

IN THE MATTER OF
BUNTE BROTHERS, INC.

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

Docket 1811. Complaint, Jan. 17, 1936¹—Decision, Feb. 19, 1938

Where a corporation engaged in manufacture and sale of "break and take," or "draw" or "deal" assortments of candy, sale and distribution of which, affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who comprise substantial number of purchasers and consumers of such type of candy, and particularly of so-called "break and take" assortments, and appearance of which "break and take," "draw," or "deal" assortments in the markets of manufacturers of "straight" merchandise has been followed by marked decrease in sale of such "straight" goods, due to gambling or lottery feature connected with other—

Sold to wholesalers and retailers (1) "break and take" assortments, together with explanatory display cards for retailers' use, composed of number of chocolate-covered penny candies of uniform size and shape, together with number of larger pieces, to be given as prizes to those securing by chance one of a relatively few of said uniform pieces, enclosed colored centers of which differed from that of majority, and to purchaser of last of said uniform pieces in assortment, and (2) "draw" or "deal" assortments composed of number of packages of candy of varying size, together with punchboard or push card, as case might be, for sale in accordance with explanatory legend thereon and under a plan by which chance purchaser received, for nickel paid, one of said packages, of a value in excess of said sum, or nothing, dependent upon success or failure in punching of certain numbers or punching of last number in each of certain sections into which board was divided;

So packed and assembled that such various assortments were and might be displayed, distributed, and sold by the numerous retail dealer purchasers thereof to consuming public by lot or chance, in accordance with aforesaid or similar plans, and sold, as packed, as aforesaid and without alteration or rearrangement, and with knowledge and intent that such candy should and would thus be resold to purchasing public as aforesaid by retail dealers therein; contrary to public policy and in competition with many who do not make and sell such lottery assortments but sell, in competition therewith, their "straight" merchandise, and with many who regard such sale and distribution by lot or chance as morally bad and as encouraging gambling, and especially among children, and as injurious to industry in question through resulting in the merchandising of a chance or lottery instead of candy, and as providing retailers with means of violating the laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed that same can be resold to public by lot or chance;

¹ Amended and supplemental.

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With result that retailers, finding such "break and take" or "draw" or "deal" candy more salable, purchased from it and others employing similar methods, trade was diverted to it and such others from aforesaid competitors, able to compete on even terms only by giving same or similar devices to retailers, some competitors began sale and distribution to public by lot or chance to meet competition of manufacturers selling such candy, in constant demand, and there was diversion of trade to it from its said competitors and a restraint upon and a detriment to the freedom of fair and legitimate competition in industry concerned; to the prejudice and injury of the public and competitors:

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 for the Commission.

Mr. Leroy Krein and *Mr. Samuel G. Clawson*, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit on May 1, 1930, issue its complaint herein charging and alleging that respondent herein is and has been guilty of unfair methods of competition in interstate commerce within the meaning and intent 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, and

Whereas, This Commission having reason to believe that respondent herein has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, other than and in addition to those in relation to which the Commission issued its complaint as aforesaid, and it appearing to said Commission that a further proceeding by it in respect thereof would be in the public interest:

Now, therefore, Acting in the public interest, pursuant to the provisions of the act of September 26, 1914, aforesaid, the Federal Trade Commission charges that Bunte Brothers, Inc. has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and states its charges in that respect as follows:

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

be transported from its principal place of business in the city of Chicago, Ill., to purchasers thereof in other States of the United States at their respective places of business; and there is now and has been for several years last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers certain packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all-inclusive of the various packages nor does it include all of the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

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

The majority of said chocolate-covered candies in said assortment have centers of the same color but a small number of said chocolate-covered candies have centers of a different color. The said pieces of candy of uniform size, shape, and quality in said assortment retail at the price of 1 cent each but the purchasers who procure one of said candies having a center of a different color than the majority of said candies are entitled to receive and are to be given free of charge one of the said larger pieces of candy. The purchaser of the last piece of chocolate-covered candy of uniform size, shape, and quality in said assortment is entitled to receive and is to be given free of charge one of the said larger pieces of candy. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy, and the purchaser of the last piece of candy in said assortment, thus procure one of the said larger pieces of candy wholly by lot or chance.

Respondent furnishes to said wholesale and retail dealers with said assortment of candy, a display card, to be used by the retailer in offering said merchandise for sale to the public, which display card

bears a legend or statement informing the prospective purchaser which color of the said colored center candies contained in said assortment entitles the purchaser to a prize, and that by purchasing the last piece of candy in said assortment the purchaser will receive one of the said larger pieces of candy free of charge.

(b) Another assortment manufactured and distributed by the respondent is composed of a number of 1-pound boxes of assorted chocolates, together with a device commonly called a "punchboard." The said boxes of candy are distributed to the consuming public by means of said punchboard in the following manner: The sales by means of said punchboard are 5 cents each and when a punch is made from said board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing the prospective customer as to which numbers receive a box of candy. The punches on said board are arranged in three sections, and the purchaser of the last punch in the first and second section each receive two 1-pound boxes of candy and the purchaser of the last punch on the board receives four 1-pound boxes of candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by punching the last number in one of the sections or on the board receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5 cents each, and a purchaser who obtains one of the numbers calling for a box of candy receives the same for the price of 5 cents. The numbers on said board are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy in said assortment are thus distributed to purchasers of punches from said board wholly by lot or chance.

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

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure (a) larger pieces of candy; (b) a box or boxes of candy.

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

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

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

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

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on May 1, 1930, issued and served its complaint upon the respondent, Bunte Brothers, Inc. Thereafter on January 17, 1936, the Federal Trade Commission issued and served an amended and supplemental complaint upon said respondent, charging that respondent had been and was using unfair methods of competition in commerce in violation of the provisions of said act. On February 8, 1936, the respondent filed its answer to said amended and supplemental complaint and, subsequent to the filing of said answer, testimony and other evidence in support of the allegations of the amended and supplemental complaint were introduced by P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by Leroy Krein, attorney for the respondent, before Miles J. Furnas, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said amended and supplemental complaint and answer thereto, testimony and other evidence, and brief in support of the complaint and in opposition thereto (oral arguments of counsel aforesaid 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, Bunte Brothers, Inc., is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located in Chicago, Ill. Respondent is now, and for several years last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers, and to retail dealers, located in all the States of the United States, and causes its said products when so sold to be transported from its principal place of business in Chicago, Ill. to

purchasers thereof in the State of Illinois and in all the other States of the United States at their respective places of business. And there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In so carrying on said business respondent is, and has been, engaged in active competition with other corporations, and with partnerships and individuals engaged in the manufacturing of candy, and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof the respondent has sold in commerce between and among the various States of the United States, to wholesale and retail dealers, certain packages or assortments of candy composed of a number of pieces of chocolate-covered candies of uniform size and shape, together with a number of larger pieces of candy, which larger pieces of candy were to be given as prizes to purchasers of said chocolate-covered candies, in substantially the following manner:

The majority of said chocolate-covered candies in said assortment had centers of the same color, but a small number of said chocolate-covered candies had centers of a different color. The said pieces of candy of uniform size and shape in said assortment retailed at the price of 1 cent each, but the purchasers who procured one of the said candies having a center of a color different from the majority of said candies were entitled to receive, and were to be given free of charge, one of the said larger pieces of candy. The purchaser of the last piece of said chocolate-covered candy of uniform size and shape in said assortment was entitled to receive, and was to be given free of charge, one of the said larger pieces of candy. The aforesaid purchasers of said candy who procured a candy having a center colored differently from the majority of said pieces of candy, and the purchaser of the last piece of candy in said assortment, thus procured one of the said larger pieces of candy wholly by lot or chance.

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

The sale and distribution of said assortment involved the use of a lottery scheme, a game of chance, or a gift enterprise when said

assortment was sold and distributed to the ultimate consumers thereof. The respondent manufactured, sold, and distributed several assortments involving the above-described sales plan or principle, but varying in detail. One such assortment was described by respondent as "Mascot Bar Assortment," another such assortment was described by respondent as "Santa Claus Bar Assortment," and still another assortment was described by respondent as "Jar Bar Assortment." The evidence offered shows, and the Commission finds, that on or about April 1, 1934, the respondent discontinued the sale and distribution of assortments similar to those just above described to purchasers located in States other than the State of Illinois.

