

IN THE MATTER OF

J. K. LEVY, ALIAS J. K. LEE, AND DAVID LEVY, CO-PARTNERS, TRADING AS LEVORE COMPANY, AND J. K. LEVY, ALIAS J. K. LEE, INDIVIDUALLY

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

Docket 2607. Complaint, Oct. 31, 1935—Decision, Aug. 9, 1937

Where certain individuals engaged in sale and distribution of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities, directly to purchasers and through sales distributors or agents for resale direct to consumers on time payments, and also for resale under their so-called "give away" plan, in competition with those engaged in sale and distribution of such products in commerce among the various States—

- (a) Sold, under latter plan, to their distributor-agents, their aforesaid so-called premium goods, together with push cards or punch boards termed "sales booklets," for disposition to sub-agents and distribution to consuming public under a plan by which final purchasers or customers selected from card one of a number of feminine names displayed thereon and paid for chance, subject to certain limitations, in accordance with number and name selected and punched, and received article being disposed of, or nothing other than privilege of making selection, for money paid, in accordance with his success or failure in selecting name corresponding to that concealed on card, as revealed after sale of all chances thereon, and under which plan, and after which time, distributor agent or sub-agent was likewise entitled to a radio or some other article of so-called "free" merchandise, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of their said products as a means of inducing purchase thereof in preference to similar articles offered and sold by competitors, and in competition with many who are unwilling to adopt and use such methods of sale, or any method involving scheme of chance, as contrary to public policy and good morals, not in accordance with business ethics, a detriment to legitimate business, and as gambling;
- (b) Represented to prospective distributor-agents that they could make big money "giving away these wonderful radios," and described their said plan as the "give away" plan, and referred, as above set forth, to the premiums or articles secured by the holder of the winning name and the distributor-agent or sub-agent as "free" merchandise, facts being those receiving same through such selection paid therefor amount determined, as indicated, wholly by lot or chance, and they did not give away any merchandise, but sold same and received value therefor; and
- (c) Represented themselves as manufacturers, through use of words "Successors to Beco Mfg. Company," placed upon their advertisements and advertising matter distributed in interstate commerce, facts being, notwithstanding their ownership of stock of licensed radio manufacturing

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concern and their building of coils and assembling of radios, they did not and had not themselves made any such products;

With result that many purchasers of such products, attracted by element of chance involved in their aforesaid sales methods, were thereby induced to buy same in preference to those of competitors who do not use same or equivalent methods, and with tendency and capacity unfairly, and because of element of chance, to divert to them trade and custom from their said competitors who do not use such or equivalent method, and exclude all competitors who are unwilling to and do not do so, and with further tendency and capacity, through aforesaid manufacturing misrepresentations, to divert trade from and otherwise injure their competitors substantially in commerce:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Morton Nesmith for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that J. K. Levy, alias J. K. Lee, and David Levy, copartners, trading as Levore Company, and J. K. Levy, alias J. K. Lee, individually, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Levore Company, is a partnership composed of J. K. Levy, alias J. K. Lee, and David Levy, and the principal place of business of said partnership is located at 130 North Wells Street in the city of Chicago, State of Illinois. Said respondent J. K. Levy, alias J. K. Lee, is an individual, with his principal place of business at 130 North Wells Street in the city of Chicago, State of Illinois. Said respondents are now and for several years last past have been engaged in the sale and distribution of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities directly to purchasers, and also through sales distributors or agents located at points in the various States of the United States other than the State of Illinois, and cause said products, when so sold, to be transported from their principal place of business in the city of Chicago, State of Illinois,

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into and through other States of the United States to purchasers at their respective points of location. In the course and conduct of their business as aforesaid, respondents are now and have been in competition with other individuals, partnerships, and corporations engaged in the sale and distribution of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and other similar commodities, in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business as aforesaid, respondents pursued the following methods and practices:

(a) Advertised in periodicals having a wide interstate circulation, and by means of circulars and form letters, the following and other similar matters:

GIVE RADIOS AWAY and earn up to \$100.00 a week. New money making plan for agents, salesmen, district managers. No experience, Profits Start Immediately.

