

# FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, DECEMBER 1, 1936 TO MAY 31, 1937

IN THE MATTER OF

CONDE NAST PUBLICATIONS, INC.

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

*Docket 2399. Complaint, May 20, 1935—Decision, Dec. 2, 1936*

Where a corporation long engaged in the publication of a semi-monthly women's style magazine which (1) had an approximate circulation of 150,000, distributed throughout every State of the United States, with editions also published in England and France, (2) was considered a style leader in its field, with its opinions and recommendations in matters of women's styles and dresses carrying great weight with a large portion of the feminine population, who buy style garments, and with manufacturers and retailers thereof, and (3) was at all times in demand on the part of the purchasing public on account of its recommendations as to stylish and "smart garments"—

- (a) Entered into contracts with from four to seven manufacturers, for each issue, out of the two hundred New York City manufacturers, in round numbers, of women's garments of the price range with which it was concerned, under which contracts, and subject to the various provisions thereof as set forth in detail, each manufacturer agreed to pay it a specified percentage of the named price of such garment of said manufacturer as might be selected by it for its featured garments in the issue and department of its said magazine devoted to such matters, and not to manufacture, during the period concerned, a similar garment, or to sell the model selected in cities in which the publisher had selected retailers participating in plan and arrangement herein set forth, and it, the publisher, agreed to supply manufacturer with list of retailers throughout the country with whom it had made agreement to feature garment in question and the names of which it undertook to publish in its said periodical; and
- (b) Entered into agreements with some seventy-three retailers in about seventy-five cities in the different States besides New York, and other than New York City, under which the retailer undertook to purchase, subject to the various detailed provisions of such contracts, at least two articles of such featured selection, and to maintain the resale prices quoted thereon, and it undertook to publish in its said periodical, and in connection with its aforesaid selections, the name of the retailer and price of the particular garment, and not to sell to any other store in such retailer's city except on the same

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terms, and entered into some twenty oral contracts of the same kind and effect with New York City retailers, and furnished, as a part of the aforesaid plan, for retailers' use in their local advertising, colored display cards and materials calling attention to and giving publicity to the fact that they had been selected by said periodical to sell its featured garments, and thus gave them the prestige possessed by said periodical and which it was able to confer;

With effect of securing the maintenance, by said selected retailers, anxious to avoid price competition and obtain lines of dresses to the exclusion of competitors, and who found plan profitable, of the resale prices fixed by it, of depriving the public of normal price competition among retailers of such garments, and of causing manufacturers, by whom selection of their garments as above set forth was featured and capitalized, to limit the number of retailers displaying and selling such selected garments to those retailers thus chosen, and of thereby depriving the public of normal competition among a number of dealers in each locality, and with capacity and tendency so to do, and to do substantial injury to (1) manufacturers of the class of garments featured in department in question of said periodical, but who do not participate in practice in question; (2) retailers in garments of class thus featured and who do not thus participate; and (3) competition in commerce; and (4) the public:

*Held*, That such acts and practices were against public policy in that they unduly suppressed and hindered competition in sale and resale of women's garments, and had capacity and tendency so to do, to prejudice of public interest; and constituted unfair methods of competition.

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

*Mr. Astor Hogg* for the Commission.

*DeWitt, Van Aken & Moynihan*, of New York City, 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 to believe that Conde Nast Publications, Inc., a corporation, hereinafter called the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, 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. The respondent, Conde Nast Publications, Inc., is and at all times hereinafter mentioned was a corporation organized, created, and existing under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of New York, in said State, and a branch office in the city of Greenwich, State of Connecticut. It is now engaged, and for more

