

## Complaint

## IN THE MATTER OF

## J. C. HICKSON &amp; COMPANY

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

*Docket 2554. Complaint, Sept. 18, 1935—Decision, Dec. 7, 1937*

Where a corporation engaged in the growing and packing of citrus fruits, and in the sale thereof to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in similar sale and shipment—

- (a) Set forth, in advertisements and on labels of crates thereof, words "Indian River," through statements such as "Indian River," "Indian River Fruit Exclusively," "Groves and packing houses Ft. Pierce, Vero Beach, White City, Gifford, Mims, on the Indian River," notwithstanding fact fruit in question was not that recognized superior quality and preferred fruit raised in Indian River Valley, but was grown in area far distant therefrom, and it owned no groves or packing houses at any point within aforesaid area and raised no fruit therein; and
- (b) Falsely represented number of pieces of fruit contained in certain cartons by placing thereon figure indicating that number of pieces contained therein was greater than that of pieces of fruit actually packed therein;

With capacity and tendency to mislead purchasing public into erroneous belief that fruit thus labeled was grown in Indian River Valley area, and with effect of misleading and deceiving consuming public as to origin of such fruit and number of pieces packed in its said cartons, and of causing substantial number of purchasing public to buy its said products because of erroneous belief thus engendered, and of unfairly and substantially diverting trade in commerce involved to it from its competitors; to their injury and that of the public:

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

Before *Mr. John W. Addison*, trial examiner.

*Mr. Alden S. Bradley* and *Mr. James I. Rooney* for the Commission.

*Weissbuch & Silverman*, of Miami, Fla., for respondent.

## 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. C. Hickson and 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

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thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, J. C. Hickson and Company, is a corporation existing under and by virtue of the laws of the State of Florida, having its principal office and place of business in Miami, Fla., and has been since the issuance of its charter in the month of July 1929, engaged in the growing, packing, shipping and selling of citrus fruits, and in the course of the sale of said citrus fruits has caused the same to be transported from the place of business of the respondent in the State of Florida to the purchasers thereof located in States other than the State of Florida and in the District of Columbia, and has maintained a constant current of trade and commerce between and among the various States of the United States.

PAR. 2. During the period of its corporate existence respondent has inserted, or caused to be inserted, in advertisements published by it the words and phrases—

Indian River  
Indian River fruit  
exclusively.  
Indian River Fruit  
Groves and packing houses  
Fort Pierce, Vero Beach,  
White City, Gifford, Mims  
on the Indian River.

and has caused to be imprinted upon the labels and the crates of the fruits so sold the words "Indian River."

The use of the words "Indian River" in connection with the packing, shipping, or selling of fruit indicates to a substantial portion of the purchasing public that the fruit so packed, shipped, and sold was grown in that area along the eastern seaboard of the State of Florida drained by the Indian River and which section is widely famed for the excellence of the fruit there produced.

The effect of the use of the words as above indicated is to falsely represent to the public that the fruits to be purchased from the respondent corporation are what is known as "Indian River" fruit.

There are among the members of the purchasing public a substantial number who have an actual preference and desire for fruit characterized and known as "Indian River" fruit.

The designation of fruit as being of that class of fruit known as "Indian River" fruit indicates to the minds of a substantial number of the purchasing public that the fruit is of a superior quality, and among the industry in which respondent is engaged the superior quality of such fruit is recognized and asserted.

In truth and in fact, the fruits sold and offered for sale by the respondent under the above-stated representations are grown in an area other than that particular geographical section on the eastern seaboard of the State of Florida drained by the Indian River, and are principally, if not wholly, secured from Dade County, Fla.

PAR. 3. During the entire period of its corporate existence the respondent has advertised and offered for sale various packages of crystallized fruit and other merchandise of the character and material hereinabove described, falsely representing them to have a content weight of one pound, two pounds, three pounds, or five pounds, according to the various packages, when in truth and in fact such packages fall materially short of having the weight represented by the respondent.

PAR. 4. During the entire course of its corporate existence, respondent has falsely represented cartons of fruit to contain twenty pieces of fruit, when in truth and in fact there is a substantial deviation from such representation, the cartons of fruit so represented often containing a number materially less than twenty pieces of fruit, and in some instances only twelve pieces of fruit are contained in such cartons.

