

Syllabus

IN THE MATTER OF
LOFT, INC., AND DR. DANIEL R. HODGDONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2496. Complaint, July 10, 1935—Decision, Feb. 4, 1937*

Where a corporation, which was one of the largest candy product manufacturers in the world, and publicly represented itself as the largest, and which owned or operated over two hundred retail stores, in addition to its sales to independent retailers, and expended large annual sums for advertising, and an individual, its agent and employee, entitled to use of word "Doctor", but not as physician, engaged under contract with it in advertising and promoting sale of its products through broadcast of lectures on food, and in lending his recommendation, name, title and photograph in promoting the sale of its said candy products, and for such use in literature advertising the same—

Featured the slogan and representation "Made without Glucose," and contains no glucose, in an extensive advertising campaign initiated and carried on by them through newspapers and radio broadcasts of said individual and through inserts in the boxes and through the labels, seals, and literature distributed through said corporation's stores, and through its store and window displays, and accompanied such slogan and representation generally with words "Seal of Protection" and "Loft Really Pure Candy," and depicted such seals in approximately all of its advertising literature, along with such words as "This Seal is Your Protection," and represented that candy products made with or containing glucose were impure and harmful to health and unsafe, and that the candies of said corporation contained no glucose, and that other candies made therewith were inferior in quality to its own and less wholesome and safe, through such statements as those above set forth and numerous others, asserting its new method of making candies without use of glucose, and purity, etc., of its own said products, and safety and beneficial quality thereof for children, and warnings against use of glucose as an adulterant made through treating starch with sulphuric or hydrochloric acid, etc., and other statements inferring or implying that said substance was a filler, preservative, cheap substitute for sugar, less digestible, etc.;

Fact being that word "Glucose," as a matter of primary definition and meaning, is a name for a certain sugar or group of sugars, glucose is contained in corn syrup, usually employed with cane sugar in the making of candy, was used by corporation in question prior to campaign in question, is regarded by many candy-makers, its competitors, as an absolutely essential ingredient for all or most of their products, has been used in industry in question for approximately fifty years because of its unique combination of values as a candy ingredient, and industrial chemistry incident to use thereof as now practiced is consistent with safe and wholesome candy, and glucose in any form, inclusive of sugar or corn syrup, as used or found in candy, is safe and wholesome and regarded as a natural and essential ingredient thereof in commercial candies, and said product, as sugar or corn

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syrup, or in any form as used or found in candy, is not an adulterant or cheap substitute, etc., and is not made with sulphuric acid, etc., or dangerous to health, and use of corn syrup affords no basis for such false disparagement of products of competitors, and its own products, while containing no glucose in form of corn syrup as such during period in question, did contain such substance as matter of scientific fact;

With result of placing in the minds of the buying public, to a substantial degree, a consciousness of danger in the use of candy or food made with or containing glucose, and of misleading and deceiving a substantial portion of such public, including purchasers and potential purchasers of candies sold in competition with candy products of said corporation, into false and erroneous belief that said statements and representations were true, that glucose was used or contained in candy in general, but not in its candies, and that it was an ingredient or substance which was impure, harmful to health, and unsafe, and that candies containing same were correspondingly thus affected and inferior to its own products, and that purchase and use of candies other than those of said corporation was in general dangerous and unsafe, and with effect of causing such purchasers and prospective purchasers of competitors to discontinue purchasing therefrom, or refrain from so purchasing, and to buy instead products of said corporation, and of thereby unfairly diverting to it trade from its competitors who do not falsely defame or disparage the products of others, and who do not misrepresent the ingredients of their own products:

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

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

Mr. Jay L. Jackson for the Commission.

Sanders, Childs, Bobb & Wescott, of Washington, D. C. and *O'Brien, Driscoll & Raftery*, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress, 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 Loft, Inc., and Dr. Daniel R. Hodgdon, hereinafter referred to as respondents have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Loft, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 40th Avenue and 9th Street, Long Island City, in the State of New York. Said respondent is now and since the month of October 1934, has been engaged in manufacturing, selling, offering for sale, and distrib-

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uting candies, candy and confection products in commerce among and between various States of the United States and in the District of Columbia, and has caused and now causes said products when sold or ordered, to be shipped and transported from the State of origin thereof to various States of the United States other than the State of origin of said shipment, and to the District of Columbia. In the course and conduct of its said business, respondent, Loft, Inc., has been and is now in competition with corporations, firms, partnerships, and with individuals engaged in like commerce.

Respondent, Daniel H. Hodgdon, is an individual and an agent or employee of respondent, Loft, Inc., with his principal place of business located at 1697 Broadway, in the city of New York, in the State of New York, and as such has been and is now engaged in and with the aforesaid business of respondent, Loft, Inc., and in the advertising and promotion thereof.

PAR. 2. Respondent, Loft, Inc., has sold and now sells its said candies, candy and confection products in interstate commerce, as set forth in paragraph 1 hereof, by use of the mails, interstate carriers and other channels of interstate commerce, by means of radio broadcasting, newspapers, pamphlets, periodicals, labels, and other forms of literature and advertising which have had or have a circulation in and through the various States of the United States and in the District of Columbia, and also in circulars, candy box and window displays and placards, labels, pamphlets, printed matter, and other forms of advertising and promotion, including radio broadcasts and oral statements by agents and employees, which have been and are circulated and distributed by respondents to customers and prospective customers in and throughout various States of the United States and in the District of Columbia, in the course and conduct of which respondents, Loft, Inc., and Daniel R. Hodgdon, individually and together, have made and now make false and misleading statements and representations, all to the injury of the public and to the injury of competitors of respondent, Loft, Inc.

PAR. 3. In the course and conduct of the business, advertising, promotion and selling of the candies, candy and confection products of respondent, Loft, Inc., as aforesaid, said respondent, Loft, Inc., advertises and makes the following statements and representations, among others, to wit:

LOFT REALLY PURE CANDIES**AN IMPORTANT MESSAGE from the PRESIDENT**

After spending thirty years in the manufacture of fine candies, I have discovered a new method of making candies without the use of glucose (U. S. Patent application serial #729,525).

