Syllabus

IN THE MATTER OF

BUREAU OF HYGIENE, INC., GYNEX CORPORATION, PREFERRED INDUSTRIES CORPORATION, AND BENJAMIN LINDNER

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

Docket 3042. Complaint, Jan. 29, 1937—Decision, May 7, 1937

Where a corporation engaged in the sale and distribution, among the several States and in the District of Columbia, of certain medicinal preparations and appliances for use by women in feminine hygiene, variously described, known as and sold under names "Gynettes," "Gyn-o-sol," "Gynex Tablets," "Viornetts," "Gynex Fountain Bag," and "Gynex Spray with Gynex Bulb," in substantial competition with others, of whom some were engaged in sale and distribution of similar preparations and appliances and of whom others were engaged in sale and distribution of preparations, remedies, and treatments used and useful for purposes for which it represented and implied that its said preparations and appliances were useful, and among which various competitors were included many who do not in any manner misrepresent their products and efficacy thereof; in describing its said preparations and appliances and efficacy thereof when used for purposes recommended, in booklets, pamphlets, and circulars distributed among prospective purchasers and in window display placards—

(*a*) Represented that said "Gynettes," "Gynex Tablets," and "Gyn-o-sol" preparation constituted competent and effective contraceptive and could be depended upon for such purpose without limitation, and that they were competent and reliable remedies, treatments, and cures for ills and diseases peculiar to women, as in said various advertisements specified;

(*b*) Represented that prepartion "Viornetts" was a competent and effective treatment and cure for period pains and irregularities in the menstruation period of women, and a sedative for uterine and ovarian troubles of women, and that it strengthened said organs;

(*c*) Represented that said preparations and appliances had been tested and approved by an independent organization devoted to scientific research on questions involving methods of preventing conception and preventing, treating, and curing diseases, maladies and conditions peculiar to women; and

(*d*) Represented that said preparations and appliances might be used with safety and without deleterious effects by all women;

Facts being preparations and products named did not constitute competent and effective contraceptives as aforesaid claimed, and could not be depended upon for such purpose without limitation, nor constitute competent and reliable remedies, treatments and cures for ills, diseases, and conditions as above set forth, but had no beneficial therapeutic value in treatment thereof or of any of them, said preparations and appliances had not been submitted, tested, and approved as above set forth, by an independent organization as claimed or represented, and could not be used with safety and without deleterious effects as contraceptives, but use thereof in many

cases was capable of causing and did cause injuries and had a deleterious effect on users thereof;

With effect of confusing, misleading and deceiving members of the public as to the properties and efficacy of the said preparations and appliances as hereinabove set forth, and of causing them, because of the erroneous beliefs thus engendered and their implications, to buy and use said preparations and appliances, and thereby substantially divert trade in said commerce to it from its competitors who truthfully represent their products; to their injury and that of the public:

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

Mr. William L. Taggart for the Commission.

Mr. John W. Hilldrop, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the Bureau of Hygiene, Inc. (formerly the Bureau of Feminine Hygiene), the Gynex Corporation, Preferred Industries Corporation, corporations and Benjamin Lindner, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Bureau of Hygiene (formerly Bureau of Feminine Hygiene) and Gynex Corporation are now, and have been for several years last past, corporations organized, existing, and doing business under the laws of the State of New York. Respondent Bureau of Hygiene was organized to do research and laboratory work relative to the products marketed by the respondent Gynex Corporation.

Respondent Preferred Industries Corporation is now, and has been for several years last past, a corporation organized and doing business under the laws of the State of New York. Benjamin Lindner is its President and directs and controls the policies and business operations of the corporation. Respondent Preferred Industries Corporation, acting directly and through Benjamin Lindner, its president, supervises, operates, and directs the sales policies and general business affairs of respondents Gynex Corporation and Bureau of Hygiene. It, together with its president, Benjamin Lindner, acting in his indi-

vidual capacity, also factor the products marketed by Gynex Corporation.

The principal offices and places of business of all of the respondents are located at 301 Madison Ave., and 211 East 19th Street in the city of New York. Respondent Benjamin Lindner also has an office at 285 Madison Avenue in the city of New York. The respondents have been, and are now engaged in the business of manufacturing, distributing and selling certain medical preparations and appliances for so-called feminine hygiene use to purchasers in commerce among and between various States of the United States and in the District of Columbia. The respondents cause these products, when sold, to be transported from their aforesaid places of business to the purchasers thereof located in the various States other than the State of New York and in the District of Columbia, and maintain a constant course of trade and commerce in said products so distributed and sold by them.

In the course and conduct of said business respondents have been, and are, in substantial competition with other corporations and with firms, individuals, and partnerships engaged in the distribution and sale of similar products, and other products intended and designed for similar use by women in commerce among and between the various States of the United States.

PAR. 2. The products marketed by the respondents are variously known and described as Gynettes (the ideal suppository for feminine hygiene), Gyn-o-sol (the ideal vaginal jelly for feminine hygiene), Gynex Tablets (normal oxyguinoline sulphate), Viornetts (viburnum compound), Gynex Spray, Gynex Fountain Bag and Gynex Spray with Gynex Bulb. In the operation of their business and for the purpose of inducing the purchase of said products on the part of members of the purchasing public, the respondents have made use of certain advertising literature such as booklets, pamphlets, circulars, and show-window displays represented to be descriptive of the various products herein named and the various applicators used in connection therewith, and the effectiveness of said products and appliances when used. The advertising literature herein referred to is distributed to members of the purchasing public through advertising literature contained in the boxes in which said products are marketed, and in advertising literature distributed through the medium of drug stores, through the United States mails direct to the prospective purchasers and in other ways.

With reference to the products designated as Gynettes and Gyn-o-sol such statements as the following are made.

GYNETTES

One Gynette is used upon retiring, or when desired. In a few minutes its cocoa butter base melts, spreading an antiseptic film over the interior of the vagina, affording protection, and security of mind. Since the antiseptic qualities of Gynettes remain effective throughout the night—douching may be postponed until morning. Gynettes are also beneficial in soothing minor irritation and are excellent deodorants. Gynettes may be used with utmost confidence—are non-injurious—dependable, and are compounded from a formula that has the professional endorsements of Gnyecologists as well as the Bureau of Feminine Hygiene.

GYN-O-SOL

Gyn-o-sol is a soft jelly which performs the same function and is compounded from the same formula as Gynettes. Use of one or the other is a matter of personal preference, the difference being entirely in the manner of application. Gyn-o-sol is applied quickly and easily and its action is immediate and effective. A similar formula is used today by thousands of women. It is non-injurious and offers the married woman the protection she wants. Its consistency is such that it spreads evenly over all internal parts and deposits a film that remains effective throughout the night, making douching unnecessary until morning.

In said statements, together with other similar statements not herein set out, and in their general advertising respondents represent directly or through implication that said products designated as Gynettes and Gyn-o-sol form competent and effective preventatives against conception, and form competent and reliable remedies, cures, or treatments for certain maladies, ills, or diseases peculiar to women such as:

Leuchorrhea (Whites)
Inflamed Membrane (Endometritis)
Vaginal Inflammation (Vaginitis)
Pelvic Inflammation
Nervous Conditions (Neurosis)

PAR. 3. In truth and in fact the products designated as Gynettes and Gyn-o-sol do not form or constitute competent treatments, remedies, or cures for the various maladies and diseases peculiar to women hereinabove set out and are of no beneficial therapeutic value in the treatment of said diseases. Neither of said products will accomplish the results claimed by the respondents with respect to preventing conception. Neither of said products, when used in connection with the applicators furnished by the respondents will in all cases serve as competent preventatives of conception but are in some cases capable of causing injuries and deleterious effects to those making use of them.

PAR. 4. With reference to the product designated as Viornetts such statements as the following are made:

Viornetts contain Viburnum and other beneficial ingredients, and are recommended to all women who suffer periodic pain or irregularities. A uterine and ovarian sedative, its use tends to tone and strengthen these organs. Non-narcotic, chocolate coated—convenient—and fully as effective as liquid preparations. Viornetts are harmless, reliable, and efficient.

In said statements, together with other similar statements not herein set out, and in their general advertising respondents represent directly or through implication that said product designated as Viornetts form effective treatments for periodic pain or irregularities, sedative for uterine and ovarian troubles of women and to strengthen these organs and are as fully effective as liquid preparations.

In truth and in fact the products designated as Viornetts do not form or constitute competent treatments for periodic pain or irregularities, sedative for uterine and ovarian troubles as hereinabove set out and have no beneficial therapeutic value in the treatment of said diseases or conditions.

PAR. 5. With reference to the products designated as Gynex Tablets such statements as the following are made:

Of the many preparations which are used for the purpose of douching, a few equal and none has been found superior to Gynex Tablets. They are excellent deodorants, instantly destroying offensive odors. Gynex Tablets are specially manufactured for use with the Gynex Dilating Spray—together they form the ideal combination for the correct practice of feminine hygiene. Healing--soothing—refreshing.

In said statements, together with other similar statements not herein set out, and in their general advertising respondents represent directly or through implication on their part that said products designated as Gynex Tablets form competent and effective preventatives against conception, and form competent and reliable remedies, cures, or treatments for certain maladies, ills, or diseases peculiar to women such as:

Leuchorrhea (Whites)
Inflamed Membrane (Endometritis)
Vaginal Inflammation (Vaginitis)
Pelvic Inflammation
Nervous Conditions (Neurosis)

In truth and in fact the products designated as Gynex Tablets do not form or constitute competent treatments, remedies or cures for the various maladies and diseases peculiar to women hereinabove set out and have no beneficial therapeutic value in the treatment of said diseases. The said product will not accomplish the results claimed by the respondents with respect to preventing conception. Neither will said product, when used in connection with the applicator furnished by the respondents in all cases serve as a competent prevent-

ative of conception but in some cases it is capable of causing injuries and deleterious effects to those making use of them.

PAR. 6. In the course of the operation of their business, as aforesaid, respondents employ and use agents for the promotion of the distribution and sale of the various products hereinabove named and also make use of window displays and other advertising matter purporting to be issued by a "Bureau of Hygiene" (Bureau of Feminine Hygiene). The advertising literature herein referred to purports to describe the functions of said Bureau in statements such as:

An especially important function of the Bureau of Feminine Hygiene is to select and test apparatus and medicaments suitable for the correct practice of Feminine Hygiene. The Bureau of Feminine Hygiene is pledged to sponsor only those products which have passed the most rigid tests. If the best available is not considered good enough, the product becomes the subject of further research and improvement.

The Bureau's Seal of Approval on any product for Feminine Hygiene is your assurance and guarantee of its purity, its quality, and its reliability.

FIRST, to answer a prevalent need for authentic, accurate, honest information on women's eternal and most troublesome problems. This information service is actually maintained, seriously, tactfully, and within the limits of all existing legislation. There is no attempt at evasion of regulation, nor is there any invasion of the functions belonging exclusively to the medical profession. There is a need that exists beyond these limits . . . and the Bureau meets it faithfully to the extent of its powers.

SECOND, to sponsor a line of appliances and preparations for the proper attainment of real feminine hygiene, that is of the very highest grade and efficacy in every respect. Every item now in the line has been subjected to the most exacting tests and has proven its value. Every article that may be added to the group in the future, will also be required to satisfy completely the most stringent requirements. . . .

In said statements, together with other statements not herein set out, and in their advertising literature generally, respondents represent, directly or through implication, that the Bureau of Hygiene (Bureau of Feminine Hygiene) is an organization devoted to scientific research on questions involving methods of prevention of conception and methods of preventing, treating, and curing diseases, maladies and conditions peculiar to women, and that the Bureau of Hygiene is in no way connected with, or financially interested in, the distribution and sale of the various products purported to be recommended by it in the various types of advertising literature distributed by the respondents herein.

In truth and in fact the Bureau of Hygiene is not an organization or institution organized and conducted for the carrying on of scientific research on questions involving methods of prevention of conception, or methods of preventing, treating, or curing diseases and maladies peculiar to women, or on any other questions. The Bureau

of Hygiene does not make any particular study of so-called feminine hygiene and in fact does not operate any laboratory wherein various hygienic products are tested. While the respondent Bureau of Hygiene is a corporation, it does not function as a business enterprise separate and distinct from the business operations conducted by the other respondent corporations.

There are among the respondents' competitors in commerce, as herein set out, those who do not in any way misrepresent the character, nature, and size of their respective businesses and who do not misrepresent in any way the nature, character and therapeutic effect of their respective products when used, and do not make use of any of the misleading representations herein set out or others similar thereto.

PAR. 7. The aforesaid false and misleading statements and representations as used by the respondents in offering for sale and selling their various products as herein described, in commerce as herein set out, have had, and do now have, the tendency and capacity to, and do mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said representations are true and into the purchase of substantial quantities of respondents' various products on account of said erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade is unfairly diverted from competitors of respondents who do not, in the sale and distribution of their respective products, make use of the same or similar misrepresentations. In consequence thereof injury has been, and is now being done by respondents to competition in commerce among and between the various States of the United States.

PAR. 8. The methods, acts, and practices of respondents herein set forth are all to the prejudice of the public and respondents' competitors as hereinabove alleged. Said methods, acts and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on January 29, 1937, issued and served its complaint in this proceeding upon respondents, Bureau of Hygiene, Inc., Gynex Corporation, Preferred Industries Corporation, and Benjamin Lindner, charging them with the use of unfair methods of competition in commerce in violation of the provisions

of said act. Subsequently, the complaint was dismissed without prejudice as to the respondents, Bureau of Hygiene, Inc., Preferred Industries Corporation and Benjamin Lindner, and the respondent, Gynex Corporation filed its answer in which it admitted the material allegations of the complaint to be true, and waived the taking of further evidence and all other intervening procedure which answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint, and the answer of respondent, Gynex Corporation, thereto, 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, Gynex Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and has its offices and places of business at 211 East 19th Street and 301 Madison Avenue in the city of New York, N. Y.

The respondent is now, and has been for the several years last past, engaged in the sale and distribution in commerce between and among the several States of the United States and in the District of Columbia of certain medicinal preparations and appliances for use by women in feminine hygiene.

Respondent's said preparations and appliances are variously described and known as, and sold under the names, Gynettes, Gyn-o-sol, Gynex Tablets, Viornetts, Gynex Fountain Bag, and Gynex Spray with Gynex Bulb.

Respondent causes said preparations and appliances, when sold, to be transported from its said places of business in the city of New York, New York, to the purchasers thereof located in the various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains a constant current of trade in said commerce in the sale and distribution of said preparations and appliances.

PAR. 2. During all of the times mentioned herein the respondent has been in substantial competition in said commerce with other corporations and with firms and individuals, some of whom are engaged in the sale and distribution of preparations and appliances similar in kind to those sold and distributed by the respondent and others of whom are engaged in the sale and distribution of preparations, remedies and treatments used and useful for the purposes for which the

respondent represents and implies that its said preparations and appliances are useful.

Among the competitors of the respondent in said commerce are many who do not in any manner misrepresent their products and the efficacy thereof.

PAR. 3. In the conduct of its business in said commerce, and for the purpose of inducing the purchase of its said preparations and appliances, the respondent caused to be prepared and distributed among prospective purchasers, booklets, pamphlets, circulars, and window display placards which contain statements descriptive of said preparations and appliances and the efficacy thereof when used for the purposes recommended.

PAR. 4. Among and typical of the statements so made in connection with the sale and distribution of said preparations and appliances are the following:

One Gynette is used upon retiring, or when desired. In a few minutes its cocoa butter base melts, spreading an antiseptic film over the interior of the vagina, affording protection, and security of mind. Since the antiseptic qualities of Gynettes remain effective throughout the night—douching may be postponed until morning. Gynettes are also beneficial in soothing minor irritation and are excellent deodorants. Gynettes may be used with utmost confidence—are non-injurious—dependable, and are compounded from a formula that has the professional endorsements of Gynecologists as well as the Bureau of Feminine Hygiene.

Gyn-o-sol is a soft jelly which performs the same function and is compounded from the same formula as Gynettes. Use of one or the other is a matter of personal preference, the difference being entirely in the manner of application. Gyn-o-sol is applied quickly and easily and its action is immediate and effective. A similar formula is used today by thousands of women. It is non-injurious and offers the married woman the protection she wants. Its consistency is such that it spreads evenly over all internal parts and deposits a film that remains effective throughout the night, making douching unnecessary until morning.

Of the many preparations which are used for the purpose of douching, few equal and none has been found superior to Gynex Tablets. They are excellent deodorants, instantly destroying offensive odors. Gynex Tablets are especially manufactured for use with the Gynex Dilating Spray—together they form the ideal combination for the correct practice of feminine hygiene. Healing—soothing—refreshing.

Viornetts contain Viburnum and other beneficial ingredients, and are recommended to all women who suffer periodic pain or irregularities. A uterine and ovarian sedative, its use tends to tone and strengthen these organs. Non-narcotic chocolate coated—convenient—and fully as effective as liquid preparations. Viornetts are harmless, reliable and efficient.

Many other statements of similar import and meaning are used by the respondent in connection with the sale and distribution of said preparations and appliances.

PAR. 5. By the means and in the manner set out in paragraph 4 hereof the respondent represents and implies that the preparations "Gynettes," "Gynex Tablets," and "Gyn-o-sol" are competent and effective preventatives of conception and that they are an absolute protection against pregnancy, and can be depended upon for which purpose without limitation; that said preparations are competent and reliable remedies, treatments and cures for ills and diseases peculiar to women, including leucorrhea, inflamed membranes, vaginal inflammation, pelvic inflammation, and nervous conditions.

By the means and in the manner set out in paragraph 4, the respondent represents and implies that the preparation of "Viornetts" is a competent and effective treatment or cure for periodic pains or irregularities in the menstruation period of women, a sedative for uterine and ovarian troubles of women, and that its use will strengthen those organs.

The preparations "Gynettes," "Gynex Tablets," and "Gyn-o-sol" and the appliances used in connection therewith are not competent and effective preventatives of conception, and are not an absolute protection against pregnancy, and cannot be depended upon for such purposes without limitation; said preparations are not competent and reliable remedies, treatments, and cures for ills and diseases peculiar to women, including leucorrhea, inflamed membranes, vaginal inflammation, pelvic inflammation, and nervous conditions.

The preparation "Viornetts" is not a competent and effective treatment or cure for periodic pains or irregularities in the menstruation period of women, a sedative for uterine or ovarian troubles of women, and its use will not strengthen these organs.

Said preparations have no beneficial therapeutic value in the treatment of any of the ailments, ills and diseases mentioned herein.

PAR. 6. Respondent in said booklets, pamphlets, circulars and window display placards represents that its said preparations and appliances have been submitted to, tested and approved by an independent organization devoted to scientific research on questions involving the methods of preventing conception and preventing, treating, and curing the diseases, maladies and conditions peculiar to women, and that such organization so testing and approving the preparations and appliances of the respondent is in no way connected with or financially interested in the sale and distribution of said preparations and appliances.

Respondent's said preparations and appliances have not been submitted to, tested, and approved by an independent organization devoted to scientific research on questions involving the methods of preventing conception and preventing, treating and curing the dis-

eases, maladies, and conditions peculiar to women, which was in no way connected with or financially interested in the sale and distribution of said preparations and appliances.

PAR. 7. Respondent in said booklets, pamphlets, circulars, and window display placards represents that said preparations and the appliances used in connection therewith may be used with safety and without deleterious effects by women to prevent conception.

In many cases the use of such preparations and appliances used in connection therewith are capable of causing, and do cause, injuries and have a deleterious effect on those using them.

PAR. 8. The representations and implications of the respondent in connection with the sale and distribution of said preparations and appliances in said commerce, as stated, have the tendency and capacity to and do confuse, mislead, and deceive members of the public as to the properties and efficacy of said preparations and appliances in the particulars herein set forth, and to cause them, because of the erroneous beliefs engendered by said representations and implications to buy and use said preparations and appliances, thereby substantially diverting trade in said commerce to the respondent from its competitors who truthfully represent their products, to their injury and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Gynex Corporation, are to the prejudice of the public and of respondent's 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, ETC.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein by the respondent, Gynex Corporation, admitting all material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and conclusion that said respondent, Gynex Corporation, has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Gynex Corporation, its officer, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of the medicinal or pharmaceutical preparations and appliances which are designed, intended and used in the treatment of various female ailments and conditions and for female hygiene purposes now designated as Gynettes, Gyn-o-sol, Gynex Tablets, Viornetts, Gynex Fountain Bag, and Gynex Spray with Gynex Bulb, or of any other preparations or appliances of substantially the same ingredients and therapeutic effect or of substantially the same design, whether designated by the aforementioned names or by any other names, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication:

1. That the preparations "Gynettes", "Gynex Tablets," and "Gyn-o-sol" are competent and effective preventatives of conception, an absolute protection against pregnancy, and can be depended upon for such purposes without limitation.

2. That the preparations "Gynettes", "Gynex Tablets" and "Gyn-o-sol" are competent and reliable remedies, treatments, and cures for ills and diseases peculiar to women, including leucorrhea, inflamed membranes, vaginal and pelvic inflammation, and nervous conditions.

3. That the preparation "Viornetts" is a competent and effective treatment or cure for period pains and irregularities in the menstruation period of women ,a sedative for uterine and ovarian troubles of women and that it strengthens the ovaries and uterus.

4. That said preparations and appliances have been tested and approved by an independent organization devoted to scientific research on questions involving the methods of preventing conception and preventing, treating, and curing the diseases, maladies, and conditions peculiar to women, until and unless such an organization has tested and approved said preparations and appliances, and

5. That said preparations and appliances may be used with safety and without deleterious effects by all women.

It is further ordered, That the complaint herein be and the same hereby is, dismissed as to the respondents, Bureau of Hygiene, Inc., Preferred Industries Corporation, and Benjamin Lindner, without prejudice.

It is further ordered, That the respondent, Gynex Corporation, shall within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF

STANDARD DISTRIBUTORS, INC., AND LOUIS H. GELLAR

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

Docket 3065. Complaint, Feb. 19, 1937—Decision, May 13, 1937

Where a corporation and an individual, president and manager thereof and director of its policies and practices, engaged in the distribution and sale of radios, food beaters, and food mixers, and of lottery schemes in connection with sale of aforesaid products to retail merchants in the various States—

(*a*) Sold and distributed to retail merchants located at various points throughout the United States, in connection with sale and distribution of aforesaid products, a lottery scheme and sales plan and paraphernalia and devices necessary to the carrying out of said scheme and distribution of aforesaid products among the customers of such merchants, under a scheme or plan by which the chance holders of the two right keys, out of a large number which it supplied to its respective merchant customers, to unlock padlock supplied with said key assortments, received, as case might be, radio, food beater or food mixer, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale or distribution of said products in accordance with such plan, contrary to the established public policy of the United States and to the laws of many States, and in competition with many unwilling, by reason of said facts, to offer or sell their merchandise so as to involve game of chance, and who refrain therefrom;

With result that many retail merchants and prospective purchasers of merchandising and sales promotion plans, attracted by element of chance involved in sales method above described, were induced to purchase their said merchandise and participate in said plan, in preference to purchase of same or similar merchandise and in preference to purchase or use of other merchandising or sales promotion plans from competitors who do not use same or equivalent methods in sale or distribution of their goods, and with tendency and capacity unfairly to divert to themselves, because of use of said lottery or game of chance, trade and commerce from competitors who do not use same or equivalent methods, to exclude from said trade all competitors who are unwilling to and do not use such practices, lessen competition therein and tend to create a monopoly thereof in them and such other competitors as do use same or equivalent practices or methods, and to deprive purchasing public of benefits of free competition therein, and with tendency and capacity, further, unfairly to eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use such or any method involving game of chance or sale of chance thus to win such articles, as contrary to public policy or laws of many States, as above set forth, or as, in their opinion, detrimental to public morals and those of persons among whom chances are distributed;

(*b*) Represented, through their agents and field representatives, to retailers that said merchandising and sales promotion plan or lottery scheme, sup-