

Syllabus

IN THE MATTER OF
COSNER CANDY COMPANYCOMPLAINT, MODIFIED FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2619. Complaint, Nov. 9, 1935—Decision, Nov. 13, 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 (1) chance selection of one of penny pieces of chocolate covered candies, of uniform size and shape, enclosed pink colored center of small number of which entitled chance purchaser to one of larger pieces or candy bars included therewith, and chance selection of one of still fewer pieces with yellow center entitled purchaser to one of small boxes of candy similarly included, and purchase of last piece entitled buyer, without charge, to larger box of candy included; (2) chance selection of certain numbers entitled penny purchaser to various pieces from similarly made up assortment, in accordance with legend displayed on push card included, and last number punched out entitled purchaser to large box of chocolates; and (3) in which similar assortments involving same principle or sales plan varied in minor detail and adaptation to seasonal variations, such as Easter candy eggs—

Sold said assortments, in competition with many who are unwilling to adopt or use such or any method involving game or sale of chance as contrary to public policy or criminal statutes of certain States or United States, or as detrimental to public morals or those of purchasers of such candy; with explanatory display and push cards, to wholesalers, jobbers and retailers, knowingly packed, assembled, and designed for display, offer, and sale, without alteration, addition or rearrangement, to consuming, purchasing public by lot or chance by retailers, stores of which, in case of small establishments, are frequently near schools and attract trade of children, principal consumer-purchasers of lottery or prize candy assortments, and buyers thereof, given choice, in preference to "straight" goods because of lottery or gambling feature connected therewith and chance of winning, 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 such gambling feature;

With result that many competitors dealing in "straight goods" candies only, 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 some of whom refuse, for said reasons to sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage, and trade was diverted to it from aforesaid competitors dealing in "straight goods" and able to compete on even terms only by giving same or similar devices to retailers, some competitors began sale and distribution of candy to public by lot or chance to meet demand for candy thus sold, sale of such

Complaint

23 F. T. C.

refusing competitors "straight" candy showed a continued decrease, 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 a 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 Cosner Candy Company, a corporation, 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 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 is now, and for several years last past has been engaged in the manufacture of candy and the sale and distribution thereof 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 its place of business in the city of Denver, State of Colorado, 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 the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products 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 hereof, the respondent sells and has sold to wholesale and retail dealers various packages or assortments of candy, so packed and assembled as to involve the use of a lottery scheme when

Complaint

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, nor does it include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of said assortments manufactured and distributed by respondent consists of a number of small chocolate-covered marshmallow pieces of candy of uniform size and shape, together with a number of larger candy bars and a number of small boxes of candy, and a larger box of candy. The larger bars of candy, the small boxes of candy and the larger box of candy, are to be given as prizes to purchasers of said chocolate-covered marshmallow candies, in the following manner:

The majority of the said chocolate-covered marshmallow candies in said assortment have white centers, but the color thereof is fully concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. A small number of said chocolate-covered marshmallow candies have pink centers, and a still smaller number of said chocolate-covered marshmallow candies have yellow centers. The said pieces of chocolate-covered marshmallow candy, of uniform size and shape, retail at the price of 1¢ each, but the purchaser who procures one of the said candies having a pink center is entitled to receive and is to be given free of charge one of the larger bars of candy, and the purchaser who procures one of the said candies having a yellow center is entitled to receive and is to be given free of charge, one of the small boxes of candy. The purchaser of the last piece of the aforesaid chocolate-covered marshmallow candy of uniform size and shape, is entitled to receive and is to be given free of charge the larger box of candy in said assortment. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of the said pieces of candy, and the purchaser of the last piece of candy in said assortment, are thus to procure one of the larger bars of candy or one of the small boxes of candy, or the larger box of candy, wholly by lot or chance.

Respondent furnishes and has furnished with said assortment of candy, a display card to be used by the retailer in offering said candy for sale to the public, which display card bears a legend or statement informing the prospective purchaser that the said candy is being sold in accordance with the above described sales plan.

(b) Another assortment manufactured and distributed by respondent consists of a number of small chocolate-covered marsh-

Complaint

23 F. T. C.

mallow candies, a number of larger bars of candy, a number of small boxes of candy, and a larger box of candy, together with a device commonly called a push card. The candy in said assortment is to be distributed in the following manner:

The push card has a number of partially perforated discs, and when a push is made and the disc separated from the card, a number is disclosed. Sales are 1¢ each, and the card bears statements or legends informing the prospective customer as to which numbers receive one of the small chocolate-covered pieces of candy, which numbers receive one of the larger bars of candy, and which numbers receive one of the small boxes of candy. The last push on the card receives the larger box of candy. The numbers on the card are effectively concealed from the purchasers or prospective purchasers until a push or sale has been made and the particular push separated from the board. The fact as to whether a purchaser obtains one of the small chocolate-covered marshmallow pieces of candy, one of the larger bars of candy, one of the small boxes of candy or the larger box of candy is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct, expose said assortments for sale, and sell said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the 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.