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It makes Loft candies easier to digest—makes them taste better than ever—smoother—richer—more delicious.

It costs more to make Loft candies without glucose, but price is never considered by Loft where quality is involved.

I believe it is now impossible to match Loft candies, from the standpoint of purity, quality and price.

CHARLES G. GUTH, *President*.

Loft CODE OF ETHICS:

Glucose should not be put in candy unless the label states the facts—because glucose is only a starch which has been treated with sulphuric acid. Excess of starch is dangerous.

Loft candies are really pure—they contain no substitutes—no adulterants of any kind.

* * * * *

Loft does not believe that glucose should be used in candy and furthermore, believes that whenever it is used it should be so stated on the label. The U. S. Pure Food Laws compel the makers of jellies, jams and table syrups, when glucose is used, to print a statement on the label, notifying the purchaser. Loft believes this same law should apply to candy, and, therefore, every package of Loft candy made and sold by Loft contains a seal stating that Loft Really Pure Candies are Made Without Glucose.

* * * * *

THIS SEAL IS YOUR PROTECTION

SEAL OF PROTECTION

LOFT REALLY PURE CANDIES

MADE WITHOUT GLUCOSE

Loft NEW PROCESS:

Loft has discovered a new method of making candies without the use of glucose.

Loft candies do not contain substitutes or preservatives of any kind.

Loft candies are made of pure cane sugar—honey—and the purest of all fine materials.

Loft candies are really pure—therefore delicious and easily digested.

Loft Seal is Your Protection.

* * * * *

WHAT IS GLUCOSE?

U. S. Pharmacopoeia, page 178, as follows:

A product obtained by the incomplete hydrolysis of starch.

Oxford English Dictionary, page 237 (1933) says of glucose:

Now chiefly in non-scientific use as a commercial name for dextrose, obtained from starch by the action of sulphuric acid.

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Mr. Alfred W. McCann says in his book, "The Science of Eating", page 300, of glucose:

Glucose as a filler is the symbol of denatured carbohydrate foods, the excess of which in the diet of the average American family is the cause of many diseases.

* * * * *

Loft Candies do not contain Glucose.

Glucose is an adulterant made by treating starch with Sulphuric or Hydrochloric Acid.

Take no chances.

Eat Loft Candy.

Loft Candy Ideals—

1. Purity with no Substitutes.
2. Freshness with Finest Materials.
3. High Quality Leadership.
4. Low Prices with Honesty.
5. Made without Glucose.

Be safe—Buy Loft Candies and Know What You are Getting.

Absolutely Pure—Good and Safe for Children—Made without Glucose.

* * * * *

Loft Candies are made in the old-fashioned way, absolutely pure, clean and wholesome, and, above everything, delicious and mouth-melting. They are like some of the fine candies that are made in your own country where adulterations in candies and food are unknown.

Loft Candies are purest and best and the price is less because we are the largest candy makers in the world.

* * * * *

YOU ARE SAFE WHEN YOU BUY *Loft* CANDIES

LOFT STORES TO SERVE YOU RIGHT

* * * * *

Loft Candies are made without glucose, preservatives or substitutes of any kind.

* * * * *

Loft—The name you can trust for Christmas Candies.

* * * * *

Said respondents, individually and together further have advertised and made, and now advertise and make, the following statements and representations, among others, to wit:

I should like to impress upon my listeners to some measure the fraudulent practices that are going on in connection with candy that is fed to our children. * * * Now all these candies and hundreds of others like them contain a cheap, sticky mass called glucose. The question is immediately raised whether glucose is a good food to be used in candy. A great deal has been said about commercial glucose, but the only reason that I can find to account for its wide use in candy making is that it is cheap. It lowers the cost of candy manufacture. It has a sticky, slimy consistency and derives its name from the word glue. There is 50% or more dextrin in glucose. We use dextrin to make

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mucilage and other adhesives. * * * It became very popular almost immediately as an ingredient in candy because it was a cheap substitute for sugar. * * * This wholesale practice of trying to make money by selling unsuspecting individuals concoctions of the worst type under the guise that they are candy, is criminal and villainous. As this Christmas season approaches, there is only one way to be assured that the spirit of Christmas can be maintained, and that is by feeding children candy free from adulterations, free from impurities, free from artificial colors and artificial eggs, and free from glucose.

When a stock-raiser tries to make a profit out of his animals he won't feed them with chemically produced glucose a lot of worthless dyes and drugs which may legally be used in foods to be consumed by human beings.

This good mother may, in all innocence give her children money to buy candy that is filled with commercial glucose, glucose, made from starch, treated with hydrochloric acid. Glucose that may have been bleached with sulphuric acid and improperly treated, so that this destructive and harmful substance is still present in the candy in sufficient amounts to do real harm to the health of children. The child may pick up this candy in the high school cafeteria where he eats his luncheon, or he may eat peanut bars with the peanuts stuck together by a cheap adulteration called commercial glucose . . . what chance has he when his food and his candy and syrups are filled with adulterations and his fruits covered with residue poisons. No wonder we find in the Rochester high school 197 children out of 425 afflicted with organic heart disease. * * * Let us strike at the heart of this evil and eliminate from our tables food that is not pure and wholesome and from the hands of our children, candies adulterated with commercial glucose. * * * Let the food and candy consumed be so pure as to keep the vital blood of life red and uncontaminated by the junk that interfere with the normal processes of digestion and elimination.

This is a warning to all my listeners to be careful of the products introduced into your homes. * * * candy made of cheap commercial glucose, bleached with sulphuric acid, a product that has no place in the stomach of children of tender age or in the digestive tracts of adult human beings of any age. Until we find effective laws which will prevent wholesale destruction of health through improper material in our foods, and commercial glucose in candies, we must choose carefully the things we feed the children and ourselves. Lurking behind these fine advertised labels and innocent looking foods and candy is the skull and cross bones, the symbol of disease and death.

