

Syllabus

IN THE MATTER OF
SWEET CANDY COMPANY

COMPLAINT, AND MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2621. Complaint, Nov. 11, 1935—Decision Dec. 31, 1936

Where a corporation engaged in manufacture and sale of candy, including both "straight" or "staple" goods and "draw" or "deal" push card and punch board assortments, in one of which number of bars received in return for five-cent punch depended on chance selection of legend concealed within partially perforated disk and upon making of last sale, and in other of which chance five-cent punch from 200-hole board determined, in accordance with number punched, whether one of several sixty-cent boxes, one of a number of thirty-cent boxes, or nothing other than chance to punch, was secured by purchaser—

Sold said assortments, with cards and boards, to jobbers and to retailers, so packed and assembled, with its knowledge, that they might be used for distribution to purchasing public by lot or chance without alteration or rearrangement by retailer, by whom they were thus resold by lot or chance to public, in competition with concerns who regard such a method of sale and distribution as morally bad and one which encourages gambling and especially among children, who constitute substantial number of the consumers purchasers of the "draw" or "deal," and particularly, such push card candy, and as injurious to the industry in merchandising a chance or lottery rather than candy, and as providing retailers with the means of violating the laws of the several States, and who refuse to sell candy so packed and assembled that it can be resold to public by lot or chance;

With result of putting at a disadvantage, by reason of their said refusal to adopt such practice, said competitors, who can compete on even terms only through following same to meet demand and preference for such candy from retailers, who find "draw" or "deal" candy more salable than the "straight" or "staple" candy, sale of which showed a marked decrease, some competitors began sale and distribution of candy to public by lot or chance, public and competitors were prejudiced and injured, trade was diverted from them to it and to others employing similar methods of sale, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry, and a violation of public policy in such sale to consuming public:

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

Dey, Hoppaugh, Mark & Johnson, and *Mr. F. W. James*, of Salt Lake City, Utah, 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 Sweet 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 Utah, with its principal place of business in the city of Salt Lake City, State of Utah. 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 Salt Lake City, State of Utah, 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 engage 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, 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 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 is designated and described by respondent as "Play Ball," and consists of a number of candy bars together with a device commonly called a push card. The candy contained in said assortment is distributed to purchasers 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 legend is disclosed. Sales are 5¢ each, and the card bears statements informing customers and prospective customers as follow:

ALL WINNERS		NO BLANKS	
HOME RUN	-----	Receives 5 Candy Bars	
3 Base Hit	-----	Receives 4 Candy Bars	
2 Base Hit	-----	Receives 3 Candy Bars	
1 Base Hit	-----	Receives 2 Candy Bars	
Base on Balls	-----	Receives 1 Candy Bar	
Foul Ball	-----	Receives 1 Candy Bar	
Out	-----	Receives 1 Candy Bar	
Last Sale receives 6 Candy Bars			

The legends on the discs or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disc separated from the card. The fact as to whether a purchaser receives one candy bar, two candy bars, three candy bars, four candy bars, five candy bars or six candy bars for the price of 5¢, is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by the respondent is described as "See-Pak Assortment or Deal." This assortment consists of fifteen small packages of candy, eight larger packages of candy, a display easel and tray, together with a 200-hole punch board. The packages of candy in said assortment are distributed in the following manner:

Punches from said board are 5¢ each, and when a punch is made a number is disclosed. The board bears the statements or legends informing the customer and prospective customer as to which numbers receive one of the small packages of candy and which numbers receive one of the larger packages of candy. The numbers on said board are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the particular punch separated from the board. A purchaser who does not qualify by obtaining a number calling for one of the small packages of candy or one of the larger packages of candy receives nothing for his money other than the privilege of pushing a number from the board. The fact as to whether a purchaser receives no merchandise, or receives one of the small packages of candy or one of the larger packages of candy for the price of 5¢, is thus determined wholly by lot or chance.

(c) Another assortment manufactured and distributed by respondent is designated and described as "Sweet's Sportsman's Delight." This assortment consists of fifteen small packages of candy, eighteen larger packages of candy, one fishing rod, one fishing basket, and one portable refrigerator, together with a device commonly called a

punch board. The said packages of candy and the other articles of merchandise are to be given as prizes to purchasers of punches from said punch board, in the following manner:

The punch board has 800 punches, and is divided into 40 sections. Punches are 5¢ each, except that the last five punches in each section are free. The numbers run from 1 to 800, but are not arranged in numerical sequence, and the numbers are effectively concealed from the purchaser until a selection has been made and the punch separated from the board. The said punch board bears legends or statements informing the purchaser and prospective purchaser that the last five numbers in each section are free, and that certain numbers receive one of the small packages of candy, certain other numbers receive one of the larger packages of candy, and that number 333 receives the fishing pole and number 666 receives the fishing basket, and that the last punch receives the portable refrigerator. Purchasers of punches who do not qualify by purchasing one of the numbers referred to on said card receive nothing for their money other than the privilege of punching a number from the board. The fact as to whether a purchaser receives one of the small packages of candy, one of the larger packages of candy, the fishing pole or the fishing basket, or receives nothing of value for his money, 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 respondents 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 additional bars of candy or packages of candy or other articles of merchandise in the manner alleged, are contrary to the established public policy of the several States of the United States and of the Government of the United States, and in many of the States of the United States are contrary to local criminal statutes.

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

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said methods and manner of packing said candy, and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent, in preference to 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 11, 1935, issued and served a complaint upon the respondent, Sweet Candy Company, charging that respondent has 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 and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of the complaint were introduced by Henry C. Lank and P. C. Kolinski, attorneys for the Commission, and in defense of the allegations of the complaint by Messrs. Dey, Hoppage, Mark & Johnson and F. W. James, attorneys for the respondent, before Miles J. Furnas, an examiner of the Commission, theretofore duly designated by it, and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and 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 its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Sweet Candy Company, is a corporation organized under the laws of the State of Utah, with its principal office and place of business in Salt Lake City, State of Utah. Respondent is now, and for several years last past has been engaged in the manufacture of candy in Salt Lake City and in the sale and distribution thereof to retail dealers and jobbers located in the State of Utah and other States of the United States. It causes the said candy when sold to be shipped or transported from its principal place of business in the State of Utah to purchasers thereof in Utah and in the States of the United States other than the State of Utah. In so carrying on said business, respondent is and has been engaged in interstate commerce and is and has been engaged in active competi-

tion 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 are several assortments composed of a number of bars of candy of uniform size, shape and quality, together with a device commonly called a "push card," and in addition thereto, are several assortments composed of a number of packages of candy of varying size, together with a device commonly called a "punch board." In one of the last mentioned assortments, the respondent also includes several articles of merchandise other than packages of candy. The respondent manufactured and distributed several assortments with which a "push card" or "punch board" was included, involving the same lot or chance feature in the distribution to the ultimate consumer and varying only in detail.

Illustrative of the sales method involved, where a "push card" was included with the assortment, was one which the respondent designated "Play Ball." This assortment contained a number of bars of candy of uniform size, shape and quality. The "push card" included with this assortment bore legends at the top thereof stating the manner in which the bars in said assortment were to be distributed to the ultimate purchaser. These legends were as follows:

5¢ a SALE	PLAY BALL	5¢ a SALE
ALL WINNERS		NO BLANKS
HOME RUN-----		Receives 5 Candy Bars
3 Base Hit-----		Receives 4 Candy Bars
2 Base Hit-----		Receives 3 Candy Bars
1 Base Hit-----		Receives 2 Candy Bars
Base on Balls-----		Receives 1 Candy Bar
Foul Ball-----		Receives 1 Candy Bar
Out-----		Receives 1 Candy-Bar

Last Sale receives 6 Candy Bars

The "push card" also had, immediately below the legends quoted, 110 partially perforated discs and under each disc was a legend corresponding to one of the legends above. Such legend was effectively concealed from the purchaser and prospective purchaser until a purchase or selection had been made and the partially perforated disc separated from the card. The candy contained in said assortment was distributed to the consuming public in accordance with the legends at the top of said "pushcard." Sales were 5¢ each and by the use of said "push card," the fact as to whether a purchaser

Findings

24 F. T. C.

received more than one bar of candy contained in said assortment for the price of 5¢ was thus determined wholly by lot or chance.

