

IN THE MATTER OF
PYROTECHNIC INDUSTRIES, INC., 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 3309. Complaint, Jan. 25, 1938—Decision, Apr. 14, 1938

Where an association of fireworks manufacturers; and the members thereof, producers, together, of approximately 85 percent of the total production of commercial fireworks in the United States, theretofore in active and substantial competition with one another and with other manufacturers in making and seeking to make sales of fireworks in commerce between and among the several States, as were jobbers and retailers in sale of said products;

Entered into and carried out understandings and combinations with intent and effect of unlawfully restricting, suppressing, and eliminating competition in manufacture, jobbing, and retail of fireworks in commerce among and in the several States; and, in pursuance of said understandings, etc., and in furtherance thereof, and acting through and by means of said association, its officers and agents—

- (a) Agreed to fix and maintain, and fixed and maintained uniform prices and discounts in sale of fireworks to jobbers, and uniform prices and discounts at which jobbers should sell such products to retailers, and minimum retail prices thereof;
- (b) Agreed to designate, and designated concerns which should, and should not, be sold by such manufacturers as jobbers, and to compile and maintain, and compiled and maintained lists of concerns which should be, and were, recognized as chain stores allowed certain special discounts in addition to those granted other purchasers similarly situated, and to fix and maintain, and fixed and maintained special discounts to those concerns which purchased certain specified amounts of fireworks from combined member establishments;
- (c) Organized and held meetings of groups of fireworks jobbers in various parts of United States to devise means of asserting influence, and coercion and other means of inducing, requiring and coercing them to abide by said agreements and combinations, and effected and procured promises and agreements by various means from various jobbers throughout the United States, and from fireworks distributors' associations, to support and enforce aforesaid agreements, etc.; and
- (d) Agreed and attempted to maintain aforesaid understandings and combinations to unlawfully restrict, suppress, and eliminate competition in manufacture, jobbing, and retail sale of fireworks in United States, and agreed to refuse, and refused, to sell said products to certain concerns and thereby boycotted same and cut off or seriously impaired their supply of fireworks, and used and engaged in other acts and cooperative and concerted action and coercive methods and policies in promoting, establishing and carrying out aforesaid understandings, etc., through and by means of said association, its members, officers, and agents, for purpose of suppressing and preventing competition and restricting and restraining sale of fireworks in trade or commerce, as hereinabove set forth;

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With effect of unduly and unlawfully restricting and restraining such sale in trade and commerce among and in the several States, substantially enhancing and maintaining prices at artificial levels, and otherwise depriving public of benefits that would flow from free and normal competition among and between said members, and among and between jobbers and retailers of such products in commerce, and with effect of eliminating competition, and tendency and capacity to create monopoly in sale of said products:

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

Mr. Fletcher G. Cohn for the Commission.

Mr. Charles Henry Fleming, of Washington, D. C., for Pyrotechnic Industries, Inc.

Mr. Henry K. Heyman, of New York City, for Unexcelled Manufacturing Co., Inc.

Sherburne, Powers & Needham, of Boston, Mass., for National Fireworks, Inc., National Fireworks Distributing Co., Los Angeles Fireworks Co., Ltd. and Victory Fireworks & Specialty Co.

Nyburg, Goldman & Walter, of Baltimore, Md., for Triumph Fusee & Fireworks Co.

Mr. George E. Hall, of New Haven, Conn., for M. Backes' Sons, Inc.

Mr. Morris M. Schnitzer, of Newark, N. J., for Essex Specialty Co., Inc.

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 Pyrotechnic Industries, Inc., Unexcelled Manufacturing Company, Inc., National Fireworks, Inc., National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., Victory Fireworks & Specialty Company, Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., and Essex Specialty Company, Inc., 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. Respondent Pyrotechnic Industries, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its principal office located in the Investment Building, Washington, D. C. Said respondent is an association of fireworks manufacturers, with a membership composed of respondents Unexcelled Manufacturing Company, Inc.,

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Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., Essex Specialty Company, Inc., National Fireworks, Inc., National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., and Victory Fireworks & Specialty Company.

Respondent Unexcelled Manufacturing Company, Inc. is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located at 22 Park Place, New York, N. Y.; it is engaged in the manufacture and sale of commercial and display fireworks.

Respondent National Fireworks, Inc. is a corporation organized, existing, and doing business by virtue of the laws of the State of Massachusetts, with its principal place of business located at 60 North Washington Street, Boston, Mass.; it is engaged, among other activities, in the manufacture and sale of fireworks.

Respondent National Fireworks Distributing Company is a corporation organized, existing, and doing business by virtue of the laws of the State of Arizona, with its principal office and place of business located at 60 North Washington Street, Boston, Mass., and is a subsidiary of respondent National Fireworks, Inc.; it is engaged in the sale of fireworks manufactured by National Fireworks, Inc.

Respondent Los Angeles Fireworks Company, Ltd. is a corporation, organized, existing, and doing business by virtue of the laws of the State of California, with its principal office and place of business located at 60 North Washington Street, Boston, Mass., and is a subsidiary of National Fireworks, Inc.; it is engaged in the sale of fireworks manufactured by National Fireworks, Inc.

Respondent Victory Fireworks & Specialty Company is a corporation organized, existing, and doing business by virtue of the laws of the State of Maryland, with its principal office and place of business located at 60 North Washington Street, Boston, Mass., and is a subsidiary of National Fireworks, Inc.; it is engaged in the sale of fireworks manufactured by National Fireworks, Inc.

Respondent Triumph Fusee & Fireworks Company is a corporation organized, existing, and doing business by virtue of the laws of the State of Maryland, and with its principal office and place of business located at Elkton, Md.; it is engaged in the manufacture and sale of fireworks.

Respondent M. Backes' Sons, Inc. is a corporation organized, existing, and doing business by virtue of the laws of the State of Connecticut, with its principal office and place of business located at Wallingford, Conn.; it is engaged primarily in the manufacture and sale of fireworks.

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Respondent Essex Specialty Company, Inc. is a corporation organized, existing, and doing business by virtue of the laws of the State of New Jersey, with its principal office and place of business located in Berkley Heights, N. J.; it is engaged, among other activities, in the manufacture and sale of commercial fireworks.

PAR. 2. Respondents Unexcelled Manufacturing Company, Inc., Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., Essex Specialty Company, Inc., and National Fireworks, Inc., with its three subsidiaries, National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., and Victory Fireworks & Specialty Company, compose the entire membership of respondent Pyrotechnic Industries, Inc., and produce approximately 85 percent of the total production of commercial fireworks in the United States.

PAR. 3. The aforementioned respondents, Unexcelled Manufacturing Company, Inc., National Fireworks, Inc., National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., Victory Fireworks & Specialty Company, Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., Essex Specialty Company, Inc., hereinafter referred to as "members" of respondent Pyrotechnic Industries, Inc., hereinafter referred to as the "association," in the course and conduct of their businesses, have made, and are making, numerous shipments of fireworks to jobbers and other customers in States of the United States other than the states in which their respective manufacturing and distributing plants are located. In the course and conduct of the businesses of said respondent members, they have been, and are now, engaged in commerce between, among, in, and with the several States of the United States.

Before the adoption of the understandings, agreements, combinations, conspiracies, and practices hereinafter alleged, respondent members were in active and substantial competition with each other and with other manufacturers of fireworks in making, and seeking to make, sales of fireworks in commerce between, among, in and with the several States of the United States, and, but for the facts hereinafter alleged, such active and substantial competition would have continued to the present time. Also, prior to the adoption of said understandings, agreements, combinations, conspiracies and practices on the part of respondent members, acting through and by means of respondent association, its officers, representatives, and agents, jobbers of fireworks in the United States were in active and substantial competition with each other in the sale of same, as likewise were retailers of fireworks, with one another, in trade and commerce between, among, in and with the several States of the United States, and but

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for the facts hereinafter alleged, such active and substantial competition would have continued to the present time.

Respondent association was organized on the 29th day of January 1935, and beginning with the second meeting of said respondent association on April 12, 1935, respondent members, acting through and by means of respondent association, entered into and thereafter carried out understandings, agreements, combinations and conspiracies for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the manufacture, jobbing and retail sales of fireworks in trade and commerce between, among, in, and with the several States of the United States.

PAR. 4. Pursuant to said understandings, agreements, combinations and conspiracies and in furtherance thereof, said respondent members, acting through and by means of respondent association, its officers and agents, have done and performed, and still do and perform, among other acts and things, the following:

1. Agreed to fix and maintain and have fixed and maintained uniform prices in the sale of fireworks to jobbers of fireworks in the United States;

2. Agreed to fix and maintain, and have fixed and maintained, uniform discounts in the sale of fireworks by manufacturers to jobbers of fireworks in the United States;

3. Agreed to fix and maintain, and have fixed and maintained, uniform prices and discounts at which jobbers of fireworks should sell same to retailers in the United States;

4. Agreed to designate and have so designated what concerns should and should not be sold by manufacturers of fireworks as jobbers;

5. Organized and held meetings of groups of fireworks jobbers in various parts of the United States, according to the particular subdivisions of the United States in which they were situated, to devise means of asserting influence, pressure, coercion, and other means of inducing, requiring, and coercing said fireworks jobbers to abide by and adhere to the agreements, combinations, and conspiracies of respondent members;

6. Effected and procured promises and agreements from various jobbers of fireworks throughout the United States by diverse and various means, including fireworks distributors associations, to support, adhere to, and enforce said agreements, combinations and conspiracies of respondent members;

7. Agreed to maintain and have attempted to maintain the understandings, agreements, combinations, and conspiracies of said respondent members by means of varied and diverse methods of polic-

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ing manufacturers, jobbers, and retailers of fireworks in the United States;

8. Agreed to compile and maintain and have compiled and maintained lists of the concerns which should be, and are, recognized as chain stores which are allowed certain special discounts in addition to those granted other purchasers;

9. Agreed to fix and maintain and have fixed and maintained minimum retail prices of fireworks throughout the United States;

10. Agreed to refuse to sell and have refused to sell fireworks to certain concerns thus boycotting said concerns and cutting off or seriously impairing their supply of fireworks;

11. Agreed to fix and maintain and have fixed and maintained special discounts to those concerns which purchase certain specified amounts of fireworks from the combined establishments of respondent members;

12. Used and engaged and continue to use and engage in other acts, cooperative and concerted action, coercive methods and policies, in promoting, establishing, and carrying out said understandings, agreements, combinations, and conspiracies of said respondent members, acting through and by means of respondent association, its members, officers, and agents, for the purpose of suppressing and preventing competition and restricting and restraining the sale of fireworks in trade and commerce between, among, in and with the several States of the United States.

PAR. 5. Each of said respondent members acted in concert and in cooperation with one or more of the other respondent members, by means of and through respondent association, its officers, representatives, and agents, in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 6. Said understandings, agreements, combinations, and conspiracies and the things done thereunder and pursuant thereto and in furtherance thereof as hereinabove alleged have had and do have the effect of unduly and unlawfully restricting and restraining the sale of fireworks in trade and commerce between, among, in, and with the several States of the United States; of unduly and unlawfully restricting and restraining trade in said fireworks in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from free and normal competition among and between the member respondents, among and between jobbers and among and between retailers in the sale of fireworks in said commerce; of eliminating competition, with the tend-

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ency and capacity of creating monopoly, in the sale of fireworks, in said commerce.

Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof as above alleged 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 the 25th day of January, A. D. 1938, issued, and subsequently served, its complaint in this proceeding upon respondents, Pyrotechnic Industries, Inc., Unexcelled Manufacturing Company, Inc., National Fireworks, Inc., National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., Victory Fireworks & Specialty Company, Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., and Essex Specialty Company, Inc., 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, the respondents filed in the office of the Commission their answers admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the answers, briefs, and oral arguments of counsel having been waived, 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 Pyrotechnic Industries, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its principal office located in the Investment Building, Washington, D. C. Said respondent is an association of fireworks manufacturers, with a membership composed of respondents Unexcelled Manufacturing Company, Inc., Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., Essex Specialty Company, Inc., National Fireworks, Inc., National Fireworks Dis-

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tributing Company, Los Angeles Fireworks Company, Ltd., and Victory Fireworks & Specialty Company.

Respondent Unexcelled Manufacturing Company, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located at 22 Park Place, New York, N. Y.; it is engaged in the manufacture and sale of commercial and display fireworks.

Respondent National Fireworks, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Massachusetts, with its principal place of business located at 60 North Washington Street, Boston, Mass.; it is engaged, among other activities, in the manufacture and sale of fireworks.

Respondent National Fireworks Distributing Company is a corporation organized, existing, and doing business by virtue of the laws of the State of Arizona, with its principal office and place of business located at 60 North Washington Street, Boston, Mass., and is a subsidiary of respondent National Fireworks, Inc.; it is engaged in the sale of fireworks manufactured by National Fireworks, Inc.

Respondent Los Angeles Fireworks Company, Ltd., is a corporation, organized, existing, and doing business by virtue of the laws of the State of California, with its principal office and place of business located at 60 North Washington Street, Boston, Mass., and is a subsidiary of National Fireworks, Inc.; it is engaged in the sale of fireworks manufactured by National Fireworks, Inc.

Respondent Victory Fireworks & Specialty Company is a corporation organized, existing, and doing business by virtue of the laws of the State of Maryland, with its principal office and place of business located at 60 North Washington Street, Boston, Mass., and is a subsidiary of National Fireworks, Inc.; it is engaged in the sale of fireworks manufactured by National Fireworks, Inc.

Respondent Triumph Fusee & Fireworks Company is a corporation organized, existing, and doing business by virtue of the laws of the State of Maryland, and with its principal office and place of business located at Elkton, Md.; it is engaged in the manufacture and sale of fireworks.

Respondent M. Backes' Sons, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Connecticut, with its principal office and place of business located at Wallingford, Conn.; it is engaged primarily in the manufacture and sale of fireworks.

Respondent Essex Specialty Company, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of New Jersey, with its principal office and place of business located

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in Berkley Heights, N. J.; it is engaged, among other activities, in the manufacture and sale of commercial fireworks.

PAR. 2. Respondents Unexcelled Manufacturing Company, Inc., Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., Essex Specialty Company, Inc., and National Fireworks, Inc., with its three subsidiaries, National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., and Victory Fireworks & Specialty Company compose the entire membership of respondent Pyrotechnic Industries, Inc., and produce approximately 85 percent of the total production of commercial fireworks in the United States.

PAR. 3. The aforementioned respondents, Unexcelled Manufacturing Company, Inc., National Fireworks, Inc., National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., Victory Fireworks & Specialty Company, Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., and Essex Specialty Company, Inc., hereinafter referred to as "members" of respondent Pyrotechnic Industries, Inc., hereinafter referred to as the "association," in the course and conduct of their businesses, have made, and are making numerous shipments of fireworks to jobbers and other customers in States of the United States other than the States in which their respective manufacturing and distributing plants are located. In the course and conduct of the businesses of said respondent members, they have been, and are now, engaged in commerce between, among, in, and with the several States of the United States.

Before the adoption of the understandings, agreements, combinations, and practices hereinafter alleged, respondent members were in active and substantial competition with each other and with other manufacturers of fireworks in making, and seeking to make, sales of fireworks in commerce between, among, in, and with the several States of the United States, and, but for the facts hereinafter alleged, such active and substantial competition would have continued to the date of discontinuance of such practices, as hereinafter found in paragraph 5. Also, prior to the adoption of said understandings, agreements, combinations, and practices on the part of respondent members, acting through and by means of respondent association, its officers, representatives, and agents, jobbers of fireworks in the United States were in active and substantial competition with each other in the sale of same, as likewise were retailers of fireworks, with one another, in trade and commerce between, among, in and with the several States of the United States, and but for the facts hereinafter alleged, such active and substantial competition would have continued to the date of discontinuance of such practices, as hereinafter found in paragraph 5.

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Respondent association was organized on the 29th day of January 1935, and beginning with the second meeting of said respondent association on April 12, 1935, respondent members, acting through and by means of respondent association, entered into and thereafter carried out understandings, agreements, and combinations for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the manufacture, jobbing and retail sales of fireworks in trade and commerce between, among, in, and with the several States of the United States.

PAR. 4. Pursuant to said understandings, agreements, and combinations and in furtherance thereof, said respondent members, acting through and by means of respondent association, its officers and agents, have done and performed, among other acts and things, the following:

1. Agreed to fix and maintain, and have fixed and maintained, uniform prices in the sale of fireworks to jobbers of fireworks in the United States; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

2. Agreed to fix and maintain, and have fixed and maintained, uniform discounts in the sale of fireworks by manufacturers to jobbers of fireworks in the United States; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

3. Agreed to fix and maintain, and have fixed and maintained, uniform prices and discounts at which jobbers of fireworks should sell same to retailers in the United States; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

4. Agreed to designate and have so designated what concerns should and should not be sold by manufacturers of fireworks as jobbers; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

5. Organized and held meetings of groups of fireworks jobbers in various parts of the United States, according to the particular subdivisions of the United States in which they were situated, to devise means of asserting influence, pressure, coercion, and other means of inducing, requiring, and coercing said fireworks jobbers to abide by and adhere to the agreements and combinations of respondent members; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

6. Effected and procured promises and agreements from various jobbers of fireworks throughout the United States by diverse and various means, including fireworks distributors' associations, to support, adhere to, and enforce said agreements and combinations of respondent members; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

7. Agreed to maintain and have attempted to maintain the understandings, agreements, and combinations of said respondent members to unlawfully restrict, restrain, monopolize, suppress, and eliminate competition in the manufacture, jobbing and retail sale of fireworks in the United States; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

8. Agreed to compile and maintain, and have compiled and maintained, lists of the concerns which should be, and are, recognized as chain stores which are allowed certain special discounts in addition to those granted other purchasers similarly situated; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

9. Agreed to fix and maintain, and have fixed and maintained, minimum retail prices of fireworks throughout the United States; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

10. Agreed to refuse to sell, and have refused to sell, fireworks to certain concerns, thus boycotting said concerns and cutting off or seriously impairing their supply of fireworks; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

11. Agreed to fix and maintain, and have fixed and maintained, special discounts to those concerns which purchase certain specified amounts of fireworks from the combined establishments of respondent members; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

12. Used and engaged in other acts, cooperative and concerted action, coercive methods and policies, in promoting, establishing and carrying out said understandings, agreements, and combinations of said respondent members, acting through and by means of respondent association, its members, officers, and agents, for the purpose of suppressing and preventing competition and restricting and restraining

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the sale of fireworks in trade and commerce between, among, in, and with the several States of the United States; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

PAR. 5. Subsequent to the completion of the investigation by the Commission, the respondent members did, on or about December 6, 1936, through a resolution adopted at a regular meeting of the Association, go on record as discontinuing the acts and claims alleged heretofore in paragraph 4.

PAR. 6. Each of said respondent members acted in concert and in cooperation with one or more of the other respondent members, by means of and through respondent association, its officers, representatives, and agents, in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, and combinations.

PAR. 7. The said understandings, agreements and combinations and the things done thereunder and pursuant thereto and in furtherance thereof as hereinabove alleged have had the effect of unduly and unlawfully restricting and restraining the sale of fireworks in trade and commerce between, among, in, and with the several States of the United States; of unduly and unlawfully restricting and restraining trade in said fireworks in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from free and normal competition among and between the member respondents, among and between jobbers and among and between retailers in the sale of fireworks in said commerce; of eliminating competition, with the tendency and capacity of creating monopoly, in the sale of fireworks, in said commerce.

CONCLUSION

The aforesaid acts and practices of the respondents Pyrotechnic Industries, Inc., Unexcelled Manufacturing Company, Inc., National Fireworks, Inc., National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., Victory Fireworks & Specialty Company, Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., and Essex Specialty Company, Inc., 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."

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers filed herein on March 8, 1938, by respondents admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said 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 all the respondents, Pyrotechnic Industries, Inc., Unexcelled Manufacturing Company, Inc., National Fireworks, Inc., National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., Victory Fireworks & Specialty Company, Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., and Essex Specialty Company, Inc., their respective officers, representatives, agents, and employees, directly or indirectly or through and by means of respondent association, its officers, representatives, and agents, in connection with the offering for sale, sale, and distribution of fireworks in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Agreeing to fix and maintain or, pursuant to such an agreement, fixing and maintaining uniform prices in the sale of fireworks to jobbers of fireworks;

2. Agreeing to fix and maintain or, pursuant to such an agreement, fixing and maintaining uniform discounts in the sale of fireworks by manufacturers to jobbers of fireworks;

3. Agreeing to fix and maintain or, pursuant to such an agreement, fixing and maintaining uniform prices and discounts at which jobbers of fireworks should sell same to retailers;

4. Agreeing to designate or, pursuant to such an agreement, designating what concerns should and should not be sold by manufacturers of fireworks as jobbers;

5. Organizing or holding meetings of groups of fireworks jobbers to devise means of asserting influence, pressure, coercion, and other means of inducing, requiring, and coercing said firework jobbers to abide by and adhere to any understandings, agreements, or combinations by and among said respondents for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the manufacture, jobbing, and retail sales of fireworks;

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6. Effecting or procuring promises or agreements, by diverse and various means, from various jobbers throughout the United States, including fireworks distributors' associations, to support, adhere to and enforce understandings, agreements and combinations entered into by and among the respondents for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the manufacture, jobbing, and retail sales of fireworks;
7. Agreeing to maintain or, pursuant to such an agreement, maintaining or attempting to maintain the understandings, agreements, and combinations of respondents to unlawfully restrict, restrain, monopolize, suppress, and eliminate competition in the manufacture, jobbing, and retail sales of fireworks in the United States;
8. Agreeing to compile and maintain or, pursuant to such an agreement, compiling and maintaining lists of concerns which should be, or are, recognized as chain stores which are allowed certain special discounts not granted to other purchasers who are similarly situated;
9. Agreeing to fix and maintain or, pursuant to such an agreement, fixing and maintaining minimum retail prices of fireworks throughout the United States;
10. Agreeing, through any combination of two or more of said respondents, to refuse to sell, or, pursuant to such an agreement, refusing to sell, fireworks to any prospective purchaser;
11. Agreeing to fix and maintain or, pursuant to such an agreement, fixing and maintaining special discounts to those concerns which purchase certain specified amounts of fireworks from the combined establishments of respondent members of said association;
12. Using or engaging in other acts, cooperative and concerted action, coercive methods and policies, in promoting, establishing and carrying out any and all understandings, agreements, and combinations of respondent members for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the manufacture, jobbing, and retail sale of fireworks by said respondent members acting through and by means of respondent association, its members, representatives, officers, and agents.

It is further ordered, That the respondents shall, within 60 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
LOOSE-WILES BISCUIT COMPANY

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

Docket 3306. Complaint, Mar. 12, 1938¹—Decision, Apr. 18, 1938

Where a corporation engaged in manufacture and sale of candy and bakery products, including—

- (a) Assortments composed of number of small bars of candy and number of large bars, together with push cards for use in sale of candy to ultimate purchaser under plan by which purchaser of chance secured, for 5 cents paid, one of smaller bars, or one of larger bars, value of which exceeded said sum, depending upon chance selection of certain numbers, in accordance with board's explanatory statement, and by which purchaser making last push was entitled to one of smaller pieces,
- (b) Assortments composed of number of boxes of assorted candy and additional article of merchandise, together with punchboard for use in sale of said candy, etc., under plan by which purchaser of chance received, for 5 cents paid, one of boxes of candy or nothing other than privilege of making selection, depending upon chance punching of one of certain numbers, in accordance with board's explanatory statement, or punching of last number in each of 12 sections into which board was divided, or punching of last number on entire board, through which such purchaser received both candy and merchandise; and
- (c) Assortments composed of number of packages of assorted chocolate and vanilla wafers and other bakery products, together with punchboard for use in sale of aforesaid products, under plan by which, and in accordance with board's explanatory statements, purchasers punching by chance certain numbers paid nothing for punch or amounts ranging from 1 to 5 cents, in accordance with particular number disclosed, and secured, in accordance with chance selection of certain preannounced numbers, as above set forth, or purchase of last punch in each of 12 sections into which board was divided, one of aforesaid packages of wafers, value of which exceeded aforesaid various amounts, or, failing such selection or purchase, secured nothing other than privilege of such chance selection or punch—

Sold said aforesaid and other assortments, involving use of similar plans or schemes, to wholesalers, jobbers, and retailers for display and sale by retail dealers to purchasing public in accordance with aforesaid sales plans, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of its products, in accordance therewith and in violation of long-standing public policy of the common law and criminal statutes and that of the United States Government; in competition with many who make and sell such products and are unwilling to offer and sell same, thus packed and assembled or otherwise arranged and packed for sale to purchasing public so as to involve game of chance or any other method of sale contrary to public policy, and refrain therefrom;

¹ Amended and supplemental.

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With tendency unduly to hinder competition or create monopoly through tendency and capacity to exclude from candy and bakery products trade competitors who do not adopt and use same or equivalent or similar methods, involving same or equivalent or similar element of chance or lottery scheme, and with result that many dealers in and ultimate purchasers of such products, attracted by said methods and manner of packing same and element of chance involved in sale thereof as above set forth, were thereby induced to buy said products, thus packed and sold by it, in preference to those offered and sold by competitors who do not use same or equivalent methods, and with tendency and capacity to induce such preferential purchasing, and, by reason of said game of chance, to divert unfairly to it trade and custom from its aforesaid competitors, to exclude from trade involved all competitors who are unwilling to and do not use same or equivalent methods because unlawful, to lessen competition in said trade and create a monopoly thereof in it and such other distributors of said products as use same or equivalent methods, and deprive purchasing public of benefits of free competition therein, and eliminate therefrom all actual competitors and exclude therefrom all potential competitors who do not adopt and use said or equivalent methods:

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

Mr. P. C. Kolinski for the Commission.

Mr. W. A. Ferguson, of Long Island, N. Y., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit, on January 19, 1938, issue its complaint herein charging that respondent herein was and had been using unfair methods of competition in interstate 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"; and

Whereas, This Commission having reason to believe that the respondent herein is engaged in business other than as described in said complaint and 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 said complaint, 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 Loose-Wiles Biscuit Company, a corporation, 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:

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PARAGRAPH 1. Respondent Loose-Wiles Biscuit Company is a corporation organized and doing business under the laws of the State of Missouri, with its principal place of business at 811 Commerce Building, Kansas City, Mo. Respondent also maintains places of business in various other cities and States one of which said places of business is located at Denver, Colo. Respondent is now and for more than 1 year last past has been engaged in the manufacture of candy and bakery products and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused its said products when sold to be transported from its principal place of business in Kansas City, Mo., and from its place of business in Denver, Colo., to purchasers thereof in the States of Missouri and Colorado and in various other States of the United States, at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondent in such candy and bakery products between and among the various States of the United States. In the course and conduct of said business respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy and bakery products 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 dealers, jobbers, and retail dealers certain assortments of candy and bakery products so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all-inclusive of the various assortments, nor does it include all of the details of the several plans which respondent has been or is using in the distribution of candy and bakery products by lot or chance:

(a) One of said assortments is composed of a number of small bars of candy and a number of large bars of candy, together with a device commonly called a push card, and the assortment is distributed to the purchasing public in the following manner:

Sales are 5 cents each and each purchaser is entitled to one push from said card. When a push is made from said card a number is disclosed. The numbers begin with 1 and continue to the number of pushes there are on the card, but the numbers are not arranged in numerical sequence. The card bears statements informing prospective purchasers that all numbers, with the exception of 5, 10, 15, 20, 25, and the last number pushed, entitle the purchasers thereof to a 5-cent bar of candy, being one of the smaller bars of the assortment,

and that the aforementioned numbers entitle the purchasers thereof to a large bar of candy. The large bars of candy are worth more than 5 cents each and the person who obtains one of the numbers calling for a large bar of candy receives the same without additional charge. The numbers on said cards are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular push separated from the card. The aforesaid purchasers of said candy who procure one of the specified numbers, thus procure the said large bars of candy wholly by lot or chance.

(b) Another assortment consists of a number of boxes of assorted candy and an additional article of merchandise, together with a device commonly called a punchboard. Said boxes of candy are distributed to the consuming public by means of said punchboard in the following manner:

The sales are 5 cents each and when a punch is made from the 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 prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a box of candy. The punches on the board are arranged in 12 sections and the purchaser of the last punch in each section receives a pound box of candy and the purchaser of the last punch on the board receives both a pound box of candy and an additional article of merchandise. 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 the last number 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, or a box of candy and an additional article of merchandise, receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy are thus distributed to purchasers of punches from the board wholly by lot or chance.

(c) Another assortment consists of a number of packages of assorted chocolate and vanilla wafers and other bakery products, together with a device commonly called a punchboard. Said wafers are distributed to the consuming public by means of said punchboard in the following manner:

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Purchasers punching numbers ending in "0" receive the same without charge. For certain other numbers the purchasers thereof pay 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents. When a punch is made from the 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 statements or legends informing prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a $7\frac{1}{2}$ -ounce package of said wafers. The punches on the board are arranged in 12 sections and the purchaser of the last punch in each section receives a $7\frac{1}{2}$ -ounce package of wafers. A purchaser who does not qualify by obtaining one of the numbers calling for a package of wafers or by punching the last number in a section receives nothing for his money other than the privilege of punching a number from the board. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The retail value of the said packages of wafers is greater than any of the designated prices of said punches. The packages of wafers are thus distributed to the purchasers of said punches from the board wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's said candy and bakery products, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, and said sales plans have the tendency and capacity to induce purchasers thereof to purchase respondent's said products in preference to candy and bakery products offered for sale and sold by its competitors.

PAR. 4. The sale of said candy and bakery products to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to secure a larger piece of candy, or box of candy, or a package of bakery products. The use by respondent of said methods in the sale of candy and bakery products and the sale of same 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 respondent 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 candy and bakery products trade competitors who do not adopt and use the same

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methods or equivalent or similar methods involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy and bakery products in competition with the respondent as above alleged are unwilling to offer for sale or sell candy and bakery products so packed and assembled as above described or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, candy and bakery products are attracted by respondent's said methods and manner of packing said candy and bakery products and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase said candy and bakery products so packed and sold by respondent in preference to candy and bakery products offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent has a 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 equivalent methods, to exclude from said candy and bakery products 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 candy and bakery products trade, to tend to create a monopoly of said candy and bakery products trade in respondent and such other distributors of candy and bakery products as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy and bakery products trade. The use of said methods by respondent has a tendency and capacity to eliminate from said 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 respondent are all to the injury and prejudice of the public and of respondent's competitors as hereinabove alleged, 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 19, 1938, issued and there-

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after served its complaint in this proceeding upon the respondent, Loose-Wiles Biscuit Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On March 12, 1938, the Commission issued its amended and supplemental complaint, to which the respondent filed in the office of the Commission an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence, and all other intervening procedure. Thereafter this proceeding regularly came on for final hearing before the Commission on the said amended and supplemental complaint and answer, 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 Loose-Wiles Biscuit Company, is a corporation organized and doing business under the laws of the State of Missouri, with its principal place of business at 811 Commerce Building, Kansas City, Mo. Respondent also maintains places of business in various other cities and states, one of which said places of business is located at Denver, Colo. Respondent is now, and for more than one year last past has been, engaged in the manufacture of candy and bakery products and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers. Respondent causes, and has caused, its said products when sold to be transported from its principal place of business in Kansas City, Mo., and from its place of business in Denver, Colo., to purchasers thereof in the States of Missouri and Colorado and in various other States of the United States, at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondent in such candy and bakery products between and among the various States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy and bakery products 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 dealers, jobbers and retail dealers certain assortments of candy and bakery products so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said assortments are hereinafter described for the pur-

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pose of showing the methods used by respondent, but this list is not all-inclusive of the various assortments, nor does it include all of the details of the several plans which respondent has been or is using in the distribution of candy and bakery products by lot or chance:

(a) One of said assortments is composed of a number of small bars of candy and a number of large bars of candy, together with a device commonly called a push card, and the assortment is distributed to the purchasing public in the following manner:

Sales are 5 cents each and each purchaser is entitled to one push from said card. When a push is made from said card a number is disclosed. The numbers begin with one and continue to the number of pushes there are on the card, but the numbers are not arranged in numerical sequence. The card bears statements informing prospective purchasers that all numbers, with the exception of 5, 10, 15, 20, 25 and the last number pushed, entitle the purchasers thereof to a five cent bar of candy, being one of the smaller bars of the assortment, and that the aforementioned numbers entitle the purchasers thereof to a large bar of candy. The large bars of candy are worth more than 5 cents each and the person who obtains one of the numbers calling for a large bar of candy receives the same without additional charge. The numbers on said cards are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular push separated from the card. The aforesaid purchasers of said candy who procure one of the specified numbers, thus procure the said large bars of candy wholly by lot or chance.

(b) Another assortment consists of a number of boxes of assorted candy and an additional article of merchandise, together with a device commonly called a punchboard. Said boxes of candy are distributed to the consuming public by means of said punch board in the following manner:

The sales are 5 cents each and when a punch is made from the board a number 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 prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a box of candy. The punches on the board are arranged in 12 sections and the purchaser of the last punch in each section receives a pound box of candy and the purchaser of the last punch on the board receives both a pound box of candy and an additional article of merchandise. 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

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in one of the sections, or the last number 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, or a box of candy and an additional article of merchandise, receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy are thus distributed to purchasers of punches from the board wholly by lot or chance.

(c) Another assortment consists of a number of packages of assorted chocolate and vanilla wafers and other bakery products, together with a device commonly called a punchboard. Said wafers are distributed to the consuming public by means of said punchboard in the following manner:

Purchasers punching numbers ending in "0" receive the same without charge. For certain other numbers the purchasers thereof pay 1 cent, 2 cents, 3 cents, 4 cents or 5 cents. When a punch is made from the board a number 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 statements or legends informing prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a 7½-ounce package of said wafers. The punches on the board are arranged in twelve sections and the purchaser of the last punch in each section receives a 7½-ounce package of wafers. A purchaser who does not qualify by obtaining one of the numbers calling for a package of wafers or by punching the last number in a section receives nothing for his money other than the privilege of punching a number from the board. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The retail value of the said packages of wafers is greater than any of the designated prices of said punches. The packages of wafers are thus distributed to the purchasers of said punches from the board wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's said candy and bakery products, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove described, and said sales plans have the tendency and capacity to induce purchasers thereof to purchase

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respondent's said products in preference to candy and bakery products offered for sale and sold by its competitors.

PAR. 4. The sale of said candy and bakery products to the purchasing public in the manner above found involves a game of chance or the sale of a chance to secure a larger piece of candy, or box of candy, or a package of bakery products. The use by respondent of said methods in the sale of candy and bakery products and the sale of same 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 respondent 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 candy and bakery products trade competitors who do not adopt and use the same methods or equivalent or similar methods involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy and bakery products in competition with the respondent, as above found, are unwilling to offer for sale or sell candy and bakery products so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy and such competitors refrain therefrom.

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

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The use of said methods by respondent has a tendency and capacity to eliminate from said 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 methods, acts and practices of respondent, Loose-Wiles Biscuit Company, a corporation, are all to the injury and prejudice of the public and of respondent's competitors, as hereinabove found, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission and the answer of the respondent, Loose-Wiles Biscuit Company, a corporation, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Loose-Wiles Biscuit Company, a corporation, its officers, agents, representatives, and employees, in connection with the offering for sale, sale and distribution of candies and bakery products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Selling and distributing candies or bakery products so packed and assembled that sales of such candies or bakery products 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 dealers, assortments of candies or bakery products 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 to the public of such candies or bakery products contained in said assortments;

3. Supplying to or placing in the hands of dealers, assortments of candies or bakery products, together with a punchboard, push or pull card, or other lottery device, for use, or which may be used, in distributing or selling such candies or bakery products to the public, at retail;

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4. Supplying to or placing in the hands of dealers, a punchboard, push or pull card, or other lottery device, either with assortments of candies or bakery products, or separately, which punchboard, push or pull card, or other lottery device, is to be used, or may be used, in distributing or selling such candies or bakery products to the public, or which punchboard, push or pull card, or other lottery device, bears legends or statements informing the purchasing public that the candies or bakery products contained in said assortments are being sold to the public by lot or chance in accordance with a sales plan which constitute a lottery, gaming device, or gift enterprise.

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

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IN THE MATTER OF
THE E. R. PAGE COMPANY, INC.

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

Docket 3334. Complaint, Feb. 12, 1938—Decision, Apr. 18, 1938

Where a corporation engaged in manufacture, sale, and distribution of an internal and external treatment for piles; in offering same through letters, circulars, leaflets, advertisements in newspapers, and periodicals, and otherwise—

Represented that said treatments or remedies were competent and effective for said ailment and that use thereof, as directed, would end suffering and pains incident thereto and remove or eliminate causes thereof and heal and cure same, facts being that while said preparations would temporarily remove pain and other conditions attendant upon said ailment in some cases thereof, they would not end such suffering or pain nor remove or eliminate cause or causes of said condition, nor act as permanent remedy therefor;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that said representations and implications were true, and that said preparations would do more than temporarily remove pain and other conditions attendant upon said condition, and end tortures and pains incident thereto and remove cause of said ailment and cure same, and of causing substantial portion of purchasing public, because of such erroneous and mistaken beliefs, to buy said products or preparations, and of thereby diverting unfairly to it substantial trade from its competitors, who truthfully represent their products and preparations:

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

Mr. Fletcher G. Cohn for the Commission.

Nash & Donnelly, of Chicago, Ill., 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 The E. R. Page Company, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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, The E. R. Page Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of busi-