

Syllabus

IN THE MATTER OF
OSTLER CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2837. Complaint, June 8, 1936—Decision, June 17, 1937*

Where a corporation engaged in manufacture and sale of "straight" or "staple" goods candy, and also of so-called "break and take," "draw," or "deal" assortments, sale and distribution of which type candy, in constant demand and affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, and providing an easy means of disposing of such products, teaches, and encourages gambling among children, constituting substantial number of purchasers and consumers of such type, and sale and distribution of which in the markets of many manufacturers who sell their "straight" goods in interstate commerce in competition with the other, has been followed by a marked decrease in sales of such "straight" goods, due to gambling or lottery feature connected with said "break and take," "draw," or "deal" candy, preferred by consumers because of gambling feature connected therewith, and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy—

Sold, to jobbers and retailers, certain assortments of candy which were so packed and assembled as to involve, or which were designed to involve, use of a lottery scheme when sold and distributed to consumers thereof, and several of which consisted of (a) a number of candy bars, together with a push card, for sale and distribution to purchasing public under a plan, and in accordance with said card's explanatory legend, by which person received, for five cents paid, one or more additional bars of candy, depending on numbers or legends pushed by chance, and last push on card likewise received specified number of additional bars, and of other assortments involving same principal or sales plan where unit of sale was one cent rather than five cents, and varying in detail from that immediately above described in such matters as inclusion of additional pieces of candy to be given as prizes or in the furnishing of articles of merchandise other than candy to be thus given and distributed to ultimate consumers wholly by lot or chance, and (b) assortments of a number of penny pieces of candy of uniform size and shape, together with number of larger pieces to be given as prizes to purchasers of a relatively few of said uniform pieces, concealed color or colored centers of which differed from that of the majority, and also with small box of candy to be given free of charge to purchaser of last piece of uniform size in assortment; so assembled and packed that they were designed to be, and were, exposed and used by retail dealer purchasers for distribution and resale to purchasing public by lot or chance, without alteration or rearrangement, and with knowledge and intent that such candy should thus be resold to public by lot or chance by said retail dealers, in competition with many who regard such sale and distribution as morally bad and as encouraging gambling, and espe-

Complaint

25 F. T. C.

cially among children, and as injurious to the candy industry through resulting in the merchandising of a chance or lottery instead of candy, and as providing retail merchants with a means of violating the laws of the several States, 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 such competitors were put to a disadvantage in competing, retailers, finding candy more salable by "break and take," "draw," or "deal" method, bought from it and others employing same methods of sale, trade was diverted to it and others using similar method from said competitors, who could compete on even terms only by giving similar devices to retailers, and sales of their "straight" candy, in their unwillingness so to do, showed a marked decrease, some competitors began sale and distribution of candy by lot or chance in order to meet competition of manufacturers who thus sold and distributed such products, and trade was diverted to it from its said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry involved; to the prejudice and injury of the public and competitors:

Held, That such acts and practices, under the conditions and circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Charles P. Vicini* and *Mr. Henry M. White*, trial examiners.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.

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 Ostler Candy Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ostler Candy Company, is a corporation organized and operating under the laws of the State of Utah, with its principal place of business located at 143 South State Street, Salt Lake City, Utah. Respondent is now, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution of such products and in the sale and distribution of the products of other candy manufacturers to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States, and causes and has caused all of said products,

when so sold, to be transported from its principal place of business in Salt Lake City, Utah, to purchasers thereof in other States of the United States at their respective places of business, and there is now and has been for more than one year last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of its said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) Several of said assortments manufactured, sold and distributed by the respondent are composed of a number of bars of candy, together with a device commonly called a push card. The said bars of candy are distributed to the consuming public by means of said push card in the following manner. The push card has a number of partially perforated discs and when a push is made and the disc separated from the card a number or legend is disclosed. Sales are five cents each and the card bears a statement or statements informing customers and prospective customers that all the numbers or legends pushed from said card receive one bar of candy, but that certain specified numbers or legends receive one or more additional bars of candy. The push card also bears a legend stating that the last push on the card receives a specified number of additional bars of candy. All purchasers receive one bar of candy, but purchasers obtaining the specified numbers or legends receive additional bars of candy of the same size and quality. The numbers or legends on said card are effectively concealed from the purchaser or prospective purchaser until a push or sale has been made and the particular push separated from the card. The additional bars of candy in said assortment are thus distributed to purchasers of pushes from said card wholly by lot or chance.

(b) The respondent distributes several other assortments involving the same principle or sales plan, where the unit of sale is one cent, rather than five cents. These several assortments vary only in detail from the assortments described above in paragraph (a). In some of said assortments larger pieces of candy instead of additional pieces of candy are to be given as prizes and in other of the assortments,

Complaint

25 F. T. C.

articles of merchandise other than candy are furnished and are to be given as prizes to purchasers from said assortments. The larger or additional pieces of candy and the other articles of merchandise are distributed to the ultimate consumer wholly by lot or chance.

(c) Certain other assortments manufactured, sold and distributed by respondent are composed of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy and a small box of candy, which larger pieces of candy and the small box of candy are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner. The majority of said pieces of candy of uniform size and shape are of the same color or have centers of the same color, but a small number of said pieces of candy are of different color or have centers of different color. The said pieces of uniform size and shape retail at a price of one cent each, but the purchaser who procures one of said candies colored differently or having a center colored differently from the majority, is entitled to receive and is to be given, free of charge, one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of candy of uniform size and shape in said assortments is entitled to receive and is to be given, free of charge, the small box of candy. The color of the said pieces of candy or the color of the centers of the said pieces of candy in said assortments is effectively concealed from the purchaser and prospective purchaser until a selection has been made and the wrapper removed or the piece of candy broken open. The aforesaid purchasers of said candies who procure a candy colored differently or having a center colored differently from the majority of said pieces of candy of uniform size and shape in said assortment, thus procure one of the said larger pieces of candy or the small box of candy wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortment, resell the same to retail dealers and said retail dealers and the retail dealers to whom respondent sells direct, expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sales of its products, in accordance with the sales plans hereinabove set forth, and said sales plans have the capacity and tendency of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance

to procure additional or larger bars of candy or small boxes of candy or other articles of merchandise.

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

Many persons, firms, and corporations who make and sell candy in competition with the respondent as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said methods and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candies so packed and sold by respondent in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent has the tendency and capacity because of said games of chance to divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same is unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or equivalent method and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods by the respondent has the tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said methods or any method involving a game of

chance or the sale of a chance to win something by chance or any other method that is contrary to public policy.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on June 8, 1936, issued and served a complaint upon the respondent, Ostler Candy Company, a corporation, charging that respondent had been and was using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by H. L. Mulliner, attorney for the respondent, before Charles P. Vicini and Henry M. White, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral argument of Henry C. Lank, counsel for the Commission, the respondent not being represented although duly notified of the time and place of such hearing; and the Commission, having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ostler Candy Company, is a corporation organized under the laws of the State of Utah, with its principal office and place of business located at 143 South State Street, in Salt Lake City, Utah. Respondent is now, and for several years

last past has been, engaged in the manufacture of candy in Salt Lake City and in the sale and distribution thereof to retail dealers and jobbers located in the State of Utah and to retail dealers in the States of Nevada, Wyoming, Idaho, and Montana. It causes the said candy when sold to be shipped or transported from its principal place of business in the State of Utah to purchasers thereof in Utah and in the other States of the United States as mentioned above. In so carrying on said business, respondent is and has been engaged in interstate commerce, and is and has been engaged in active competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to jobbers and retail dealers, as above described, certain assortments of candy so packed and assembled as to involve, or which are designed to involve, the use of a lottery scheme when sold and distributed to the consumers thereof. Several of such assortments manufactured, sold, and distributed by respondent are composed of a number of bars of candy, together with a device commonly called a "push card." The said bars of candy are distributed to the consuming public by means of said push card in the following manner: The push card has a number of partially perforated discs, and when a push is made and the disc separated from the card a number or legend is disclosed. Sales are 5¢ each, and the card bears a statement or statements informing customers and prospective customers that all the numbers or legends pushed from said card receive one bar of candy, but that certain specified numbers or legends receive one or more additional bars of candy. The push card also bears a legend stating that the last push on the card receives a specified number of additional bars of candy. All purchasers receive one bar of candy, but purchasers obtaining the specified numbers or legends receive additional bars of candy of the same size and quality. The numbers or legends on said card are effectively concealed from the purchaser or prospective purchaser until a push or sale has been made and the particular push separated from the card. The additional bars of candy in said assortment are thus distributed to purchasers of pushes from said card wholly by lot or chance.

Respondent has distributed and does distribute several other assortments involving the same principle or sales plan as that described above where the unit of sale is 1¢ rather than 5¢. These several assortments vary only in detail from the assortment described imme-

Findings

25 F. T. C.

diately above. In some of said assortments larger pieces of candy, instead of additional pieces of candy, are to be given as prizes, and in other assortments articles of merchandise other than candy are furnished by respondent and are to be given as prizes to purchasers from said assortments. The larger or additional pieces of candy, or the other articles of merchandise, are distributed to the ultimate consumers wholly by lot or chance.

Respondent has also distributed and does distribute assortments which are composed of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy and a small box of candy, which larger pieces of candy and small box of candy are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner: The majority of said pieces of candy of uniform size and shape are of the same color or have centers of the same color, but a small number of said pieces of candy are of different color or have centers of different color. The said pieces of candy of uniform size and shape retail at a price of 1¢ each, but the purchaser who procured one of said candies colored differently or having a center colored differently from the majority is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of candy of uniform size and shape in said assortment is entitled to receive and is to be given free of charge the small box of candy. The color of the said pieces of candy, or the color of the centers of the said pieces of candy in said assortment, is effectively concealed from the purchaser and prospective purchaser until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candies who procure a candy colored differently, or having a center colored differently from the majority of said pieces of candy of uniform size and shape in said assortment, thus procure one of the said larger pieces of candy or the small box of candy wholly by lot or chance.

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

PAR. 4. The wholesale dealers or jobbers to whom respondent sells its assortments resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose

said assortments for sale and sell said candy to the purchasing public in accordance with the sales plans as described above.

PAR. 5. All sales made by respondent, whether to wholesale dealers and jobbers or to retail dealers, are absolute sales and respondent retains no control over said assortments after they are delivered to the wholesale dealer or jobber or retail dealer. The assortments are assembled and packed in such manner that they are designed to be used and are used by the retail dealer for distribution to the purchasing public by lot or chance without alteration or rearrangement. In the sale and distribution to jobbers and wholesale dealers for resale to retail dealers and to retail dealers direct of the assortments of candy described in paragraph 2, respondent has knowledge that said candy will be resold to the purchasing public by retail dealers by lot or chance, and it packs such candy in the way and manner described so that without alteration, addition or rearrangement thereof it may be resold to the public by lot or chance by said retail dealers.

PAR. 6. There are in the United States many manufacturers of candy, competing with respondent in the territory served by respondent, who do not manufacture and sell "draw," "deal," or "break and take" assortments of candy and who sell their "straight" or "staple" goods in interstate commerce in competition with the "draw," "deal," or "break and take" candy, and manufacturers of "straight" or "staple" goods have noted a marked decrease in the sales of their products whenever or wherever the "draw," "deal," or "break and take" assortments have appeared in their markets. This decrease in the sale of "straight" or "staple" candy is due to the gambling or lottery feature connected with the "draw," "deal," or "break and take" candy. Witnesses from several branches of the candy industry testified in this proceeding to the effect that consumers preferred to purchase the "draw," "deal," or break and take" candy because of the gambling feature connected with its sale. The sale and distribution of "draw," "deal," or "break and take" packages or assortments of candy, or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children who comprise a substantial number of the purchasers and consumers of this type of candy.

PAR. 7. The sale and distribution of candy by the retailers by the methods described herein is the sale and distribution of candy by lot or chance and constitutes a lottery or gaming device. The Commission finds that many competitors regard such sale and distribution as morally bad and as encouraging gambling, especially among chil-