PAR. 4. The sale of said candy to the purchasing public, as above alleged, involves a game of chance or the sale of a chance to procure larger pieces or boxes of candy in the manner alleged. Such sales of candy, along with the sale of such chances to procure larger pieces or boxes of candy 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 the respondent as above alleged, are unwilling to offer for sale or sell candy 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 pieces or boxes of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. Many dealers in candy are induced to purchase said candy so offered for sale and sold by respondent, in preference to all others, because said ultimate purchasers give preference to respondent's said candy on account of the said game of chance involved therein. 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 the 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 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 the 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 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, 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 November 9, 1935, issued and served a complaint upon the respondent, Cosner Candy Company, a corporation, 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 said complaint, the respondent having failed to file answer thereto, testimony and other 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 other evidence were duly recorded and filed in the office of the Commission. The respondent was represented by Walter J. Hughes, Esq., but offered no testimony or other evidence in opposition to the charges of complaint. Thereafter the proceeding came regularly on for final hearing before the Commission on said complaint, the testimony and other evidence and brief in support of the complaint, respondent having failed to file any brief, and through its counsel having indicated that it did not desire 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, Cosner Candy Company, 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, 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 candy to retail and wholesale dealers located in the State of Colorado and in the States of Wyoming, Nebraska, and New Mexico. It causes said candy when sold to be shipped or transported from its principal place of business in Denver, Colo., to purchasers thereof in Colorado and in Wyoming, Nebraska, 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 com-

petition with other corporations and with partnerships and individuals 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. Among the candy manufactured and sold by respondent is an assortment designated as "Lucky Cherries" composed of a number of small chocolate covered pieces of candy of uniform size and shape, together with a number of larger pieces or bars of candy, a number of small boxes of candy, and a larger box of candy. The larger bars of candy, the small boxes of candy, and the larger box of candy are given as prizes to the ultimate purchasers or consumers of said chocolate covered candies in the following manner:

The majority of the said chocolate covered candies in said assortment have white centers, but a small number of said chocolate covered candies have pink centers and a still smaller number of said chocolate covered candies have yellow centers. The color of the center of the said chocolate covered candies is effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular piece of candy broken open. The said chocolate covered candies retail at the price of 1¢ each, but the purchaser or consumer who procures one of said candies having a pink center is entitled to receive, and is given free of charge, one of the larger bars of candy, and the purchaser or consumer who procures one of the said candies having a yellow center is entitled to receive, and is given free of charge, one of the small boxes of candy. The purchaser of the last piece of the said chocolate covered candies is entitled to receive, and is given free of charge, the larger box of candy in said assortment. The larger pieces or bars of candy, the small boxes of candy, and the larger box of candy contained in said assortment are thus distributed to purchasers of the small chocolate covered candies wholly by lot or chance.

Respondent furnishes and has furnished with said assortment of candy a display card designed to be used by the retailer in offering said candy for sale to the public, which display card bears a legend or statement informing the prospective customer that the said candy is being sold in accordance with the above-described plan.

PAR. 3. Another assortment manufactured and distributed by respondent, and also designated as "Lucky Cherries" consists of exactly the same type and quantity of candy as the assortment described in paragraph 2 just above, but also includes a device commonly called a push card. The push card included with this assortment bears legends at the top thereof stating the manner in which the candy is to be

Findings

23 F. T. C.

distributed to the purchasers or consumers. These legends are as follows:

"LUCKY CHERRIES"
 1¢ PER PUNCH —NO BLANKS— 1¢ PER PUNCH
 Nos. 5-15-25-35-45-55-65-75-85-95-105-115-125
 135-145-155-165-175-185 and 195 Receives
 5¢ "CHOCOLATE CANDY BAR"

Nos. 7-17-107-117 Receives 5¢ "CHOCOLATE
 CANDY BAR"

Nos. 13 and 113 Receives 4 oz. Pkg.
 "DAYLIGHT CHOCOLATES"

LAST NUMBER Punched out Receives
 "LARGE BOX DAYLIGHT CHOCOLATES"

The push card also has immediately below the legends quoted 200 partially perforated discs, and under each disc is a number effectively concealed from purchasers, and prospective purchasers, until a "push" or selection has been made and the particular disc separated from the card. The candy bars, the small packages of candy, and the large box of candy are distributed to purchasers in accordance with the legends shown at the top of said push card. Purchasers obtaining numbers not shown at the top of said push card receive one of the small pieces of candy contained in said assortment. Sales are 1¢ each and the fact as to whether a purchaser receives one of the small pieces of chocolate covered candy, one of the larger pieces or bars of candy, one of the small packages of candy, or the larger package or box of candy for the price of 1¢ is thus determined wholly by lot or chance.

