

Syllabus

IN THE MATTER OF

CHESAPEAKE DISTILLING & DISTRIBUTING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2319. Complaint, Mar. 7, 1935—Decision, Nov. 11, 1936

Where a corporation engaged in the rectifying and bottling of distilled spirits purchased by it from distillers, and with no stills or other apparatus for the production of distilled spirits by original and continuous distillation from mash, wort, or wash, as long understood from word in trade, in competition with those engaged in manufacture by distillation of whiskies, brandies, and other spirituous beverages, and in sale thereof, and with rectifiers, wholesalers, and jobbers—

Represented, through use of word "distilling" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sold and shipped its products, to wholesale customers, and furnished them with means of similarly representing to their retail dealer vendees and ultimate purchasers, that the whiskies, brandies, and other spirituous beverages contained in such bottles were by it made through process of distillation; notwithstanding fact it was not a distiller and did not distill said whiskies or other spirituous liquors thus bottled, sold, and transported by it;

With tendency to mislead and deceive wholesalers, retailers, and ultimate purchasers into the belief that in purchasing the same they were buying a product bottled at a distillery by the original distiller thereof, as substantially preferred by the trade and public, and with the effect of unfairly diverting trade to it from its competitors, including those who manufacture spirituous liquors by process of original and continuous distillation, as above set forth, and truthfully designate themselves as distilling companies, and those who, engaged solely as rectifiers, do not untruthfully designate themselves as "distillers" or "distilling companies":

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

Before *Mr. John W. Bennett*, trial examiner.

Mr. PGad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

Nash & Donnelly, of Washington, D. C., 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 Chesapeake Distilling & Distributing Company, a corporation, has been or is using unfair methods of competition in commerce, as "commerce" is defined

¹ Count 2 of the complaint, under National Industrial Recovery Act, dismissed.

Complaint

23 F. T. C.

in said act, and in violation of the act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act," and it appearing to the 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:

Count 1

PARAGRAPH 1. Respondent is a corporation organized in 1933, and existing under the laws of the State of Maryland, and has its office and principal place of business at No. 9 South Howard Street, in the city of Baltimore, State of Maryland. Respondent is now and since its organization has been engaged in the business of rectifying, blending, and bottling whiskies, brandies, and other spirituous beverages and selling same at both wholesale and retail. It causes the said products when sold to be transported from the city of Baltimore, in the State of Maryland into the District of Columbia to wholesale purchasers thereof, and in the city of Baltimore, State of Maryland, it sells the said products to both wholesalers and retailers. In the course and conduct of its business as aforesaid, respondent is and has been in competition with other individuals, partnerships, and corporations engaged in the manufacture by distillation of whiskies, brandies, and other spirituous beverages and the sale and distribution of the same in interstate commerce, both wholesale and retail.

PAR. 2. For a long period of time, the word "distilling" in connection with the liquor industry has had a definite significance to the minds of the purchasers, both wholesale and retail, to wit, the manufacture of such liquors by the process of distillation, and a substantial portion of such purchasers in the District of Columbia aforesaid, prefers to buy such beverages from an original distiller or manufacturer of the same; and a substantial portion of the consuming public in the District of Columbia in purchasing such beverages, prefers to purchase those bottled by the original distiller or manufacturer.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "distilling" in its corporate name, printed on its stationery, and on the labels attached to the bottles in which it sells and ships such products, respondent represents, and furnishes its wholesale customers in the District of Columbia with the means of representing to the retailer and ultimate purchaser that the said whiskies, brandies, and other spirituous beverages therein contained, were by it manufactured through the process of distillation, when, as a matter of fact, the respondent is not a distiller and did not distill

the said whiskies or other spirituous liquors by it so bottled, sold, and transported.

