

IN THE MATTER OF
NATIONAL KREAM COMPANY, INC., AND NATIONAL
FOODS, INC.

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

Docket 2909. Complaint, Sept. 8, 1936¹—Decision, June 11, 1937

Where a corporation and its subsidiary distributing agency engaged, as case might be, in manufacture and sale of jams, preserves, and other food products, in substantial competition with those offering or selling similar products in like commerce, and including therein those engaged in manufacture of jams and preserves in accordance with conception thereof entertained by trade and consuming public, and who truthfully describe and represent their products, and including also preserve manufacturers making products similar to those made by said corporation, as hereinbelow set forth, and who label, describe, and sell the same as imitation preserves, in accordance with universal practice among other manufacturers—

Offered and sold, to retailers, chain stores, and others, certain imitation preserves and imitation jams which so simulated in appearance the genuine that the difference in fruit content could not be discerned by visual inspection, in jars or containers labeled as "Pure Preserves," together with name of particular fruit, notwithstanding fact products in question, thus labeled, were not made from the edible portion of the fruit or fruits indicated and in the proportion of forty-five pounds of actual fruit to each fifty-five pounds of sugar, but were adulterated by undisclosed substitution, in part, for fruits of mixture of water, sugar, and pectin, and were not jams, pure jams, preserves, or pure preserves, within meaning and popular acceptance of words "jams" or "preserves," as implying composition and proportion hereinbefore indicated;

With result that competitors selling standard unadulterated preserves were placed at a decided disadvantage in the marketing of their products in competition with the less costly imitation preserves made by said corporation and labeled, sold and described, as aforesaid, as "Pure Preserves," and at prices to dealers which producers of the genuine product could not meet by reason of fruit shortage in, and consequent lower production cost of, imitation product, and with capacity and tendency to mislead and deceive trade and consuming public into belief that products described as aforesaid by said corporation had been made from at least forty-five pounds of fruit or fruits involved to fifty-five pounds of sugar, and into purchase thereof in reliance on such erroneous belief, and with result of placing in hands of dealers at wholesale and retail, instrument of fraud enabling them to mislead and deceive public, and with capacity and tendency, further, unfairly to divert trade to them from their competitors, and otherwise injuriously affect the same; to the substantial injury of substantial competition in commerce:

¹ Amended.

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

Before *Mr. Robert S. Hall* and *Mr. John L. Hornor*, trial examiners.
Mr. James M. Brinson and *Mr. James M. Hammond* for the Commission.

Mr. Henry Duke, of Long Island City, N. Y., for respondents.

AMENDED 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 National Kream Company, Inc., and National Foods, Inc., corporations hereinafter designated respondents, have been and are, and each has been and is, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, and having determined to modify its complaint herein heretofore on August 22, 1936, issued, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPHS 1. Respondents National Kream Company, Inc., and National Foods, Inc., are now, and for several years last past have been, corporations organized, existing and doing business under the laws of the State of New York, with offices and principal place of business at 360 Furman Street, in Brooklyn, in said State.

Respondent National Kream Company, Inc., has been during such period, and now is, engaged in the manufacture of jams, jellies, preserves, and other food products and each of them has been and is engaged in their sale, and also in the sale of jams, jellies, and preserves purchased by them, and each of them, from other manufacturers, in commerce between and among the State of New York and the various States of the United States other than the State of New York.

National Foods, Inc., acts as a distributing agency for National Kream Company, Inc. and is a subsidiary of, and owned, controlled, managed, and directed by National Kream Company, Inc. Some of the jams, jellies, and preserves manufactured by National Kream Company, Inc., or purchased by it from other manufacturers, are sold in commerce as above described, bearing labels of National Foods, Inc.

It has been and is the practice of respondents, and each of them, to transport such products, or cause them to be transported, when sold,

Complaint

25 F. T. C.

from their said place of business at Brooklyn, N. Y., to purchasers thereof located in States of the United States other than the State of New York.