PAR. 4. The respondent at certain times and seasons of the year distributed various other assortments similar to the assortments described in paragraphs 2 and 3 and involving the same principle or sales plan for the sale and distribution of the said candy to the ultimate purchaser or consumer, but varying only in detail. As an illustration of such seasonal variation the respondent, at or before the Easter season of the year, distributed assortments involving the same principle or sales plan in which the candy was egg shape, the majority being small candy eggs and a few of the pieces being large candy eggs.

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 "break and take," "draw," or "deal" assortments. Assortments of candy without the lot or chance 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 designate these types of assortments.

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 the 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 because of any or all of said reasons.

PAR. 7. The respondent sells its merchandise to retail dealers and to wholesale dealers and jobbers in the States of Colorado, Nebraska, Wyoming, and New Mexico, and respondent's merchandise, both "straight" and "break and take" or "draw" or "deal" assortments, is resold in practically all stores where candy is sold.

All sales made by respondent are absolute sales and respondent retains no control over the goods after they are delivered to the retail dealers or to the wholesale dealers and jobbers. The assortments are packed and assembled in such manner that they are sold and may be sold by the retail dealers to the purchasing public by means of a lottery, gaming device, or gift enterprise.

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

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

PAR. 8. 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 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. 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 which is sold by lot or chance and in order to meet the competition of manufacturers who sell and distribute candy which is resold 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 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. The principal demand in the trade for the "break and take," or "deal," or "draw" 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 candy assortments are principally children and because of the lottery or gambling feature connected with the "break and take," or "draw," or "deal" assortments and the possibility of becoming a winner it has been observed that the children purchase them in preference to the "straight" candy when the two types of assortments are displayed side by side.

The children prefer to purchase the lottery or prize assortments of candy because of the gambling feature connected with its sale. The sale and distribution of "break and take," or "draw," or "deal" assortments of candy or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance teaches and encourages gambling among children who comprise by far the largest class of purchasers and consumers of this type of candy.

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" candy in interstate commerce in competition with the "break and take," or "draw," or "deal" candy, and manufacturers of the "straight" type of candy have noted a marked decrease in the sales of their product whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight" candy is principally due to the gambling or lottery feature indicated with the "break and take," or "draw," or "deal" candy.

PAR. 11. The exact annual volume of respondent's business was not shown but an officer of the respondent corporation testified, and the Commission finds, that the annual volume of respondent's business

861

Order

exceeds \$200,000, and that the sale of the "break and take," "draw," or "deal" assortments is a substantial part of this volume.

PAR. 12. The Commission further finds that the sale and distribution in interstate commerce of assortments or packages of candy 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, Cosner Candy Company, a corporation, under the conditions and circumstances set forth in the foregoing findings of fact are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce and constitute violation 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."

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 to the complaint, and no testimony having been offered in opposition thereto, and upon the brief herein filed by counsel for the Commission, 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, its officers, agents, representatives, and employees, in the offering for sale, sale, and distribution by it in interstate commerce of candy and candy products, do cease and desist from:

(1) Selling and distributing to retail dealers, and to jobbers and wholesale dealers for resale to retail dealers, 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, retail dealers and wholesale dealers and jobbers, packages or assortments of candy which are used, or may be used, without alteration or rearrangement of the

Order

23 F. T. C.

contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of candy or candy products contained in said assortments 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 or small boxes of candy, which said larger pieces of candy or small boxes of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color;

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

(5) Furnishing to retail dealers or to wholesale dealers and jobbers display cards or other printed matter for use in connection with the sale of candy, which said advertising literature informs the purchasing public that upon the obtaining by the ultimate purchaser of a piece of candy of a particular colored center, a larger piece of candy, or small box of candy, will be given free to said purchaser;

(6) 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 distribution of said candy to the public at retail.

And it is further ordered, That the respondent, Cosner 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.

Complaint

IN THE MATTER OF
THE L. D. CAULK COMPANY

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

Docket 2750. Complaint, Mar. 21, 1936—Decision, Nov. 13, 1936

Where a corporation engaged in manufacture and sale of dental materials and dental specialties, including a dental amalgam alloy sold to dentists for dental filling, and to dental supply houses for resale—

Falsely represented in its advertisements in trade papers and periodicals circulating among the dental profession and dealers in dental supplies in various States, and in circulars, etc., distributed in packages in which its said product was sold, as aforesaid, that its said alloy markedly resisted the effects of over and under manipulation and was adapted to any technic followed in the preparation of dental amalgam therefrom;

With effect of deceiving and misleading public, purchasers of dental amalgam alloy, into belief that such statements and representations were true, and into buying its said alloy instead of that sold by its competitors, and of diverting trade in such product to it; to the substantial injury and prejudice of its competitors:

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

Mr. Edward E. Reardon 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 The L. D. Caulk Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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, The L. D. Caulk Company, is a corporation, organized on or about April 30, 1913, and existing under the laws of the State of Delaware, and having at all times since its organization its principal place of business at Milford, Del., and branch offices, places of business, or retail depots in several cities in other States.

PAR. 2. During all the times above mentioned, the respondent is and has been engaged in the business of the manufacture and sale