PAR. 4. The representation set forth in the preceding paragraph hereof, is calculated, has a tendency, and operates to mislead and deceive the wholesalers who buy from respondent and the retailers and ultimate purchasers who in turn purchase the said products in the District of Columbia, into the belief that when purchasing such spirituous liquors they are buying a product bottled at a distillery by the original distiller thereof, and this tends to and does unfairly divert trade from respondent's aforesaid competitors to the respondent. The methods and representations aforesaid, used by respondent in connection with its intrastate sales to both wholesalers and retailers, has a tendency to and operates to affect those of its competitors who cause their products when sold, to be shipped from points of origin outside of the State of Maryland, into the State of Maryland for resale there in competition with respondent's products by diverting trade from the customers of such competitors to the respondent.

PAR. 5. The acts and things above alleged to have been done and the false representation alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent 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.

Count 2

PARAGRAPH 1. Respondent is a corporation organized in 1933, and existing under the laws of the State of Maryland, and has its office and principal place of business at No. 9 South Howard Street, in the city of Baltimore, State of Maryland. Respondent is now and since its organization has been engaged in the business of rectifying, blending, and bottling whiskies, brandies, and other spirituous beverages and selling same at both wholesale and retail. It causes the said products when sold to be transported from the city of Baltimore, in the State of Maryland into the District of Columbia to wholesale purchasers thereof, and in the city of Baltimore, State of Maryland, it sells the said products to both wholesalers and retailers. In the course and conduct of its business as aforesaid, respondent is and has been in competition with other individuals, partnerships, and corporations engaged in the manufacture by distillation of whiskies, brandies, and other spirituous beverages and the sale and distribution of the same in interstate commerce, both wholesale and retail.

Complaint

23 F. T. C.

PAR. 2. For a long period of time, the word "distilling" in connection with the liquor industry has had a definite significance to the minds of the purchasers, both wholesale and retail, to wit, the manufacture of such liquors by the process of distillation, and a substantial portion of such purchasers in the District of Columbia aforesaid, prefers to buy such beverages from an original distiller or manufacturer of the same; and a substantial portion of the consuming public in the District of Columbia in purchasing such beverages, prefers to purchase those bottled by the original distiller or manufacturer.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "distilling" in its corporate name, printed on its stationery, and on the labels attached to the bottles in which it sells and ships such products, respondent represents, and furnishes its wholesale customers in the District of Columbia with the means of representing to the retailer and ultimate purchaser that the said whiskies, brandies, and other spirituous beverages therein contained, were by it manufactured through the process of distillation, when, as a matter of fact, the respondent is not a distiller and did not distill the said whiskies or other spirituous liquors by it so bottled, sold, and transported.

PAR. 4. The representation set forth in the preceding paragraph hereof, is calculated, has a tendency and operates to mislead and deceive the wholesalers who buy from respondent and the retailers and ultimate purchasers who in turn purchase the said products in the District of Columbia into the belief that when purchasing such spirituous liquors they are buying a product bottled at a distillery by the original distiller thereof, and this tends to and does unfairly divert trade from respondent's aforesaid competitors to the respondent. The methods and representations aforesaid, used by respondent in connection with its intrastate sales to both wholesalers and retailers, has a tendency to and operates to affect those of its competitors who cause their products when sold, to be shipped from points of origin outside of the State of Maryland, into the State of Maryland for resale there in competition with respondent's products by diverting trade from the customers of such competitors to the respondent.

PAR. 5. Under and pursuant to Title I of the National Industrial Recovery Act (Public No. 67, 73rd Congress), the President of the United States, by Executive Order No. 6182 of June 26, 1933, as supplemented by Executive Order No. 6207 of July 21, 1933 and Executive Order No. 6345 of October 20, 1933, delegated to H. A. Wallace as Secretary of Agriculture, certain of the powers vested in the President of the United States by the aforesaid act.

That under and pursuant to the delegation of such powers, the said Secretary of Agriculture pursuant to Section 3 (d) of the act and Executive orders under the act, upon his own motion presented a Code of Fair Competition for the Distilled Spirits Rectifying Industry after due notice and opportunity for hearing in connection therewith had been afforded all interested parties, including respondent, in accordance with Title I of the National Industrial Recovery Act and applicable regulations issued thereunder, to the President of the United States who approved the same on the 9th day of December 1933, thereby constituting the said code a Code of Fair Competition within the meaning of the said National Industrial Recovery Act, for the regulation of the aforesaid industry.