When we consume quantities of candy made of commercial glucose, bleached with sulphurous acid; when we give our children such candy, we begin to interfere with the calcium retention and absorption and assimilation and we starve. I mean just what the word means. We deprive, yes, we starve ourselves, our children, the ones we love most, of those vital mineral salts so necessary to life and health.

It means that the market is flooded today with food concoctions, dietetical monstrosities, and cheap glucosed-filled candies * * * and a lot of other junk made for human consumption and at the same time preparing the way to

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death and destruction of human beings. Why is the child at school becoming a nervous unstable object of worry to his mother? Why does the teacher find her job irksome and her nerves jumpy? Why does Dad at home become easily irritated and upset? Because of starvation * * * the starvation which is brought about through the improper selection of foods and the introduction into the system of foods filled with artificial products which have no nourishing value and which prevent a sufficient supply of mineral elements to maintain good health. Our children purchase on the street corner candy filled with commercial glucose that has been bleached with that dangerous poison substance, sulphurous acid; glucose made of starch with the aid of hydrochloric acid; glucose still containing an over-abundance of this tissue destroying and digestive juice destroying acid. I don't care where you go; I don't care in what store you purchase your candy, except one. You will find that the candy-maker has used to a greater or less degree quantities of a cheap adulterant known as commercial glucose. It is cheaper than sugar and that is why he uses it. One of the great outstanding inventions in the candy-making world was the discovery that candy can be made wholly of pure cane sugar which could be inverted into a substance resembling honey without acid and without artificial chemical substances. This inversion created out of pure sugar, a highly digestive substance resembling honey and containing fructose, levulose and dextrose, highly nourishing, ready to be absorbed and used as food by the blood. Now, when a substance like that is created out of pure sugar and is made into candy, free from adulterations, free from artificial coloring matter other than pure vegetable colors, free from infected nuts and fruits, we have a candy that can be safely fed to children and adults without burdening the digestive tract with a lot of unhealthy, vile, filthy, poisonous, and doubtful material which would have no other function than to destroy or burden the human organisms with foreign matter, totally unnatural to the normal functions it must perform. * * * There is one candy-maker that makes pure candy. Loft Candy represents a new standard, a standard of purity, a standard of cleanliness, a standard of unadulteration, a standard of candy free from all commercial glucose with all of its possibilities of destructive acid content.

* * * * *

It frequently happens that where the mother denies the children food between meals, she opens up the way for children to stuff themselves with cheap candy made of commercial glucose. When children consume a large amount of this glucose candy between meals, they have a tendency to lack an appetite at mealtime. If the commercial glucose has been bleached with sulphurous acid and contains residues of this acid, naturally it will destroy the appetite. * * * Candy made from invert sugar is especially recommended because the cane sugar has been changed into a wholesome food resembling honey. This is quickly and easily digested and gives the child a considerable amount of energy for his play. This candy should be fed at the close of the meal or at the close of the between-meal luncheons. This kind of candy does not destroy the appetite for food, as the cheap glucose type of candy does.

* * * * *

Candies may be adulterated with all sorts of cheap commercial glucose and no mention is made of it. Little children will buy this stuff in the thousands of penny candy stores. There is not a thing on any label to indicate that it was made with commercial glucose. You can go into a store today and buy even the highest priced candies, pay a lot of money for it, and most of your

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money will go into the boxes and other fancy containers. The candy will be made up of a large percentage of cheap commercial glucose. When a product is adulterated with glucose, the public should be warned of its presence;—when the candy is made of pure sugar, the public should be told that they are getting an honest product, free from adulteration.

* * * * *

Now, studies of these mentalities and mental diseases will tend to show that mental abnormality is frequently a merely temporary condition depending on the feeding of the brain, and that, when this condition is rectified so that the brain obtains proper feeding, the disorder vanishes. * * * What effect has any poisonous byproduct such as sulphurous acid which may, or may not be, in glucose, upon the activity of the brain. * * * When we introduce sulphurous acid into the stomach * * * these ketones—which are believed the cause of old age and degeneration, can do their work. They appreciably shorten life. * * * I want children to have pure candy—not candy made with glucose. * * * I want every food to be so pure as to avoid the making of the D-ketones which are so destructive to health and life and our vitality, to our thinking power and to our mental balance, and when we do that we produce lactic acid. Then these byproducts cannot do us any harm. * * *

Announcer:—"Now, ladies and gentlemen, the following products are approved and endorsed because of their quality, of their wholesomeness and their standard of purity. Loft's candy is endorsed because it is absolutely pure, has no glucose in any form, no substitutes, no preservatives are used in Loft's candy. Loft's candies are the purest candy known to the science of candy makers. These points that Dr. Hodgdon has brought up this morning: 'The effect on the brain of candy, of sugar', in many instances are most interesting, and remember that you must have pure candy for the correct and corrective effect upon the brain."

* * * * *

DR. DANIEL R. HODGDON says:

While President of Hahneman Medical College and Chicago Memorial Hospital, I became intensely interested in the subject of Pure Candy. I have recently made a thorough inspection of the Loft manufacturing plant where 100,000 pounds, or more, of fine Candies are made daily.

Until then, I never dreamed that Candies could be made so pure, delicious and healthful.

It gives me pleasure to state that Loft Candies are made of the finest and highest quality, rich natural materials, and are absolutely free from all adulterations, substitutes and commercial glucose (corn syrup). In my opinion, this puts Loft Candies in the highest possible class, regardless of the fact that they are sold to the public at such reasonable prices.

(Signed) DANIEL R. HODGDON.

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PAR. 4. In the course and conduct of the business aforesaid, and in the advertising, promotion and selling as aforesaid, respondent, Loft, Inc., and its agents and employees have falsely and misleadingly stated and represented and now falsely and misleadingly state and represent that said respondent uses a newly discovered method of making candies without the use of glucose and that its said products

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are "made without glucose"; whereas, in truth and in fact said respondent's products are made with and do contain glucose, and the method used by respondent, Loft, Inc., in making said products is not a new discovery.