PAR. 3. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent was, and is, selling and distributing in commerce between and among the various States of the United States several other assortments of candy so packed and assembled as to involve the use of a lottery scheme, game of chance, or gift enterprise when sold or distributed to the ultimate consumers thereof. Such assortments were and are shipped or transported by respondent from its place of business in Chicago, Ill., to the purchasers thereof in all of the States of the United States at their respective points of location. Such assortments are composed of a number of packages of candy of varying sizes, together with a device commonly called a "punchboard." The said packages of candy are distributed to the consuming public by means of said punchboard in the following manner:

The said punchboard has a number of indicated holes, and in each hole a slip of paper bearing a printed number or legend is secreted. Sales are 5 cents each, and when a punch is made from said board one of the printed slips bearing a number or legend is disclosed. The numbers begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing customers and prospective customers as to which numbers receive a package of candy, and the size thereof. The punches on said board are arranged in sections, and the purchaser of the last punch in each section receives a specified package of candy. A purchaser who does not qualify by obtaining one of the numbers or legends calling for one of the packages of candy, or by punching the last number in one of the sections, receives nothing for his money other than the privilege of punching a number from said board. The packages of candy are each worth more than 5 cents, and a purchaser who obtains one of the numbers calling for a package of candy receives the same for the price of 5 cents. The numbers on said board are effectively

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concealed from purchasers and prospective purchasers until a punch or selection has been made and the printed slip of paper separated from the board. The packages of candy in said assortment are thus distributed to purchasers of punches from said board wholly by lot or chance.

The respondent is and has been distributing several assortments involving the same principle but varying in detail. Some of the assortments are composed of packages of candy and other articles of merchandise to be given as prizes to purchasers selecting particular numbers or legends, and some of the assortments contain a device commonly called a "push card" rather than a punchboard, but the candy and other merchandise distributed by push cards involve the same plan or method as the punchboard.

PAR. 4. Candy assortments involving the lot or chance feature, as described in paragraph 2, are generally referred to in the candy trade or industry as "break and take" assortments. Assortments of candy as described in paragraph 3 above are generally referred to in the candy trade or industry as "draw" or "deal" assortments. Assortments of candy without any lot or chance features in connection with their resale to the public are generally referred to in the candy trade or industry as "straight" assortments. These terms will be used hereafter in these findings to distinguish the separate types of assortments.

PAR. 5. The wholesale dealers or jobbers to whom respondent sells, or has sold, its assortments resell, or have resold, same to retail dealers. Respondent also sells, and has sold, its assortments direct to retail dealers. Numerous retail dealers purchase, and have purchased, the assortments described in paragraphs 2 and 3 above either from respondent or from wholesale dealers or jobbers who in turn have purchased said assortments from the respondent, and such retail dealers have, and do, display said assortments for sale to the public as packed by the respondent, and the candy contained in the majority of said assortments is, or has been, sold and distributed to the consuming public by means of said "break and take" sales plan or method, or by means of the punchboards or push cards, in the manner above described.

PAR. 6. All sales made by respondent, whether to wholesalers or jobbers, or to retail dealers, are, and have been, absolute sales, and respondent retains and has retained no control over said assortments after they are delivered to the wholesale dealer or jobber, or retail dealer. The assortments are, and have been, assembled and packed in such manner that they are, and have been, used and may be used by retail dealers for distribution to the purchasing public by lot or chance without alteration or rearrangement.

In the sale and distribution to jobbers and wholesale dealers for resale to retail dealers, and to retail dealers direct, of the assortments of candy described in paragraphs 2 and 3, respondent had, and now has, knowledge that the said candy was, and is, to be resold to the purchasing public by retail dealers by lot or chance, and it has packed, and does pack, such candy in the way and manner described, so that without alteration, addition, or rearrangement thereof, it would be, and may be, resold to the public by lot or chance by said retail dealers.

PAR. 7. There are in the United States many manufacturers of candy who do not manufacture and sell "break and take," "draw," or "deal," assortments of candy, and who sell their "straight" merchandise in interstate commerce in competition with the "break and take," "draw," or "deal," candy, and manufacturers of "straight" merchandise have noted a marked decrease in the sales of their products whenever or wherever the "break and take," "draw," or "deal," assortments have appeared in their market. This decrease in the sale of "straight" merchandise is due to the gambling or lottery feature connected with the "break and take," "draw," or "deal," candy.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that consumers preferred to purchase the "break and take," "draw," or "deal," candy because of the gambling feature connected with its sale. The sale and distribution of "break and take," "draw," or "deal," assortments of candy, or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who comprise a substantial number of the purchasers and consumers of this type of candy, particularly the "break and take" assortments.

