper. Also, within each of said wrappers was a slip of paper which had printed thereon the retail price at which said piece of candy was to be sold to the consuming public. Said printed slip was effectively concealed from the consumer until he had removed the said wrapper. The retail prices printed on said slips were 1¢, 2¢, 3¢, 4¢, or 5¢, and these were the prices which the consumer paid the retail merchant. The ultimate consumers thus procured 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.

PAR. 3. Another package of candy manufactured and sold by respondent consisted of forty-eight candy bars of a uniform quality, size and shape, and with each of said candy bars contained within a wrapper. Also, within each of said wrappers was a slip of paper which had printed thereon the retail price at which said piece of candy was to be sold to the consuming public. Said printed slip was effectively concealed from the consumer until he had removed the said wrapper. The retail prices printed on said slips were 1¢, 2¢, or 3¢, and these were the prices which the consumer paid the retail merchant. The ultimate consumers thus procured 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.

PAR. 4. The respondent also manufactured and distributed an assortment of candy consisting of forty bars of candy with each of said bars of candy contained within a wrapper. Within the wrapper of ten of said bars of candy was a slip of paper stating that the bar of candy was *free*, the other thirty bars of candy to be retailed at a price of 5 cents each. The said slips of paper bearing the statement that the bar of candy was free were effectively concealed from the consumer until he had made his selection and removed the wrapper. Whether the ultimate consumers procured a bar of candy

free or paid 5 cents for it was thus determined wholly by lot or chance.

PAR. 5. In each of said assortments as described in paragraphs 2, 3, and 4 above, was fastened a display card bearing legends printed thereon stating that the bars of candy were being sold by the methods above described (Com. Exs. 1, 2, 7, and 11a).<sup>2</sup>

PAR. 6. Subsequent to the issuance of the complaint, but prior to the taking of testimony herein the respondent has been manufacturing and distributing assortments of candies composed of a number of pieces of caramel candy of uniform size, shape and quality, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said caramel candies in the following manner: The majority of the said caramel candies in said assortments are of the same color throughout, but a small number of said caramel candies have white centers. The said pieces of caramel candy of uniform size, shape and quality in said assortments retail at the price of 1 cent each, but the purchasers who procure one of the said pieces of caramel candy of uniform size, shape, and quality having a white center are entitled to receive and are given free of charge, one of the said larger pieces of candy hereinbefore referred to. The pieces of caramel candy of uniform size, shape, and quality are contained within a wrapper and the color of the center is effectively concealed from the prospective purchaser until after a selection has been made and the wrapper removed. The aforesaid purchasers of said candy who procure a candy having a white center thus procure one of the said larger pieces of candy wholly by lot or chance. The assortment as above described, which respondent was distributing at the time of the taking of testimony contained 150 pieces of caramel candy retailing at 1 cent each, 55 of which had white centers and were prize winners.

PAR. 7. Subsequent to the issuance of the complaint herein, but prior to the taking of testimony herein, the respondent discontinued the manufacture and distribution of the assortments of candy described in paragraphs 2, 3, and 4 of these findings. The respondent did, subsequent to discontinuing the above assortments, begin the distribution of the assortment described in paragraph 4 of these findings, but had again discontinued the manufacture and the distribution thereof prior to the taking of the testimony in this case. This Commission, however, has no assurance that the respondent will not again begin the manufacture and distribution of these several assortments.

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<sup>2</sup> Not published.

PAR. 8. The lottery, prize, or draw packages described in paragraphs 2, 3, 4, and 6 above, are generally referred to in the candy trade or industry as "break and take" packages. The packages or assortments of candy without the lottery, prize or draw features in connection with their resale to the public are generally referred to in the candy trade or industry as "straight goods." These terms will be used hereafter in these findings to describe these respective types of candy.

PAR. 9. Numerous retail dealers purchase the packages described in paragraphs 2, 3, 4, and 6 above either from respondent or from wholesale dealers or jobbers who in turn have purchased said packages from respondent, and such retail dealers display said packages for sale to the public as packed by the respondent, and with the display card furnished by the respondent, and the candy contained in said packages is sold and distributed to the consuming public in the manner suggested by respondent.