BEST RADIO—Amazing little 7 lb. portable AC & DC radio for home, office, auto, farm, etc. Wonderful tone. Gets police calls. \$30 value. Licensed by R. C. A. and associated companies. Write at once. We will show you how to make BIG MONEY giving away these wonderful radios * * *

PLAN NO. 1

This "give away" plan is one which involves the distribution of high quality merchandise, many articles known through national advertising. It is a plan that has proved to be very popular with Levore dealers. You will see a picture of a Levore Sales Card on the back of this letter. On this card are printed 120 names of girls. As a distributor, you will employ agents to dispose of these cards. For their efforts in disposing of this card, you will give each agent one of the gifts of his or her choice. The person selecting the same name which appears under the seal also receives a gift * * *

To be more specific, the Best Radios, both Standard and Dual-Wave Models, the Log Cabin Radio and the Dohrmeyer Electric Mixer and Wahl Eversharp Pencils are used in connection with the R-120 Sales Card. Your agent receives their choice of one of these four gifts. The person selecting the lucky name also receives the gift of their choice, and in addition five people receive Wahl Everysharp Pencils. You buy the required merchandise from us at the confidential price shown in the distributor's price list. The difference between the cash you receive from your agent for the sale of the complete card and the cost of the merchandise represents your profit which as stated before runs from \$11.75 to \$15.25 per card, depending upon the gift items selected.

You will note that we have other books, which are disposed of in the same manner as the one described above, each card being used in connection with certain gift items.

HOW TO PUT THIS PLAN IN OPERATION

The more agents you get to work for you the bigger your profits will be. Among your relatives and friends are any number who would gladly work for one of these free gifts. Everybody wants another radio, especially the

portable kind, like Best Radios. Then there is a big demand right now for World-Wide Radios and Automobile Radios. So many people want them but cannot afford to buy them outright. These people will be tickled to death with an opportunity to get a radio of their choice absolutely free * * *

\$100 to \$150 Weekly Easy to Earn

This clock has a retail value of \$15.00 and give them away in connection with our M-100 Sales Books.

REMEMBER GIFTS ARE GIVEN AWAY

That's the important thing to always keep in mind and to impress upon those whom you employ to work for you. They buy nothing. All they have to do is to get their friends to pull the names on the card. Everyone has an equal chance to earn the gift of his or her choice. The agent selling the card gets one of the gifts and the winner gets another. You donate these gifts and earn a big profit in the process of doing it.

* * * this marvelous little radio set that is keeping our factory humming to supply the demand * * * Remember, we are in the business of manufacturing BEST radios, and we will sell them to you at any time at the wholesale price * * * You can purchase any number of radios from us at any time at the factory wholesale price of \$9.00 each.

These two high class guaranteed radios are given away in connection with the R-170 sales booklet.

The BEST radio is not a "fly-by-night" affair—here today and gone tomorrow. We make this radio on a large scale production basis in our own modern plant. Expert radio engineers supervise every phase of its manufacture * * *

PLAN NO. 2

Direct to consumers on time payments.

Respondents sell to their distributors-agents their so-called premium goods, with which are included what are described as sales booklets, but which are in reality push cards or punchboards. The agents in turn dispose of these commodities, including the push cards or punchboards, to subagents. The cards or boards are made up with a certain number of names, usually the names of girls or women, under each of which is concealed a number; such numbers run from 1 to 100 or more, corresponding with the number of names on the card. The customer selects a name which he punches out, thereby disclosing a concealed number, and pays a premium equal to the number disclosed, but in no case more than thirty-five cents. The winning name is concealed on the card and the seal is not removed from it until the last chance has been sold, and thereupon the holder of the winning name and the distributor-agent are each entitled to a radio or some other article of the "free" merchandise. Persons who received the so-called "free" merchandise paid for the same in an amount determined as indicated, wholly by lot or chance.

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PAR. 3. The respondent Levore Company, in the course and conduct of its business as aforesaid, in its advertising to induce prospective distributors-agents to dispose of its merchandise, represented to them that they could make big money "giving away these wonderful radios," and their plan as the "give away plan."

PAR. 4. The respondent Levore Company, in the course and conduct of its business as aforesaid, in its advertising caused and still causes the words "Successors to Beco Mfg. Company" to appear upon its advertisements and advertising matter distributed in interstate commerce.

PAR. 5. The aforesaid distributors-agents and sub-agents dispose of the aforesaid "free" merchandise to the purchasing public in accordance with the aforesaid sales plans. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products, in accordance with the respondents' sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondents' said products in preference to similar articles offered for sale and sold by their competitors.

PAR. 6. The respondent Levore Company, in the course and conduct of its business as aforesaid, in their advertising represented that their agents earn \$100 and \$150 per week under their sales plan No. 1.

In truth and in fact, neither the Beco Manufacturing Company nor the respondent Levore Company, the latter either in its own right or as successor of said Beco Manufacturing Company, are manufacturers, nor does the respondent Levore Company own, operate, or control any factory wherein its products are made, manufactured or fabricated. Said representation made by the respondent Levore Company in its advertising matter that it is a manufacturer, or successor to the Beco Manufacturing Company, is false and misleading, and has the tendency and capacity to mislead and deceive purchasers of respondents' products into the belief that when purchasing from the respondent they are dealing with a manufacturer, thereby gaining an advantage and saving the middleman's profit.

In truth and in fact, the respondent Levore Company did and does not give away radios, nor does respondent give away any merchandise free or as a gratuity.

In truth and in fact, the usual and ordinary earnings of respondents' agents is not either \$100 or \$150 per week.

PAR. 7. The use of said methods by respondent, as described in paragraph 2, has the tendency and capacity unfairly, and because of said game of chance and of said free goods, to divert to respondents trade and custom from their said competitors who do not use

the same or equivalent methods, and to exclude all competitors who are unwilling to and who do not use the same or equivalent methods. Many of respondents' competitors 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, because such methods are contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such methods are detrimental to the morals of the public, or because of any or all of such reasons.

PAR. 8. There are, among the competitors of the respondents, many persons, firms, corporations, and associations who sell and distribute radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras and other similar commodities, in interstate commerce. There are also among the competitors of the respondents, many persons, firms, corporations, and associations who manufacture similar commodities and sell the same in interstate commerce, and the sales plan No. 1 employed by respondent, and the use of the phrase "Successors to Beco Mfg. Company," when the Levore Company is not a manufacturer, has the capacity and tendency to unfairly divert trade from and otherwise injure and prejudice respondents' competitors in interstate commerce.

PAR. 9. The above alleged acts and things done by the respondents are all to the injury and prejudice of the public and of the competitors of respondents in interstate commerce, and constitute unfair methods of competition in interstate 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 the 31st day of October 1935, issued, and on the 4th day of November 1935, served its complaint upon respondents J. K. Levy, alias J. K. Lee, and David Levy, charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Morton Nesmith, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, and in opposition to the

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allegations of the complaint by John A. Nash, attorney for the respondents; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents J. K. Levy, alias J. K. Lee, and David Levy, are co-partners trading as Levore Company, and the principal place of business of this partnership is located at 130 North Wells Street, in the city of Chicago, State of Illinois. The respondent J. K. Levy, alias J. K. Lee, is an individual, with his principal place of business at the same address.

The respondents are now, and for several years last past have been, engaged in the sale and distribution of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities directly to purchasers and also through sales-distributors or agents located at points in the various States of the United States other than the State of Illinois, and respondents have caused their products, when so sold, to be transported from their principal place of business in the city of Chicago, State of Illinois, into and through other States of the United States to purchasers at their respective points of location.

In the course and conduct of their business, the respondents are now, and have been, in competition with individuals, partnerships, and corporations engaged in the sale and distribution of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and other similar commodities in commerce between and among the various States of the United States.

PAR. 2. In the course and operation of their business and for the purpose of inducing the purchase of their products, the respondents advertised in periodicals having wide interstate circulation and by means of circulars and form letters, the following and other similar statements:

GIVE RADIOS AWAY and earn up to \$100.00 a week. New money making plan for agents, salesmen, district managers. No experience, Profits Start Immediately.

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BEST RADIO—Amazing little 7 lb. portable AC & DC radio for home, office, auto, farm, etc. Wonderful tone. Gets police calls. \$30 value. Licensed by R. C. A. and associated companies. Write at once. We will show you how to make **BIG MONEY** giving away these wonderful radios * * *.

PLAN NO. 1

This "give away" plan is one which involves the distribution of high quality merchandise, many articles known through national advertising. It is a plan that has proved to be very popular with Levore dealers. You will see a picture of a Levore Sales Card on the back of this letter. On this card are printed 120 names of girls. As a distributor, you will employ agents to dispose of these cards. For their efforts in disposing of this card, you will give each agent one of the gifts of his or her choice. The person selecting the same name which appears under the seal also receives a gift * * *

To be more specific, the Best Radios, both Standard and Dual-Wave Models, the Log Cabin Radio and the Dohrmeyer Electric Mixer and Wahl Eversharp Pencils are used in connection with the R-120 Sales Card. Your agent receives their choice of one of these four gifts. The person selecting the lucky name also receives the gift of their choice, and in addition five people receive Wahl Eversharp Pencils. You buy the required merchandise from us at the confidential price difference between the cash you receive from your agent for the sale of the complete card and the cost of the merchandise represents your profit which as stated before runs from \$11.75 to \$15.25 per card, depending upon the gift items selected.

You will note that we have other books, which are disposed of in the same manner as the one described above, each card being used in connection with certain gift items.

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The more agents you get to work for you the bigger your profits will be. Among your relatives and friends are any number who would gladly work for one of these free gifts. Everybody wants another radio, especially the portable kind, like Best Radios. Then there is a big demand right now for World-Wide Radios and Automobile Radios. So many people want them but cannot afford to buy them out-right. These people will be tickled to death with an opportunity to get a radio of their choice absolutely free * * *.

\$100 to \$150 Weekly Easy to Earn

This clock has a retail value of \$15.00 and give them away in connection with our M-100 Sales Books.

REMEMBER GIFTS ARE GIVEN AWAY

That's the important thing to always keep in mind and to impress upon those whom you employ to work for you. They buy nothing. All they have to do is to get their friends to pull the names on the card. Everyone has an equal chance to earn the gift of his or her choice. The agent selling the card gets one of the gifts and the winner gets another. You donate these gifts and earn a big profit in the process of doing it.

* * * this marvelous little radio set that is keeping our factory humming to supply the demand * * * Remember, we are in the business of manu-

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facturing BEST radios, and we will sell them to you at any time at the whole-sale price * * * You can purchase any number of radios from us at any time at the factory wholesale price of \$9.00 each.

These two high class guaranteed radios are given away in connection with the R-170 sales booklet.

The BEST radio is not a "fly-by-night" affair—here today and gone tomorrow. We make this radio on a large scale production basis in our own modern plant. Expert radio engineers supervise every phase of its manufacture * * *.

Direct to consumers on time payments.

Respondents sell to their distributors-agents their so-called premium goods, with which are included what are described as sales booklets, but which are in reality push cards or punchboards. The agents in turn dispose of these commodities, including the push cards or punchboards, to sub-agents. The cards or boards are made up of a certain number of names, usually the names of girls or women, under each of which is a concealed number; such numbers run from 1 to 100 or more, corresponding with the number of names on the card. The customer selects a name which he punches out, thereby disclosing a concealed number, and pays a premium or price equal to the number disclosed in cents, but in no case more than thirty-five cents. The winning name is concealed on the card and the seal is not removed from it until the last chance has been sold, and thereupon the holder of the winning name and the distributor-agent or the sub-agent are each entitled to a radio or some other article of the "free" merchandise. Persons who receive the so-called "free" merchandise paid for the same an amount determined as indicated wholly by lot or chance; the respondents, therefore, do not give away any merchandise but sell the same and receive value therefor.

PAR. 3. The respondents, J. K. Levy, alias J. K. Lee, and David Levy, in the course and conduct of their business and in their advertising, to induce prospective distributors-agents to dispose of their merchandise, represented to them that they could make big money "giving away these wonderful radios" and their plan as the "give away plan." The distributors-agents and sub-agents dispose of this "free" merchandise described in respondents' advertising to the purchasing public in accordance with the respondents' sales plans as herein outlined, namely, 1 and 2. The respondents supply to and place in the hands of others the means of conducting lotteries in the sale of their products, and in accordance with respondents' sales plans hereinbefore described as a means of inducing purchasers thereof to purchase respondents' products in preference to similar articles offered for sale and sold by competitors of respondent. A substantial part of respondents' business in the sale of their mer-

chandise is effectuated by the use of the push, pull, or punch card system.

PAR. 4. In the course and conduct of their business the respondents, J. K. Levy and David Levy, advertise and represent that the Levore Company is a manufacturer through the use of the words "Successors to Beco Mfg. Company," which is placed upon Levore Company advertisements and advertising matter distributed in interstate commerce. The Beco Mfg. Company is a trade name for The Best Company and was the predecessor of the Levore Company. Respondents J. K. Levy and David Levy, trading as the Levore Company, own the stock of the LeWahl Mfg. Company, which was a licensed radio manufacturing concern, and licensed by the R.C.A. Company. They build coils and also assemble radios, but do not, and have not, manufactured any radios themselves.

PAR. 5. The respondents, J. K. Levy and David Levy, in disposing of their radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and other products in accordance with the sales plan No. 1, hereinabove described, which involves the use of the aforesaid push or punch cards, conduct lotteries or games of chance in the disposition of their merchandise. Many purchasers of these products are attracted by the element of chance involved in the respondents' sales method before described and are thereby induced to purchase respondents' products in preference to the same or similar products or merchandise of respondents' competitors who do not use the same or equivalent methods.

PAR. 6. The use of the sales plan No. 1 by the respondents, namely, by the push and pull card method, has the tendency and capacity unfairly and because of the element of chance to divert to respondents trade and custom from their said competitors who do not use the same or equivalent methods, and exclude all competitors who are unwilling to and who do not use the same or equivalent methods. Many of respondents' competitors are unwilling to adopt and use these methods of sale or any method involving a scheme of chance because such methods are contrary to public policy and good morals, do not comply with business ethics, are a detriment to legitimate business, and constitute gambling. In truth and in fact, the respondents, J. K. Levy and David Levy, trading as the Levore Company, are not manufacturers and do not own or control or operate a factory wherein their radios, fountain pen and pencil sets, cocktail sets, cameras, and similar merchandise are manufactured or fabricated, all of which has the further capacity and tendency to divert trade from and otherwise injure respondents' competitors substantially in interstate commerce.

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CONCLUSION

The aforesaid acts and practices of the respondents, J. K. Levy, alias J. K. Lee, and David Levy, are to the prejudice of the public and the respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein by Morton Nesmith, counsel for the Commission, and by John A. Nash, counsel for the 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, J. K. Levy, alias J. K. Lee, and David Levy, individually or trading as Levore Company or under any other trade name, their servants, representatives, and employees in connection with the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities, do forthwith cease and desist:

1. From supplying to or placing in the hands of others punch cards, pull cards or push cards for the purpose of enabling such persons to dispose of or sell by the use thereof, said or similar products.

2. From mailing, shipping or transporting to their agents or distributors or to members of the public, punch, push or pull cards so prepared or printed as to enable said persons by the use thereof to sell or distribute said or similar products.

3. From selling or otherwise disposing of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities by the use of punch, push or pull cards.

4. From in any manner selling or otherwise disposing of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras,

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and similar commodities by the use of devices depending upon lot or chance.

5. From directly or indirectly representing that they are manufacturers unless and until they own, operate or control a factory wherein their products are made or manufactured; or

6. From representing in any manner that their radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities are free or given away, when such is not the fact.

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

IN THE MATTER OF
MELSTER 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 3045. Complaint, Jan. 30, 1937—Decision, Aug. 9, 1937

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which consisted of a number of candy bars, a number of loaf candies and a box of candy, together with push card, for sale and distribution to purchasing public under a plan, and in accordance with said card's explanatory legend, by which purchaser received, for five cents paid, and in accordance with number pushed by chance, one or two bars of candy, or package of loaf candy, and purchaser of last push on card was entitled to receive, free of charge, in addition to one of said bars, aforesaid box of candy—

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

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing said product and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase such candy, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use such or an equivalent method, and with tendency and capacity, because of said game of chance, to divert to it trade from its aforesaid competitors who do not use such or equivalent method, exclude from such trade all competitors who are unwilling to and do not use any such method as unlawful, lessen competition in said trade and tend to create a monopoly thereof in it and such other distributors as do use same or equivalent practice or method, and deprive purchasing public of benefit of free competition in trade involved, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method;

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

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