PAR. 8. The sale and distribution of candy by the methods described herein is the sale and distribution of candy by lot or chance, and constitutes a lottery or gaming device. Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds, that many competitors regard such sale and distribution as morally bad, and as encouraging gambling, especially among children, and as injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy, and has provided retail merchants with a means of violating the laws of the several States. Because of these reasons some competitors of respondent refuse to sell candy so packed that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competition. The retailers, finding that they can dispose of more candy by the "break and take" method, and that they

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can dispose of more candy by the "draw" or "deal" method, buy from respondent and others employing the same methods of sale, and thereby trade is diverted from said competitors to respondent and others using similar methods. Such competitors can compete on even terms only by giving the same or similar devices to retailers. This they are unwilling to do, and their sales of "straight" candy show a marked decrease.

The sale and distribution of candy by lot or chance provides an easy means of disposing of such products. There is a constant demand for candy which is sold by lot or chance, and in order to meet the competition of manufacturers who sell and distribute candy which is sold by such methods, some competitors have begun the sale and distribution of candy to the public by lot or chance. The use of such methods by the respondent in the sale and distribution of its candy is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon, and a detriment to, the freedom of fair and legitimate competition in the candy industry.

PAR. 9. As stated previously in these findings, the respondent sells its merchandise in all States of the United States, and while the annual volume of business of the respondent was not shown exactly, an officer of the respondent testified, and the Commission finds, that the respondent's annual volume of "break and take" assortments was substantial, and its annual volume of business of "draw" or "deal" assortments is, and has been, substantial.

PAR. 10. The Commission finds that the sale and distribution in interstate commerce of assortments of candy so packed and assembled, as to enable retail dealers, without alteration, addition, or rearrangement, to resell the same to the consuming public by lot or chance, are contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Bunte Brothers, Inc., 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 amended and supplemental complaint of the Commission, the answer of respondent, testimony and other evidence

taken in support of the allegations of the complaint and in opposition thereto before Miles J. Furnas, an examiner of the Commission, theretofore duly designated by it, and brief of counsel for the Commission, and brief of counsel for the respondent (oral argument having been waived), 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, Bunte Brothers, Inc., a corporation, its officers, directors, agents, representatives, and employees, in the offering for sale, sale, and distribution of candy and candy products in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

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

2. Supplying to or placing in the hands of retail and wholesale dealers and jobbers 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 or candy products contained in said assortments to the public;

3. Packing or assembling in the same packages or assortments 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;

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

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

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

Mr. Freer dissented to the inclusion of certain words in the Commission's order to cease and desist in this case, involving a respondent located within the Seventh Circuit, because the United States Circuit Court of Appeals for the Seventh Circuit in the case of *A. McLean & Son*—Docket 2264—had stricken from the order in said previous case these words and substituted others for them.

Complaint

IN THE MATTER OF

LES PARFUMS D'ISABEY, INC.

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

Docket 3149. Complaint, June 11, 1937—Decision, Feb. 19, 1938

Where a corporation engaged in sale and distribution of toilet water and perfumes, compounded in the United States through blending with alcohol vehicle, perfume concentrate, imported as such, or made, by company from which it purchased, from the essential oil or flower essence, aromatic chemicals, and animal products imported by such company—

Represented, through use of such words as "Isabey Parfums d'Isabey, Parfums d'Isabey 'Isabey—Paris'," on labels attached to containers and cartons of its said products, that same were made or compounded in France, notwithstanding fact its said perfumes, purchased by it as above set forth, were, as aforesaid, actually compounded in the United States and were not products made or compounded in France or in any other foreign country, or imported;

With effect of misleading and deceiving a substantial part of purchasing public into erroneous and mistaken belief that said representations were true, and that perfumes in question were imported into United States from Paris, France, and with result that public, acting under mistaken and erroneous beliefs induced by such false, deceptive, and misleading statements and representations, purchased substantial volume of its said products as and for the preferred imported, and particularly preferred French, perfumes, and trade was unfairly diverted to it from competitors engaged in manufacture and distribution, or in sale and distribution, of perfumes who truthfully describe their products and represent country or source or origin thereof; to the substantial injury of competition 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. William C. Reeves*, trial examiner.

Mr. S. Brogdyne Teu, II for the Commission.

Mr. John H. Glaccum of Munn, Anderson & Liddy, of New York City, 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 Les Parfums d'Isabey, Inc., a corporation, organized and doing business by virtue of and under the laws of the State of New York, hereinafter referred to as respondent, has been, and is now, using unfair methods