Respondents have been and are, and each of them has been and is, engaged in substantial competition in interstate commerce with individuals, partnerships, and corporations offering for sale or selling jams, jellies, preserves, and other food products in like commerce.

PAR. 2. It has been and is the practice of respondents and of each of them to offer for sale and sell their products to retail dealers, chain stores and others in jars or containers bearing labels which represent that the contents of such jars or containers are "pure jams," "pure jellies," or "pure preserves." Such labels also name the fruits which respondents represent have been used in the manufacture of the contents of such jars or containers.

The following are typical labels which indicate the said representations, by means of which respondents induce purchase of their products:

NATIONAL PURE PRESERVES**STRAWBERRY****CONTENTS 4 lbs. (or "2 lbs." or "1 lb.") NET****Manufactured by****NATIONAL KREAM CO., INC.****NEW YORK, N. Y.***** * *****NATIONAL PURE PRESERVES****STRAWBERRY****Contents 1 lb. net****Manufactured by****NATIONAL KREAM CO., INC.****New York, N. Y.**

In truth and in fact the products of respondents, so denominated, described and represented, have not been and are not jams, jellies or preserves or pure jam, pure jellies or pure preserves within the meaning and popular acceptance of the words "jams," "jellies," or "preserves."

The expressions "jams," "fruit jams," "jelly," "fruit jelly," "preserves," and "fruit preserves" signify and mean to and are known and understood by the trade and the purchasing public to be a product prepared from a mixture of the fruit or fruits specifically named on the label, or otherwise specified or represented, with sugar in the

proportion of at least forty-five pounds of fruit to fifty-five pounds of sugar and cooked to an appropriate consistence, or expressed in terms of percentages, a product so cooked from at least 45 percent of fruit and 55 percent of sugar.

The jams, jellies, and preserves offered for sale and sold by respondents and each of them, in interstate commerce, by and with the representation that they have been or were jams, or pure jams, jellies or pure jellies, preserves or pure preserves have been or were adulterated by the substitution in part for fruits of a mixture of water, sugar, and pectin, so that the products have contained substantially less fruit than the pure or genuine jams, jellies, and preserves.

Respondents have failed to disclose such deficiency of the fruit so named on the label, or otherwise specified or represented, and the presence of substitutes therefor in their products. This practice of respondents lowers and reduces the quality of their products and enables them to sell adulterated jams, jellies, and preserves, as, and for the pure and genuine articles they purport to be and are not.

PAR. 3. Water, sugar, and pectin, the materials used for adulteration by respondent National Kream Company, Inc., in the manufacture of its so-called jams, jellies, and preserves are less expensive than the fruit for which they are substituted, and in addition thereto, the substitution of water, sugar and pectin for the proportion of fruit prescribed by the usages of the trade and the popular significance of the words "jams," "jellies," and "preserves" enables respondent National Kream Company, Inc., to procure a substantially higher yield than results from use of the proportion of at least forty-five pounds of fruit to fifty-five pounds of sugar.

Such practice of so substituting water, sugar and pectin in part for fruit, results in the reduction of costs of manufacture for National Kream Company, Inc., both because of greater yield and cheaper material.

PAR. 4. There are now and for several years last past have been individuals, partnerships and corporations engaged in the manufacture of jams, jellies and preserves in accordance with the conception of jams, jellies, and preserves entertained by the trade and consuming public, as more particularly described in paragraph 2 hereof, and in their sale in interstate commerce, truthfully described and represented, in competition with respondents.

PAR. 5. The practices of respondents and each of them in offering for sale and selling as jams, or pure jams, as jellies or pure jellies, as preserves or pure preserves, products which have not been manufactured from at least forty-five pounds or forty-five percent of the fruit or fruits named on the label, or otherwise specified or represented, to

fifty-five pounds, or fifty-five percent of sugar, but which have been adulterated with substitutes in part for said named fruit or fruits, have had and have the capacity and tendency to mislead and deceive the trade including wholesale and retail dealers and the consuming public into the belief that the products described as jams or pure jam, jelly or pure jelly, preserves or pure preserves, have been or are made from at least forty-five pounds of said fruit or fruits to fifty-five pounds of sugar and into the purchase of respondents' products in reliance on such erroneous belief.

By such practices, respondents have placed or put directly into the hands of dealers, wholesale and retail, an instrument of fraud by means of which they have been and are enabled to mislead and deceive the consuming public.

PAR. 6. The aforesaid practices of respondents described in paragraph 2 hereof have had and have the capacity and tendency to divert trade to respondents from their competitors mentioned in paragraph 4 hereof, and otherwise injuriously to affect them. Thereby substantial injury has been done, and still is being done, by respondents to substantial competition in interstate commerce.

PAR. 7. The aforesaid practices of respondents have been and are all to the prejudice of the public and respondents' competitors, and have been and are unfair methods of competition in interstate commerce in violation of the provisions 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 September 8, 1936, issued and served its amended complaint in this proceeding upon the respondents, National Kream Company, Inc., and National Foods, Inc., both incorporated, 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 amended complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said amended complaint were introduced by James Brinson, Esq., and James M. Hammond, Esq., attorneys for the Commission, before Robert S. Hall and John L. Hornor, examiners of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Henry Duke, Esq.,

attorney for the respondents; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said amended complaint, the answer thereto, testimony and other evidence, briefs in support of the amended 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. Respondents, National Kream Company, Inc., and National Foods, Inc., are now, and have been for several years last past, corporations organized and existing in accordance with the laws of the State of New York, with their offices and principal places of business located at 360 Furman Street in Brooklyn in said State.

Respondent, National Kream Company, Inc., has been and is now engaged in the manufacture of jams, preserves, and other food products and together with the respondent, National Foods, Inc., has been and is engaged in their sale, and in the sale of jams and preserves purchased by them, and each of them, from other manufacturers, in commerce between and among the State of New York and the various other States of the United States and in the District of Columbia.

The respondent, National Foods, Inc., acts as a distributing agency for the respondent, National Kream Company, Inc., and is a subsidiary of, and is owned, controlled, managed, and directed by the said National Kream Company, Inc. Some of the jams and preserves manufactured by National Kream Company, Inc., or purchased by it from other manufacturers, are sold in commerce as above described, bearing labels of National Foods, Inc.

It has been and is the practice of respondents, and each of them, to transport such products, or cause them to be transported, when sold, from their said place of business at Brooklyn, N. Y., to purchasers thereof located in States of the United States other than the State of New York.

The respondents have been and are, and each of them has been and is engaged in substantial competition in interstate commerce with corporations, individuals and partnerships offering for sale or selling jams, preserves, and other food products in like commerce.

PAR. 2. It has been and is the practice of respondents, and of each of them, to offer for sale and sell their products to retail dealers, chain stores and others in jars or containers bearing labels which

represent that the contents of such jars or containers are "pure preserves." Such labels also name the fruits which respondents represent have been used in the manufacture of the contents of such jars or containers.

The following are typical labels which indicate the said representations by means of which respondents induce the purchase of their products:

NATIONAL PURE PRESERVES

STRAWBERRY

CONTENTS 4 lbs. NET

Manufactured by

NATIONAL KREAM CO., INC.

NEW YORK, N. Y.

NATIONAL

PRESERVES

PURE BLACKBERRY

2 lbs. Net Wt.

NATIONAL FOODS, INC.,

Brooklyn, N. Y.

In truth and in fact, the products of respondents, so denominated, described and represented, have not been and are not jams, pure jams, preserves, or pure preserves, within the meaning and popular acceptance of the words "jams" or "preserves."

Preserves and jams originated as food products produced in the home by the housewife. In such home production, fruit and sugar, as ingredients of these products, were used in the proportion of a cup of sugar to a cup of fruit, and for many years such proportion of fruit and sugar was used and became generally recognized as the proper minimum proportion of fruit to sugar for such home production of preserves and jams. Since a cup of sugar is slightly heavier than a cup of fruit, this household formula is approximately equivalent to the ratio of at least forty-five pounds of fruit to fifty-five pounds of sugar as used in the standard or accepted formula by commercial manufacturers of jams and preserves as described below.

As defined commercially, insofar as fruit and sugar content is concerned, preserve, fruit preserve, jam and fruit jam are understood to mean the fruit product made by cooking or concentrating to a suitable consistency the properly prepared, entire edible portion of fresh fruit, cold-packed fruit, canned fruit, or a mixture of two or all of these, with sugar, in the preparation of which fruit product there is

used not less than forty-five pounds of actual fruit to each fifty-five pounds of sugar.

This formula of at least forty-five pounds of fruit to fifty-five pounds of sugar used in manufacturing jam or preserves has been universally recognized by preserve manufacturers as the minimum proportion of fruit to sugar required to produce a product that conforms to the public's understanding as to what constitutes "Jam" or "Preserve."

The jams and preserves offered for sale and sold by respondents, and each of them, in interstate commerce, by and with the representation that they are jams, pure jams or preserves or pure preserves, have been or were adulterated by the substitution in part for fruits of a mixture of water, sugar, and pectin, so that the products have contained substantially less fruit than pure or genuine jams and preserves.

Respondents have failed to disclose such deficiency of the fruit so named on the label, or otherwise specified or represented, and the presence of water, sugar, and pectin as a substitute therefor in their products by naming them as imitations. This practice of respondents lowers and reduces the quality and cost of manufacture of their products and enables them to sell adulterated jams and preserves, as, and for pure and genuine jams and preserves.

During the period 1932 to 1936, parts of both years inclusive, fifty-three samples of the respondents' preserves, representing seven different kinds of fruit were purchased at various retail stores in many different States, covering a territory from Massachusetts to Ohio and Maryland. In order to determine whether or not adulteration had been practiced by respondents, it was necessary to resort to chemical analysis. By comparing these analyses of respondents' products with the average analysis of corresponding fruits, properly qualified chemists are able to calculate the ratio of fruit to sugar in the preparation of a jam or preserve, both of which terms are synonymous as to the amount of fruit and sugar content. Twenty-eight of these samples were analyzed under the supervision of Commission's witness Sale, an expert food chemist of the United States Department of Agriculture. The result of each of these analyses is shown by Commission's Exhibit 38. He found that all samples analyzed were deficient in fruit content and averaged only approximately thirty-three pounds of fruit to fifty-five pounds of sugar. Seventeen samples of respondents' preserves were analyzed by Commission's witness Harrison, a commercial chemist of eighteen years' experience, who likewise found all samples deficient in fruit. Eight samples were analyzed by Commission's witness Walde, a chemist

Findings

25 F. T. C.

who has specialized for ten years in the analysis of preserves. Mr. Walde, who interpreted his own and Mr. Harrison's analyses, found an average shortage in respondents' product of thirteen pounds of fruit; that is to say, only thirty-two pounds of fruit were used to fifty-five pounds of sugar, instead of at least forty-five pounds of fruit to fifty-five pounds of sugar as required by the accepted formula. The principal shortage of fruit in respondents' product was found to exist in strawberries, the most expensive of all the fruits used by the respondents for preserving purposes. The average content of fruit of all of the fifty-three samples analyzed was thirty-two and five-tenths pounds of fruit to fifty-five pounds of sugar.

Preserve manufacturers who are in competition with respondents also manufacture jams and preserves in the preparation of which less than forty-five pounds of fruit are used to each fifty-five pounds of sugar, and in which water, sugar, and pectin, a chemical which has the property of jellifying sugar and water, are used as a substitute material for part of the fruit that is required for a standard preserve. In composition, such products are substantially the same in appearance and consistency as the average composition of the products of the respondents. Preserve manufacturers in competition with respondents, who produce such products deficient in fruit, label, describe and sell the same as "Imitation Preserve," and this form of labeling and description is generally a universal practice among manufacturers other than respondents.

As known to the trade and to the purchasing and consuming public, "Imitation preserve" and "Imitation jam" are products prepared with less than forty-five pounds of fruit to each fifty-five pounds of sugar and in place of the full proportion of fruit there is added sugar and water with or without pectin, or combinations of one or more of these ingredients. The chemical analyses referred to above show that respondents' products were, in fact, imitation preserves and imitation jams manufactured in this manner.

The evidence further shows that in 1935 a criminal information was filed in the United States District Court for the Eastern District of New York, containing thirty counts, each charging the respondent, National Kream Company, Inc., with the adulteration of preserves in substantially the same manner as alleged in the amended complaint in this case. The National Kream Company, Inc., pled guilty to twelve of these counts and was fined \$25.00 on each of seven counts, for a total fine of \$175.00 and received a suspended sentence as to the other five counts to which the plea of guilty was entered. The other eighteen counts were dismissed.

PAR. 3. Various preserve manufacturers were called by the Commission for the purpose of ascertaining what savings would accrue as a result of an adulteration of preserves as described above. They testified that manufacturers of preserve so adulterated might save from five to thirty-eight per cent of their manufacturing costs by this subterfuge depending in each instance on the degree of adulteration and the cost of the fruit involved. Commission's Exhibits 40, 41, 43, and 51 set out complete tabulations on costs and savings accruing as a result of adulteration. Comparison of these exhibits with the degree of adulteration in respondents' product, as shown by the chemical analyses referred to above, indicates the amount the respondent saved in production costs. For example, referring to Commission's Exhibit No. 51, a tabulation covering strawberry preserves where the fruit was purchased at \$0.115 per pound, if the respondents adulterated to the extent of using only twenty-five pounds of fruit to fifty-five pounds of sugar, they would save 24% in cost of production, or \$0.98 per dozen on their two-pound jars of strawberry preserves. If the respondents used only thirty pounds of strawberries to fifty-five pounds of sugar, they would save 18% of their production costs, or \$0.72 on each dozen of their two-pound jars of strawberry preserves. The respondent's adulteration of strawberry preserves, as shown by the chemical analyses referred to above, averaged twenty-seven pounds of fruit to fifty-five pounds of sugar. Its average saving in production costs was therefore about \$0.80 per dozen on their two-pound jars of strawberry preserves, depending on the cost of the fruit, with a similar proportionate saving on one-pound or four-pound jars, as the case might be.

Respondent's competitors in the sale of standard unadulterated preserves were placed at a decided disadvantage in the marketing of their products in competition with the imitation preserve manufactured by the respondents but labeled, sold and described by respondents as pure preserve, and sold to dealers at prices which the producers of pure preserves could not meet as a result of respondents' trade advantage because of fruit shortage in their product which necessarily gave them a lower production cost.

Respondents' imitation preserves and imitation jams were so made that they simulated unadulterated preserves or jams in appearance to the extent that the difference in fruit content between the imitation and the genuine products could not be discerned by visual inspection.

PAR. 4. There are now, and have been for many years past, other corporations, partnerships, and individuals engaged in the manu-

facture of jams and preserves in accordance with the conception of jams and preserves entertained by the trade and consuming public, as more particularly described in paragraph 2 hereof, who truthfully describe and represent their products in their sale in interstate commerce in competition with respondents.

PAR. 5. The practices of respondents and each of them in offering for sale and selling as jams, or pure jams and as preserves or pure preserves, products which have not been manufactured from at least forty-five pounds of the fruit or fruits named on the label, or otherwise specified or represented, to fifty-five pounds of sugar, but which have been adulterated with substitutes in part for said named fruit or fruits, have had and now have the capacity and tendency to mislead and deceive the trade, including wholesale and retail dealers, and the consuming public into the belief that the products described by respondents as jams or pure jams, preserves or pure preserves, have been or are made from at least forty-five pounds of said fruit or fruits to fifty-five pounds of sugar and into the purchase of respondents' products in reliance on such erroneous belief.

By such practices, respondents have placed in the hands of dealers, wholesale and retail, an instrument of fraud by means of which said dealers have been and are enabled to mislead and deceive the consuming public.

PAR. 6. The aforesaid practices of respondents, as described herein, have had and now have the capacity and tendency to unfairly divert trade to respondents from their competitors and otherwise to injuriously affect them, thereby, substantial injury has been done, and still is being done by respondents to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondents, National Kream Company, Inc., and National Foods, Inc., respondents herein, are to the prejudice of the public and of the respondents' competitors and constitute unfair methods in 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 amended complaint of the Commission, the answer of respondents, testimony and other evidence taken before Robert S. Hall and John L. Hornor, trial examiners of the Commission

theretofore duly designated by it, in support of the allegations of said amended complaint and in opposition thereto, briefs filed herein and oral arguments by James M. Hammond, Esq., counsel for the Commission, and by Henry Duke, Esq., counsel 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 the respondents, National Kream Company, Inc., and National Foods, Inc., their officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution of preserves or imitation preserves, jams or imitation jams in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing in any manner whatsoever that a mixture of fruit and sugar is pure preserve or pure jam or jam unless the same is properly prepared from the entire edible portion of fresh, cold-packed, or canned fruit, or a mixture of two or all of these, and cooked or concentrated to a suitable consistency with sugar, and in the preparation of which jam or preserve there is used not less than forty-five pounds of actual fruit to each fifty-five pounds of sugar;

2. Selling or offering for sale a product made in simulation of a jam or preserve but containing less than forty-five pounds of fruit to each fifty-five pounds of sugar used in the manufacture thereof until there is affixed to the container in which said product is sold, in a conspicuous place so as to be easily and readily seen, a word or words clearly indicating that said fruit product is imitation jam or imitation preserve.

It is hereby further ordered, That the respondents, National Kream Company, Inc., and National Foods, Inc., shall, within 30 days from the date of service upon them of this order, file with the Commission their reports in writing stating the manner and form in which they shall have complied with this order.

IN THE MATTER OF

J. G. McDONALD CHOCOLATE COMPANY

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

Docket 2706. Complaint, Jan. 31, 1936—Decision, June 12, 1937

Where a corporation engaged in manufacture and sale of "straight" goods candy, and of so-called "break and take," "draw," or "deal" assortments, sale and distribution of which latter type to public, with means or opportunity of obtaining a prize or becoming a winner by lot or chance connected therewith, teaches and encourages gambling among children, who comprise a substantial number of the purchasers and consumers of such type, and particularly of assortments sold and distributed through different colored centers or pushcards, and sale and distribution of which, by lot or chance, provides easy means of disposing of such type candy, for which there is constant demand, and sale of which in the markets of the other, or "straight," merchandise has been followed by a marked decrease therein, due to gambling or lottery feature connected with former—

Sold to jobbers and retailers assortments so packed and assembled as to involve, or as to be designed to involve, use of a lottery scheme in sale and distribution to consumers thereof, and consisting of (1) number of penny pieces of uniform size and shape, concealed colored centers of some of which differed from those of the majority, together with number of larger pieces to be given free of charge and as prizes to chance purchasers of those pieces, colored centers of which differed, as aforesaid, from majority; (2) bars of candy, together with pushcards, for sale under a plan, and in accordance with cards' explanatory legend, under which purchaser's five cents secured one or more bars, depending on number or legend pushed by chance, and last push likewise receives specified number of additional pieces; and (3) assortments of packages of candy of varying size, together with punchboard, for sale under a plan, and in accordance with said board's explanatory legend, pursuant to which purchaser received, for five cents paid, one of aforesaid packages or nothing other than privilege of a punch, dependent upon number thus secured by chance; in competition with many who sell their exclusively "straight" merchandise in competition with such "break and take," "draw," or "deal" assortments, and with many who regard such 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, by reason thereof, refuse to sell candy so packed and assembled that same can be resold to public by lot or chance, and in violation of public policy;

With result that such competitors were thereby put to a disadvantage in competing, retailers bought, from it and other employing same methods of sale, such candy as more salable, sales of such unwilling competitors, who could compete on even terms only by giving same or similar devices