

Syllabus

IN THE MATTER OF
PAUL F. BEICH COMPANYCOMPLAINT, 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, 1935¹—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-

¹ Amended and supplemental.

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advantage in competing and their sales of "straight" candy showed a continued decrease, some competitors began the sale and distribution of candy for resale to the public by lot or chance, for which, thus sold, there is demand, public and competitors were prejudiced and injured and trade was diverted to it from its said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in industry concerned:

Held, That such acts and practices were 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.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas the Federal Trade Commission did heretofore, to-wit, on October 2, 1934, issue its complaint herein charging and alleging that respondent is and has been guilty of unfair methods of competition in interstate 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; and

Whereas this Commission having reason to believe that respondent herein has been and is using unfair methods of competition in commerce as "commerce" is defined in said act other than and in addition to those in relation to which the Commission issued its complaint as aforesaid, and it appearing to said Commission that a further proceeding by it in respect thereof would be in the public interest:

Now, therefore, acting in the public interest pursuant to the provisions of the act of September 26, 1914, aforesaid, the Federal Trade Commission charges that the Paul F. Beich Company, a corporation, 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 states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois with its principal office and place of business in the city of Bloomington, State of Illinois, and with a branch selling office and branch manufacturing establishment in the city of Chicago, State of Illinois. Respondent for several years last past has been engaged in the manufacture of candy and in the distribution thereof to wholesale dealers and jobbers 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 principal place of business in the city of Bloomington, Ill., and from its branch establishment in the city of Chicago, Ill., into and through other States of the United

States and the District of Columbia to said purchasers at their respective points of location in said several States and in the District of Columbia. In the course and conduct of the said business respondent is in competition with other corporations, 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 and the District of Columbia and within the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof 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 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 several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of the said assortments of candies is composed of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to said purchasers of said pieces of candy of uniform size and shape, in the following manner:

The said pieces of candy of uniform size and shape in said assortment are contained within wrappers, 2 pieces of said candy being contained within each wrapper. The majority of said pieces of candy are of the same color, but a small number of said pieces of candy are of a different color, the colors of said pieces of candy being effectively concealed from the prospective purchaser by the wrappers in which they are contained until a selection or purchase has been made and the wrapper removed. The pieces of candy of uniform size and shape in said assortment retail at the price of 2 for 1¢, but the purchaser who procures 2 pieces of said candy of a different color than the majority is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of candy in said assortment is entitled to receive and is to be given free of charge one of the said larger pieces of candy. The aforesaid purchaser of said candies who procures a candy of a different color than the majority, is thus to procure one of the said larger pieces of candy wholly by lot or chance.

(b) Another assortment of candy consists of a number of small pieces of candy of uniform size and shape, together with a number of larger pieces of candy, which larger pieces of candy are to be

given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner: The said pieces of candy of uniform size and shape are contained within wrappers and the majority of said pieces of candy are of the same color, but a small number of the said pieces of candy are of a different color but the color of the said pieces of candy is effectively concealed from the prospective purchaser by the wrappers in which they are contained, until a selection or purchase has been made and the wrapper removed. The pieces of candy of uniform size and shape in said assortment retail at the price of 1¢ each, but the purchaser who procures one of the said candies of a different color than the majority is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to and the purchaser of the last piece of candy in the said assortment is also entitled to receive and is to be given free of charge one of the said larger pieces of candy. The aforesaid purchaser of said candies who procures a candy of a color different from the majority of said pieces of candy is thus to procure one of the said larger pieces of candy wholly by lot or chance.

