

IN THE MATTER OF
DIETZ GUM COMPANY OF CHICAGO, ETC., ET AL.

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

Docket 3189. Complaint, July 27, 1937—Decision, Jan. 12, 1938

Where a corporation and two individuals, officers, stockholders, and controllers thereof, engaged in sale and distribution of chewing gum assortments which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, and which included, as typical, assortments composed of (1) one hundred penny pieces of gum of uniform size and shape (within individual wrappers of relatively few of which were concealed, as below set forth, printed legends), together with (a) a number of small felt pennants, of which purchasers securing by chance concealed legend reading "One Base Hit" received one, of which purchasers thus securing legend reading "Two Base Hit" received two, and of which purchasers thus securing legend reading "Three Base Hit" received three; and together with (b) larger felt pennants, to be given to such purchasers procuring by chance legend reading "Home Run"; and together with (c) still larger pennant, to be given to purchaser of last piece in assortment; and (2) similar assortments of chewing gum of uniform size, etc., together with number of small felt pennants, to be given as prizes to purchasers of individually wrapped pieces containing legend "Double Play," and together with further chance toward the securing of baseball uniform or gymnasium outfit through chance securing and accumulating of wrappers containing letters, in sequence, necessary to spell sentence "YOU ARE THE WINNER"—

Sold, to wholesalers and jobbers, for display and resale to purchasing public by retailer-vendee-customers thereof in accordance with aforesaid sales plans, said assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of their products, in accordance with aforesaid sales plans, 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 chewing gum or other confections, so packed and assembled, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance, refrain therefrom;

With capacity and tendency to induce purchasers of their said assortments to buy their said products in preference to chewing gum or other confections offered and sold by their competitors, and with result that many dealers in and ultimate purchasers of such products were attracted by their said methods and manner of packing said chewing gum and by elements of chance involved in sale thereof as above set forth, and were thereby induced to purchase their said chewing gum thus packed and sold by them, in preference to chewing gum or other confections offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to them trade and custom from their said competitors as aforesaid, exclude from

said chewing gum trade all competitors who are unwilling to and do not use such or equivalent methods as unlawful, lessen competition therein and tend to create monopoly thereof in it and such other distributors as use same or equivalent methods, deprive purchasing public of benefit of free competition in said chewing gum trade, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent methods:

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* and *Mr. John L. Hornor*, trial examiners.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.
Beach, Fathchild & Scofield, 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 the Dietz Gum Company of Chicago, a corporation, in its own name and right and trading as Novelty Gum Company, Specialty Gum Company, and Yankee Doodle Gum Company, and Sol. S. Leaf, individually and as president and treasurer of the Dietz Gum Company of Chicago, and Harry Leaf, individually and as secretary of the Dietz Gum Company of Chicago, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Dietz Gum Company of Chicago, is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 1734 West Hubbard Street, Chicago, Ill. In addition to doing business under its own name as Dietz Gum Company of Chicago, the said respondent uses the trade names and styles of Novelty Gum Company, Specialty Gum Company, and Yankee Doodle Gum Company. Respondent, Sol S. Leaf, is president, treasurer, a director and a stockholder of respondent, Dietz Gum Company of Chicago, and has his office and place of business at 1734 West Hubbard Street, Chicago, Ill. Respondent, Harry Leaf, is secretary, a director and a stockholder of the respondent, Dietz Gum Company of Chicago, and has his office and place of business at 1734 West Hubbard Street, Chicago, Ill. Said respondents, Sol

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S. Leaf, and Harry Leaf, as officers, directors, and stockholders of the Dietz Gum Company of Chicago, have a controlling voice in the methods employed by, and direct the policies of, the said respondent corporation.

The respondents, as above described, are now and for some time last past have been engaged in the sale and distribution of chewing gum to wholesale dealers and jobbers located at points in the various States of the United States. Respondents cause and have caused their said products when sold to be transported from their principal place of business in the city of Chicago, State of Illinois, to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There is now and has been for some time last past a course of trade and commerce by said respondents in such chewing gum between and among the States of the United States. In the course and conduct of said business, respondents are in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of chewing gum or other confections in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, the respondents sell and have sold to wholesale dealers and jobbers assortments of chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) One of said assortments is composed of 100 sticks of chewing gum of uniform size and shape, together with a number of small felt pennants, a lesser number of slightly larger felt pennants, and one still larger felt pennant, which said felt pennants are to be given as prizes to purchasers of individual sticks of chewing gum in the following manner: The said sticks of chewing gum in said assortment are wrapped in individual wrappers, and all of the said wrappers appear identical until removed from said chewing gum. The majority of the said wrappers have no printing on the inside thereof, but a small number bear the printed legend "One Base Hit"; a still smaller number bear the printed legend "Two Base Hit"; a still smaller number bear the printed legend "Three Base Hit"; and a few of the wrappers bear the printed legend "Home Run." The printed legends on the inside of the wrappers cannot be seen or ascertained until a selection has been made and the wrapper removed. The individual sticks of chewing gum retail at the price of 1¢ each, and purchasers procuring a stick of chewing gum contained within a wrapper bearing the legend "One Base Hit" receives one small pennant, contained in said assortment and heretofore referred to,

free of charge and as a prize. Purchasers obtaining a stick of chewing gum contained within a wrapper bearing the legend "Two Base Hit" receive two of the said small pennants free of charge and as a prize. Purchasers procuring a stick of chewing gum contained within a wrapper bearing the legend "Three Base Hit" receive three small pennants free of charge and as a prize. Purchasers procuring a stick of chewing gum contained within a wrapper bearing the legend "Home Run" receive one of the larger pennants contained in said assortment and heretofore referred to, free of charge and as a prize. The purchaser of the last piece of chewing gum in the said assortment receives the still larger pennant contained in said assortment. The said felt pennants contained in said assortment are thus distributed to purchasers of chewing gum from said assortment wholly by lot or chance.

(b) Another assortment sold and distributed by respondents is composed of 100 sticks of chewing gum of uniform size and shape, together with a number of small felt pennants, which said felt pennants and certain other specified articles of merchandise are to be given as prizes to purchasers of individual sticks of chewing gum in the following manner: The said sticks of chewing gum in said assortment are wrapped in individual wrappers, and the said wrappers appear identical until a selection has been made and the wrappers removed. A small number of the said wrappers bear on the inside thereof the printed words "Double Play." Other wrappers bear on the inside thereof a printed letter from the following sentence: "You are the Winner." The individual sticks of chewing gum retail at the price of 1¢ each, and the purchaser who procures a stick of chewing gum contained within a wrapper bearing the printed legend "Double Play" is entitled to receive and is to be given free of charge one of the said small felt pennants contained in said assortment and heretofore referred to. The wrappers bearing one of the printed letters, above referred to, also contain the following or similar legends:

SAVE THIS LETTER—W

This is the 10th letter in **YOU ARE THE WINNER.**

Save all the other letters.

Boys and Girls—Save wrappers with letters.

When you have the proper letters to spell out

Y-O-U-A-R-E-T-H-E-W-I-N-N-E-R

mail the wrappers by registered mail to

NOVELTY GUM CO., 1734 W. Hubbard St., Chicago, Ill.

You will receive free a complete **BASEBALL UNIFORM**

or **GYMNASIUM OUTFIT** to your measurements.

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When purchasers have procured the necessary wrappers bearing letters spelling "You Are the Winner," they are entitled to forward them to the respondents and receive free of charge and as a prize a baseball uniform or a gymnasium outfit. The printed legends on the inside of the said wrappers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular wrapper removed. The felt pennants, the baseball uniform, and the gymnasium outfit are thus distributed to purchasers of chewing gum from said assortment wholly by lot or chance.

The respondents manufacture, sell and distribute various assortments of chewing gum involving a lot or chance feature, but such assortments are similar to those described in (a) and (b) above, and vary only in detail.

PAR. 3. The wholesale dealers and jobbers to whom respondents sell their assortments resell said assortments to retail dealers, and said retail dealers expose said assortments for sale and sell said chewing gum 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 sales plans hereinabove set forth, and said sales plans have the capacity and tendency of inducing purchasers thereof to purchase respondents' said products in preference to the chewing gum or other confections offered for sale and sold by their competitors.

PAR. 4. The sale of said chewing gum to the purchasing public by either one of the methods above described involves a game of chance or the sale of a chance to procure other articles of merchandise. The use by respondents of said methods in the sale of chewing gum, and the sale of chewing gum by and through the use thereof and by the aid of said methods, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States. The use by respondents of said methods 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 chewing gum trade, competitors who do not adopt and use the same methods or equivalent or similar methods involving the same or equivalent or similar elements of chance or lottery schemes. Many persons, firms, and corporations who make and sell chewing gum or other confections in competition with respondents, as above alleged, are unwilling to offer for sale or sell chewing gum or other confections 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 chewing gum or other confections are attracted by respondents' said methods and manner of packing said chewing gum and by the elements of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said chewing gum so packed and sold by respondents in preference to chewing gum or other confections offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents has the tendency and capacity, because of said games of chance, to divert to respondents trade and custom from their said competitors who do not use the same or equivalent methods; to exclude from said chewing gum trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in said chewing gum trade, and to tend to create a monopoly of said chewing gum trade in respondents and in such other distributors of chewing gum or other confections as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said chewing gum trade. The use of said methods by respondents has the tendency and capacity to eliminate from said chewing gum trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

PAR. 6. The aforementioned methods, acts, and practices of respondents are all to the prejudice of the public and of respondents' 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on July 27, 1937, issued and served its complaint in this proceeding upon the above-named respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor

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an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for hearing before the Commission on the said complaint, and the substitute answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the matter, 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 Dietz Gum Company of Chicago is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 1734 West Hubbard Street, Chicago, Ill. In addition to doing business under its own name as Dietz Gum Company of Chicago, the said respondent uses the trade names and styles of Novelty Gum Company, Specialty Gum Company, and Yankee Doodle Gum Company. Respondent Sol S. Leaf is president, treasurer, a director and a stockholder of respondent Dietz Gum Company of Chicago, and has his office and place of business at 1734 West Hubbard Street, Chicago, Ill. Respondent Harry Leaf is secretary, a director and a stockholder of respondent Dietz Gum Company of Chicago, and has his office and place of business at 1734 West Hubbard Street, Chicago, Ill. Said respondents, Sol S. Leaf, and Harry Leaf, as officers, directors, and stockholders of the Dietz Gum Company of Chicago, have a controlling voice in the methods employed by, and direct the policies of, the said respondent corporation.

The respondents, as above described, are now and for some time last past have been engaged in the sale and distribution of chewing gum to wholesale dealers and jobbers located at points in the various States of the United States. Respondents cause and have caused their said products when sold to be transported from their principal place of business in the city of Chicago, State of Illinois, to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There is now and has been for some time last past a course of trade and commerce by said respondents in such chewing gum between and among the States of the United States. In the course and conduct of said business, respondents are in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of chew-

ing gum or other confections in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, the respondents sell and have sold to wholesale dealers and jobbers assortments of chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) One of said assortments is composed of 100 sticks of chewing gum of uniform size and shape, together with a number of small felt pennants, a lesser number of slightly larger felt pennants, and one still larger felt pennant, which said felt pennants are to be given as prizes to purchasers of individual sticks of chewing gum in the following manner: The said sticks of chewing gum in said assortment are wrapped in individual wrappers, and all of the said wrappers appear identical until removed from said chewing gum. The majority of the said wrappers have no printing on the inside thereof, but a small number bear the printed legend "One Base Hit"; a still smaller number bear the printed legend "Two Base Hit"; a still smaller number bear the printed legend "Three Base Hit"; and a few of the wrappers bear the printed legend "Home Run." The printed legends on the inside of the wrappers cannot be seen or ascertained until a selection has been made and the wrapper removed. The individual sticks of chewing gum retail at the price of 1¢ each, and purchasers procuring a stick of chewing gum contained within a wrapper bearing the legend "One Base Hit" receive one small pennant, contained in said assortment and heretofore referred to, free of charge and as a prize. Purchasers obtaining a stick of chewing gum contained within a wrapper bearing the legend "Two Base Hit" receive two of the said small pennants free of charge and as a prize. Purchasers procuring a stick of chewing gum contained within a wrapper bearing the legend "Three Base Hit" receive three small pennants free of charge and as a prize. Purchasers procuring a stick of chewing gum contained within a wrapper bearing the legend "Home Run" receive one of the larger pennants contained in said assortment and heretofore referred to, free of charge and as a prize. The purchaser of the last piece of chewing gum in the said assortment receives the still larger pennant contained in said assortment. The said felt pennants contained in said assortment are thus distributed to purchasers of chewing gum from said assortment wholly by lot or chance.

(b) Another assortment sold and distributed by respondents is composed of 100 sticks of chewing gum of uniform size and shape, together with a number of small felt pennants, which said felt pen-

nants and certain other specified articles of merchandise are to be given as prizes to purchasers of individual sticks of chewing gum in the following manner: The said sticks of chewing gum in said assortment are wrapped in individual wrappers, and the said wrappers appear identical until a selection has been made and the wrappers removed. A small number of the said wrappers bear on the inside thereof the printed words "Double Play." Other wrappers bear on the inside thereof a printed letter from the following sentence: "You are the Winner." The individual sticks of chewing gum retail at the price of 1¢ each, and the purchaser who procures a stick of chewing gum contained within a wrapper bearing the printed legend "Double Play" is entitled to receive and is to be given free of charge one of the said small felt pennants contained in said assortment and heretofore referred to. The wrappers bearing one of the printed letters, above referred to, also contain the following or similar legends:

SAVE THIS LETTER—W

This is the 10th letter in YOU ARE THE WINNER.

Save all the other letters.

Boys and Girls—Save wrappers with letters.

When you have the proper letters to spell out

Y-O-U-A-R-E-T-H-E-W-I-N-N-E-R

mail the wrappers by registered mail to

NOVELTY GUM CO., 1734 W. Hubbard St., Chicago, Ill.

You will receive free a complete BASEBALL UNIFORM
or GYMNASIUM OUTFIT to your measurements.

When purchasers have procured the necessary wrappers bearing letters spelling "You Are the Winner," they are entitled to forward them to the respondents and receive free of charge and as a prize a baseball uniform or a gymnasium outfit. The printed legends on the inside of the said wrappers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular wrapper removed. The felt pennants, the baseball uniform, and the gymnasium outfit are thus distributed to purchasers of chewing gum from said assortment wholly by lot or chance.

The respondents manufacture, sell and distribute various assortments of chewing gum involving a lot or chance feature, but such assortments are similar to those described in (a) and (b) above, and vary only in detail.

PAR. 3. The wholesale dealers and jobbers to whom respondents sell their assortments resell said assortments to retail dealers, and said retail dealers expose said assortments for sale and sell said chewing gum to the purchasing public in accordance with the afore-

said 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 sales plans hereinabove set forth, and said sales plans have the capacity and tendency of inducing purchasers thereof to purchase respondents' said products in preference to the chewing gum or other confections offered for sale and sold by their competitors.

PAR. 4. The sale of said chewing gum to the purchasing public by either one of the methods above described involves a game of chance or the sale of a chance to procure other articles of merchandise. The use by respondents of said methods in the sale of chewing gum, and the sale of chewing gum by and through the use thereof and by the aid of said methods, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States. The use by respondents of said methods 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 chewing gum trade, competitors who do not adopt and use the same methods or equivalent or similar methods involving the same or equivalent or similar elements of chance or lottery schemes. Many persons, firms, and corporations who make and sell chewing gum or other confections in competition with respondents, as above found, are unwilling to offer for sale or sell chewing gum or other confections so packed and assembled, or otherwise arranged and packed for sale to the purchasing public, as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of chewing gum or other confections are attracted by respondents' said methods and manner of packing said chewing gum and by the elements of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said chewing gum so packed and sold by respondents in preference to chewing gum or other confections offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents has the tendency and capacity, because of said games of chance, to divert to respondents trade and custom from their said competitors who do not use the same or equivalent methods; to exclude from said chewing gum trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in said chewing gum trade, and to tend to create a monopoly of said chewing gum trade in respondents and in such other distributors of chewing gum or other

confections as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said chewing gum trade. The use of said methods by respondents has the tendency and capacity to eliminate from said chewing gum trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

CONCLUSION

The aforesaid acts and practices of the respondents are to the prejudice of the public and of 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, and the substitute answer filed herein by respondents admitting all 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 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 respondent, Dietz Gum Company of Chicago, a corporation, its officers, representatives, agents, and employees, and the respondents, Sol S. Leaf, individually and as president and treasurer of the Dietz Gum Company of Chicago, and Harry Leaf, individually and as secretary of the Dietz Gum Company of Chicago, in connection with the offering for sale, sale and distribution of chewing gum and other merchandise in interstate commerce do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers or others chewing gum or other merchandise so packed and assembled that sales of such chewing gum or other merchandise 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 or jobbers or others assortments of chewing gum or other merchandise which are used or may be used without alteration or rearrangement of the contents thereof to conduct a lottery, gaming device, or gift

enterprise in the sale or distribution of the chewing gum or other merchandise contained in said assortments to the public;

3. Packing or assembling in the same package or assortment of chewing gum for sale to the public at retail pieces of chewing gum, together with felt pennants, which said felt pennants are to be given as prizes to purchasers of individual pieces of chewing gum procuring a piece of chewing gum contained within a wrapper bearing particular or specified legends;

4. Packing or assembling in the same package or assortment of chewing gum for sale to the public at retail, pieces of chewing gum contained within wrappers bearing various legends or letters, which wrappers bearing particular legends entitle the purchaser to specified articles of merchandise as a prize and which wrappers bearing letters, when obtained in particular combinations, entitle the holder thereof to certain specified articles of merchandise as a prize.

It is further ordered, That the respondents, Dietz Gum Company of Chicago, a corporation, in its own name and right and trading as Novelty Gum Company, Specialty Gum Company, and Yankee Doodle Gum Company; and Sol S. Leaf, individually and as president and treasurer of the Dietz Gum Company of Chicago; and Harry Leaf, individually and as secretary of the Dietz Gum Company of Chicago, shall, within 30 days after service upon them 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

LOUIS H. TABACH, TRADING AS LONGWEAR HOSIERY
COMPANY, CERTIFIED HOSIERY COMPANY, AND
CANARY HOSIERY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3229. Complaint, Sept. 18, 1937—Decision, Jan. 12, 1938*

Where an individual engaged in sale of hosiery among the various States through house-to-house canvassers, in substantial competition with those engaged in manufacture, sale, and distribution, or in sale and distribution, of hosiery in commerce among the various States and in the District of Columbia, and including among his said competitors manufacturers, sellers, and distributors of hosiery who do not in any manner misrepresent their products and do not use methods and practices as below described in connection with offer, sale and distribution thereof—

- (a) Falsely represented that he manufactured the hosiery sold and distributed by him, and that such hosiery corresponded as to grade, texture, color, and quality to samples displayed by his said agents and representatives for customers' selection, facts being he was not a hosiery manufacturer and hosiery shipped was of a quality or grade inferior to sample selected and to that represented by his said agents and representatives, and in many instances not of size and color selected by purchaser;
- (b) Represented that his stock in trade was turned over every ten days, and was always new and fresh, and that some of his said hosiery was made by a certain specified well-known manufacturer of ladies' hosiery, facts being none of the products sold by him was made by manufacturer referred to, nor was his stock in trade turned over as above represented;
- (c) Represented that his so-called "Longwear" hosiery was woven with special lockstitch which prevented it from snagging, running or developing holes, and that it was guaranteed as hole-proof and run-proof for a period of from three to six months, facts being said hosiery was not thus woven and would not, with normal wear, last for period of time specified, and he did not replace worn with new hosiery as promised;
- (d) Represented that purchasers ordering not fewer than six pairs of hosiery would be given, without further charge, extra pair, and misrepresented postage which customer would actually be called upon and required to pay when goods were shipped, facts being he failed and refused to include so-called "free" pair in such order when shipment was made, and thereafter to deliver such pair as promised, and postage charge required was greater than that represented at time of sale; and
- (e) Exacted additional payments of ten percent or more to cover postage and insurance fee on extra shipment in case of exchange of goods to correct mistakes in color or size, and unduly and unreasonably delayed correction of mistakes in filling orders; and
- (f) Failed and neglected, in a number of instances, to make adjustments as promised, refusing adjustments unless and until purchaser sent in original