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than two years last past has been engaged, in the business of selling and distributing various publications, including "Vogue," between and among the various States of the United States. It now causes, and for more than two years last past has caused, its various publications, including "Vogue," when sold by it to be transported from its place of business in Greenwich, Conn., to newsdealers and subscribers thereof, some located in the State of New York and others in the various States of the United States; and there is now, and has been for more than two years last past, a constant current trade and commerce by said respondent in such publications, including "Vogue," between and among the various States of the United States. In the course and conduct of its business respondent is now and for more than two years last past has been in substantial competition with other corporations and with firms and partnerships engaged in the sale and distribution of like publications between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as aforesaid, respondent publishes a magazine known as "Vogue," in which magazine respondent has featured and does feature a department sometimes entitled "Vogue Smart Economies," and at other times, "Vogue's Finds of the Fortnight." The magazine "Vogue" is a woman's magazine devoted to fashion and has a circulation throughout all the States of the United States, and said magazine is at all times in demand on the part of the purchasing public, on account of the fashions and styles of women's apparel which it features, including the department entitled "Vogue Smart Economies" and "Vogue's Finds of the Fortnight." A substantial number of respondent's said competitors maintain in their respective publications similar departments of information and recommendation concerning women's clothing.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has adopted and still has in effect a plan whereby it enters into written contracts with various dress and garment manufacturers of the United States, wherein it is agreed that the respondent shall choose models of women's wearing apparel from the model lines of such manufacturers, for featuring in "Vogue Smart Economies" and "Vogue's Finds of the Fortnight" department of the "Vogue" magazine. For featuring such models as selected by the respondent the manufacturers agree to pay respondent, for each occasion a model is chosen from such manufacturer's line and published in the above-mentioned department, a service fee of five percent of the amount col-

lected as the price payable for the sale of each and every article which is a reproduction of the model chosen by respondent for the picture of the garment to be featured in said magazine. The manufacturers agree not to manufacture or sell any other garment so similar in design to the models so chosen and pictured in "Vogue" as to simulate the said designs.

The written contract which respondent enters into with such manufacturers of women's apparel also stipulates that respondent has made agreements with certain retailers throughout the various States of the United States who will feature and sell these garments, and that it will publish the names of such retailers in the magazine "Vogue," and respondent agrees to furnish a list of these retailers selected by it in the various States of the United States to the manufacturers with whom it enters into such written contract, and the manufacturers agree that in localities where respondent has made such agreements with retailers they will not sell their garments to any retailers in such localities except to those specified in the list furnished the manufacturers. The said manufacturers so selected by respondent in selling to retail dealers regularly, and as a part of such sales, ship their garments to said dealers from the manufacturer's places of business to such purchasers located in various other States, and in so doing are in substantial competition with other manufacturers of women's clothing.

In further connection with the operation of this department of the magazine, respondent selects retail dealers in women's apparel in various localities of the different States of the United States and enters into both written contracts and oral contracts with such retail dealers, by the terms of which contracts respondent agrees to publish in each issue of "The Vogue" the name of the retailer with whom it enters into such contract as the outlet or place where such garment can be obtained in his locality. Such retailer agrees to purchase a minimum of one of each garment pictured and featured in "Vogue's Finds of a Fortnight" and "Vogue Smart Economies," in every issue of "The Vogue," and further agrees and binds itself to respondent to maintain the retail price thereof quoted in "Vogue" for a period of at least one month from the on-sale date of the issue of "Vogue" in which the garments are shown. Respondent agrees that for at least a period of two months after the delivery of these models in the retail store, such models will not be sold by the manufacturers thereof to any other store in the retailer's city or locality except under the same terms and under the same form of contract as entered into between such retailer and respondent.

PAR. 4. Before selecting any model of any such manufacturer to be featured and shown in the "Vogue Smart Economies" and "Vogue's

Finds of the Fortnight" department of the magazine, respondent's experts, agents, and servants visit the various manufacturing establishments of the different States of the United States and select the designs to be featured, and require, before featuring such designs, that said manufacturers alter and modify such designs of wearing apparel to meet the demand of the respondent.

PAR. 5. By and through the captions of such department of its said magazine, "Vogue Smart Economies" and "Vogue's Finds of the Fortnight," the publication therein of the identity of the manufacturers whose garments are selected and of the retailers where same may be purchased, and by and through the text of the reading matter in said department contained, respondent impliedly represents to its readers that it is disinterestedly acting to inform them of "smart" garments and where they may be purchased at economical prices; when in truth and in fact respondents select the garments of those manufacturers who will agree to pay it a consideration for making such selection and recommending the same to its readers, and causes the manufacturers of such garments to adopt and carry out, and aids and assists them in adopting and carrying out, a resale price maintenance policy whereby all price competition among retail dealers in such garments is prevented.

PAR. 6. The capacity and tendency, and purpose and result, of the combination and agreement between respondent and the manufacturers and retailers of women's garments and of the acts and practices of respondent, as hereinabove alleged, has been and is to mislead and deceive the readers of respondent's said magazine into the belief that respondent's research and recommendations were and are disinterested; to deprive the public of the benefits of normal price competition among retailers of such garments by constraining retailers to sell at a price arbitrarily fixed by respondent and said manufacturers; and to cause manufacturers to limit the retail dealers in each locality to those selected by respondent, thus depriving the public of the benefits of competition among a number of dealers in each locality.

PAR. 7. The said combination and agreement and acts and practices, were and are to the prejudice of the public interest, as aforesaid; to prejudice of respondent's competitors who honestly conduct similar departments in the interest of their readers; and to the prejudice of the competitors of the said manufacturers who enter into no such schemes to deceive the public, and deprive it of the benefits of competition; 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 20, 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 the 20th day of May 1935, issued and served its complaint in this proceeding upon respondent, Conde Nast Publications, Inc., 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 the said complaint were introduced by Astor Hogg, attorney for the Commission, before John W. Norwood, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by MacDonald DeWitt, attorney for respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding 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 the counsel aforesaid; 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 conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Conde Nast Publications, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal corporate office located in the city and State of New York and its principal place of business located in the town of Greenwich, State of Connecticut. It is now, and has been for more than twenty years last past, engaged in the business of selling and distributing various publications, including the magazine known as "Vogue," to various individuals, firms, and corporations, located in the various States of the United States. It has caused and still causes its said publications, including "Vogue," when so sold by it to be transported, in commerce, from its principal place of business in the town of Greenwich, Conn., to, into, and through said other States to the purchasers thereof.

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PAR. 2. In the course and conduct of its business as aforesaid respondent published the magazine "Vogue" in which it has featured and does feature a department, or continuous feature, which from its incipency in September 1932, to June 1934, was entitled "Vogue's Smart Economies," since said latter date it has been entitled "Vogue's Finds of the Fortnight." "Vogue" is a women's style magazine, published twice a month, and has an approximate circulation of 150,000, distributed throughout every State of the United States. It also has editions published in England and France. It is considered a style leader in its field and its opinions and recommendations in matters of women's styles and dresses have great weight with a large portion of the female population who buy style garments, and with manufacturers and retailers of such garments. It is at all times in demand on the part of the purchasing public on account of its recommendations as to stylish and "smart garments".

PAR. 3. In the course of and in connection with the conduct of said department "Finds of the Fortnight," respondent has adopted and still has in effect a plan whereby it enters into and carries out certain written contracts, first, with women's garment manufacturers, and second, with retailers of such garments. Its contract with manufacturers is in the words and figures following, to wit:

## CONDE NAST PUBLICATIONS, INC.

420 Lexington Avenue,

New York, N. Y.

AGREEMENT between The Conde Nast Publications, Inc., publisher of the magazine Vogue, hereinafter called the "Publisher", and \_\_\_\_\_, wholesale manufacturer, hereinafter called the "Manufacturer."

1. The Publisher conducts a department in Vogue entitled "Vogue's Finds of the Fortnight", wherein it publishes pictures of models of women's wearing apparel, with retail prices given. These models are chosen by the editors of Vogue from the Model lines of wholesale manufacturers. The Manufacturer is desirous of having selections made by Vogue from his line for that purpose.

2. The Manufacturer agrees to pay the Publisher, to offset, in part, the expense to the Publisher of operating such Finds of the Fortnight Department, for each occasion when a model is so chosen from his line and published in the above-mentioned department of Vogue, a service fee of 5% of the amount quoted to Vogue as the price payable to him from the sale of each and every article of wearing apparel (in any and all materials in which the same may be made) which is a reproduction or adaption of the model so chosen and pictured in Vogue (less 8% to cover trade discount), and the Manufacturer agrees not to manufacture or sell any other garment so similar in design to the model so chosen and pictured in Vogue as to constitute an infringement of the design of such model or a substantial imitation thereof. The Manufacturer shall pay such service fee to the Publisher each thirty days after delivery of the merchandise to retailers during the sales life of the garment selected by Vogue.

3. The Publisher has made agreements with certain retailers throughout the country who will feature these garments, to publish the names of such

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retailers in Vogue. The list of these retailers will be furnished to the Manufacturer, and the Manufacturer agrees that in cities where Vogue has made such agreements with retailers he will not, without Vogue's written consent, sell these garments to any retailers except those specified in such list. The Manufacturer agrees not to make delivery of any garment reproduced by him from the model so chosen by the editors of Vogue to retailers more than five days before the publication date of the particular issue of Vogue in which such garment is to be pictured, and the Publisher agrees to give the Manufacturer advance notice of such publication date.

Dated: New York, \_\_\_\_\_ 1933 THE CONDE NAST PUBLICATIONS, INC.  
 In presence of: \_\_\_\_\_ By: \_\_\_\_\_  
 Witness: \_\_\_\_\_ Firm Name: \_\_\_\_\_  
 Witness: \_\_\_\_\_

The written contract between the respondent and the retailers is in the words and figures following, to wit:

AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ 193 , between THE CONDE NAST PUBLICATIONS, INC., Publisher of the magazine Vogue, and \_\_\_\_\_ of \_\_\_\_\_, Retailer.

1. There appears in the editorial section of each issue of Vogue a special department consisting of several pages of illustrated wearing apparel under the title "Vogue's Finds of the Fortnight".

The purpose of this Editorial feature is to present to the readers of Vogue special garments selected by Vogue from wholesale manufacturers, because of their good style and good values. On the pages where these garments are illustrated, Vogue quotes the retail prices and states further that they may be found in the better shops throughout the country.

2. In order that you may get the full benefit of Vogue's promotion of these garments, Vogue is prepared to publish in each issue the name of your store as a retail outlet for these particular garments in your community, providing you subscribe to the conditions specified herein.

3. You agree to purchase until further notice a minimum of two of each garment (not to exceed seven numbers) shown in "Vogue's Finds of the Fortnight" in every issue of Vogue, and you further agree to maintain the retail price thereof quoted in Vogue for a period of at least one month from the on-sale date of the issue of Vogue in which these garments have been shown.

4. Vogue agrees that for at least a period of two months after the delivery of these models to your store, these same models will not be sold by the manufacturers thereof to any other store in your city, except under the same terms and under the same form of contract as subscribed to by you.

5. This agreement may be terminated by either party giving the other thirty days' written notice, at the expiration of six months.

CONDE NAST PUBLICATIONS, INC.

By \_\_\_\_\_

ACCEPTED:

\_\_\_\_\_  
 Retailer

PAR. 4. For each issue of Vogue respondent enters into the contract hereinabove first set out with New York City manufacturers of from four to seven models of garments to be featured, and offers sugges-

tions and requires alterations in the same to meet respondent's ideas and desires. During the year 1932, respondent entered into such contracts with seventy-three manufacturers of dress garments, all of whom were located in New York City. In 1933 it entered into seventy-seven such contracts; in 1934 it entered into seventy-three such contracts and from January 1, 1935, to August 1, 1935, respondent entered into forty such contracts. Approximately 85% of the manufacturers in the United States, of garments of the class featured by Vogue, in "Finds of the Fortnight," are situated in New York City. Manufacturers of such dresses outside of New York City are not permitted to participate in the plan although said manufacturers are engaged in interstate commerce in the sale of their dresses to the same class of retail dealers as those to whom said other manufacturers sell. The wholesale price range of dresses featured by Vogue in its "Finds of the Fortnight" is from \$10.75 to \$39.50. In this price range there are about 200 manufacturers in New York City who manufacture dresses of the class which Vogue features in its department, and it has contacted approximately 160 of that number. Thus, in any one issue of Vogue, from four to seven of the manufacturers in New York are favored against the remainder of about 200, and against all manufacturers outside of New York. The selected manufacturers circularize their trade and stress the fact of their selection by Vogue. The manufacturers with whom respondent enters into such contracts are regularly engaged in selling women's garments to retail dealers located in states other than the state in which such manufacturers are located, and pursuant to such sales, and as a part thereof, shipping the garments into and through the various States of the United States to purchasers thereof.

PAR. 5. The list of Vogue retail dealers, with whom it enters into the written contract hereinabove set out, covers regularly about seventy-five cities in the different States of the United States, besides New York City, and embraces about seventy-three retailers outside the State of New York. Since the plan was adopted written contracts have been made with a total of 137 retail dealers. Approximately twenty oral contracts of the same tenor and effect as the written contracts are operative between respondent and retailers in New York City. Respondent has had, at various times, co-existing contracts covering the same models with two retailers in each of the following cities:

Philadelphia  
Los Angeles  
San Francisco  
Chicago

Brooklyn  
Kansas City  
Pittsburgh  
Toledo

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and with from six to eight retailers in New York City. As a part of the plan the selected retail dealers are furnished with colored display cards and materials for use in their local advertising, calling attention to and giving publicity to the fact that they have been selected by Vogue to sell the featured garments, thus giving them the prestige which Vogue possesses and is able to confer. It is understood that failure by the retailers to maintain, according to the contract, the resale price for the garments fixed by respondent and quoted in Vogue, with fractional tolerances, will result in such retailer being denied further participation in the plan. However, the selected retailers have found the plan profitable to them, and they have maintained the fixed prices. Retail dealers in such garments have been and are anxious to avoid price competition and to obtain lines of dresses to the exclusion of competitors.

PAR. 6. The maximum demand for a garment featured in "Finds of the Fortnight" occurs during the first month after the issue of the magazine in which said garment is featured goes on sale. In the year 1934, Vogue circulation increased approximately 15,000 copies per issue and the Department "Finds of the Fortnight" contributed substantially to the increase. The plan under which this department is and has been operated, has resulted in the sale of 32,459 garments in the year 1933, of 32,301 garments in the year 1934, and 9,937 garments from January 1, 1935, to August 1, 1935.

PAR. 7. The capacity, tendency, and effect of respondent's plan and practices as set forth in these findings has been and is to secure the maintenance by the selected retail dealers of the resale prices fixed by respondent and to deprive the public of normal price competition among the retailers of such garments; and to cause manufacturers to limit the number of retail dealers displaying and selling said selected garments to those selected by respondent, thus depriving the public of normal competition among a number of dealers in each locality. The plan has had and has the capacity and tendency to do substantial injury to manufacturers of the class of garments featured in "Finds of the Fortnight" who do not participate in the practice herein set out and to do substantial injury to retailers in garments of the class featured in "Finds of the Fortnight" who do not participate in the practice herein set forth. The plan has had and has the capacity and tendency to do substantial injury to competition in interstate commerce and to do substantial injury to the public.

PAR. 8. The evidence in the record fails to establish by substantial proof that respondent's method of conducting the department "Vogue's Finds of the Fortnight" has the capacity or tendency to mislead and deceive its readers, as alleged in the complaint.