PAR. 10. All sales made by respondent are absolute sales, and respondent retains no control over the goods after they are delivered to the wholesale dealer or jobber, or retail dealer. The packages are assembled and packed in such manner that they can be displayed by the retail dealer for sale and distribution to the purchasing public as suggested by the display card enclosed in each package without alteration or rearrangement. An examination of the packages or assortments of candy described in paragraphs 2, 3, 4, and 6 herein, as packed, assembled, and sold by respondent, shows that said packages or assortments can not be resold to the public by the retail dealers except as a lottery or gaming device, unless said retail dealers unwrap, unpack, disassemble, or rearrange the said packages or assortments.

In the sale and distribution to jobbers and wholesale dealers, for resale to retail dealers, of packages and assortments of candy assembled and packed as described in paragraphs 2, 3, 4, and 6 herein, respondent has knowledge that said candy will be resold to the purchasing public by retail dealers by lot or chance, and it packs and assembles such candy in the way and manner described, so that it may and shall be resold to the public by lot or chance by said retail dealers.

PAR. 11. The sale and distribution of candy by the retailers by the methods described in the findings as to the facts herein, is a sale and distribution of candy by lot or chance, and constitutes a lottery or gaming device.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact, that many com-

petitors regard such method of sale and distribution as morally bad and encouraging gambling, especially among children, as injurious to the candy industry, because it results in the merchandising of a chance or lottery instead of candy, and as providing retail merchants with the means of violating the laws of the several States. Because of these reasons some competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. Certain retailers who find that they can dispose of more candy by the "break and take" method, buy respondent's products and the products of others employing the same methods of sale, and thereby trade is diverted to respondent, and others using similar methods, from said competitors. Said competitors can compete on even terms only by giving the same or similar devices to retailers. This they are unwilling to do, and their sales of "straight goods" candy show a continued decrease.

There is a constant and growing demand for candy which is sold by lot or chance, and in order to meet the competition of manufacturers who sell and distribute candy which is sold by such methods, some competitors of respondent have begun the sale and distribution of candy for resale to the public by lot or chance. The use of such methods by respondent in the sale and distribution of its candy is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 12. The principal demand in the trade for the "break and take" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of the school children. The consumers or purchasers of the lottery or prize package candy are principally children, and because of the lottery or gambling feature connected with the "break and take" package, and the possibility of becoming a winner, it has been observed that the children purchase them in preference to the "straight goods" candy when the two types of packages are displayed side by side.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that children prefer to purchase the lottery or prize package candy because of the gambling feature connected with its sale. The sale and distribution of "break and take" packages or assortments of candy or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages

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gambling among children, who comprise by far the largest class of purchasers and consumers of this type of candy.

PAR. 13. The pieces of candy in the "break and take" packages of all manufacturers of that type of candy are either smaller in size than the corresponding pieces of "straight goods" candy, or the quality of the candy in the "break and take" packages is poorer than that in the "straight goods" assortments. It is necessary to make this difference between either the size of the individual pieces of candy or the quality of the candy in order to compensate for the value of the prizes or premiums which are distributed with the "break and take" goods, or to compensate for the reduced price at which some of the pieces of candy are sold.

PAR. 14. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize packages of assortments of candy and who sell their "straight goods" candy in interstate commerce in competition with the "break and take" candy, and manufacturers of the "straight goods" type of candy have noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight goods" candy is principally due to the gambling or lottery feature indicated with the "break and take" candy.

PAR. 15. In addition to the assortments described in paragraphs 2, 3, 4, and 6 herein, the respondent manufactures candy which it sells to wholesalers and jobbers without any lottery or chance features. It began the manufacture and distribution of the assortments as described in paragraphs 2, 3, and 4 at the time of its organization in the year 1925 and has continuously, to the time of taking testimony in this case, manufactured some assortments involving the distribution of candy by lot or chance. For the year 1930 respondent's total volume of business was approximately \$1,200,000. Approximately two years prior thereto the "break and take" candy business of the respondent represented about 50 percent of the respondent's total business. This percentage has, however, had a gradual decline and is now approximately 15 percent of the respondent's total volume.

PAR. 16. The sale and distribution of candy by lot or chance is against the public policy of many of the States of the United States, and some of the said States have laws making lotteries and gambling devices penal offenses.