In his written report to the President, the said Secretary of Agriculture made, among others, the following findings with respect to the said code in the following words, to wit:

That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of said Act in that the terms and provisions of such Code tend: (a) To remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purposes of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

By his approval of the said code on December 9, 1933, the President of the United States, pursuant to the authority vested in him by Title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive order, wherein he adopted and approved report, recommendations and findings of the said Secretary of Agriculture and ordered that the said Code of Fair Competition be, and the same thereby was approved, and by virtue of the National Industrial Recovery Act aforesaid, the provisions of said Code became and still are the standards of fair competition for the Distilled Spirits Rectifying Industry and are binding upon every member of said Industry and this respondent.

Article V of said Code in part provides:

The following practices constitute unfair methods of competition and shall not be engaged in by any member of the industry:

SECTION 1. *False Advertising*.—To publish or disseminate in any manner any false advertisement of any rectified product. An advertisement shall be deemed to be false if it is untrue in any particular, or if directly or by ambiguity, omission or inference it tends to create a misleading impression.

Findings

23 F. T. C.

PAR. 6. The use by respondent of the word "distilling" in its corporate name, printed upon its stationary and on the labels attached to the bottles in which it sells and ships such products, by ambiguity, omission, or inference tends to create the misleading impression that respondent is engaged in the business of distilling spirits, contrary to the provisions of Section 1, Article V, of the Code aforesaid.

PAR. 7. The above alleged methods, acts, and practices of the respondent are, and have been in violation of the standard of fair competition for the Distilled Spirits Rectifying Industry of the United States. Such violation of such standard in interstate commerce and in other transactions which affect interstate commerce in the manner set forth in paragraph 4 of count 1 hereof, are in violation of Section 3 of the National Industrial Recovery Act, are to the prejudice of the public and the competitors of respondent 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, on March 7, 1935, issued, and on March 8, 1935, served its complaint in this proceeding upon respondent Chesapeake Distilling & Distributing Company, a corporation, charging it 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 PGad B. Morehouse, attorney for the Commission, before John W. Bennett, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Horace J. Donnelly, Jr., attorney for the respondent; 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, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being now 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 was incorporated November 24, 1933, under the laws of the State of Maryland, with a capital stock of \$100,000.00, divided into four thousand shares. Becoming equipped and organized to rectify, blend, and bottle whiskies, brandies, and other alcoholic beverages, in March of 1934, it engaged in that business as a rectifier of distilled spirits under a basic permit from the Federal Government, and at the time of the taking of testimony herein was still so engaged, with its principal office and place of business at No. 9 South Howard Street, in the city of Baltimore in said State.

After bottling, it sells the aforesaid distilled products or blends and mixtures thereof, and causes them, when sold, to be transported from Baltimore, Md., principally into the District of Columbia, with occasional sales and shipments to Delaware and Kentucky—to the purchasers thereof, who are either wholesalers or retail dealers. Approximately 50 percent of respondent's business transactions are in interstate commerce.

In the course and conduct of its business, respondent is, and has been, in competition with other corporations, individuals, and partnerships engaged in the manufacture by distillation of whiskies, brandies, and other spirituous beverages and the sale and distribution of the same in interstate commerce; and also in competition with other rectifiers, wholesalers, and bottlers.

PAR. 2. Since the repeal of prohibition, there has been, and still is, a sharp distinction in the trade between the processes of distilling and rectifying. Distilling is confined to the manufacture of alcoholic spirits by an original and continuous process from grain, or other raw materials, in a mash to a cistern room, in the case of whiskey. Rectifying deals wholly with subsequent modifications of the product not involving the process of distillation. This distinction in trade significance has been recognized by the Government through its issuance of two separate kinds of basic permits to those engaging in the two respective operations.

Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete.

Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery rectifying plant or at any other rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the —— Company". If the distilled spirits therein contained are bottled by a distiller either in his distillery or are spirits of his own distillation bottled in his rectifying plant, the distiller may and does put "Distilled and Bottled by —— Company". If, in the distiller's rectifying plant, other spirits have been blended or rectified, he puts "Blended and Bottled by —— Company". Finally, blown (usually in the bottom) of each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler, viz, a "D" for a distillery and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-197" designates this respondent. A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or his rectifier's permit.

Knowledge of these details is not widespread among the retail trade and is very limited to the general public.

It is not possible to determine from the presence of the phrase "Blended and Bottled by" alone or the phrase "Bottled by" alone, on the label, whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

This respondent purchases its distilled spirits from distillers both within and outside of Maryland; does little rectifying and mostly bottles the purchased whiskies straight at 100 proof.

This respondent does not now have, and has never had, stills or other apparatus for the production of distilled spirits by an original and continuous distillation from mash, wort or wash. For a long period of time, the word "distilling" in connection with the liquor industry has had, and still has, a definite significance to the minds of purchasers, both wholesale and retail, to wit: the manufacture of such liquors by the process of distillation from some kind of mash.

PAR. 3. Approximately thirty witnesses who had had no connection with the liquor industry were subpoenaed at the instance of

the Commission to ascertain whether or not there existed a preference of a substantial portion of purchasers and potential purchasers to buy whiskies and other alcoholic beverages, bottled at or by a distillery or distilling company. These witnesses were fairly representative and included men from practically every walk of life, namely, a banker, stockroom clerk, sales manager, superintendent of fertilizer plant, salesman, government employees, pastry shop owner, electrical engineer, telephone man, real estate broker, postal clerk, department store manager, paper carrier, insurance man, a professor of anatomy, a syrup salesman, an assistant train yardmaster, coal merchant and a graduate law student. Their testimony showed that the word "distilling," or similar words in connection with the liquor industry, meant to them a person or concern which manufactured by distillation, and twenty-two of them testified that in a corporate name such as respondent's, such a word as "distilling" would imply to them that respondent was such a manufacturer, and they indicated a distinct preference to buy distillery-bottled packages of liquor, usually for the reason that they felt more confidence in the goods, as the manufacturer, in their judgment, was likely to be more trustworthy and had more at stake than any middleman. A liquor dealer with thirty-one years of experience in making contacts with the trade and the public was of the opinion based upon such experience that in the majority of cases, the ultimate consumer prefers to buy distillery bottled goods. The respondent produced approximately ten witnesses who were retail liquor dealers and who, from their experience with the public, stated it as their observation that customers paid no attention to the corporate or trade name of the seller as shown upon the labels, but made their purchases because of other considerations. Such testimony is not contradictory to that given by the thirty witnesses as aforesaid, from all of which the Commission concludes it to be true that there is a substantial portion of purchasers which prefers to buy beverages bottled by the original distiller or manufacturer thereof.

PAR. 4. In the course and conduct of its business as aforesaid, by the use of the word "distilling" in its corporate name, printed on its stationery, and on the labels attached to the bottles in which it sells and ships such products, respondent represents, and furnishes its wholesale customers in the District of Columbia with the means of representing to the retailer and ultimate purchaser that the said whiskies, brandies, and other spirituous beverages therein contained, were by it manufactured through the process of distillation, when, as a matter of fact, the respondent is not a distiller and did not distill the said whiskies or other spirituous liquors by it so bottled, sold and transported.

Conclusion

23 F. T. C.

PAR. 5. The Commission finds that because the trade, as well as the public, has a substantial preference for buying liquors bottled by the actual distillers, the tendency to diversion of trade by respondent's use of the word "Distilling" in its name is plain, particularly with reference to any prospective purchaser who does not know from other sources the particular status of respondent, and the name readily lends itself as a tool to any salesman to be used by him for the purpose of gaining an unfair competitive advantage in competing with an actual distilling company for any particular order of whisky.