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## CONCLUSION

The aforesaid acts and practices of Conde Nast Publications, Inc. are against public policy in that they have the capacity and tendency to, and do, unduly suppress and hinder competition in the sale and resale of women's garments, to the prejudice of the public interest, and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before John W. Norwood, 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 Astor Hogg, counsel for the Commission, and by MacDonald DeWitt, counsel for the 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 now ordered*, That the respondent, Conde Nast Publications, Inc., its officers, representatives, agents and employees, in connection with the publication and sale of its magazines in interstate commerce, or in the District of Columbia, do cease and desist from:

(1) Entering into contracts, agreements, or understandings with retail dealers of women's garments, who regularly purchase such garments in interstate commerce, requiring or providing that the retailers, in the resale of such garments, or any of them, shall observe and maintain the retail prices therefor specified, fixed or quoted by respondent;

(2) Entering into contracts, agreements, or understandings with manufacturers of women's garments, who regularly sell and ship such garments in interstate commerce, requiring or providing that the manufacturers shall limit, in each locality, the number of retail dealers to whom it will sell and ship such garments, or any of them;

(3) Using and carrying out a plan whereby, pursuant to contracts with selected manufacturers of women's garments, who regularly sell and ship such garments in interstate commerce to retailers thereof, respondent selects models of such manufacturers' garments, pic-

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tures the same in its magazine, selects, and publishes the names of, retailers who will have and have such garments for sale, and requires the manufacturers to refrain from selling such garments, in cities where respondent has selected retailers, to any retailers except those selected by respondent; and enters into contracts with and requires the selected retailers to observe and maintain the resale prices fixed and quoted by respondent for such garments;

(4) Aiding, assisting, and abetting any person in carrying out any resale price maintenance policy, the capacity, tendency, or effect of which may be to prevent or to substantially lessen competition among retail dealers;

(5) Utilizing any cooperative means of accomplishing or carrying out the things prohibited in paragraphs 1, 2, 3, and 4, hereof.

*It is further ordered,* That the said respondent shall, within 30 days from and after the day of the date of the service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

## Syllabus

IN THE MATTER OF  
PAUL F. BEICH COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 2237. Complaint, Dec. 30, 1935<sup>1</sup>—Decision, Dec. 3, 1936*

Where a corporation engaged in manufacture and sale of "straight" goods candy and of so-called "break and take," "draw," or "deal" assortments, one of the principal trade demands 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 opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, largest class by far of purchasers and consumers of such type of candy, who buy same in preference to so-called "straight" goods, when displayed side by side, by reason of lottery or gambling feature connected with former, and selling 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 gambling or lottery feature connected with so-called "break and take," "draw," or "deal" merchandise—

Sold, to wholesalers and jobbers, its said candy, including assortments of (1) two-for-a-penny individually wrapped pieces of uniform size and shape in which chance purchaser of pieces, the enclosed concealed color of which differed from that of the majority, was entitled, free of charge, to one of the larger pieces included, and purchaser of last piece was similarly entitled to small package of candy; in which (2) plan and arrangement were employed, but with uniform pieces priced at penny each instead of two for a penny; and (3) in which purchaser paid nothing and secured nothing other than a free punch, or paid two cents, three cents, or five cents for one of the bars comprising the assortment, in accordance with number pushed by chance from push card included therewith, and with purchaser of last punch on board receiving two bars; so packed and assembled that such various assortments could be displayed and offered by the numerous retailer purchasers thereof, and with knowledge and intent that such assortments would and could be sold without alteration or rearrangement to the consuming or purchasing public by lot or chance, in accordance with such arrangement, in violation of public policy and in competition with many manufacturers of "straight" candy exclusively, and in competition with many who regard such methods of sale and distribution as morally bad and as encouraging gambling and especially among children, as injurious to the industry through resulting 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, and some of whom, for such reasons, refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance;

With the result that such refusing competitors, who can compete on even terms only by giving the same or similar devices to retailers, were put to a dis-

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