## CONCLUSION

The aforesaid acts and practices of respondent, Walter H. Johnson Candy Company, under the conditions and circumstances set forth in

the foregoing findings of facts are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce and constitute violations 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 heard by the Federal Trade Commission upon amended and supplemental complaint of the Commission, the answer of the respondent, the testimony taken and the briefs filed, and the Commission having made its findings as to the facts and conclusion that the respondent has violated 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 now ordered*, That the respondent, Walter H. Johnson Candy Company, its officers, 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 to be made or may be made 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, bars of candy of uniform size, shape and quality containing within their wrappers tickets bearing different prices.

(4) Packing or assembling in the same package or assortment of candy for sale to the public at retail, bars of candy of uniform size, shape and quality, some of which contain within their wrappers tickets bearing the price of 5 cents, and others containing within their wrappers tickets stating that the particular bar of candy is free.

(5) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size,

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shape, and quality having centers of a different color, together with larger pieces of candy, which said larger pieces of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(6) 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.

(7) 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¢, respectively, depending upon the price tag enclosed in the wrapper of the bar 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¢, respectively, depending upon the price tag enclosed in the wrapper of the bar of candy selected by the purchaser.

(c) That certain bars of candy of uniform size, shape, and quality will be obtained for a price of 5 cents, or will be obtained free of charge, depending upon the printed wrapper enclosed in the wrapper of the bar of candy selected by the purchaser.

(d) That upon the obtaining by the ultimate purchaser of a piece of candy with a particular colored center that a larger piece of candy will be given free to said purchaser.

*It is further ordered*, That the respondent, Walter H. Johnson Candy Company, within 30 days after the service upon it of this order shall 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 hereinabove set forth.

## Syllabus

IN THE MATTER OF  
ODORA COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2166. Complaint, Mar. 15, 1934—Decision, Nov. 5, 1934*

Where a corporation engaged in the manufacture of kraft corrugated, permeable cardboard receptacles such as closets and chests, and in the sale thereof, knocked down, to retail dealers and jobbers, for resale to the public, for use, set up, for storage of clothes, etc., in substantial competition with sellers of such effective storage receptacles for moth protection as tight cabinets or chests containing in the body proper at least 70 percent of  $\frac{3}{4}$ -inch red cedar wood, and with sellers of tight storage receptacles of cardboard or heavy paper, garment bags, and other articles for similar purposes,—

Marked, branded, and represented its aforesaid closets and chests as “cedarized” and so sold the same to dealers, by whom they were thus designated and sold to the public, and represented in advertisements which it circulated throughout the United States among dealers and purchasers and prospective purchasers, and which it encouraged dealers to publish, and to the expense of which latter advertising it contributed, that the so-called cedar retainers, or “cedarizers”, which contained oil of cedar and were enclosed within its said receptacles, gave forth a pungent cedar vapor guaranteed to be continuous for a year, with assurance of lasting protection from moths to articles stored therein, through providing an atmosphere obnoxious to the flying and egg-laying forms of moth life, and that the public could trust said receptacles like cedar walls, by reason of said fact and the fact that they were dust-proof, damp-proof and insect-proof, and that if clean garments were placed therein infestation or moth damage would not occur;

The facts being that they were neither dust-proof, damp-proof, moth-proof, nor moth-deterrent, and that the so-called cedar retainers, or strips of absorbent paper sprayed with a cedar oil combination, contained only a small fraction of the amount of such oil necessary for the vapor therefrom to act as a fumigant in substantially airtight cedar chests in destroying the destructive moth larvae, as was also true of its so-called “cedarizers”, or small receptacles within which such oil, cedar shavings, and other substances were stored, and that the loose joints of said receptacles, set up, permitted the evaporation of a large part of the oil in said retainers even before reaching the consuming public, and permitted the entry of air, dust and moths;

With effect of deceiving and misleading the public through said representations made by it and its dealers, into the belief that its said receptacles had the qualities pertaining to wood cedar chests by reason of the oil included therewith, as above set forth, and would retain said characteristics during the time articles subject to damage from moths were stored therein, and that they were damp-proof, dust-proof, and moth-proof, and could not be entered by moths when used for storage purposes, and into purchasing the same in reliance upon such beliefs, instead of the aforesaid much more costly wood cedar chests, or other storage receptacles of competitors, and thus diverting trade to it from competitors: