

IN THE MATTER OF
STARTUP CANDY COMPANY

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

Docket 2705. Complaint, Jan. 31, 1936—Decision, June 19, 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, comprising, by far, majority 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 wholesalers, jobbers, and retailers, certain packages or assortments of candy which were so packed and assembled as to involve, or which were designed to or might involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof, and several of which were composed of (a) number of penny pieces of uniform size and shape, together with explanatory display card for retailer's use, and number of larger pieces or bars of candy, to be given as prizes to purchasers by chance of a relatively few of said uniform penny pieces, concealed colored centers of which differed from those of the majority, and also together with small package of candy, to be given free of charge to purchaser of last uniform piece in assortment, (b) number of small pieces of candy, number of larger pieces and bars of candy, and number of small packages of candy, together with push card, for sale and distribution to consuming public under a plan, and in accordance with said board's explanatory legend, by which purchaser received, for penny paid, one of small pieces, one of larger pieces, one of bars, or one of small packages, in accordance with number pushed by chance, and purchaser of last push or punch was entitled also to one of such packages, and (c) of number of candy bars, together with push card, for 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, two, three, four, or five bars, dependent upon legend disclosed by chance by push, and purchaser of last push received six; so assembled and packed that they were designed to be, and were, displayed and used by retail dealer purchasers thereof for distribution and resale to purchasing public in accordance with such sales plans, 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;

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

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Utah with its principal office and place of business located in the city of Provo, State of Utah. It is now and for several years last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers and to retail dealers located at points in the various States of the United States and causes the said products, when so sold, to be transported from its principal place of business in the city of

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Provo, Utah, to purchasers thereof in other States of the United States at their respective places of business; and there is now and has been for several years last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of 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 packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all-inclusive of the various packages nor does it include all of the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of said assortments is composed of a number of pieces of candy of uniform size, shape, and quality, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said smaller candies in the following manner:

The majority of said pieces of candy in said assortment have centers of the same color but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size, shape, and quality in said assortment retail at the price of one cent each but the purchasers who procure one of said candies having a center of a different color than the majority of said candies are entitled to receive and are to be given free of charge one of the said larger pieces of candy. The purchaser of the last piece of candy of uniform size, shape, and quality in said assortment is entitled to receive and is to be given free of charge one of the said larger pieces of candy. The color of the center of said pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy, and the purchaser of the last piece of candy in said assortment, thus procure one of the said larger pieces of candy wholly by lot or chance.

Respondent furnishes to said wholesale and retail dealers with said assortment of candy, a display card, to be used by the retailer in offering said merchandise for sale to the public, which display card bears a legend or statement informing the prospective purchaser which color of the said colored center candies contained in said assortment entitles the purchaser to a prize, and that by purchasing the last piece of candy in said assortment the purchaser will receive one of the said larger pieces of candy free of charge.

(b) Another assortment manufactured and distributed by the respondent is composed of a number of small pieces of candy, a number of larger pieces of candy, and a small box of candy, together with a device commonly called a push card. The candy in said assortment is distributed to the consuming public in the following manner:

The push card has a number of partially perforated discs and when a disc is separated from the card, a number is disclosed. Sales are 1¢ each and the card bears statements informing customers and prospective customers as to which numbers receive one of the small pieces of candy, which numbers receive one of the larger pieces of candy, and that the purchaser of the last push from said card receives the small box of candy. The numbers on the discs or pushes are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disc separated from the card. The fact as to whether a purchaser receives one of the small pieces of candy, one of the larger pieces of candy, or the small box of candy is thus determined wholly by lot or chance.