PAR. 5. There are among the competitors of the respondent corporation a substantial number of persons, partnerships, and corporations who do not falsely represent the fruit offered by them for sale to be of that class of fruit known as "Indian River" fruit or who do in fact sell and offer for sale fruit grown in that territory along the eastern seaboard of the State of Florida drained by the Indian River, so that the same are truthfully represented or designated as "Indian River" fruit.

There are among the competitors of the respondent various persons, partnerships and corporations which offer for sale merchandise of a like nature and character with that in which the respondent deals, offering the same for sale to members of the purchasing public and truthfully representing the proper net weight of the fruit so offered for sale, offering the same in cartons similar to those used by the respondent but truthfully representing the exact and correct weight of the merchandise so offered.

There are among the competitors of the respondent various persons, partnerships and corporations who represent to a substantial number of the purchasing public the number of pieces of fruit to be obtained at a given price in a described carton, or otherwise, and such representation on the part of such competitors is truthful, and the number of pieces of fruit represented as being offered for sale in

such packages are the number of pieces of fruit which are actually placed in such cartons or packages.

PAR. 6. The above acts and practices done by the respondent are all to the injury and prejudice of the public and of the competitors of the respondent in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of the 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 September 18, 1935, issued, and on September 20, 1935, served its complaint in this proceeding upon respondent; J. C. Hickson & Company, a corporation, charging it 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 respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Alden S. Bradley, attorney for the Commission, before John W. Addison, an examiner of the Commission, theretofore duly designated by it, no evidence was introduced by the respondent; and the said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence and brief in support of the complaint; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. C. Hickson & Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Florida, with its principal office and place of business in the city of Miami, State of Florida, and since its inception in 1929 has been engaged in the business of growing, packing and selling of citrus fruits and causing said citrus fruits, when sold, to be transported from its place of business in the State of Florida to the purchasers

thereof located in States other than the State of Florida and in the District of Columbia, and has maintained a constant current of trade and commerce in said produce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as aforesaid, respondent is now, and since its inception in 1929 has been, in substantial competition with other corporations, and with partnerships, firms, and individuals engaged in the sale and shipment of citrus fruits in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent in the course and conduct of its business, as aforesaid, and in the sale and distribution of citrus fruit, has caused to be inserted in advertisements published by it and imprinted on labels and crates of fruit so sold by it the following words and phrases:

Indian River,  
Indian River Fruit Exclusively,  
Groves and packing houses Ft. Pierce, Vero Beach, White City,  
Gifford, Mims, on the Indian River.

The use of the words "Indian River" in connection with the sale and distribution of citrus fruits indicates to a substantial portion of the purchasing public that the fruit so labelled was grown in an area known as "Indian River Valley," which extends from Daytona Beach to West Palm Beach in the State of Florida and is between 15 and 25 miles wide.

Among the industry in which the respondent is engaged the superior quality of citrus fruit raised in the area known as "Indian River Valley" is recognized and asserted; and there is a decided preference on the part of the purchasing public for citrus fruit grown in this area.

The citrus fruit sold and shipped by the respondent as aforesaid, under the aforementioned representation, had not been grown in the area known as "Indian River Valley" but had been grown in an area known as Dade County, which is far distant from the area known as "Indian River Valley."

The respondent does not own, nor has it ever owned groves or packing houses at any point located within the area known as "Indian River Valley," nor has the respondent raised any fruit in said area.

The use of the words "Indian River" in connection with the sale and offering for sale of citrus fruit has the capacity and tendency to mislead the purchasing public into the erroneous belief that the said fruit so labelled has been grown in the area known as Indian River Valley.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent has falsely represented the number of pieces of fruit contained in certain cartons by placing thereon a number indicating that the number of pieces of fruit contained in said cartons was greater than the number of pieces of fruit actually packed in said cartons.

PAR. 5. The aforesaid acts and practices of the respondent have the tendency and capacity to, and do, mislead and deceive the consuming public as to the origin of said fruit and as to the number of pieces of fruit packed in said cartons, and have caused a substantial number of the purchasing public to purchase said products because of the erroneous belief engendered by the acts and practices of the respondent, thereby unfairly substantially diverting trade in said commerce to the respondent from its competitors, to their injury and to the injury of the public.

#### CONCLUSION

The aforesaid acts and practices of the respondent, J. C. Hickson & Company, a corporation, are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

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 John W. Addison, an examiner of the Commission, theretofore duly designated by it, in support of the allegations to said complaint and in opposition thereto, and brief filed herein, 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 ordered*, That the respondent, J. C. Hickson & Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of citrus fruits in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

(a) Representing in advertisements, on labels, or otherwise, that citrns fruit is "Indian River Valley" fruit, unless and until said

fruit is produced in that section of the State of Florida where the fruit produced is known and sold as "Indian River Valley" fruit.

(b) Representing that it owns or operates fruit groves or warehouses in that section of the State of Florida where the citrus fruit produced is known and sold as "Indian River Valley" fruit, unless and until it does own or operate a fruit grove or warehouse, as the case may be, in that section of the State of Florida.

(c) Representing by figures placed on the container, or otherwise, that the number of pieces of fruit in such container is greater than the number of pieces of fruit in such container.

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

IN THE MATTER OF  
CONFECTIONERS TRADING CORPORATION

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

*Docket 3195. Complaint, Aug. 5, 1937—Decision, Dec. 9, 1937*

Where a corporation engaged in sale and distribution 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 one of which was composed of a number of penny pieces of uniform size and shape, together with number of larger pieces to be given as prizes to those purchasers selecting, by chance, one of a relatively few of said penny pieces, concealed centers of which were pink and not white—

- (a) Represented, to customers and prospective customers, through salesmen and agents, and through its business stationery, billheads, invoices and other printed literature, that it was a manufacturing agent of the candy dealt in by it, notwithstanding fact it neither owned, controlled, nor operated any factory whatsoever, and did not make candy purchased, repacked, and sold by it, and was not agent for manufacturer or manufacturers thereof;

With effect of misleading, and deceiving many of its customers and prospective customers into erroneous belief that it was a business concern which controlled and operated factory in which candy sold by it was made, or was agent of such business concerns, and that persons dealing with it were buying from the manufacturer or agent thereof, and thereby limiting profits of middlemen and obtaining various advantages, including those of service, delivery and adjustment of account, not obtained by purchasers from middlemen, and of diverting business from, and otherwise injuring and prejudicing, competitors, including many who make the candies sold by them or are agents of the manufacturers thereof and rightfully represent themselves as such manufacturers or agents, and others who purchase candy dealt in by them and resell same at profit to themselves, and in no wise represent that they are manufacturers of such product;

- (b) Sold, to wholesalers, jobbers, and retailers, assortments of candy without name thereon of manufacturer thereof and in wrappers displaying names and addresses, as case might be, of various concerns other than itself, notwithstanding fact candy in question was not made by any one of companies thus indicated;

With effect of misleading and deceiving many of its customers and prospective customers into the erroneous belief that candy thus sold was made by business concern whose name appeared thereon, and of diverting business from, and otherwise injuring and prejudicing, competitors, of whom many do not misbrand the merchandise sold by them, nor place thereon false and misleading labels; and

- (c) Sold, to wholesalers, jobbers, and retailers, lottery assortments above described, for display and resale to purchasing public in accordance with above set forth sales plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products, in

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accordance with such plan, and as means of inducing purchasers to buy its said products in preference to those offered and sold by competitors, 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 made and sold by them, so packed and assembled or otherwise arranged and packed for sale to purchasing public as to involve a game of chance, refrain therefrom;

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

Before *Mr. Miles J. Furnas*, trial examiner.

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

*Mr. Alexander J. Sparrow*, of Brooklyn, N. Y., for respondent.

## 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 Confectioners Trading Corporation, 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, Confectioners Trading Corporation, is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 380 Throop Avenue, in the city of Brooklyn, State of New York. It is now, and for several months last past has been, engaged in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers located at points in the various States of the

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United States. It causes the said products when sold to be transported from its principal place of business in Brooklyn, N. Y., to purchasers thereof in other States of the United States at their respective places of business. There is now, and has been for several months 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 sale and distribution of candy in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its said business, as described in paragraph 1 hereof, respondent has caused and causes the representation to be made to its customers and prospective customers by its salesmen and agents, and to be set forth on its business stationery, billheads, invoices, and other printed literature, that it is a manufacturing agent of the candy in which it deals. By the representation that it is the manufacturing agent, respondent represents that it is the direct agent of the concern or concerns manufacturing the candy which it sells, and also by said representation represents that it is agent for certain customers or purchasers and as such manufactures candy to their order. A substantial portion of the purchasing public, including dealers in candy, have expressed and have a preference for purchasing products direct from the manufacturer or his agents, such persons believing that they secure closer prices, superior quality, and other advantages that are not obtained when they purchase from an independent selling agency or middleman.

PAR. 3. The use by respondent of said representation that it is a manufacturer of candy, or the agent of manufacturers of candy, has the capacity and tendency to and does mislead and deceive many of respondent's said customers and prospective customers into the erroneous belief that respondent is a business concern which controls and operates a factory in which the aforesaid candy sold by respondent is manufactured, or that it is the agent of such business concerns, and that persons dealing with the respondent are buying said candy from the manufacturer thereof or his agent, thereby eliminating the profits of middlemen and obtaining various advantages, including advantages in service, delivery, and adjustment of account, that are not obtained by persons purchasing goods from middlemen. The truth and fact is that respondent neither owns, controls, nor operates any factory whatsoever and does not manufacture said candy sold by it and is not the agent for the manufacturer or manufacturers of the candy which it sells, but on the contrary only purchases and repacks the candy which it sells.

PAR. 4. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who manufacture the candy which they sell or who are agents of such manufacturers and who rightfully represent that they are the manufacturers thereof or are the agents of such manufacturers. There are others of said competitors who purchase the candy in which they deal and resell the same at a profit to themselves and who in no wise represent that they manufacture said candy. The above alleged acts and practices of respondent, as set out in paragraphs 2 and 3 hereof, tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 5. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers and retail dealers assortments of candy which do not and did not have thereon its name or the name of the manufacturer of the candy contained in said assortment. The candy contained in said assortment was contained in wrappers bearing the legends Red Hook Chocolate Corporation, Red Hook, N. Y., thereby representing that the said candy was manufactured by the Red Hook Chocolate Corporation of Red Hook, N. Y., when such was not the fact. The candy in other assortments was contained in wrappers bearing the name Harwood Candy Corporation. Other assortments contained candy in wrappers bearing the name Lincoln Chocolate & Confectionery Company. Other assortments contained candy in wrappers bearing the name Geiger's Candy Company. Other assortments bore the legend Allan & Allan, Corning, New York, thereby representing that the assortments contained candy manufactured by the Harwood Candy Corporation, Lincoln Chocolate & Confectionery Company, Geiger's Candy Company, and Allan & Allan, respectively, when in fact the candy was not made by any one of the said companies. The misbranding of respondent's merchandise, or the false labeling thereof, has the capacity and tendency to and does mislead and deceive many of respondent's customers and prospective customers into the erroneous belief that the candy so sold was manufactured by the business concern whose name appeared on the said wrappers. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who do not misbrand the merchandise which they sell and who do not place thereon false and misleading labels. The acts and practices of respondent just above described tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 6. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers assortments of candy so packed and as-

sembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

One of said assortments is composed of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy, which larger pieces 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 the said pieces of candy of uniform size and shape have white centers, but a small number of said pieces of candy have pink centers. The said pieces of candy of uniform size and shape retail at the price of 1¢, but the purchaser who procures one of said candies having a pink center is entitled to receive and is to be given free of charge one of the said larger pieces of candy contained in said assortment and heretofore referred to. 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 who procure a piece of candy having a pink center thus procure one of the said larger pieces of candy wholly by lot or chance.

Respondent packs, assembles and sells various assortments of candy involving the above described sales plan or lottery scheme but varying in detail from the sales plan or lottery scheme just above described.