PAR. 5. In the course and conduct of the business aforesaid, and in the advertising, promotion and selling as aforesaid, respondents, individually and together, further falsely and misleadingly have stated, represented and implied, and now falsely and misleadingly state, represent and imply that the ingredient generally used in the making of candies and confections and known as "glucose" is impure, unwholesome, harmful to health, dangerous for children, made with sulphuric acid, bleached with sulphuric acid, an adulterant, a filler, a cheap substitute for sugar in candy, and less digestible than cane sugar, and that in general candies and confection products in competition with products of respondent, Loft, Inc., are made with glucose and are therefore impure, unwholesome, harmful to health, dangerous for children, contain sulphuric acid or hydrochloric acid and starch, contain a filler, an adulterant and a cheap substitute for sugar in candies, and are less digestible than the candy and confection products of respondent Loft, Inc., and that said competing products and products of said respondent's competitors are therefore not only of inferior quality but that said products are unsafe and the use thereof dangerous or unsafe; whereas, in truth and in fact the ingredient known as "glucose" used in the making of candies and confections in competition with said respondent's products, and as used by said respondent's competitors, is, contrary to respondents' representations, pure, wholesome and healthful, is not dangerous to children, does not contain sulphuric or hydrochloric acid, is not a filler, an adulterant or a cheap substitute for sugar in candies and is not less digestible than cane sugar; and whereas, in truth and in fact the candies or confections of said competitors of respondent, Loft, Inc., and in competition with products of said respondent, Loft, Inc., are contrary to said respondents' representations, no less pure, wholesome or more harmful to health or more dangerous for children or less digestible than the products of said respondent, Loft, Inc., and do not contain sulphuric or hydrochloric acid and starch, or a filler, or an adulterant or a cheap substitute for sugar; and whereas, further, in truth and in fact the purchase and use of candies or confections of said competitors of respondent, Loft, Inc., are no more dangerous or unsafe than the purchase and use of the candies, candy and confection products of said respondent.

PAR. 6. That the aforesaid false and misleading statements so made by respondents in the sale of the candies, candy and confection

products of respondent, Loft, Inc., have had and have the tendency and capacity to mislead and to deceive, and do mislead and deceive, purchasers and prospective purchasers of products of competitors of respondent, Loft, Inc., into the false and erroneous belief that such statements and representations are true and that the purchase and use of said competing candies, candy or confection products is dangerous or unsafe, thereby causing a substantial portion of such purchasers and prospective purchasers of said competitors' products to discontinue or refrain from the making of such purchases from said competitors, causing such purchasers and prospective purchasers to purchase respondent's products in lieu and instead of the products of its competitors, in consequence of which trade has been and is diverted to respondent, Loft, Inc., from its competitors who do not falsely defame or disparage the products of others, or who do not misrepresent their own products, and thereby substantially injuring competition and said competitors in interstate commerce.

PAR. 7. The above and foregoing acts, practices and representations of respondent have been, and are, all to the prejudice of the public and respondent's competitors, and have been, and are, unfair methods of competition within the meaning and intent 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."

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 July 10, 1935, issued, and on July 11, 1935, served, its complaint in this proceeding upon respondents, Loft, Inc., and Dr. Daniel R. Hodgdon, charging them 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 respondents' separate answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Jay L. Jackson, attorney for the Commission, before John W. Bennett, Esq., an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Messrs. Sanders, Childs, Bobb & Wescott, by Everett Sanders, Esq. and Edward F. Howrey, Esq., of counsel, and Messrs. O'Brien, Driscoll & Raftery, by Benjamin Pepper, Esq., of counsel, attorneys for respondents; and said testimony and other evidence

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were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answers thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Loft, Inc., is a corporation organized in 1919 under the laws of the State of Delaware, with its principal office and place of business located at 40th Avenue and 9th Street, Long Island City, in the State of New York. Said respondent is now engaged, and since the first day of October 1934, has been engaged in manufacturing, selling, offering for sale, and distributing candy and confection products in commerce among and between the various States of the United States, and in the District of Columbia, and has caused said products to be sold in and shipped to several States of the United States other than the State of New York, including New Jersey, Connecticut, Massachusetts, and Pennsylvania, and the District of Columbia, in the course and conduct of which said respondent has been, and is, in substantial competition with other corporations, partnerships, and individuals likewise engaged in the sale, offering for sale and distribution of candy and confection products in commerce in, among, and between the various States of the United States, and in the District of Columbia.

Respondent Dr. Daniel R. Hodgdon is an individual with his principal place of business located at 54 West 40th Street, New York, N. Y., and with addresses at other places in New York State. During the latter part of 1934 and the early part of 1935, his principal place of business was located at 1697 Broadway, New York, N. Y. He holds the degree of Ph. D. and J. D., which entitle him to prefix the title "Dr." to his name, but he does not hold the degree of Doctor of Medicine and has never practiced medicine. On and before the 1st day of October 1934, and for several months continuously thereafter, he was an agent and employee of respondent Loft, Inc., and as such engaged, under contract for a consideration, in advertising Loft candy products and in promoting the sale thereof by means of broadcasts of lectures on food over Radio Station WMCA, of New York City, State of New York, and during said time was further

engaged in lending his recommendation, name, title, and photograph for use on advertising literature of, and in promoting the sale of, the candy products of respondent Loft, Inc.

PAR. 2. Commencing on or about the first day of October 1934, and continuously thereafter for several months, reaching into the year 1935, respondents, separately and together, began and carried on an extensive advertising and sales promotion program for Loft candy products, directed to and reaching the public in general in various States of the United States, and in the District of Columbia, by means of statements and representations, having State and interstate circulation, in newspapers, on circular literature inserted in Loft candy boxes, on labels and seals, on certain literature distributed through Loft stores, on Loft store and window displays, and by means of radio broadcasts made by respondent Daniel R. Hodgdon and contracted for and sponsored by respondent Loft, Inc. Throughout the entirety of the aforesaid advertising of respondents there runs and prominently appears the slogan and representation that Loft candies are "Made without Glucose" and contain no glucose. The said slogan and representation appears on Loft labels and seals, sometimes standing alone, but usually in combination with the words "SEAL OF PROTECTION" and "LOFT REALLY PURE CANDY." These seals, which are placed on Loft candy boxes and wrappers, are pictured in approximately all of the advertising literature of respondent Loft, Inc., and are repeatedly therein referred to and combined with such statements as "This Seal is your Protection" and "Loft Seal is Your Protection." The aforesaid statements and representations also repeatedly and variously appear in association or combination with such statements and representations as the following:

Loft CODE OF ETHICS:

Glucose should not be put in candy unless the label states the facts—because glucose is only a starch which has been treated with sulphuric acid. Excess of starch is dangerous.

Loft candies are really pure—they contain no substitutes—no adulterants of any kind.

* * * * *

Loft has discovered a new method of making candies without the use of glucose.

Loft candies do not contain substitutes or preservatives of any kind.

Loft candies are made of pure cane sugar—honey—and the purest of all fine materials.

Loft candies are really pure—therefore delicious and easily digested.

Loft Seal is Your Protection.

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Loft Candies do not contain Glucose. Glucose is an adulterant made by treating starch with Sulphuric or Hydrochloric Acid.

Take no chances.

Eat Loft Candy.

Loft Candy Ideals—

1. Purity with no Substitutes.
2. Freshness with Finest Materials.
3. High Quality Leadership.
4. Low Prices with Honesty.
5. Made without Glucose.

Be Safe—Buy Loft Candies and Know What You are getting.

Absolutely Pure.

Good and Safe for Children.

Made Without Glucose.

* * * * *
YOU ARE SAFE WHEN YOU BUY *Loft* Candies.

* * * * *

LOFT STORES TO SERVE YOU RIGHT

* * * * *

Loft Candies are made without glucose, preservatives or substitutes of any kind.

* * * * *

Loft—The name you can trust for Christmas Candies.

* * * * *

During the period between October 1, 1934, and the first part of January 1935, respondents made no specific reference to corn syrup as being the product identified by their use of the term "glucose" and for the most part confined themselves to the use of the term "glucose," except that a substantial portion of the newspaper advertisements of respondent Loft, Inc., during the said times, carried the following additional statements and references to definitions additional statements and references to definitions purporting to describe and identify glucose:

WHAT IS GLUCOSE?

U. S. Pharmacopoeia, page 178, as follows:

A product obtained by the incomplete hydrolysis of starch.

Oxford English Dictionary, page 237 (1933) says of glucose:

Now chiefly in non-scientific use as a commercial name for dextrose, obtained from starch by the action of sulphuric acid.

Mr. Alfred W. McCann says in his book, "The Science of Eating", page 300, of glucose:

Glucose as a filler is the symbol of denatured carbohydrate foods, the excess of which in the diet of the average American family is the cause of many diseases.

During the aforementioned period, the aforesaid statements and definitions were also made and referred to on the insert literature separately circulated and distributed to and among the purchasing and consuming public by respondent Loft, Inc., in its candy boxes, together, however, with the following additional statements, representations, and references to definitions:

Funk & Wagnalls Standard Dictionary, 1932 Edition, page 1044, says of glucose:

It is the principal member of the group to which it gives its name and is much less sweet than cane sugar. It is made commercially by treating starch with dilute sulphuric acid, and the resulting solid product is called grape sugar, and the syrup Glucose.

The Winston Simplified Dictionary, 1934, page 415, says of Glucose:

Obtained by the action of sulphuric acid on starch, or in solid form known as dextrose. Commercially a syrup containing glucose proper and other substances. Used as an adulterant.

Webster's International Dictionary (1934), page 1067, says of glucose:

Commercial. A light colored, uncrystallizable syrup obtained by the incomplete hydrolysis of starch (usually by heating it with dilute acid) and containing chiefly maltose, dextrin, and dextrose; mixing syrup; starch syrup.

PAR. 3. In the course and conduct of the aforesaid advertising and sales promotion program for Loft candy products, respondent Loft, Inc., and respondent Daniel R. Hodgdon represented and represent to purchasers and prospective purchasers of candy and to the public in general that the candy products of the respondent Loft, Inc., are "Made without Glucose" and contain no glucose; that glucose, as used or found in candy, is made with sulphuric or hydrochloric acid and bleached with sulphuric acid, is a filler, an adulterant, a preservative, and a cheap substitute for sugar in candy, is less digestible than cane sugar, and contains starch, and therefore, that it is impure, unwholesome, harmful to health, unsafe, and dangerous for adults and children; that glucose is an ingredient used and found in candies, except Loft candies; that candy products made with or containing glucose may contain and do contain sulphuric or hydrochloric acid and starch, are less digestible than candies made without glucose, contain a filler, a preservative, an adulterant, and a cheap substitute for sugar in candies, and therefore, that the same are impure, unwholesome, harmful to health, unsafe, and dangerous for adults and children; that the Loft seal, appearing on Loft candy boxes, bearing the slogan "Made without Glucose", is a "Seal of Protection" against such candies, all therein and thereby further implying and representing that the purchase and use of candy products in general, other than those of respondent Loft, Inc., is dangerous and unsafe and is to be warned against, and that candies made with or containing glucose

are inferior in quality to candies made without or containing no glucose, and to the candy products made, offered, and sold by respondent Loft, Inc.

The slogan "Made without Glucose," as used by respondents with relation to Loft candies, is calculated to and does epitomize the aforesaid statements and representations relative to glucose, to candies made with or containing glucose, and to Loft candies as distinguished therefrom and as superior thereto. Said slogan is at all times combined with respondent's statements and representations in disparagement of glucose, such that the same is inseparable from said statements and representations with respect to the benefits accruing therefrom to respondent Loft, Inc.

The substance of the aforesaid statements and representations relative to Loft candies, to glucose, to candies made with or containing glucose, and to candies other than those of Loft, Inc., all as above set forth, is abundantly diffused throughout the advertising and sales promotion conducted by respondents between October 1, 1934, and the month of October 1935, but in carrying the same over in the advertising conducted during the latter part of January 1935, and thereafter, respondents used the terms "glucose" and "commercial glucose," together or in association with the term "corn syrup," for the most part in such a way as to indicate that by the terms "glucose" and "commercial glucose" respondents specifically and exclusively referred to, meant, and intended to limit the application of such terms to that candy ingredient or product known as "corn syrup."

The aforesaid statements and representations falsely disparage the qualities and ingredient properties of the candy products of competitors of respondent Loft, Inc.

PAR. 4. In view of the primary meaning of "glucose," as more fully hereinafter set forth, and because "glucose" and "commercial glucose" are used to identify a certain sugar contained in candy products in general, and in Loft candies, said terms, in and of themselves, are inadequate to identify "corn syrup" or to identify and distinguish that commercial ingredient, specifically known as "corn syrup," from certain other sugar or candy ingredients commonly designated and identified as "glucose."

As a matter of primary definition and meaning, the word "glucose" is a name for a certain sugar or group of sugars. Dictionary definitions of "glucose" are not worded alike, and some are more extensive than others, but according to that definition which in substance is common to dictionaries in general, the word "glucose" is generic in meaning and as such identifies a sugar. This definition also usually

indicates that this sugar is found largely in the vegetable kingdom, in honey, and in animal organisms, as in the blood, liver, etc.; that it is less sweet than cane sugar, and that it is commercially derived from starch. Within this meaning, the words "glucose" and "dextrose" are interchangeable and synonymous, and in connection with the said definition of the word "glucose," the word "dextrose" is sometimes referred to and defined as a synonym for "glucose." Within this meaning, also, and as a matter of fact, the said sugar is an end-product of hydrolized cane sugar and an end-product of hydrolized starch. Some definitions also indicate that "glucose" is the name of a group of sugars or sweet compounds having a common chemical formula, to which glucose, as the principal member of the group, gives its name, and that this group includes, among others, grape-sugar, also called "dextrose," and fruit sugar, also called "fructose" and "levulose." In some instances, but not universally, dictionary definitions also indicate that the word "glucose" has a commercial significance, in which connection some definitions indicate it as a commercial name for dextrose, while other definitions indicate it as the name for syrup which is commercially derived from starch, but this information, in those definitions in which it appears, is subordinated to the primary definition of glucose as meaning a sugar or sugars, such that general reference to dictionary definitions serves to identify glucose as a sugar rather than as a commercial syrup, and even where a commercial syrup is referred to in definitions appearing under the word "glucose," no specific mention is made of "corn syrup" nor is the commercial meaning of the word limited in such a way as to identify glucose as being only that syrup commercially derived from the starch of corn.

In the sense that the word "glucose" primarily identifies sugar, it is a word familiar to and generally used in the parlance of biochemists, nutritionists, pediatricians, and medical men, and in general by those professions dealing with the feeding, uses, and metabolisms of food, and as so used, it means and signifies that particular sugar also known and identified both as "dextrose" and as "d-glucose." By such experts it is also described as the "sugar of the blood," or as that sugar which, upon digestion of carbohydrate foods, is absorbed and taken into the blood stream to the liver and to the muscles of the body. For the reason that the glucose sugars, including glucose or dextrose and levulose, are subject to scientific detection by a process known as polarization, the word "glucose" has been subjected to some refinement and has given rise in chemical and scientific terminology to the words "d-glucose" and "l-glucose." For the reason that the simple sugar known as "glucose" or "dextrose" is

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dextrorotary, that is, upon polarization rotates the plane of light to the right, it has come to be more specifically identified as "d-glucose." "Levulose," on the other hand, being levurotary, rotating the plane of light to the left, has come to be more particularly identified as "l-glucose."

The Pharmacopoeia of the United States defines Glucos (Liquid Glucose) as "a product obtained by the incomplete hydrolysis of starch."

The words "glucose" and "commercial glucose" are interchangeably used among members of the candy-making trades to designate a candy ingredient or syrup product made and sold by the corn industries, and with regard thereto these words are understood by most members of the candy-making trades to mean "corn syrup", but the words as so used by some members of said trades have not been and are not accepted, adopted or used by all members of said trades as a name and synonym for "corn syrup." It is not shown that these words, standing alone and as used or understood among members of said trades, are understood by the public in general to mean "corn syrup."

PAR. 5. Sugars are called monosaccharides, disaccharides, and polysaccharides, depending upon whether they are composed of one, two, or more sugar molecules. The simple glucose sugars, dextrose (d-glucose) and levulose (l-glucose), are monosaccharides. Hydrolysis (chemical breakdown) of the disaccharides and polysaccharides produces monosaccharides. The hydrolysis of cane sugar (sucrose), a polysaccharide, into its simple sugars, produces one part dextrose and one part levulose. The hydrolysis of starch into maltose, a disaccharide, and thence into its simple sugars, produces two equal parts of dextrose. Levulose is known to be sweeter than dextrose sugar, but the food and energy values of dextrose presently appear to be more emphasized in human diet, physiology, and food metabolism.

The general process of making commercial candies with cane sugar involves a substantial hydrolysis or breakdown of the cane sugar into its simple sugars and the inversion thereof into non-crystalline form, in which form it is known as "invert sugar." The maintenance of this inversion is essential in the finished candy product. Except in the presence of acids, acid salts, or certain enzymes, by which hydrolysis and inversion are achieved and maintained, inverted cane sugar regains or crystallizes, for which reason acidity, as distinguished from alkaline conditions, must be present in candy made of cane sugar and must be produced or induced therein in the process of manufacture in order to make and maintain candy as such. The

industrial chemistry incident and essential to these accomplishments in candy making, as now practiced, is consistent with the qualities of safety and wholesomeness in candy.

Among commercial candy makers in general, the aforesaid ends for the most part are achieved by use of that candy ingredient or product made and sold by the so-called corn industries and specifically described and identified as "corn syrup", although called "glucose" and sometimes "commercial glucose" among members of the candy-making trades. This product is obtained in commercial manufacture by the controlled hydrolysis or conversion of starch, derived from corn, in which process the starch loses its identity and nature as such, and in which, short of complete hydrolysis, producing dextrose only, the starch is converted into dextrins, maltose, and dextrose, in varying proportions dependent upon the extent of hydrolysis. A dextrin is a product which is neither starch nor sugar but intermediate between starch and sugar. Dextrins are not found in cane sugar or in hydrolyzed or inverted cane sugar. They are produced from starch in the process of human digestion and, like the starch from which derived, they are healthful and wholesome when found or produced in human diet. In addition, corn syrup contains water and is acid, as distinguished from alkaline, in its reactions.

Candy can be made with a sugar ingredient other than cane sugar, but cane sugar is usually used, and usually with corn syrup in combination therewith. Corn Syrup contains glucose, that is, sugar, which is the base of all candy, and it has the additional value and necessary properties for aiding the hydrolysis and inversion of cane sugar and for maintaining the inverted sugar of candy against regraining or reversion to crystalline form. It thus serves not only in the making of candy but also thereafter to maintain it as such. It is also valuable in obtaining and regulating the desired sweetness or taste of candy and serves to satisfy needs brought about by varied conditions under which candy is kept and sold.

PAR. 6. Respondent Loft, Inc., professes to a long record and reputation for good candies, and for many years prior to the month of October 1934, it used corn syrup in the making of its candies. Because of its unique combination of values as a candy ingredient, corn syrup, also known as "glucose" and "commercial glucose" by members of the candy making industry, has been used in said industry for approximately fifty years. Many makers of candy, competitors of respondent Loft, Inc., regard it as an absolutely essential ingredient for all or most of their candies. It is now used generally, if not universally, by competitors of respondent Loft, Inc., so that false and disparaging statements and representations by respondents relative

to corn syrup, glucose, and commercial glucose, as a candy ingredient, tend to affect and obstruct, and do affect and obstruct, competitors in the sale of their candies.

PAR. 7. For the reason that glucose, in any form, inclusive of sugar or corn syrup, as used or found in candy, is safe and wholesome and regarded both as a natural and essential ingredient in commercial candies, there is no basis for disparaging candies made with or containing glucose in any form. For the same reasons, and contrary to the statements and representations made by respondents, as set forth in paragraphs 2 and 3 above, glucose, as sugar or corn syrup, or in any form as used or found in candy, with respect to candy, is not an "adulterant" and is not a "substitute," or a "cheap substitute" for cane sugar, or a "filler," or a "preservative," in the sense that these words may be used, and were so used in Loft advertising, to reflect upon candy quality, and the same are inappropriate to describe corn syrup as a candy ingredient or to reflect comparative qualities of candies as a result of the use or non-use of corn syrup. For the same reasons, also, the market price of corn syrup, purchased in commercial quantities for use in candies, is not relevant to the quality of candies, and with respect to the qualities of candy made with or containing corn syrup, there is no basis for disparaging said candy by way of a general representation to the effect that the ingredient used or contained therein, called "glucose," "commercial glucose," or "corn syrup," is "cheap" or a "cheap substitute" for cane sugar in candy. The said ingredient, as used or found in candy, is not made with sulphuric acid, is not bleached with sulphuric acid, and does not contain either sulphuric or hydrochloric acid, or starch, is not impure, unwholesome, harmful to health, unsafe, or dangerous for adults or children, or less digestible than cane sugar. The said ingredient has been studied by biochemists and is used extensively by nutritionists, pediatricians, and experts in the field of carbohydrate feeding, and upon the overwhelming weight of evidence, it is not only healthful and wholesome but a valuable food product which may be made an ingredient in candy or other food products without risk of injuring the health of either adults or children. In general, the industrial chemistry of making said ingredient for use in candies is not in every detail parallel to that used in the making or refining of cane sugar, but the same is comparable thereto, and no basis is shown for impeaching either of these processes, or the process or processes used in hydrolizing and inverting cane sugar in candy making, as being unsafe or unwholesome. Candy products made with or containing said ingredient or product do not contain sulphuric or hydrochloric acid, or starch, are not less digestible than candies made without said ingredi-

ent, or with cane sugar only, and the same are not impure, unwholesome, harmful to health, unsafe, and dangerous for adults or children, or otherwise inferior in quality to candies made without said ingredient or product. The purchase and use of candy products in general other than those of respondent Loft, Inc., is not dangerous or unsafe. With respect to the qualities of safety, healthfulness, and wholesomeness in candy, respondent Loft, Inc., has competitors making and selling candies made with and without said ingredient, which are comparable and equal to the candy products made, offered, and sold by respondent Loft, Inc.

For the reasons above stated, the statements and representations made by respondents in disparagement of the qualities and ingredient property or properties of candy products made and sold by competitors of respondent Loft, Inc., all as set forth and referred to in paragraphs 2 and 3 above, were and are, and each of them was and is, false.

PAR. 8. It is not shown that glucose, in the form of corn syrup as such, was used or found in any of the candy products made and sold by respondent Loft, Inc., during the course of the advertising and sales promotion hereinabove referred to; but with respect to glucose, defined as "a product obtained by the incomplete hydrolysis of starch," and as so identified and represented in certain portions of Loft advertisements, some of said candies did in fact contain, or were made with, a product identified as incompletely hydrolyzed starch and as glucose, as evidenced by the presence of dextrans. Of necessity, also, being made with cane sugar and invert cane sugar, the candy products of respondent Loft, Inc., were and are made with dextrose and levulose, so that as a matter of scientific fact, and within the general and specific definition of glucose as identifying sugars and a particular sugar, and further, within the identity thereof as so represented in certain portions of Loft advertising, referred to and set out in paragraph 2 above, referring to glucose as sugar, and as a name for dextrose, said candies were and are made with glucose.