(c) Another assortment manufactured and distributed by respondent is composed of a number of bars of candy, together with a device commonly called a push card. The candy contained in said assortment is distributed to purchasers in the following manner:

The push card has a number of partially perforated discs and when a push is made and the disc separated from the card, a legend is disclosed. Sales are 5¢ each, and the card bears statements informing customers and prospective customers as to the number of bars which are to be given with particular legends. Certain specified legends receive one bar, certain specified legends receive two bars, others three bars, others four bars, and others five bars. The purchaser of the last push on said card receives six bars. The legends on the discs or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disc separated from the card. The number of candy bars which a customer receives for the price of 5¢ is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase 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 as above alleged involves a game of chance or the sale of a chance to procure (a) larger pieces of candy, (b) larger pieces of candy or a box of candy, (c) additional bars of candy.

The use by respondent of said method of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method 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 method has the 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 method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, 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 method and manner of packing said candy, and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent, in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do

not use the same or an equivalent method 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method 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 method or an equivalent method.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy.

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

REPORT, 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 31, 1936, issued and served a complaint upon the respondent, Startup 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

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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 is a corporation organized under the laws of the State of Utah, with its principal office and place of business located in the city of Provo, State of Utah. It is now, and for several years last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers, jobbers, and to retail dealers located in the State of Utah and in the States of Wyoming, Idaho, Nevada, and Arizona. 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 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, the respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain packages or assortments of candy so packed and assembled as to involve or which are designed to or may involve the use of a lottery scheme when sold and distributed to the ultimate consumer thereof.

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

Respondent furnishes to said wholesale and retail dealers with the above described assortments a display card to be used by the retail dealers in offering said merchandise for sale to the public, which display card bears a legend or statement informing the purchaser and prospective purchaser which of the said colored center candy contained in said assortments entitles the purchasers to a prize and that by purchasing the last piece of candy in said assortments the purchaser will receive a prize.

Other assortments manufactured, sold and distributed by the respondent are composed of a number of small pieces of candy, a number of larger pieces and bars of candy, and a number of small packages of candy, together with a device commonly called a "push card." The candy in said assortments is distributed to the consuming public in the following manner: The "push card" has a number of partially perforated discs and when a disc is separated from the card, a number is disclosed. Sales are one cent each and the card bears statements or legends informing purchasers and prospective purchasers as to which numbers receive one of the small pieces of candy, which numbers receive one of the larger pieces of candy, which numbers receive one of the bars of candy, which numbers receive one of the small packages of candy, and that the purchaser of the last push or punch from said card receives one of the small packages of candy. The numbers on the discs or pushes are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disc selected separated from the card. The fact as to whether a purchaser receives one of the small pieces of candy, one of the larger pieces of candy, one of the bars of candy, or one of the small packages of candy, is thus determined wholly by lot or chance.

The respondent also manufactures, sells and distributes assortments which are composed of a number of bars of candy, together with a device commonly called a "push card." The candy contained

in said assortments is distributed to the consuming public in the following manner: The "push card" has a number of partially perforated discs and when a push is made and the disc selected separated from the card, a legend is disclosed. Sales are 5¢ each and the card bears statements informing purchasers and prospective purchasers as to the number of bars of candy which are to be given with particular legends. Certain specified legends receive one bar; other specified legends receive two bars; others, 3 bars; others, 4 bars; and others, 5 bars. The purchaser of the last push on said card receives 6 bars. The legends on the discs or pushes are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the disc selected separated from the card. The fact as to whether a purchaser receives one, two, three, four, five or six bars of candy for the price of 5¢ is thus determined wholly by lot or chance.

PAR. 3. The candy assortments involving the lot or chance feature as above described are generally referred to in the candy trade or industry as "break and take," "draw," or "deal" assortments. Assortments of candy without the lot or chance feature in connection with their resale to the public are generally referred to in the candy trade or industry as "straight" 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. Numerous retail dealers purchase the assortments described in paragraph 2 above, either from respondent or from wholesale dealers or jobbers who in turn have purchased said assortments from the respondent and such retail dealers display said assortments for sale to the public as packed and assembled by the respondent and the candy contained in the majority of said assortment is sold and distributed to the consuming public in accordance with the sales plans as described in paragraph 2 hereof.

