

IN THE MATTER OF
SAVAGE CANDY COMPANY

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

Docket 2606. Complaint, Oct. 31, 1935—Decision, Nov. 3, 1936

Where a corporation engaged in manufacture and sale of candy, including both "straight goods," and "break and take" and "draw" or "deal" assortments, in which, as case might be, (1) chance selection of one of a number of penny pieces of uniform size and shape, enclosed, colored center of which differed from that of majority of said penny pieces, entitled purchaser to receive, without charge, one of larger pieces included therewith, and in which purchaser of last one of said penny pieces received as prize, box of candy; (2) chance selection depended upon concealed color of individually wrapped pieces of candy making up assortment; (3) identical assortments were sold with push cards and receipt of one of larger pieces included depended upon chance selection of certain numbers from 200-hole push card supplied therewith, and in which purchaser pushing last disk from card received box of candy prize; and, (4) assortment composed of candy bars and pound box of candy, in which so-called "Baseball" assortment, purchaser of a punch received, for five cents charged, from one to five candy bars, depending upon legend punched by chance from push card included, and box of candy was secured by last punch, as set forth by said cards' explanatory legends—

Sold said various assortments, with cards, to retailers, wholesalers, and jobbers knowingly assembled and packed for resale, without alteration, addition, or rearrangement, to consuming, purchasing public, by lot or chance, by retailers, which, as sellers of its said candy, included grocery, candy, and drug stores, stores in vicinity of schools, and, in some cases, cigar stores, and stores of which, in case of small establishments, are frequently near schools and attract trade of school children, substantial proportion of whom constitute the consumers of the lottery or prize package candy, and who, given choice, purchase same in preference to "straight" goods because of lottery or gambling feature connected therewith, and chance of becoming a winner, and sale of which "straight" goods candy showed a marked decrease whenever and wherever lottery or prize candy appeared in its markets by reason of said gambling feature connected therewith;

With result that many competitors dealing in "straight goods" candy only, and who regard sale and distribution of other as morally bad and as encouraging gambling, and especially among children, its largest class, by far, of consumer-purchasers, and as injurious to the industry in merchandising, instead of candy, a chance or lottery, and as providing retail merchants with means of violating the laws of the States, and refuse to sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage, retailers bought from it and others employing similar methods of sale as enabling them to sell more candy, and trade was diverted to it and such others from aforesaid competitors dealing in straight goods, and able to compete on even terms only

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by giving same or similar devices to retailers, sale of such refusing competitors "straight" goods candy showed continued decrease, some competitors began sale and distribution of candy to public by lot or chance to meet constant demand for candy thus sold, public and competitors were prejudiced and injured, and there was a restraint upon and a detriment to the freedom of fair competition in said industry, and violation of public policy:

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.

Mr. Walter C. Hughes, of Chicago, Ill., for respondent.

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 the Savage Candy Company, a corporation, hereinafter referred to as respondent, has been and is now 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 a corporation organized under the laws of the State of Colorado, with its principal office and place of business in the city of Denver, State of Colorado. Respondent for several years last past has been engaged in the manufacture of candy and in the sale and distribution thereof through retail dealers located at points in several of the States of the United States and causes its said products when so sold to be transported from its principal place of business in the city of Denver, Colo., to purchasers thereof in other States of the United States at their respective places of business, and there is now and has been for several years last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of its said business respondent is in competition with other corporations, and with individuals and partnerships engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 herein respondent sells and has sold to retail dealers various packages or assortments of candy 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 details of the methods used by respondent, but this list is not all inclusive of the various sales plans which respondent has been or is using to distribute candy by lot or chance.

(a) Several of the said assortments are composed of a number of pieces of chocolate covered candy of uniform size and shape together with a number of larger pieces of candy and a small box of candy, the larger pieces of candy and the small package of candy are to be given as prizes to purchasers of said chocolate covered candies of uniform size and shape in the following manner:

The majority of said chocolate covered pieces of candy are the same color throughout but a few of said pieces of chocolate covered candy have centers of a different color. The color of the center of these pieces of chocolate covered candy is effectively concealed from the prospective purchasers until a selection or purchase has been made and the piece of candy broken open. The said pieces of candy of uniform size and shape in said assortment retail at the price of 1¢ each, but the purchasers who procure one of the said pieces of chocolate covered candy having a center of a different color than the majority are entitled to receive and are to be given free of charge one of said larger pieces of candy. The purchaser of the last piece of candy of uniform size and shape in said assortment is to be given as a prize the small package of candy. The aforesaid purchasers of said candies who procure a piece of chocolate covered candy having a center colored differently from the majority thus receive one of said larger pieces of candy wholly by lot or chance.

(b) Respondent also manufactures and distributes several assortments of candy identical with the assortment described above in subparagraph (a) and includes therewith a device commonly called a push card. Said push card has 200 partially perforated disks and when a disk is pushed or separated from the card a number is disclosed, these numbers are effectively concealed from the customer until such disk is pushed or separated from the card. The numbers run from 1 to 200 but are not arranged in numerical sequence. The said push card bears legends or statements to the effect that certain numbers are prize winning numbers and the purchaser or customer procuring one of these numbers is entitled to one of the larger boxes of candy. Each purchaser of one of the pieces of chocolate covered candy of uniform size and shape is entitled to push one of the disks from the card and if such purchaser obtains one of the prize winning numbers, such purchaser is entitled to receive and is to be given free of charge one of the larger pieces of candy in said assortment.

The purchaser pushing the last disk from the card is to be given, as a prize, the small package of candy. The aforesaid purchasers of said candies of uniform size and shape who push one of the prize winning numbers from the said push card thus procure one of the said larger pieces of candy wholly by lot or chance.

(c) Another assortment distributed by the respondent is composed of a number of bars of candy and a 1 lb. box of candy together with a device commonly called a push card. The bars of candy and the 1 lb. box of candy are to be distributed to purchasers in the following manner:

Sales are 5¢ each and when a push is made, a legend is disclosed. The push card has printed at the top thereof a statement or statements showing the number of bars which the purchaser is entitled to receive upon obtaining particular legends. Some of the legends entitle the purchaser to three bars of candy and certain legends entitle the purchaser to two bars of candy. All other legends entitle the purchaser to one bar of candy. The last purchaser from said assortment is entitled to receive the 1 lb. package of candy. Thus all purchasers receive one bar of candy but certain purchasers depending upon the legend printed on the push selected by them receive more than one bar of candy or the 1 lb. box of candy. The legends on said disks 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 additional bars of candy and the 1 lb. box of candy in said assortment are thus distributed to purchasers of pushes from said card wholly by lot or chance.

(d) The respondent also manufactures and distributes various assortments composed of a number of bars of candy and other articles of merchandise together with a device commonly called a punch board. These assortments vary with regard to the number of bars of candy, the number of articles of merchandise and the number of holes or punches in the said punch board. Sales are 5¢ each and when a punch is made a number is disclosed. The punch board bears statements informing the purchaser or prospective purchaser as to which numbers receive a bar of candy and which numbers receive in addition one of the other articles of merchandise. The numbers of said board are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The articles of merchandise included in said assortments of candy are thus distributed to purchasers of punches from said board wholly by lot or chance.

PAR. 3. The retail dealers to whom respondent sells its assortments expose said assortments for sale and sell said candy to the purchas-

ing 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 sales plans hereinabove set forth as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors. The sales plans and methods of respondent as above described also appeal to the gambling instinct of the consumers of candy and said candies are sold to the consuming public by means of such appeal rather than on the basis of merit or value and a large number of the ultimate purchasers of respondent's said candies are minors.

PAR. 4. The sale of candy to the purchasing public as above alleged involves a game of chance or the sale of a chance to procure additional or larger pieces of candy or packages of candy or an article of merchandise in the manner alleged. Such games of chance and the sale along with the sale of such candy of such chance to procure such additional or larger pieces of candy or packages of candy or other articles of merchandise 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 local criminal statutes.

By reason of said facts many persons, firms, and corporations who make and sell candy in competition with respondent as above alleged are unwilling to offer for sale or sell candies so packed and assembled as above alleged, or otherwise arranged or 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 additional or larger pieces of candy or other articles of merchandise by chance; and such competitors refrain therefrom.

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

PAR. 6. The use of said methods by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods; to exclude from

said candy trade all competitors who are unwilling to and who do not use the same or equivalent methods; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods by respondent has the tendency and capacity unfairly, to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or equivalent methods that are contrary to public policy and to criminal statutes as above alleged. Many of said competitors of respondent are unwilling to adopt and use said methods, or any method involving a game of chance or the sale of a chance to win something by chance, because such method is 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 a method is detrimental to public morals and to the morals of the purchasers of said candy, or because of any or all of such 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, MODIFIED 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 31, 1935, issued and served a complaint upon the respondent, Savage Candy Company, charging that the respondent had been and was using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress.

After the issuance of the complaint, notwithstanding the failure of the respondent to file answer thereto, testimony and evidence in support of the allegations of the 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 said testimony and evidence were duly recorded and filed in the office of the Commission. No testimony was offered on behalf of the respondent, although an opportunity was afforded it so to do. Thereafter, the proceeding came regularly on for final hearing before the Commission on said complaint and the testimony.

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and evidence in support thereof, 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. Respondent, Savage Candy Company, is a corporation organized under the laws of the State of Colorado, with its office and place of business in the city of Denver, Colo. Respondent is now, and for several years last past has been, engaged in the manufacture of candy in Denver, Colo., and in the sale and distribution of said candies to retail dealers located in Wyoming, New Mexico, and Colorado, and to a few wholesale dealers and jobbers in the same States. It causes the said candy, when sold, to be shipped and transported from its principal place of business in Colorado into the States of Wyoming and New Mexico. 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 and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution of candy between and among the various States of the United States.

PAR. 2. Among the candies manufactured and distributed by respondent is an assortment containing a number of small pieces of candy of uniform size and shape, a number of larger pieces of candy, and a box of candy. The small pieces of candy are of uniform size and shape, and the majority thereof have centers of the same color, but a small number of said pieces of candy have centers of a different color. The purchaser who procures one of the small pieces of candy having a center colored differently from the majority is entitled to receive, and is to be given free of charge, one of the larger pieces of candy. The purchaser procuring the last piece of candy of uniform size and shape in said assortment is to receive a box of candy as a prize. The purchaser who procures one of the candies having a center of the color of the majority of the pieces of candy receives only that piece of candy for his money. The small pieces of candy of uniform size and shape retail at the price of 1¢ each, and the color of the center of the said pieces of candy is effectively concealed from the purchasers and prospective purchasers until a selection or purchase has been made and the particular piece broken open. The larger pieces of candy and the box of candy in said assortment are thus distributed to purchasers obtaining a small piece of candy of uniform size and shape of a particular colored center wholly by lot or chance.

The respondent has also manufactured and distributed an assortment involving the same principle, where the small pieces of candy are of different colors but are contained within wrappers and the color of the particular piece of candy cannot be ascertained until a selection and purchase had been made and the wrapper removed.

PAR. 3. Respondent also manufactures and distributes an assortment of candy identical with the assortment described above in paragraph 2, and includes therewith a device commonly called a push card. Said push card has 200 partially perforated disks and when a disk is pushed or separated from the card a number is disclosed. These numbers are effectively concealed from the customer until such disk is pushed or separated from the card. The numbers run from one to two hundred but are not arranged in numerical sequence. The push card bears legends or statements to the effect that certain numbers are prize-winning numbers, and the purchaser or customer procuring one of these numbers is entitled to one of the larger pieces of candy. Each purchaser of one of the pieces of small candies of uniform size and shape is entitled to push one of the disks from the card, and if such purchaser obtains one of the prize-winning numbers, such purchaser is entitled to receive, and is to be given free of charge, one of the larger pieces of candy in said assortment. The purchaser pushing the last disk from the card is to be given as the prize the box of candy. The larger pieces of candy and the box of candy contained in said assortment are thus distributed to purchasers of "pushes" wholly by lot or chance.

PAR. 4. Another assortment manufactured and distributed by respondent is composed of a number of bars of candy and a one pound box of candy, together with a device commonly called a push card. Sales are 5¢ each, and when a push is made from said card a legend is disclosed. The push card has printed at the top thereof statements showing the number of bars which the purchaser is entitled to receive upon obtaining particular legends, as follows:

5¢	BASEBALL	5¢
a Play		a Play
Every Play Receives One or More Candy Bars		
Home Run Receives.....	5 CANDY BARS	
Three Bagger Receives.....	3 CANDY BARS	
Two Bagger Receives.....	2 CANDY BARS	
Stolen Base Receives.....	2 CANDY BARS	
Sacrifice Hit Receives.....	2 CANDY BARS	
Single Receives.....	2 CANDY BARS	
Walk Receives.....	2 CANDY BARS	
Hit by Pitcher Receives.....	2 CANDY BARS	
All other Plays Receive.....	1 CANDY BAR	
Last Play Receives.....	1 LB. CHOCOLATES	

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There are legends on the said disks corresponding to the legends shown at the top of the card, and the candy is distributed to the ultimate purchasers in accordance with the legends or statements shown on the said push card. The fact as to whether a purchaser receives more than one bar of candy or receives the one pound box of candy for the price of 5¢ is thus determined wholly by lot or chance.

PAR. 5. The lottery or prize assortments described in paragraphs 2, 3, and 4 are generally referred to in the candy industry as "break and take," "draw," or "deal" assortments, and packages or assortments of candy without the gaming device or lottery 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. 6. Numerous retail dealers purchase the assortments described in paragraphs 2, 3, and 4, above, direct 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 the candy contained in said packages is sold and distributed to the consuming public in the manner described.

PAR. 7. All sales made by respondent, whether to wholesale dealers and jobbers or to retail dealers, are absolute sales and respondent retains no control in any manner over the goods after they are delivered to the wholesale dealer or jobber or retail dealer. The assortments are assembled and packed in such manner that they are sold and may be sold by the retail dealers to the purchasing public in the manner described.