PAR. 9. Respondent Loft, Inc., is one of the largest candy products manufacturers in the world and has publicly represented itself to be the largest. While it sells to independent retailers, it also owns or operates over two hundred retail stores, located in various cities of the various States of the United States and in the District of Columbia. The total sales income of respondent Loft, Inc., in 1934, the year in which the advertising complained of was begun, was \$12,412,327.46, of which \$7,692,270.85 represents income from candy sales. Respondent spent \$226,067.32 on account of advertising in 1934, and \$208,609.82 on account of advertising from January 1, 1935, to Oc-

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tober 1, 1935. The amount spent in 1934 was almost half as much as the entire net profit of the corporation for 1934, which was \$455,377.19. In the year 1934, the year in which the advertising complained of began, respondent Loft, Inc., produced and distributed 22,950,817 pounds of candies, representing an increase of considerably over two and a half million pounds more than it sold in 1933. Many of the competitors of respondent Loft, Inc., are small and inferior in business size and strength to that of said respondent.

PAR. 10. The false and disparaging statements and representations made by respondents, separately and together, all as more particularly hereinabove set forth, have the tendency and capacity to place, and have in fact placed, in the minds of the buying public to a substantial degree a consciousness of danger in the use of candy or food made with or containing glucose, and the same have had, and have, and each of them has had, and has, a tendency and capacity to, and did and do in fact, mislead and deceive a substantial portion of the buying public, including purchasers and potential purchasers of candies being sold in competition with the candy products of respondent Loft, Inc., into the false and erroneous belief that said statements and representations are, and each of them is, true; that glucose is an ingredient or substance which is used or contained in candy in general but is not used or contained in Loft candies; that it is an ingredient or substance which is impure, harmful to health, unwholesome, dangerous, and unsafe; that candies in which it is used or present are impure, harmful to health, unwholesome, dangerous, and unsafe, and otherwise inferior in quality to the candies of respondent Loft, Inc., and that the purchase and use of candies other than those of respondent Loft, Inc., is in general dangerous and unsafe, and the same have caused, and cause, such purchasers and prospective purchasers of competitors to discontinue or refrain from the making of purchases from said competitors and to purchase products of Loft, Inc., in place and stead of candy products of said competitors, in consequence of which trade has been, and is, unfairly diverted to respondent Loft, Inc., from its competitors who do not falsely defame or disparage the products of others and who do not misrepresent the ingredients of their own products.

CONCLUSION

The aforesaid acts and practices of respondent, Loft, Inc., and Dr. Daniel R. Hodgdon, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an

Act of Congress, approved September 26, 1914, 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 separate answers of respondents, testimony and other evidence taken before John W. Bennett, Esq., 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 Jay L. Jackson, attorney for the Commission and by Messrs. Sanders, Childs, Bobb & Wescott, by Everett Sanders, Esq. and Edward F. Howrey, Esq., of counsel, attorneys for respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That respondent Loft, Inc., and respondent Dr. Daniel R. Hodgdon, and its and his officers, agents, representatives, and employees, in connection with the advertising, offering for sale, sale, and distribution of candy products in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Representing in any way, directly or indirectly, that glucose, whether in the form of commercial glucose or glucose in any other form, as now produced and used or contained in candy products, is impure, harmful to health, unwholesome, dangerous, or unsafe, or that that ingredient, or any ingredient, now produced and used or contained in candy products, and called or identified by the name glucose, is impure, harmful to health, unwholesome, dangerous, or unsafe;

2. Representing in any way, directly or indirectly, that candy products made with or containing glucose, whether in the form of commercial glucose or glucose in any other form, are impure, harmful to health, unwholesome, dangerous, or unsafe, or that such candies are inferior in quality to, or less pure, wholesome, or safe than, the candies of respondent Loft, Inc.;

3. Representing in any way, directly or indirectly, that the purchase and use of candies made with or containing glucose, whether in the form of commercial glucose or glucose in any other form, is dangerous or unsafe, or that the purchase and use of candy products

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in general, other than those of respondent Loft, Inc., is dangerous or unsafe;

4. Representing, directly or indirectly, that the candy products of respondent Loft, Inc., are made without, or do not in fact contain, glucose.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF
CHARLES R. LUCE, INDIVIDUALLY AND AS TRUSTEE,
TRADING AS LUCE & COMPANY

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

Docket 2780. Complaint, Apr. 23, 1936—Decision, Feb. 9, 1937

Where an individual engaged in manufacture and sale of "straight" goods candy and of so-called "break and take" assortments, principal trade demand for which comes from the small retailers with stores, in many instances, near schools and patronized by school children, and sale and distribution of which candy, giving with sale thereof to public 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 thereof, who buy same in preference to so-called "straight" candy 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, has been followed by marked decrease in sales of such "straight" candy, due to gambling or lottery feature connected with so-called "break and take" merchandise—

Sold to wholesalers and jobbers assortments variously designated as "Lucky Winner," "Lucky Smokes," and "Big Winner," and composed of a number of penny pieces of uniform size and shape, the concealed colored centers of some of which differed from those of the majority, together with number of packages of candy, to be given as prizes to those procuring one of said pieces, colored center of which differed as aforesaid from majority thereof, and together with explanatory display cards with said "Lucky Winner" assortments for retailers' use is offering same to public; so assembled and packed that such assortments might be and were displayed and sold by numerous retail dealer purchasers thereof in accordance with above described plan, and with knowledge and intent that such assortments could and would thus be resold to public by retail dealers as above set forth, in violation of public policy and in competition with many who regard such method 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 retailers with a 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 public by lot or chance;

With result that retailers, finding such candy more salable, purchased products of said individual and others employing similar methods, some competitors began sale and distribution of candy for resale to public by lot or chance to meet competition of manufacturers who thus sell and distribute their products, "straight" goods sales of aforesaid refusing competitors, who can compete on even terms only by giving same or similar devices to retail dealers, showed a continued decrease in their unwillingness to do so, public and competitors were prejudiced and injured, and trade was