Illustrative of the sales method involved, where a "punch board" was included, was an assortment which the respondent designated "See-Pak Assortment." This assortment contained a number of packages of candy which the respondent stated retailed for 60¢ each and a number of packages of candy which the respondent stated retailed at the price of 30¢ each. The "punch-board" included with this assortment bore legends at the top thereof stating the manner in which the several packages of candy in said assortment were to be distributed to the various purchasers. These legends were as follows:

5¢	SEE-PAK ASSORTMENT	5¢
Numbers 5, 10, 20, 30, 40, 50		
Receive 60¢ SEE-PAK		
Numbers 60, 70, 80, 90, 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 195		
Receive 30¢ SEE-PAK		

LAST PUNCH IN EACH SECTION RECEIVES 60¢ SEE-PAK

The "punch board" also had, immediately below the legends quoted, 200 holes in which slips of paper bearing numbers were secreted. The slips of paper and the numbers thereon were effectively concealed from the purchaser and the prospective purchaser until a punch or selection had been made and the particular slip of paper separated from the board. The packages of candy contained in said assortment were distributed to the consuming public in accordance with the legends at the top of said "punch board." Sales were 5 cents each, and by the use of said "punch board," the facts as to whether a purchaser received one of the 30¢ boxes of candy, one of the 60¢ boxes of candy or merely the privilege of punching a number from the board, for the price of 5¢ was thus determined wholly by lot or chance.

PAR. 3. The candy assortments involving the lot or chance feature as above described, are generally referred to in the candy trade or industry as "draw" or "deal" assortments. Assortments of candy without lot or chance features in connection with their resale to the public, are generally referred to in the candy trade or industry as "straight" or "staple" goods. These terms will be used hereafter in these findings to distinguish these separate types of assortments.

PAR. 4. The wholesale dealers or jobbers to whom respondent sells its assortments resell the same to retail dealers. Respondent also sells its said assortments direct to retail dealers. Numerous retail dealers purchase the assortments described in paragraph 2 above either from

respondent or from wholesale dealers or jobbers, who in turn have purchased said assortments from the respondent and such retail dealers, display said assortments for sale to the public, as packed by the respondent, and the candy contained in the majority of said assortments is sold and distributed to the consuming public by means of said "push cards" and "punch boards" in the manner shown by the legends at the top of such "push cards" and "punch boards."

PAR. 5. All sales made by respondent, whether to wholesalers and jobbers or to retail dealers, are absolute sales and respondent retains no control over said assortments after they are delivered to the wholesale dealer or jobber or retail dealer. The assortments are assembled and packed in such manner that they may be used and are used by the retail dealer for distribution to the purchasing public by lot or chance without alteration or rearrangement.

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

PAR. 6. There are in the United States and in the territory served by this respondent many manufacturers of candy who do not manufacture and sell "draw" or "deal" assortments of candy and who sell their "straight" or "staple" goods in interstate commerce, in competition with the "draw" or "deal" candy and manufacturers of "straight" and "staple" goods have noted a marked decrease in the sales of their products whenever or wherever the "draw" or "deal" assortments have appeared in their markets. This decrease in the sale of "straight" or "staple" candy is due to the gambling or lottery feature indicated with the "draw" or "deal" candy.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that consumers preferred to purchase the "draw" or "deal" candy because of the gambling feature connected with its sale. The sale and distribution of "draw" or "deal" packages or 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 a substantial number of the purchasers and consumers of this type of candy, particularly the assortments of candy bars which are sold and distributed to the consumers by means of "push cards."

PAR. 7. The sale and distribution of candy by the retailers by the methods described herein, is the 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 that many competitors regard such 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 a 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. The retailers, finding that they can dispose of more candy by the "draw" or "deal" method, buy from respondent and others employing the same methods of sale, and thereby trade is diverted to respondent and others using similar methods from said competitors. Such 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" or "staple" candy show a marked decrease. The sale and distribution of candy by lot or chance provides an easy means of disposing of such products. There is a constant 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 have begun the sale and distribution of candy 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 its 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. Respondent sells its merchandise in the States of Utah, Idaho, Nevada, Wyoming, Colorado, Washington, Oregon, New Mexico, and California. The majority of its candy is sold as "straight" merchandise, less than 10% being assortments with which a "push card" or "punch board" is furnished. While the annual volume of business of the respondent was not shown exactly, an officer for the respondent testified, and the Commission finds that the respondent's annual volume is substantial.

PAR. 9. The Commission 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 respondent, Sweet 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 approved September 26, 1914, 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 answer of the respondent, testimony and evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein and oral argument of Henry C. Lank of counsel for the Commission, and F. W. James, of 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 hereby ordered, That the respondent, Sweet Candy Company, a corporation, its officers, directors, agents, representatives, and employees, in the offering for sale, sale and distribution in interstate commerce of candy and candy products, cease and desist from:

1. Selling and distributing to wholesale dealers and jobbers, for resale to retail dealers and to retail dealers direct, candy so packed and assembled that sales of said 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 and wholesale dealers and jobbers, packages or assortments of candy which are used, or may be used, without alteration or rearrangement of the contents, of such packages or assortments, to conduct a lottery, gaming device or gift enterprise in the sale or distribution of the candy or candy products contained in said assortments to the public;
3. Supplying to, or placing in the hands of, retail and wholesale dealers and jobbers, assortments of candy, together with a device com-

Order

24 F. T. C.

monly called a "push card," or a device commonly called a "punch board," for use or which may be used in distributing or selling said candy to the public at retail;

4. Furnishing to retail and wholesale dealers and jobbers a device, commonly called a "push card," or a device commonly called a "punch board" either with packages or assortments of candy or candy products, or separately bearing a legend or legends, or statements, informing the purchasing public that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device or gift enterprise.

It is further ordered, That the respondent, Sweet Candy Company, a corporation 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.

Syllabus

IN THE MATTER OF

STERNHEIMER BROS., INC., TRADING AS ARMY & NAVY
SUPPLY COMPANY AND ARMY GOODS STORECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2756. Complaint, Apr. 3, 1936—Decision, Dec. 31, 1936*

Where a corporation engaged in the operation of a number of retail stores in the District of Columbia and in the State of Virginia, and maintaining also a mail order business through which it solicited and accepted orders for merchandise out of its stock from persons in the various States other than that aforementioned, and successor to a concern long theretofore engaged chiefly in the purchase of goods from the Army and Navy Departments of the United States Government and in the offer thereof for resale, and in competition, as such successor to aforesaid business, with those engaged in the marketing of goods similar to its own and who do not use words "Army" or "Navy," or either of them, in connection with their corporate or trade names or their advertisements or representations as to source or origin of merchandise sold by them—

Made use of words "Army" and "Navy" in its corporate and various trade names under which it operated its various stores and branches of its said business, and including such names as "Army Goods Store," "Army Store," "Navy Store," and "The Army and Navy Supply Company," and featured its aforesaid various names in large signs affixed to its mercantile establishments, and in trade journals, catalogs, circulars, and advertisements in daily newspapers and other periodicals, with words "Army" or "Navy" of equal prominence with other portions of the name, notwithstanding fact that a substantial portion of its inventory had been drawn from the common marts of trade, and the theretofore sales by the Army and Navy Departments of large quantities of surplus and condemned material had been so sharply curtailed that, for a number of years last past, almost no goods had been sold;

With result that various members of the purchasing public formed the conclusion or received the impression and belief from use of aforesaid words, that goods to be purchased in store in question were substantially all, if not all, procured from aforesaid departments of the Government, and were of the quality and nature used by them, and that a substantial bargain, with reference to price and quality, would be obtained in such store, and with the result that a substantial number of such members of said public were induced, by virtue of such belief or impression, to make purchases of and from it, and with capacity and tendency to, and effect of, misleading and deceiving members of purchasing public into such false impression and belief and of causing an unfair diversion of trade from competitors who offer merchandise identical with the bulk of its inventory and procured, like its own, from same source and ordinary marts of trade, without making use of such misleading and deceptive practice; to the substantial injury of competition in commerce: