

Syllabus

IN THE MATTER OF

ROCKY MOUNTAIN LABORATORIES, INC., AND JAMES
W. FITCHESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2953. Complaint, Oct. 20, 1936—Decision, Mar. 29, 1938*

Where a corporation and an individual, its president and general manager, engaged in manufacture, distribution and sale in commerce of a pharmaceutical preparation called "Biotone"; in advertising same in newspapers and periodicals of general circulation throughout the United States, and through advertising folders and literature printed and circulated through the various States to customers and prospective customers, and by radio broadcasts—

- (a) Represented that said preparation was natural solution for all health problems and that average individual was not getting the elements from his food supply to maintain normal chemical balance in the body, and that such elements were supplied by said "Biotone";
- (b) Represented that most common ailments have their origin in the digestive system and that "Biotone" had healing qualities that corrected serious disorders, and aided nature in its natural cleansing, building, and normalizing process of the body and helped to neutralize acids therein and combat and eliminate toxins, build sound healthy tissues, and promote vigorous normal body functions; and
- (c) Represented that said "Biotone" was a helpful remedy for malnutrition, loss of appetite, lack of energy, stomach ulcers, and various other ailments and conditions;

Facts being normal average American food supply furnishes enough chemical substances to keep body normal without supplementing diet by medicine, said preparation was not a helpful remedy in cases of malnutrition, high blood pressure, etc., generally caused by or directly associated with serious systemic or metabolic disorders, most common ailments do not have their origin in digestive system nor are great majority of common ailments of humanity traceable to unbalanced body chemistry resulting in acidity, toxemia, or mineral deficiency, natural cleansing, etc., processes of the body do not need aid of any medicine or chemical to take place and function properly, ingredients in said preparation were present in such small quantities as to be totally ineffective, and aforesaid representations as to functioning and values of said preparation in aiding nature, etc., and with respect to its curative and remedial qualities were grossly exaggerated, false, misleading, and untrue;

With tendency and capacity to mislead and deceive a large portion of purchasing public into erroneous belief that all said representations were true and that preparation possessed substantial therapeutic value, and with result that a number of said public, as direct consequence of such erroneous beliefs, bought substantial volume of said product and trade was unfairly diverted to them from individuals and concerns likewise engaged in sale of other preparations designed and intended for similar usage, and

Complaint

26 F. T. C.

who truthfully advertise efficacy of their products; 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. Charles P. Vicini* and *Mr. Robert S. Hall*, trial examiners.

Mr. George Foulkes for the Commission.

Mr. James W. Fitches, of Salt Lake City, Utah, for respondents.

COMPLAINT¹

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 James W. Fitches, an individual, and Rocky Mountain Laboratories, Inc., a corporation, hereinafter referred to as respondents, have been and are 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, Rocky Mountain Laboratories, Inc. is a corporation existing and doing business under the laws of the State of Utah, with its principal office and place of business located at 18 West Second South Street, Salt Lake City, Utah.

Respondent, James W. Fitches, also of Salt Lake City, Utah, was president and manager of respondent, Rocky Mountain Laboratories, Inc., during the time of its corporate existence, and controlled, managed, and directed the business activities, sales policies, and transactions of said corporate respondent, Rocky Mountain Laboratories, Inc., and used said corporation as an instrumentality and agency to accomplish such things as he proposed and planned.

Respondent, Rocky Mountain Laboratories, Inc., and respondent, James W. Fitches, are now, and have been for some time engaged in the business of manufacturing, distributing, and selling in commerce, as herein set out, a medicinal preparation designated as "Biotone."

PAR. 2. Said respondents, being engaged in business as aforesaid, caused said medicinal preparation when sold, to be transported from their respective offices and places of business in the State of Utah to purchasers thereof, located at various points in States of the United States other than the State from which said shipments were

¹ Published as amended to conform to proof by order dated March 18, 1938.

Complaint

made. Both respondents have maintained, and now maintain, a constant current of trade in commerce in said medicinal preparation, manufactured, distributed, and sold by them between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their respective businesses, both said respondents are now and have been in substantial competition with other corporations, and with individuals and firms likewise engaged in the business of manufacturing, distributing, and selling medicinal preparations and kindred remedies for the same ailments for which said respondents represent "Biotone" to be a remedy, in commerce among and between the various States of the United States and in the District of Columbia.

In the course of operation of their respective businesses and for the purpose of inducing individuals to purchase "Biotone" both respondents have caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States and have printed and circulated throughout the various States to customers and prospective customers advertising folders and literature. Both respondents have caused statements and representations concerning the curative and remedial quality of "Biotone" to be made over radio broadcasts. Certain advertising matter used by said respondents in making said representations, and certain statements made or caused to be made by said respondents over radio stations are set out herein, as illustrative of said representations, but are not all-inclusive. Such advertisements and statements are as follows:

BIOTONE—THE NATURAL SOLUTION FOR YOUR HEALTH PROBLEM.

The average family is not getting the elements from its food supply necessary to maintain normal chemical balance.

Most common ailments have their origin in the digestive system.

Because of the natural healing qualities of BIOTONE and its normalizing and alkalizing effects, it has proven a most remarkable corrective for many of the more serious stomach and intestinal disorders.

It helps to neutralize acids, combat and eliminate toxins, the building of sound, healthy tissues, and the promotion of vigorous, normal body functions.

Especially helpful in malnutrition, loss of appetite, lack of energy, languidness and depleted vitality.

BIOTONE gets results even when all other methods have failed.

The basic causes of most ailments are Acidity, Toxemia, and lack of the essential elements which the body must have. BIOTONE corrects all those foundations of illness, by neutralizing acids and toxins and supplying the body with these vital elements.

If your bloodstream and the vital fluids of the body are normally alkaline you cannot keep from enjoying health and vitality. But the big trouble is, that our modern methods of eating devitalized, demineralized and refined foods deprives us of the essential elements to maintain a normal chemical balance.

Complaint

26 F. T. C.

The lack of even one or two of these important substances may result in serious physical and mental disturbances. The absence of several of them may bring about a complication of said symptoms.

Sour stomach, gastritis, internal ulcers, high blood pressure, rheumatism, arthritis, eczema and many others are the result of chemical deficiencies. An acid condition proves the lack of sodium, magnesium and chlorine. A toxic condition proves the lack of sufficient sulphur, potassium, iodine, iron, manganese, phosphorus and similar elements. We urge the use of BIOTONE as the real and quick solution to these deficiency disorders.

By the use of advertisements in newspapers, pamphlets, testimonials, and over the radio, both respondents represent that:

1. Biotone is the natural solution for all health problems.
2. The average individual is not getting the elements from his food supply to maintain a normal chemical balance in the body, and that Biotone supplies these elements.
3. The most common ailments have their origin in the digestive system, and that Biotone has healing qualities that correct serious stomach and intestinal disorders.
4. Biotone aids nature in its natural cleansing, building and normalizing processes of the body and helps to neutralize acids in the body, and combat and eliminate toxins, and aids in building healthy tissues and the promotion of vigorous healthy body functions.
5. Biotone is a helpful remedy for malnutrition, loss of appetite, lack of energy, languidness, depleted vitality, ulcers of the stomach, liver trouble, prostatitis, eczema, high blood pressure, acidity, toxemia, sour stomach, gastritis and rheumatism.

PAR. 4. Representations made by said respondents with respect to the curative and remedial qualities of Biotone when used, are grossly exaggerated, false, misleading, and untrue. In truth and in fact Biotone is not a natural solution for all health problems, and it is not true that the average individual is not getting the elements from his food supply necessary to maintain normal chemical balance in the body. In truth and in fact the most common ailments do not have their origin in the digestive system, and Biotone does not have healing qualities of such a character as to correct serious stomach and intestinal disorders. Biotone does not aid nature in its natural cleansing, building and normalizing processes of the body, and it does not help to neutralize acids in the body, or to combat and eliminate toxins. Biotone does not aid in the building of healthy tissues or in the promotion of vigorous healthy body functions. Biotone is not a helpful remedy for malnutrition, loss of appetite, lack of energy, languidness, depleted vitality, ulcers of the stomach, liver trouble, prostatitis, eczema, high blood pressure, acidity, toxemia, sour stomach, gastritis, and rheumatism.

PAR. 5. Each and all of the false and misleading statements and representations, made by both respondents, as hereinabove set forth, in their advertising in newspapers, magazines, pamphlets, and other

advertising literature, in offering for sale and selling Biotone, had and now has the tendency and capacity to mislead and deceive a large portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of the stated misleading, mistaken, and erroneous beliefs, induced by advertisements and statements of both respondents, as hereinabove enumerated, a number of the purchasing public purchased a substantial volume of respondents' product with a result that trade has been unfairly diverted to respondents from individuals, firms, and corporations likewise engaged in the business of selling medicinal preparations, who truthfully advertise their products. As a result thereof, substantial injury has been done and is being done by both respondents to competition in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors, as aforesaid, and are unfair methods of competition 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 October 26, 1936, issued and served its complaint in this proceeding upon Biotone Laboratories, Inc., a corporation, and Rocky Mountain Laboratories, Inc., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by George Foulkes, attorney for the Commission, and in opposition to the allegations of the complaint by James W. Fitches, who appeared on behalf of both respondents, before Charles P. Vicini and Robert S. Hall, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence was duly recorded and filed in the office of the Commission. The chief counsel filed a motion to amend the complaint to conform to the proof contained in the record by deleting from the complaint Biotone Laboratories, Inc., as respondent, and inserting in lieu thereof James W. Fitches, an individual, as respondent, and

it appearing that the respondents had due notice of the pendency of said motion, the motion of the chief counsel was granted. Thereafter the proceeding came on for final hearing before the Commission on said complaint and answer thereto, testimony and other evidence and brief in support of the amended complaint, respondents not having filed briefs, and having not requested oral arguments herein; 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. The respondent Rocky Mountain Laboratories, Inc., is a corporation existing and doing business under the laws of the State of Utah with its office located at 18 West Second South Street, Salt Lake City, Utah.

In the year 1936 respondent Rocky Mountain Laboratories, Inc., became inactive, and respondent James W. Fitches became trustee of the corporate property.

Respondent James W. Fitches, also of Salt Lake City, Utah, was president and general manager of respondent Rocky Mountain Laboratories, Inc., during the time of its corporate activity, and controlled, managed, and directed the business activities, sales policies, and transactions of the respondent Rocky Mountain Laboratories, Inc., and used said corporation as an instrumentality and agency to accomplish such things as he proposed and planned.

There is a possibility that respondent James W. Fitches may again organize respondent Rocky Mountain Laboratories, Inc., for the purpose of resuming sales of its principal commodity, "Biotone." Respondent James W. Fitches now holds title to the said product "Biotone" as trustee of respondent Rocky Mountain Laboratories, Inc.

Respondent Rocky Mountain Laboratories, Inc., and respondent James W. Fitches have for some time last past been engaged in the business of manufacturing, distributing, and selling in commerce a pharmaceutical preparation designated as "Biotone."

PAR. 2. The respondents caused the medicine designated "Biotone," when sold, to be transported from their principal office and place of business in the State of Utah to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made.

Respondents have maintained a course of trade in commerce in said preparation, manufactured, distributed, and sold by them between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the operation of their business, respondents have been in substantial competition with other corporations and with individuals and firms likewise engaged in the business of manufacturing, distributing, and selling other preparations and treatments for the same ailments for which the respondents represent "Biotone" to be a remedy, in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Rocky Mountain Laboratories, Inc., and respondent James W. Fitches caused advertisements descriptive of said preparation to be inserted in newspapers and magazines of general circulation throughout the United States, and have printed and circulated throughout the various States, to customers and prospective customers, similar advertising folders and literature.

The respondents have also caused statements and representations concerning the curative and remedial quality of "Biotone" to be made over radio broadcasts.

Certain advertising matter used by the respondents in making the aforementioned representations, and certain statements made or caused to be made by respondents over radio broadcasts are as follows:

BIOTONE—THE NATURAL SOLUTION FOR YOUR HEALTH PROBLEM.

The average family is not getting the elements from its food supply necessary to maintain normal chemical balance.

Most common ailments have their origin in the digestive system.

Because of the natural healing qualities of BIOTONE and its normalizing and alkalizing effects, it has proven a most remarkable corrective for many of the more serious stomach and intestinal disorders.

It helps to neutralize acids, combat and eliminate toxins, the building of sound healthy tissues, and the promotion of vigorous, normal body functions.

Especially helpful in malnutrition, loss of appetite, lack of energy, languidness and depleted vitality.

BIOTONE gets results even when all other methods have failed.

The basic causes of most ailments are Acidity, Toxemia, and lack of the essential elements which the body must have. BIOTONE corrects all those foundations of illness, by neutralizing acids and toxins and supplying the body with these vital elements.

If your bloodstream and the vital fluids of the body are normally alkaline you cannot keep from enjoying health and vitality. But the big trouble is, that our modern methods of eating devitalized, demineralized and refined foods deprives us of the essential elements to maintain a normal chemical balance. The lack of even one or two of these important substances may result in serious physical and mental disturbances. The absence of several of them may bring about a complication of said symptoms.

Sour stomach, gastritis, internal ulcers, high blood pressure, rheumatism, arthritis, eczema, and many others are the result of chemical deficiencies. An acid condition proves the lack of sodium, magnesium and chlorine. A toxic condition proves the lack of sufficient sulphur, potassium, iodine, iron, manganese, phosphorus and similar elements. We urge the use of BIOTONE as the real and quick solution to these deficiency disorders.

Findings

26 F. T. C.

By use of advertisements in newspapers, pamphlets, testimonials, and over the radio, both respondents represent that:

1. Biotone is the natural solution for all health problems.
2. The average individual is not getting the elements from his food supply to maintain a chemical balance in the body, and that Biotone supplies these elements.
3. The most common ailments have their origin in the digestive system, and that Biotone has healing qualities that correct serious stomach and intestinal disorders.
4. Biotone aids nature in its natural cleansing, building and normalizing processes of the body and helps to neutralize acids in the body, and combat and eliminate toxins, and aids in building healthy tissues and the promotion of vigorous healthy body functions.
5. Biotone is a helpful remedy for malnutrition, loss of appetite, lack of energy, languidness, depleted vitality, ulcers of the stomach, liver trouble, prostatitis, eczema, high blood pressure, acidity, toxemia, sour stomach, gastritis, and rheumatism.

An analysis of the commodity "Biotone" shows that it is made up as follows:

Silica (SiO ₂)	317.0 parts per million
Calcium (Ca)	125.0 " " "
Magnesium (Mg)	155.0 " " "
Sodium (Na)	34.0 " " "
Potassium (K)	55.0 " " "
Phosphorus (P ₂ O ₅)	5.0 " " "
Chlorides (Cl)	122.0 " " "
Sulphur (S)	3739.0 " " "
Iron (Fe)	5153.0 " " "
Alumina (Al)	228.0 " " "
Manganese (Mn)	5.0 " " "
Notrogen (N)	64.0 " " "
Carbon (C)	974.0 " " "
Iodine (I)	Trace " " "

PAR. 4. The foregoing representations made by respondents with respect to the curative and remedial quality of "Biotone" when used are grossly exaggerated, false, misleading, and untrue.

In truth and in fact the normal average American food supply furnishes enough chemical substances to keep the body normal, and it is not necessary to supplement the diet by taking internally any medicine. "Biotone" is not a helpful remedy in cases of malnutrition, high blood pressure, ulcers of the stomach, prostatitis, rheumatism, gastritis, and eczema. The aforesaid conditions and ailments are generally caused by or directly associated with serious systemic or metabolic disorders and do not respond to treatments containing ingredients similar in their properties to those contained in respondents' preparation. Said preparation is not a helpful

remedy in cases of loss of appetite, or in cases of lack of energy. Said preparation is not of any value in cases of liver trouble, acidity, sour stomach, and toxemia. In the treatment of such cases a diagnosis is necessary and no medicine such as respondents' compound could be applied in all cases.

The most common ailments do not have their origin in the digestive system, and respondents' preparation does not have healing quality of such a character as to correct serious stomach and intestinal disorders.

Respondents' preparation does not aid nature in its natural cleansing, building, and normalizing processes of the body, and it does not help to neutralize acids in the body or to combat and eliminate toxins.

"Natural cleansing, building, and normalizing processes of the body" mean the normal processes of eating, digesting, assimilating, and eliminating food material maintaining it by normal adequate intake of food, and the average individual does not need the aid of any medicine, chemical, or chemical compound for the cleansing, building up, or for the so-called normalizing processes to take place.

The great majority of the common ailments of humanity are not traceable to unbalanced body chemistry, resulting in acidity, toxemia, or mineral deficiency.

From the expert testimony adduced at the hearings, it is found that the ingredients of respondents' preparation are present in such small quantities as to be considered totally ineffective. Many of the ingredients present in the preparation are in no higher concentration than may be found in ordinary drinking water. Even if the system is deficient in some element or necessary ingredients, the amount of said element or ingredient in respondents' preparation is so minute as to render it ineffectual in supplying the deficiency. The only significant ingredients in respondents' preparation are iron and aluminum. The physiological effects of such quantities of aluminum as are contained in the preparation are negligible. The amount of iron that is contained in three teaspoonsful of the preparation, which is the prescribed dose per day, is equivalent to about one grain of iron per day. In certain deficiency diseases, varying dosages of iron may be prescribed.

PAR. 5. The above false and misleading statements and representations, made by respondents, as above set forth, in their advertising in newspapers, magazines, pamphlets, and other advertising literature, in offering for sale and selling "Biotone," had and now have the tendency and capacity to mislead and deceive a large portion of the purchasing public into the erroneous beliefs that all the said

Order

26 F. T. C.

representations are true and that said preparation possesses substantial therapeutic value.

As a direct consequence of the stated mistaken and erroneous beliefs as hereinbefore enumerated, a number of the purchasing public purchased a substantial volume of respondents' product, with the result that trade has been unfairly diverted to respondents from individuals, firms, and corporations likewise engaged in the business of selling other preparations designed and intended for similar usage, who truthfully advertise the efficacy of their products. As a result thereof, substantial injury has been done, and is being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents Rocky Mountain Laboratories, Inc., a corporation, and James W. Fitches, an individual, 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 amended complaint of the Commission, the answer of respondents, testimony and other evidence taken before Charles P. Vicini and Robert S. Hall, examiners of the Commission, theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, and brief in support of the complaint, respondents having filed no brief and having not requested oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondents Rocky Mountain Laboratories, Inc., a corporation, and James W. Fitches, an individual, their officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a pharmaceutical product now known as "Biotone" or any product containing the same or substantially the same ingredients, and possessing similar properties, sold under that name or any name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That said preparation is the natural solution for all health problems.

2. That the average individual is not getting the elements from his food supply necessary to maintain a normal chemical balance of the body, and that "Biotone" supplies these elements.

3. That the most common ailments have their origin in the digestive system, and that said preparation has any healing qualities that correct stomach and intestinal disorders.

4. That said preparation aids nature in its natural cleansing, building, and normalizing processes of the body, helps to neutralize acids in the body, combats and eliminates toxins from the body, or aids in building healthy tissues and the promotion of vigorous, healthy body functions.

5. That said preparation has any beneficial value whatsoever for the treatment of malnutrition, loss of appetite, lack of energy, languidness, depleted vitality, ulcers of the stomach, liver trouble, prostatitis, eczema, high blood pressure, acidity, toxemia, sour stomach, gastritis, and rheumatism, or similar diseases, ailments or conditions.

It is further ordered, That the respondents 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 this order.

IN THE MATTER OF

IRA W. MINTER AND CLAYTON A. MINTER, INDIVIDUALLY, AND TRADING AS MINTER BROTHERS AND DOUGLASS CANDY COMPANY

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

Docket 3138. Complaint, May 23, 1937—Decision, Mar. 30, 1938

Where a firm engaged in manufacture and sale of candy, including so-called "break and take," "draw," or "deal" merchandise, composed, among others, of (a) assortments of marbles, candy bars, fudge squares and 216-hole punchboards, concealed within various holes of which boards said marbles, in accordance with color thereof as disclosed by chance punches at a penny each, and with advisory legend on said boards displayed, entitled purchaser to marble without charge, to marble only, to marble and bar of candy, or to marble and fudge square, and (b) assortments of 200 penny pieces of chocolate-covered candy of uniform size and shape, enclosed, concealed brown or chocolate centers of some of which, as distinguished from white centers of majority, entitled chance purchaser, without further charge, to one of cream bars therewith, while chance purchaser of one of still smaller numbers of pink squares was similarly entitled to one of candy bars included, with purchaser of last piece similarly entitled, without further charge, to assortment's small package of candy—

Sold said assortments to dealers knowingly so assembled and packed that they could be displayed and used by retailers for distribution to purchasing public by lot or chance without alteration or rearrangement, in competition with many manufacturers who do not make and sell such "break and take," "draw," or "deal" assortments, but only "straight" merchandise, sales of which have materially decreased whenever and wherever said other goods have appeared in their markets, due to latter's gambling or lottery feature, and in competition with many who regard sale and distribution of such lottery candy as morally bad and as teaching and encouraging gambling among children, substantial purchasers and consumers of such candy, and as injurious to the candy industry, and therefore refuse to sell candy so packed that it can be resold to public by lot or chance;

With result of placing in hands of retail merchants who purchase, from them and from others employing same methods, such "break and take," "draw," or "deal" goods as more salable in view of consumer preference therefor because of gambling feature connected with sales thereof, means of violating the laws of the several States in sale of such candy by lot or chance and operation thereby of a lottery, gambling device, or gift enterprise, and of putting to a competitive disadvantage aforesaid competitors, and with effect of diverting thereby unfairly trade from said competitors to themselves and others using similar methods:

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