The respondent has knowledge that said assortments 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 without alteration, addition, or rearrangement it may be resold to the public by lot or chance by said retail dealers.

PAR. 8. The sale and distribution of candy by the retailers by the methods described in paragraphs 2, 3, and 4, above, is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device.

Respondent's candy is sold to the consuming public in grocery stores, candy stores, drug stores, stores in the vicinity of schools selling candy, and in some cases in cigar stores.

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

tors regard such methods of sale and distribution as morally bad and as 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" or "draw" methods 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" show a continued decrease.

There is a 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 to respondent's 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. 9. One of the principal demands in the trade for the "break and take" or "draw" or "deal" candy 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 package candy are principally children and because of the lottery or gambling feature connected with the "break and take" or "draw" package and the possibility of becoming a winner, children purchase candy from such packages in preference to the "straight goods" candy, when the two types of assortments are displayed side by side. The sale and distribution of "break and take" or "draw" packages 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 gambling among children, who comprise by far the largest class of purchasers and consumers of this type of candy.

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PAR. 10. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize assortments of candy, and who sell their "straight goods" candy in interstate commerce in competition with the "break and take" or "draw" or "deal" 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 connected with the "break and take," "draw," or "deal" candy.

PAR. 11. In addition to the assortments described in paragraphs 2, 3, and 4 herein, the respondent manufactures candy which it sells to retail dealers and wholesale dealers and jobbers without any lottery or chance features. The exact annual volume of respondent's business was not shown but an officer of the respondent testified, and the Commission finds, that the business of respondent is substantial, and that the major portion of respondent's business has been the sale and distribution of the various "break and take," "draw," or "deal" assortments.

PAR. 12. The Commission further finds that the sale and distribution in interstate commerce of assortments of candy, as described in paragraphs 2, 3, and 4 hereof, are contrary to public policy.

CONCLUSION

The practices of said respondent under the conditions and circumstances hereinbefore described are to the prejudice of the public and respondent's competitors and are unfair methods of competition in interstate commerce, and constitute a violation of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the charges of the complaint, no answer having been filed by the respondent nor any testimony having been offered in opposition to the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Savage Candy Company, a corporation, its officers, agents, representatives, and employees, in the sale, offering for 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 retailers, 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 or which may be 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 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 and shape having centers of a different color, together with larger pieces of candy and a small box of candy, which said larger pieces of candy and small box of candy 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, retail and wholesale dealers and jobbers assortments of candy, together with a device commonly called a push card, for use, or which may be used, in distributing said candy to the public at retail.

(5) Furnishing to wholesale dealers and jobbers and retail dealers a device commonly called a push card, either with assortments of candy or candy products, or separately, and 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.

It is further ordered, That the respondent, Savage 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.

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IN THE MATTER OF

J. R. STONE TRADING AS SPANISH DIAMOND CO.,
CHINESE RING CO., AND NATIONAL JEWELRY CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2866. Complaint, July 3, 1936—Decision, Nov. 3, 1936*

Where an individual, engaged in the sale of imitation and simulated diamonds and rings, and variously doing business as Spanish Diamond Co., Chinese Ring Co., and National Jewelry Co.; in advertising said products in newspapers and periodicals, and in booklets, testimonials, and other advertising literature—

- (a) Referred to said imitation and simulated diamonds as "gems" "which look like diamonds worth \$150.00" and other substantial amounts, and "cannot be told from the genuine costing many hundreds of dollars," and as "Spanish" or "Spanish Imitation," and as possessing "fire" and "flawless," and as "scientific reproductions of the genuine, which will wear a lifetime," and as "Spanish imported," or "Laboratory Made;" the facts being said diamonds were made of glass and other cheap compositions, did not baffle or deceive experts or have any such appearance, no such thing is known to the jewelry trade as a "Spanish" or "Spanish Imitation" diamond, they were not imported from Spain or "Laboratory Made," and said various representations were false;
- (b) Represented that his said ring mountings had a "Platinum Effect Finish" or were "White Gold-Appearing," or "Sterling," or "Chromium" reproductions of a \$300.00 diamond ring, and were finished in 18 Kt. white gold; the facts being said mountings were not finished with a material simulating platinum, and did not have any such appearance as above set forth;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and with the result that a number of the consuming public purchased a substantial volume of his said imitation and simulated diamonds and rings, and trade was unfairly diverted to him from those engaged in sale of diamonds and rings and who truthfully advertise their products; to the substantial injury of competition in commerce:

Held, That such acts and practices were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Before Mr. Robert S. Hall, trial examiner.

Mr. George Foulkes 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