PAR. 7. The jobbers and 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 plan. 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 plan 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. 8. 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 larger pieces of candy. The use by respondent of said method in the sale of candy, and the sale of candy 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 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 candy trade 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. 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. 9. 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 an equivalent method. 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 in 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 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 the said method or an equivalent method.

PAR. 10. The aforementioned methods, acts and practices of 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 August 5, 1937, issued and on August

6, 1937, served its complaint in this proceeding upon respondent, Confectioners Trading Corporation, charging it 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 respondent's answer, the Commission by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefore an answer dated November 3, 1937, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which answer was duly filed in the office of the Commission on November 9, 1937. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Confectioners Trading Corporation, is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 380 Throop Avenue, in the city of Brooklyn, State of New York. It is now, and for several months last past has been engaged in the sale and distribution of candy to wholesale dealers, jobbers and retail dealers located at points in the various States of the United States. It causes the said products when sold to be transported from its principal place of business in Brooklyn, N. Y., to purchasers thereof in other States of the United States at their respective places of business. There is now, and has been for several months 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 sale and distribution of candy in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its said business, as described in paragraph 1 hereof, respondent has caused and causes the representation to be made to its customers and prospective customers by its salesmen and agents, and to be set forth on its business stationery, billheads, invoices, and other printed literature, that it is a manufacturing agent of the candy in which it deals. By the representation that it is the manufacturing agent, respondent represents that it is the direct agent of the concern or concerns manufac-

turing the candy which it sells, and also by said representation represents that it is agent for certain customers or purchasers and as such manufacturers candy to their order. A substantial portion of the purchasing public, including dealers in candy, have expressed and have a preference for purchasing products direct from the manufacturer or his agents, such persons believing that they secure closer prices, superior quality, and other advantages that are not obtained when they purchase from an independent selling agency or middleman.

PAR. 3. The use by respondent of said representation that it is a manufacturer of candy, or the agent of manufacturers of candy, has the capacity and tendency to and does mislead and deceive many of respondent's said customers and prospective customers into the erroneous belief that respondent is a business concern which controls and operates a factory in which the aforesaid candy sold by respondent is manufactured, or that it is the agent of such business concerns, and that persons dealing with the respondent are buying said candy from the manufacturer thereof or his agent, thereby eliminating the profits of middlemen and obtaining various advantages, including advantages in service, delivery, and adjustment of account, that are not obtained by persons purchasing goods from middlemen. The truth and fact is that respondent neither owns, controls nor operates any factory whatsoever and does not manufacture said candy sold by it, and is not the agent for the manufacturer or manufacturers of the candy which it sells, but on the contrary only purchases and repacks the candy which it sells.

PAR. 4. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who manufacture the candy which they sell or who are agents of such manufacturers and who rightfully represent that they are the manufacturers thereof or are the agents of such manufacturers. There are others of said competitors who purchase the candy in which they deal and resell the same at a profit to themselves and who in no wise represent that they manufacture said candy. The above described acts and practices of respondent, as set out in paragraphs 2 and 3 hereof, tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 5. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers assortments of candy which do not and did not have thereon its name or the name of the manufacturer of the candy contained in said assortment. The candy contained in said assortment was contained in wrappers bearing the

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legends Red Hook Chocolate Corporation, Red Hook, N. Y., thereby representing that the said candy was manufactured by the Red Hook Chocolate Corporation of Red Hook, N. Y., when such was not the fact. The candy in other assortments was contained in wrappers bearing the name Harwood Candy Corporation. Other assortments contained candy in wrappers bearing the name Lincoln Chocolate & Confectionery Company. Other assortments contained candy in wrappers bearing the name Geiger's Candy Company. Other assortments bore the legend Allan and Allan, Corning, N. Y., thereby representing that the assortments contained candy manufactured by the Harwood Candy Corporation, Lincoln Chocolate & Confectionery Company, Geiger's Candy Company, and Allan & Allan, respectively, when in fact the candy was not made by any one of the said companies. The misbranding of respondent's merchandise, or the false labeling thereof, has the capacity and tendency to and does mislead and deceive many of respondent's customers and prospective customers into the erroneous belief that the candy so sold was manufactured by the business concern whose name appeared on the said wrappers. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who do not misbrand the merchandise which they sell and who do not place thereon false and misleading labels. The acts and practices of respondent just above described tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 6. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers and retail dealers assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