PAR. 5. All sales made by respondent whether to wholesale dealers or 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 above, respondent has knowledge that said candy will be sold 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 or rearrangement thereof it may be sold to the purchasing public by lot or chance by said retail dealers.

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

Witnesses from several branches of the candy industry testified in this proceeding to the effect that consumers preferred to purchase the "break and take," "draw," or "deal" candy because of the gambling feature connected with its sale. The sale and distribution of "break and take," "draw," or "deal" 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 by far the majority 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 children; as injurious to the candy industry, because it results in the merchandising of a chance or lottery instead of candy; and as providing retail merchants with a means of violating the laws of the several states. Because of these reasons, some competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. The retailers, finding that they can dispose of more candy by the "break and take," "draw," or "deal" method, buy from respondent and others employing the same methods of sale, and thereby trade is diverted to respondent and others using similar methods, from said competitors. Such competitors can compete on even terms only by giving the same or similar devices to retailers. This, they are unwilling to do

and their sales of "straight" candy shows 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 respondent's 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. Although the volume of business of the respondent was not shown exactly, an official of the respondent corporation testified and the Commission finds that the respondent's annual volume of business is approximately \$100,000.00, but that the majority of this business is "straight" merchandise and the lesser part thereof the lot or chance assortments.

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.

CONCLUSION

The aforesaid acts and practices of respondent, Startup 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 the 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 re-

spondent 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 hereby ordered, That the respondent, Startup Candy Company, its officers, directors, 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, assortments of candy which are used or which may be used without alteration or rearrangement of the contents of such assortments to conduct a lottery, gaming device, or gift enterprise in the sale and distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail, pieces of candy of uniform size and shape having centers of a different color, together with larger pieces of candy or small packages of candy, which larger pieces of candy or small packages of candy are to be given as prizes to the purchasers procuring pieces of candy with a center of a particular color.

4. Supplying to, or placing in the hands of wholesale dealers and jobbers, or retail dealers assortments of candy, together with a device commonly called a "push card" for use or which may be used in distributing or selling said candy to the public at retail.

5. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "push card," either with 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 the respondent, Startup Candy Company, a corporation, shall, within 30 days after the 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
UNIQUE NOVELTIES, INC.

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

Docket 3108. Complaint, Apr. 20, 1937—Decision, June 25, 1937

Where a corporation engaged in sale and distribution of candy, candy products, and chewing gum, including certain assortments so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which included (1) large number of individually wrapped penny caramels of uniform size and shape, of which a relatively few were red or red-centered, and of which a still smaller number were green or green-centered, together with a number of small pennants to be given free, and in accordance with explanatory display card for retailer's use included with assortment, to chance purchasers of aforesaid red or red-centered caramels, and with a number of larger pennants to be thus given to such purchasers of the green or green-centered caramels, and to be given, along with said display card, to which one of said larger pennants was attached, to purchaser of last caramel in assortment; and (2) a large number of individually wrapped penny sticks of chewing gum, together with number of small felt pennants to be given, without charge, to chance purchasers of said sticks, upon the inside of the wrapper of which were printed words "Home Run," and to be given also to purchaser of last stick in assortment, in accordance with explanatory display card supplied for retailer's use—

Sold, to wholesalers and jobbers and to retailers for display and resale, in accordance with aforesaid plan, such assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of said products, in accordance with such plans, contrary to public policy as long recognized in the common law and criminal statutes, and contrary to an established public policy of the United States Government, and in competition with many who, unwilling to offer and sell candy and chewing gum so packed and assembled, or otherwise arranged and packed for sale to the purchasing public as to involve a game of chance, refrain therefrom, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win by chance, as contrary to public policy or criminal statutes as aforesaid, or as detrimental to public morals and to morals of the purchasers of such products;

With results that consuming public was induced to purchase said caramels or gum because of chance of obtaining free, one of pennants contained in said assortments, and with capacity and tendency to induce purchasers to buy its said products in preference to those offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by said methods and manner of packing such products and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase same, thus packed and sold by it, in preference to those offered and sold by said competitors who do not use such or