dren; as injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy; and as providing retail merchants with a means of violating the laws of the several States. Because of these reasons some competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. The retailers, finding that they can dispose of more candy by the "draw," "deal," or "break and take" method, buy from respondent and others employing the same methods of sale, and thereby trade is diverted to respondent and others using similar methods from said competitors. Such competitors can compete on even terms only by giving the same or similar devices to retailers. This they are unwilling to do, and their sales of "straight" or "staple" candy show a marked decrease. The sale and distribution of candy by lot or chance provides an easy means of disposing of such products. There is a constant demand for candy which is sold by lot or chance, and in order to meet the competition of manufacturers, who sell and distribute candy which is sold by such methods some competitors have begun the sale and distribution of candy to the public by lot or chance. The use of such methods by respondent in the sale and distribution of its candy is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 8. Respondent sells its merchandise in the States of Utah, Nevada, Idaho, Montana, and Wyoming. The majority of its candy is sold as "straight" merchandise, only a small part of its sales being assortments with which a pushcard is furnished or which is so packed and assembled as to involve a lot or chance feature when resold to the consuming public, but all of its salesmen at all times offer said "draw," "deal," or "break and take" assortments of candy to its customers and prospective customers, together with its "straight" merchandise. While the annual volume of business of respondent was not shown exactly, an officer for the respondent testified, and the Commission finds, that respondent's annual volume of business is substantial.

PAR. 9. The Commission further finds that the sale and distribution in interstate commerce of assortments or packages of candy so packed and assembled as to enable retail dealers, without alteration, addition or rearrangement, to resell the same to the consuming public by lot or chance, is contrary to public policy.

Order

CONCLUSION

The aforesaid acts and practices of respondent, Ostler Candy Company, a corporation, under the conditions and circumstances set forth in the foregoing findings of fact, are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce 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 answer of respondent, testimony and other evidence taken before Charles P. Vicini, and Henry M. White, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and the oral argument of Henry C. Lank, counsel for the Commission, the respondent not being represented at said argument although duly notified of the time and place thereof; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered, That the respondent, Ostler Candy Company, a corporation, its officers, agents, representatives, and employees, in the offering for sale, sale, and distribution in interstate commerce of candy, do cease and desist from:

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

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

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail, bars of candy, together with a

Order

25 F. T. C.

device commonly called a "push card," which push card is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail.

4. Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size and shape of different colors or having centers of a different color, together with larger pieces of candy or other articles of merchandise, which said larger pieces of candy or other articles of merchandise are to be given as prizes to the purchaser procuring a piece of candy of a particular color or having a center of a particular color.

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

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

Syllabus

IN THE MATTER OF
GLADE CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2848. Complaint, June 12, 1936—Decision, June 17, 1937*

Where a corporation engaged in manufacture and sale of "straight" goods candy, and also of so-called "break and take," "draw," or "deal" assortments, sale and distribution of which type candy, in constant demand and affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, and providing an easy means of disposing of such products, teaches and encourages gambling among children, constituting substantial number of the purchasers and consumers of such type, and particularly of candy-bar assortments with push card, and sale and distribution of which type in the markets of many manufacturers who sell their "straight" goods in interstate commerce in competition with the other, has been followed by a marked decrease in sales of such "straight" goods, due to gambling or lottery feature connected with said "break and take," "draw," or "deal" candy, preferred by consumers because of gambling feature connected therewith, and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition, or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy,—

Sold, to jobbers and retailers, certain assortments of candy which were so packed and assembled as to involve, or were designed to involve, use of a lottery scheme when sold and distributed to consumers thereof, and several of which consisted of (a) a number of candy bars, together with push card, for sale and distribution to consuming public under a plan, and in accordance with said card's explanatory legend, by which purchaser received, for five cents paid, one or more additional bars of candy, depending upon particular number or legend pushed by chance, and last push on card also received specified number of additional bars, and (b) number of packages of candy of varying size, together with punch board, for sale and distribution to consuming public under a plan, and in accordance with said board's explanatory legend, by which purchaser received, for five cents paid, one of said packages, in accordance with number punched by chance, or nothing other than privilege of a punch; so assembled and packed that they were designed to be, and were, exposed and used by retail dealer purchasers thereof for distribution and resale to purchasing public by lot or chance, without alteration or rearrangement, and with knowledge and intent that such candy should thus be resold to public by lot or chance by said retail dealers, in competition with many who regard such sale and distribution as morally bad and as encouraging gambling, and especially among children, and as injurious to the candy industry through resulting in the merchandising of a chance or lottery instead of candy, and as providing retail merchants with a means of violating the laws of the several States, 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;