One of said assortments is composed of a number of pieces of candy of uniform size and shape together with a number of larger pieces of candy which larger pieces 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 the said pieces of candy of uniform size and shape have white centers, but a small number of said pieces of candy have pink centers. The said pieces of candy of uniform size and shape retail at the price of 1¢, but the purchaser who procures one of said candies having a pink center is entitled to receive and is to be given free of charge one of the said larger pieces of candy contained in said assortment and heretofore referred to. 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 who procure a piece of candy having a pink center thus procure one of the said larger pieces of candy wholly by lot or chance.

Respondent packs, assembles, and sells various assortments of candy involving the above described sales plan or lottery scheme but varying in detail from the sales plan or lottery scheme just above described.

PAR. 7. The jobbers and 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 plan. 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 plan 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. 8. The sale of said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure larger pieces of candy. The use by respondent of said method in the sale of candy, and the sale of candy 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 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 candy trade 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. Many persons, firms, and corporations who make and sell candy in competition with the respondent are unwilling to offer for sale or sell candy so packed and assembled as above described, 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. 9. 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 an equivalent method. The use of said method by

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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 in 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 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 the said method or an equivalent method.

## CONCLUSION

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

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer dated November 3, 1937 and filed herein on November 9, 1937 by the respondent, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and 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 ordered*, that the respondent, Confectioners Trading Corporation, its officers, representatives, agents, and employes, in connection with the offering for sale, sale and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Representing, directly or indirectly that it is a manufacturing agent of the candy which it sells, or that it is the direct agent of the concern or concerns manufacturing the candy which it sells and distributes, or that it is the agent for certain customers or purchasers, and as such manufactures the candy which it sells to their order;

2. Representing, directly or indirectly by labels, wrappers or otherwise that the candy which it sells or offers for sale is manufactured by any concern other than the actual manufacturer or manufacturers thereof;

3. 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;

4. 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 or distribution of the candy contained in said assortments to the public; and

5. 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 having centers of a different color, together with larger pieces of candy, which said larger pieces of candy are to be given as prizes to the purchaser procuring a piece of candy having a center of a particular color.

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

IN THE MATTER OF  
FORM MAID COAT COMPANY, INC., AND WALTER-LEWIS  
& COMPANY, INC.

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

*Docket 3237. Complaint, Oct. 8, 1937—Decision, Dec. 10, 1937*

Where a corporation engaged in manufacture of women's cloth coats made from fabric containing little, if any, of the hair or wool of the camel, and the exclusive sales agent of said fabric and seller thereof to said first-named corporate coat manufacturer, respectively engaged in substantial competition with others likewise selling and distributing, in commerce among the States, women's coats, and with those engaged in thus selling cloth fabrics from which such garments are made—

Respectively supplied, and made use of, labels for attachment to garments made from fabric in question, depicting camel with palm trees and mountains or pyramids, and displaying, in large and readable type, statement "Genuine Camel's Hair," and thereby represented to retailers and purchasing public that garments made, as above set forth, from aforesaid fabric and with aforesaid labels thus supplied and attached thereto, were composed in whole or in substantial part from the hair or wool of the camel;

With effect of misleading and deceiving dealers and substantial portion of purchasing public into erroneous belief that coats in question, made from aforesaid fabric and labeled as above described, were made in whole or in substantial part from such hair or wool, and with the result, as a consequence of such erroneous and mistaken belief thus engendered, that some dealers and members of purchasing public bought said garments as and for camel's hair or wool, preferred by many retailers and members of purchasing public as more desirable than those of other materials and as lighter, warmer and more desirable than other similar products not thus made in whole or substantial part, and trade was thereby unfairly diverted, in commerce in question, to them from their competitors who do not misrepresent the nature, character or quality of the materials from which their garments are made, and of placing in hands of unscrupulous retailers means whereby latter may commit fraud upon members of purchasing public by representing thereto that such garments are made in whole or substantial part from the hair or wool of the camel; to the substantial injury of competition in commerce:

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

*Mr. Wm. T. Chantland* 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