(c) Another of said assortments contains a number of bars of candy together with a device commonly called a "push card." The bars of candy contained in said assortment are distributed to purchasers in the following manner:

The push card has a number of partially perforated disks and when a push is made, the disk is separated from the card and a number is disclosed. The numbers are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disk separated from the card. The card bears statements or legends informing purchasers and prospective purchasers as follows:

NUMBERS: 1 2 3 4 5 FREE PUNCH

NUMBERS: 6 7 8 9 10 Pay 2¢ and receive 5¢ BAR

NUMBERS: 11 12 13 14 15 Pay 3¢ and receive 5¢ BAR

ALL OTHER NUMBERS PAY 5¢ AND RECEIVE 5¢ BAR

LAST PUNCH ON BOARD RECEIVES 2—5¢ BARS

The candy bars in said assortment are distributed by the retail dealers in accordance with the above legends or instructions. The fact as to whether a purchaser pays 2¢ and receives one bar of candy, or pays 3¢ and receives one bar of candy, or pays 5¢ and receives one bar of candy, or pays 5¢ and receives two bars of candy, or receives a free punch and obtains no 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 in the manner above alleged involves a game of chance or the sale of a chance to procure (a) and (b) larger pieces of candy at the price of 1¢; or (c) bars of candy at a price of 2¢ or 3¢, rather than at the price of 5¢.

The use by respondent of said method in the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with respondent, as above alleged, are unwilling to offer for sale or sell 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said method 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. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade, and to tend to create a monop-

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oly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or an equivalent method.

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 or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, acts and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on October 2, 1934, issued and served a complaint in two counts upon the respondent, Paul F. Beich Company, charging in count one of the aforesaid complaint that the respondent had been and was using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, and charging in count two of the aforesaid complaint that the respondent had been and was using unfair methods of competition in commerce in violation of an act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act." The respondent filed no answer to said complaint and thereafter, on November 21, 1934, the matter being presented to the Commission for final hearing, the Commission made findings as to the facts and drew its conclusion therefrom and entered and issued an order to cease and desist from the practices charged in said complaint. Subsequently thereto, on December 30, 1935, the Commission vacated its order to cease and desist previously entered on November 21, 1934, and issued and served an amended and supplemental complaint containing only one count upon the respondent Paul F. Beich Company, a corporation, charging therein 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 amended and supplemental complaint, the respondent having failed to file answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank and P. C. Kolinski, attorneys for the Commission, before Miles J. Furnas, an examiner of the commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. The respondent was represented by Walter C. Hughes, Esq., but offered no testimony or other evidence in opposition to the allegations of said complaint. Thereafter the proceeding came regularly on for final hearing, before the Commission on said amended and supplemental complaint, the testimony and other evidence, and brief of counsel for the Commission, the respondent having failed to file any brief and 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, Paul F. Beich Company, is a corporation organized under the laws of the State of Illinois, with its executive office and manufacturing plant in the city of Bloomington, Ill., and with a sales office and a manufacturing plant in the city of Chicago, Ill. Respondent is now and for several years last past has been engaged in the manufacture of candy and in the sale and distribution of said candy to wholesale dealers and jobbers located in practically all States of the United States. It causes said candy when sold to be shipped or transported from its manufacturing plant in Bloomington, or from its manufacturing plant in Chicago, to purchasers thereof in the State of Illinois and in the other States of the United States, and in the District of Columbia. In so carrying on said business respondent is and has been engaged in interstate commerce and is and has been in active competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. Among the candies manufactured and distributed by respondent was an assortment composed of a number of pieces of candy

of uniform size and shape, together with a number of larger pieces of candy and a small package of candy, which larger pieces of candy and small package of candy were given as prizes to said purchasers of said pieces of candy of uniform size and shape in the following manner.

The said pieces of candy were contained within wrappers—two pieces of said candy being contained within each wrapper. The majority of the said pieces of candy were of the same color, but a small number of said pieces of candy were of a different color. The color of the said pieces of candy were effectively concealed from purchasers or prospective purchasers by the wrapper in which they were contained until a selection or purchase had been made and the wrapper removed. The pieces of candy of uniform size and shape in said assortment retailed at the price of 2-for-1¢, but the purchaser who procured two pieces of said candy of a different color than the majority was entitled to receive, and was to be given free of charge, one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of candy in said assortment was entitled to receive, and was given free of charge, the small package of candy. The aforesaid purchasers of said candies who procured candies colored differently than the majority thus procured one of the said larger pieces of candy wholly by lot or chance.

Respondent also manufactured and distributed an assortment of candy similar to the above described assortment, but where the retail price of the pieces of candy of uniform size and shape was 1¢ each instead of 2-for-1¢, the sales plan involved was identical with that above described.

The respondent manufactured and distributed the above described assortments until shortly prior to the issuance of the amended and supplemental complaint, but the Commission has no assurance that the respondent will not again begin the manufacture and distribution of said assortment.

PAR. 3. Another assortment manufactured and distributed by respondent contained a number of bars of candy, together with a device commonly called a "push card." The bars of candy contained in said assortment were distributed to purchasers in the following manner.

The push card has a number of partially perforated disks, and when a push is made a disk is separated from the card and a number is disclosed. The numbers are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disk separated from the card. The card bears statements or legends informing purchasers and prospective purchasers as follows:

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NUMBERS: 1 2 3 4 5 FREE PUNCH
NUMBERS: 6 7 8 9 10 Pay 2¢ and receive 5¢ BAR
NUMBERS: 11 12 13 14 15 Pay 3¢ and receive 5¢ BAR
ALL OTHER NUMBERS PAY 5¢ AND RECEIVE 5¢ BAR
LAST PUNCH ON BOARD RECEIVES 2-5¢ BARS

The candy bars in said assortment are distributed by the retail dealers in accordance with the above legends or instructions. The fact as to whether a purchaser pays 2¢, 3¢ or 5¢ and receives one or two bars of candy or receives a free punch and obtains no candy is thus determined wholly by lot or chance.

PAR. 4. The candy assortments involving the lot or chance feature, as described in paragraphs 2 and 3 above, are generally referred to in the candy trade or industry as "break and take," "draw," or "deal" assortments, and assortments of candy without the gaming device or lottery feature in connection with their resale to the public are generally referred to in the candy trade or industry as "straight" goods. These terms will be used hereafter in these findings to describe these respective types of candy.

PAR. 5. Numerous retail dealers purchase the assortments described in paragraphs 2 and 3 above from wholesale dealers or jobbers who in turn have purchased said assortments from respondent, and such retail dealers display said assortments for sale to the public as packed by the respondent, and the candy contained in said assortment is sold and distributed to the consuming public in the manner described.

PAR. 6. All sales made by respondent to wholesale dealers and jobbers are absolute sales, and respondent retains no control in any manner over the goods after they are delivered to the wholesale dealer or jobber. The assortments are assembled and packed in such a manner that they are sold and are designed to be sold by retail dealers to the consuming public in the manner described without alteration or rearrangement.

The respondent has knowledge that the said assortments will be resold to the purchasing public by retail dealers by lot or chance, and it packs and assembles such candy in the way and manner described so that without alteration, addition, or rearrangement it may be resold to the public by lot or chance by said retail dealers.

PAR. 7. The sale and distribution of candy by retail dealers by the methods described in paragraphs 2 and 3 above is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact, that many competitors regard such methods of sale and distribution as morally

bad and as encouraging gambling, especially among children; as injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy; and as providing retail merchants with the means of violating the laws of the several states. Because of these reasons some competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. Certain retailers who find that they can dispose of more candy by the "break and take", "draw", or "deal" methods buy respondent's products and the products of others employing the same methods of sale and thereby trade is diverted to respondent and others using similar methods from said competitors. Said competitors can compete on even terms only by giving the same or similar devices to retailers. This they are unwilling to do and their sales of "straight" 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 sold by such methods some competitors of respondent have begun the sale and distribution of candy for resale to the public by lot or chance. The use of such methods by respondent in the sale and distribution of its candy is prejudicial and injurious to the public and to respondent's competitors and has resulted in the diversion of trade to respondent from its said competitors and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 8. One of the principal demands in the trade for the "break and take," "draw," or "deal" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of school children. The consumers or purchasers of the lottery or prize package candy are principally children and because of the lottery or gambling feature connected with the "break and take," "draw," or "deal" package and the possibility of becoming a winner, children purchase candy from such packages in preference to the "straight" candy, when the two types of assortments are displayed side by side. The sale and distribution of "break and take," "draw," or "deal" packages of candy or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance teaches and encourages gambling among children, who comprise by far the largest class of purchasers and consumers of this type of candy.

PAR. 9. 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," "draw," or "deal" candy, and manufacturers of the "straight" type of candy have noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight" candy is principally due to the gambling or lottery features connected with the "break and take," "draw," or "deal" candy.

PAR. 10. In addition to the assortments described in Paragraphs Two and Three herein the respondent manufactures candy which it sells to wholesale dealers and jobbers without any lottery or chance feature. The total annual volume of respondent's business was not shown, but an officer of the respondent corporation testified, and the Commission finds, that the respondent's business is substantial. The "break and take," "draw," or deal" assortments, as described by the respondent, are not the major part of its total business.

PAR. 11. The Commission further finds that the sale and distribution in interstate commerce of assortments 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, Paul F. Beich Company, a corporation, are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce, and constitute a violation 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 amended and supplemental complaint of the Commission, the testimony and other evidence in support of the charges of said complaint taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, no answer having been filed by the respondent nor any testimony having been offered in opposition to the allegations of the complaint, 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, ap-

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proved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is hereby ordered, That the respondent, Paul F. Beich Company, a corporation, its officers, agents, representatives, and employees, in the offering for sale, sale and distribution in interstate commerce of candy and candy products do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retailers candy so packed and assembled that sales of such candy to the general public are to be made, or are designed to be made, by means of lottery, gaming device, or gift enterprise.

(2) Supplying to, or placing in the hands of wholesale dealers and jobbers packages or assortments of candy which are used, or are designed to be used, without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail pieces of candy of uniform size and shape, but having different colors, together with larger pieces of candy and a small box of candy, which said larger pieces of candy and small box of candy are to be given as prizes to the purchaser procuring a piece of candy of a particular color.

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

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

It is further ordered, That the respondent, Paul F. Beich Company, within 30 days after the service upon it of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF
GOLD SEAL DISTILLERS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2425. Complaint, June 5, 1935—Decision, Dec. 3, 1936*

Where a corporation engaged in purchasing and bottling whiskies, gins, and other spirituous beverages and in the sale thereof to wholesalers and retailers, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in sale thereof, and with those engaged in purchasing, rectifying, blending, and bottling, or in purchasing and bottling, such products, and respectively selling the same among the various States and in the District of Columbia, and including among aforesaid competitors those who manufacture and distill from mash, wort, or wash, as commonly understood, their whiskies and other spirituous beverages and truthfully use words "distillery," "distilleries," "distillers," or "distilling" as part of their corporate or trade names and on their stationery and on the labels of the bottles in which they sell and ship their products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling, or in purchasing, bottling, and selling at wholesale, such various products, do not use aforesaid words as a part of their corporate or trade names, etc., as above set forth—

Represented, through use of word "Distillers" in its corporate name, printed on its stationery and on the labels attached to bottles in which it sold and shipped its said products, and in various other ways, to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that the said whiskies, gins, and other spirituous beverages contained in said bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact they did not distill said whiskies, etc., thus bottled, labeled, sold, and distributing by it, nor own, operate, or control any place or places where such beverages were made by process of distillation from mash, wort, or wash, as long definitely understood from word "Distillers" by trade and ultimate purchasing public as meaning places where such liquors are made by aforesaid process, and it was not a distiller, for the purchase of bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and purchasing public into belief that the whiskies, gins, and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash as above set forth, and of inducing dealers and purchasing public, acting in such belief, to buy its said whiskies, etc., bottled and sold by it, and of diverting thereby trade to it from its competitors who do not, by their corporate or trade names, or in any other manner, misrepresent that they are manufacturers by distillation, as above set forth, of their products; to the substantial injury of competition and commerce:

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