

Syllabus

IN THE MATTER OF

WILLARD B. CASTERLINE, INDIVIDUALLY AND TRADING AS CASTERLINE BROTHERS

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

Docket 2568. Complaint, Oct. 4, 1935—Decision, Oct. 22, 1936

Where an individual, engaged in purchase of candy and chewing gum in bulk, and in repacking and selling a substantial portion of his said merchandise, advertised in periodicals of nation-wide circulation and resold in practically all stores where such products are sold, arranged as "break-and-take," "draw," or "deal" assortments, principal trade demand for which comes from the small retailers with stores in many instances near schools and patronized by the school children, and sale and distribution of which, or similarly sold candy, offering the opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, the largest class by far of purchasers and consumers of such assortments, who buy same in preference to the so-called "straight" goods when displayed side by side, by reason of the lottery or gambling feature connected with the former, and sale of which in the market of the other, i. e., the "straight" goods, sold exclusively by many manufacturers, has been followed by a marked decrease in sale of such "straight" candy or gum due to the gambling or lottery feature of the so-called "break-and-take," "draw," or "deal" merchandise—

Sold to wholesalers and jobbers of candy and chewing gum, located generally throughout the United States, together with punchboards, push cards, and explanatory display cards for retailers' use (1) assortments in which number punched by chance from board by penny purchaser determined whether particular purchaser received one or two sticks of gum, or one or two small packages of candy, or one of the other articles of merchandise included, or the half pound box of candy secured by last punch on board; (2) assortments in which number pushed by chance from card by nickel purchaser determined whether particular purchaser received one package of chewing gum, one or two packages of candy, or one of the other articles of merchandise included, or half pound box of candy procured by last push on card; and (3) assortments of penny candies of uniform size and shape, in which chance selection of certain pieces, colored centers of which differed from those of the majority, resulted in particular purchaser making such chance selection receiving one of larger pieces included with assortment, or one of the other articles of merchandise thus included, and in which purchaser of last piece in assortment secured a half pound box of candy; so packed and assembled that such various assortments could be and were displayed and offered by the numerous retail dealer purchasers thereof, and with knowledge and intent that such assortments would and could be sold, without alteration, addition, or rearrangement, to public by lot or chance by such retail dealers therein; in violation of public policy, and in competition with many who regard such methods of sale and distribution as morally bad and as encouraging gambling, and especially among

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children, as injurious to the industry in question through resulting in the merchandising of a chance or lottery instead of candy or gum, and as providing retail merchants with the means of violating the laws of the several States, and some of whom, for such reasons, refuse to sell candy or gum so packed and assembled that it can be sold to the public by lot or chance;

With the result that competitors refusing, as aforesaid, to sell candy or gum so packed and assembled that it could be sold to the public by lot or chance, and who could compete on even terms only by giving the same or similar devices to retailers, were put to a disadvantage and their sales of "straight" candy showed a continued decrease, some competitors began the sale and distribution of candy and chewing gum for resale to the public by lot or chance to meet the competition of those who sold and distributed candy or gum resold by such methods and the demand therefor, the public and competitors were prejudiced and injured, and trade was diverted to it from its said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry in question:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

COMPLAINT

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, having reason to believe that Willard B. Casterline, individually and trading as Casterline Brothers, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual trading under the name and style of Casterline Brothers, with his principal office and place of business in the city of Chicago, State of Illinois. Respondent is now and for more than one year last past has been engaged in purchasing candy and chewing gum in bulk and repacking and selling the same to wholesale and retail dealers. Respondent sells said candy and chewing gum to wholesale and retail dealers located at points in the various States of the United States and causes said products when so sold to be transported from his place of business in the city of Chicago, Ill., to purchasers thereof in other States of the United

States at their respective places of business, and there is now and has been for more than one year last past a course of trade and commerce by said respondent in such candy and chewing gum between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other individuals and with corporations and partnerships engaged in the sale and distribution of candy and chewing gum in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers various packages or assortments of candy and chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages or sales plans which respondent has been or is using in the distribution of candy and chewing gum by lot or chance:

(a) One of said assortments is designated and described by respondent as "1¢ Sunnyside Merchandising Unit." The assortment consists of a number of sticks of Sunnyside Chewing Gum, a number of small packages of candy, a number of other articles of merchandise and a half-pound box of candy, together with a device commonly called a punchboard. The candy, chewing gum, and other articles of merchandise contained in said assortment are distributed to purchasers of punches from said punchboard in the following manner:

Punches from said board are 1¢ each, and when a punch is made a number is disclosed. There are as many separate numbers on the board as there are punches, and the numbers begin with 1, but are not arranged numerically. The board bears statements or legends informing the prospective customer as to which numbers receive one stick of chewing gum, which numbers receive two sticks of chewing gum, which numbers receive one small package of candy, which numbers receive two small packages of candy, and which numbers receive the other articles of merchandise. The last punch on the board receives the half-pound box of candy. The numbers on the board are effectively concealed from the purchasers or prospective purchasers until a punch or sale has been made and the particular punch separated from the board. The candy and chewing gum and other articles of merchandise in said assortment are thus distributed to purchasers of punches from said board wholly by lot or chance.

(b) Another assortment distributed by respondent is designated and described by respondent as "5¢ Sunnyside Square Deal Merchandising Plan". The said assortment consists of a number of 5¢

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packages of chewing gum, a number of small packages of candy, other articles of merchandise and a half-pound box of candy, together with a device commonly called a push card. The candy and other articles of merchandise contained in said assortment are distributed to purchasers of pushes from said card in the following manner:

Pushes from said card are 5¢ each and when a push is made a number is disclosed. There are as many separate numbers on the card as there are pushes, and the numbers begin with 1, but are not arranged numerically. The card bears legends informing the prospective purchaser as to which numbers receive one of the five-cent packages of chewing gum, which numbers receive one of the small packages of candy, which numbers receive two of the small packages of candy, and which numbers receive the other articles of merchandise. The last push on the card receives the half-pound box of candy. The numbers on the card are effectively concealed from the purchasers or prospective purchasers until a push or selection has been made and the particular push separated from the card. The candy, chewing gum and other articles of merchandise contained in said assortment are thus distributed to purchasers of pushes from said card wholly by lot or chance.

(c) Another assortment includes a number of small pieces of candy of uniform size and shape, a number of larger pieces of candy, a half-pound box of candy and another article of merchandise, together with a display card. The larger pieces of candy, the other article of merchandise and the half-pound box of candy are to be given as prizes to purchasers of the small pieces of candy of uniform shape and size in the following manner.

The majority of said pieces of candy have white centers, but a few of said pieces of candy have red centers, and one of the pieces of candy has a green center. The color of the center of these pieces of candy is effectively concealed from the prospective customer until a selection has been made and the piece of candy broken open. The said pieces of candy of uniform size and shape retail at the price of 1¢ each, but the purchasers who procure one of the said candies having a center colored red are entitled to receive and are to be given free of charge, one of the larger pieces of candy. The purchaser who procures the green center is entitled to receive and is to be given free of charge, the article of merchandise included in said assortment, and the purchaser of the last piece of candy of uniform size and shape in said assortment is entitled to receive and is to be given free of charge the half-pound box of candy. The aforesaid purchasers of said candy who procure a candy having a center colored red or green are thus to procure one of the larger pieces of candy

or the other article of merchandise wholly by lot or chance. The display card furnished with said assortment bears statements or legends informing the prospective customer that said assortment is being sold and distributed in accordance with the above described sales plan.

PAR. 3. The wholesale dealers to whom respondent sells his assortments resell said assortments to retail dealers, and the said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale and sell said candy and chewing gum to the purchasing public, in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means for conducting lotteries in the sale of his products (in accordance with the sales plans hereinabove set forth), as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy and chewing gum offered for sale and sold by his competitors.

PAR. 4. The sale of said candy and chewing gum to the purchasing public as above alleged involves a game of chance or the sale of a chance to procure additional or larger pieces or packages of candy or chewing gum in the manner alleged. Such sales of candy and chewing gum, along with the sale of such chance to procure such larger or additional pieces or packages of candy or chewing gum in the manner alleged are contrary to the established public policy of the several States of the United States and of the Government of the United States, and in many of the States of the United States are contrary to the local criminal statutes.

By reason of said facts many persons, firms, and corporations who make and sell candy or chewing gum in competition with respondent as above alleged, are unwilling to offer for sale or sell candy or chewing gum so packed and assembled as above alleged or otherwise arranged and packed for sale to the purchasing public, so as to involve a game of chance, or the sale with such candy of a chance to procure larger or additional pieces or packages of candy or chewing gum by chance; and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy or chewing gum are attracted by respondent's said methods and manner of packing said candy and chewing gum and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy and chewing gum so packed and sold by respondent, in preference to candy and chewing gum offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. Many dealers in candy and chewing gum are induced to purchase said candy and chewing gum

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so offered for sale and sold by respondent in preference to all others, because said ultimate purchasers give preference to respondent's said candy and chewing gum on account of said game of chance involved therein. The use of said methods by respondent has a tendency and capacity unfairly and because of said game of chance alone, to divert to respondent trade and custom from his said competitors who do not use the same or equivalent methods, to exclude from said candy and chewing gum trade all competitors who are unwilling to and who do not use the same or equivalent methods; to lessen competition in said candy and chewing gum trade, and to tend to create a monopoly of said candy and chewing gum trade in respondent and such other distributors of candy and chewing gum as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy and chewing gum trade. The use of said methods by the respondent has the tendency and capacity unfairly to eliminate from said candy and chewing gum trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods that are contrary to public policy and to criminal statutes as above alleged.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, because such methods are contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such methods are detrimental to public morals and to the morals of the purchasers of said candy or chewing gum, or because of any or all of said reasons.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, acts, and practices 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, on October 4, 1935, issued and served its complaint in this proceeding upon the respondent, Willard B. Casterline, individually and trading as Casterline Brothers, charg-

ing him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank and P. C. Kolinski, attorneys for the Commission, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by the respondent in proper person; and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, and the briefs in support of the complaint and in opposition thereto, no request having been made to orally argue the matter; and the Commission having duly considered the same, 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. The respondent, Willard B. Casterline, is an individual trading under the name and style of Casterline Brothers with his principal office and place of business in the city of Chicago, State of Illinois. Respondent is now, and for several years last past has been engaged in purchasing candy and chewing gum in bulk and repacking and selling the same to wholesale dealers and jobbers of candy and chewing gum located generally throughout the United States. He causes said candy and chewing gum when sold to be shipped and transported from his principal place of business in Chicago, Ill., to purchasers thereof in the various States of the United States at their respective points of location. 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 individuals and with partnerships and corporations engaged in the sale and distribution of candy and chewing gum in commerce between and among various States of the United States.

PAR. 2. Among the assortments sold and distributed by respondent is an assortment designated as "1¢ Sunnyside Merchandising Unit". This assortment consists of a number of sticks of chewing gum, a number of small packages of candy, a number of other articles of merchandise and a half-pound box of candy together with a device commonly called a "punchboard". The candy, chewing gum and

other articles of merchandise contained in said assortment are distributed to purchasers of punches from said punchboard in the following manner:

Punches from said board are 1¢ each and when a punch is made a number is disclosed. The numbers begin with one and continue to the number of punches on the board, but they are not arranged in numerical sequence. The board bears statements or legends informing purchasers and prospective purchasers as to which numbers receive one stick of chewing gum, which numbers receive two sticks of chewing gum, which numbers receive one small package of candy, which numbers receive two small packages of candy and which numbers receive one of the other articles of merchandise. The last punch on the board receives the half-pound box of candy. The numbers on the board are effectively concealed from purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The fact as to whether a purchaser receives one or two sticks of chewing gum, or receives one or two small packages of candy, or one of the other articles of merchandise, or the half-pound box of candy is thus determined wholly by lot or chance.

PAR. 3. Another assortment sold and distributed by respondent is designated and described as "5¢ Sunnyside Square Deal Merchandising Plan". This assortment consists of a number of 5¢ packages of candy, a number of other articles of merchandise, and a half-pound box of candy together with a device commonly called a "push card". The chewing gum, candy, and other articles of merchandise contained in said assortment are distributed to purchasers of pushes from said card in the following manner:

Pushes from said card are 5¢ each, and when a push is made a number is disclosed. The numbers begin with one and continue to the number of pushes there are on the card, but they are not arranged in numerical sequence. The card bears legends informing purchasers and prospective purchasers as to which numbers receive one of the 5¢ packages of chewing gum, which numbers receive one of the small packages of candy, which numbers receive two of the small packages of candy and which numbers receive one of the other articles of merchandise. The purchaser of the last push on the card receives the half-pound box of candy. The numbers on the card are effectively concealed from purchasers and prospective purchasers until a push or selection has been made and the particular push separated from the card. The fact as to whether a purchaser receives one package of chewing gum, one or two packages of candy, or one

of the other articles of merchandise or the half-pound box of candy is thus determined wholly by lot or chance.

PAR. 4. Prior to the issuance of the complaint in this case, the respondent sold and distributed an assortment which consisted of a number of small pieces of candy of uniform size and shape, a number of larger pieces of candy and a half-pound box of candy and another article of merchandise, together with a display card. The larger pieces of candy, the other article of merchandise, and the half-pound box of candy were given as prizes to purchasers of the small pieces of candy of uniform size and shape in the following manner:

The majority of said pieces of candy had white centers but a few of said pieces of candy had red centers, and one of the said pieces of candy had a green center. The color of the center of these pieces of candy was effectively concealed from purchasers and prospective purchasers until a selection had been made and the particular piece of candy broken open. The said pieces of candy of uniform size and shape retailed at the price of 1¢ each, but the purchaser who procured one of the said candies having a center colored red was entitled to receive and was given free of charge one of the larger pieces of candy. The purchaser who procured the said piece of candy having a green center was entitled to receive and was given free of charge the other article of merchandise included in said assortment, and the purchaser of the last piece of candy in said assortment was entitled to receive and was given free of charge the half-pound box of candy. The aforesaid purchasers of said candy who procured a candy having a center colored red or green, or who purchased the last piece of candy in said assortment, thus procured one of the larger pieces of candy, the other article of merchandise, and the half-pound box of candy wholly by lot or chance. The display card furnished with said assortment bore statements or legends informing purchasers and prospective purchasers that said assortment was being sold and distributed in accordance with the above described sales plan. This assortment was discontinued on or about February 1935, but the Commission has no assurance that its sale and distribution will not be resumed.

PAR. 5. The candy assortments involving the lot or chance feature as described in paragraphs 2, 3, and 4 above, are generally referred to in the candy trade or industry as "draw," or "deal," or "break and take" assortments. Assortments of candy without the lot or chance feature 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 designate these types of assortments.

PAR. 6. Respondent has from time to time caused advertisements of his merchandise to be inserted in magazines having a nation-wide circulation. Among such are "Specialty Salesman's Magazine" and "Opportunity Magazine."

PAR. 7. Numerous retail dealers purchase and have purchased the assortments described in paragraphs 2, 3, and 4 above, from wholesale dealers and jobbers who in turn have purchased said assortments from the respondent. Such retail dealers display said packages for sale to the public as packed and assembled by the respondent, and the candy and chewing gum contained in said assortments is sold and distributed to the consuming public by means of the punchboard or push card, or as suggested by respondent, and in accordance with the legends printed on the punchboard, the push card, or on the display card.

PAR. 8. The respondent sells its merchandise to wholesale dealers and jobbers throughout the United States, and respondent's merchandise, both "straight" and "draw" or "deal" and "break and take" assortments, is resold in practically all stores where candy and chewing gum are sold. All types of sales made by the respondent are absolute sales, and respondent retains no control over the goods after they are delivered to the wholesale dealers and jobbers. The assortments are packed and assembled in such manner that they can be displayed and offered for sale, and are designed to be displayed and offered for sale, without alteration, addition, or rearrangement, to the consuming public by means of a lottery, gaming device, or gift enterprise.

The sale and distribution of candy and chewing gum by retail dealers by the methods described herein is a sale and distribution of candy and chewing gum by lot or chance and constitutes a lottery, gaming device, or gift enterprise.

In the sale and distribution to wholesale dealers and jobbers for resale to retail dealers of assortments of candy and chewing gum packed and assembled as described in paragraphs 2, 3, and 4 herein, respondent has knowledge that the said candy will be sold to the purchasing public by retail dealers by lot or chance, and he packs and assembles such candy and chewing gum in the way and manner described so that the same may, without alteration, addition, or rearrangement, be sold to the public by lot or chance by said retail dealers.

PAR. 9. Many competitors of respondent regard such methods of sale and distribution as morally bad and as encouraging gambling,

especially among children; as injurious to the candy and chewing gum industry because they result in the merchandising of a chance or lottery instead of candy or chewing gum; 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 or chewing gum 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. 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" candy show a continued decrease.

There is a demand for candy and chewing gum which is sold by lot or chance and in order to meet the competition of competitors who sell and distribute candy which is resold by such methods, some competitors of respondent have begun the sale and distribution of candy and chewing gum for resale to the public by lot or chance. The use of such methods by respondent in the sale and distribution of his candy and chewing gum is prejudicial and injurious to the public and respondent's competitors who do not resort to or make use of the same methods, and has resulted in the diversion of trade to respondent from his said competitors and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 10. The principal demand in the trade for the "draw," or "deal," or "break and take" candy assortments comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of school children. The consumers or purchasers of the lottery or prize candy and chewing gum assortments are principally children, and because of the lottery or gambling feature connected with the "draw" or "deal" or "break and take" assortments and the possibility of becoming a winner, it has been observed that the children purchase them in preference to the "straight" goods when the two types of assortments are displayed side by side.

The children prefer to purchase the lottery or prize assortments of candy and chewing gum because of the lottery feature connected with their sale. The sale and distribution of "draw" or "deal" or "break and take" assortments of candy and chewing gum, or of candy and chewing gum 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 gambling among children, who comprise by far the largest class of purchasers and consumers of this type of merchandise.

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PAR. 11. There are in the United States many distributors of candy and chewing gum who do not sell and distribute lottery or prize assortments, and who sell their "straight" merchandise in interstate commerce in competition with the "deal" or "draw" or "break and take" assortments, and distributors of the "straight" type of candy and chewing gum have noted a marked decrease in the sales of their products whenever and wherever the lottery candy and chewing gum assortments have appeared in their markets. This decrease in the sales of "straight" candy and chewing gum is principally due to the gambling or lottery feature connected with the "draw" or "deal" or "break and take" assortments.

PAR. 12. The exact annual volume of respondent's business was not shown, but the respondent testified and the Commission finds that the annual volume of respondent's business is substantial, and that while the sale of the "draw," "deal," and "break and take" assortments is also substantial it is not the major part of respondent's business.

PAR. 13. The Commission further finds that the sale and distribution in interstate commerce of assortments of candy and chewing gum so packed and assembled as to enable retail dealers without alteration, addition, or rearrangement to resell the same to the consuming public by lot or chance is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Willard B. Casterline, individually and trading as Casterline Brothers, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning 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 the complaint of the Commission, the answer of the respondent, the testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of and in opposition to the charges of the complaint, and the Commission having made its findings as to the facts and its conclusion that 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."

Order

It is ordered, That the respondent, Williard B. Casterline, individually and trading as Casterline Brothers, his agents, representatives, and employees in the offering for sale, sale, and distribution by him in interstate commerce of candy and chewing gum, do cease and desist from:

(1) Selling and distributing to wholesale dealers and jobbers for resale to retail dealers candy and chewing gum so packed and assembled that sales of such candy and chewing gum to the general public are to be made or are designed to 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 assortments of candy and chewing gum which are used or are designed to be used without alteration, or rearrangement of the contents of such assortments to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or chewing gum contained in said assortments to the public;

(3) Packing or assembling in the same assortment of candy for sale to the public at retail pieces of candy of uniform size and shape having centers of a different color, together with larger pieces of candy, small boxes of candy, or other article of merchandise which said larger pieces of candy, small boxes of candy or other article of merchandise are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color;

(4) Supplying to or placing in the hands of wholesale dealers and jobbers assortments of candy and chewing gum, together with a device commonly called a "punchboard" or a device commonly called a "push card" for use or which is designed to be used in the distribution of said candy to the public at retail;

(5) Furnishing to wholesale dealers and jobbers a display card, a punchboard or a push card either with assortments of candy and chewing gum or separately, bearing legends or statements informing the public that the candy and chewing gum are being sold by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

And it is further ordered, That the respondent shall, within 30 days after the service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
SERVICE PRODUCTS, INC., ET AL.

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

Docket 2824. Complaint, May 28, 1936—Decision, Oct. 22, 1936

Where a family group of three individuals, and two corporations organized and controlled by them, and engaged in manufacturing, rectifying, compounding, and selling hair tonic, bay rum, cosmetics, lotions, and like products—

(a) Featured the words "West Point," and the corporate name of said manufacturing corporation, including the words "West Point Laboratories," upon the containers of their said products and in periodicals, papers, pamphlets, and on letterheads and stationery, together with depictions of a cadet in full dress military uniform, and such statements as "In Hollywood as at WEST POINT a well-groomed appearance is essential. Men and women who know and care use WEST POINT natural vegetable oil hair tonic," etc.;

Notwithstanding fact they were never granted permission to use name "West Point," or depiction of a cadet in military hat and uniform, as a trade name, mark, or brand on their products by the authorities of the West Point Military Academy, the Army, or the United States Government, and use by them of the name "West Point," as aforesaid, was objectionable to said authorities, etc.;

With result that various members of the purchasing public received impression and came to conclusion and belief that products thus marked, etc., emanated, or were of a quality and nature endorsed and approved by aforesaid authorities, and substantial numbers of said purchasing public were induced to make purchases thereof by virtue of such belief; and

(b) Included upon their aforesaid labels, etc. a circular red seal with flat surface and irregular outer edges, in center of which was inscribed "Seal of Approval" encircled within the words "Official Research Bureau of the State of New York, Inc.," conveying false and misleading impression that it was an official seal of the State of New York and that said research bureau was a bureau or branch of the State Government;

Notwithstanding fact that officials of said State never granted them permission to use the great seal of the State, and said bureau was not a branch of the State Government, and use by them of any seal or words conveying impression that their products were approved or endorsed by said State, or any bureau or branch thereof, was objectionable to the authorities thereof;

With result that various members of purchasing public received impression and formed conclusion and belief that said products thus stamped or marked with a seal, as above set forth, were authorized and approved by said State, and substantial numbers of said public were induced, by virtue of such belief or impression, to make purchases thereof;

With tendency and capacity to mislead and deceive a substantial portion of such public into the mistaken belief that the goods in question were derived from, or had the approval of a branch of the United States Govern-