The use by respondent of the term "distilling" in its trade or corporate name upon its invoices, stationery, advertising, and upon the labels attached to the bottles in which it sells and ships its spirituous liquors has a tendency to mislead and deceive wholesalers, retailers and the ultimate purchasers into the belief that in purchasing the same they are purchasing a product bottled at a distillery by the original distiller thereof and this, in turn, tends to and does unfairly divert trade from respondent's competitors to the respondent. Among such competitors, there are those who, manufacturing spirituous liquors by a process of original and continuous distillation from mash, wort, or wash, do truthfully designate themselves as distilling companies and also among such competitors are those in the same class with this respondent, to wit; those who are engaged in that branch of the industry known as the distilled spirits rectifying industry and who, as rectifiers, do not untruthfully designate themselves as "distilleries," "distillers," or "distilling companies."

PAR. 6. The complaint herein was issued April 22, 1935 (which was prior to the decision of the United States Supreme Court, May 27, 1935, in the case of *A. L. A. Schechter Poultry Corporation, et al., vs. United States*, 295 U. S. 495) and contained two counts. Count 1 specifically charged a violation of the Federal Trade Commission Act and count 2 charged that the practices of respondent, as hereinbefore set out, were unfair methods within the meaning of the Federal Trade Commission Act because they were in violation of Section 3 of Title I of the National Industrial Recovery Act which was invalidated by the aforesaid decision.

For this reason the Commission is of the opinion that the complaint should be dismissed as to count 2 thereof.

CONCLUSION

The aforesaid acts and practices of the respondent Chesapeake Distilling & Distributing Company, a corporation, 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, en-

807

Order

titled "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 respondent, testimony and other evidence taken before John W. Bennett, an examiner of the Commission, theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by PGad B. Morehouse, counsel for the Commission and by Horace J. Donnelly, Jr., counsel for respondent, and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That the respondent Chesapeake Distilling & Distributing Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of whiskies, brandies, and all other spirituous beverages in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing through the use of the word "Distilling" in its corporate name, on its stationery, advertising or on the labels attached to the bottles in which it sells and ships said products, or in any other way by words of like import, (a) that it is a distiller of whiskies, brandies or any other spirituous beverages; (b) that the said whiskies, brandies, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or mash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

It is further ordered, That the said respondent, within 60 days from and after the date of the service upon it of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

It is further ordered, That the said complaint be, and the same is hereby, dismissed as to count 2 thereof.

IN THE MATTER OF
UCANCO CANDY COMPANY, INC.

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

Docket 2612. Complaint, Nov. 4, 1935—Decision, Nov. 11, 1936

Where a corporation engaged in manufacture and sale of candy, arranged, with push cards, as "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 type of candy, who buy the 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 due to the gambling or lottery feature of the so-called "draw" or "deal" merchandise—

Sold to wholesale dealers and jobbers located in practically all the States of the United States east of the Rocky Mountains, together with push cards, (1) assortments in which the number disclosed by chance on the card by purchaser determined whether such purchaser received one of the candy bars making up such assortment free of charge, or paid an amount ranging from 1¢ to 5¢, as the case might be, for such bar, and (2) assortments in which the penny purchaser received, depending upon the number pushed by chance or the making of the last push in each of the sections into which the board was divided, a small piece, one of the larger pieces or bars, or one of the still larger bars for such purchaser's penny; so packed and assembled that such various assortments could be displayed and offered by the numerous retail dealers, purchasers thereof from its own wholesale or jobber customers, and with knowledge and intent that such assortments would and could be sold, without alteration, addition, or rearrangement, to the public by lot or chance by retail dealers therein; in violation of public policy, and in competition with some manufacturers who had begun sale and distribution of candy for resale to the public by lot or chance to meet competition of those who sell and distribute candy sold by such methods and in demand; With result that the public and its competitors were prejudiced and injured, and trade was diverted to it from said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry involved:

Held, That such acts and practices, under the conditions and circumstances therein 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.

Cook & Balluff, of Davenport, Iowa, for respondent.