

IN THE MATTER OF
THE TAREX COMPANY

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

Docket 2925. Complaint, Sept. 21, 1936—Decision, June 2, 1938

Where a corporation engaged in sale and distribution of pharmaceutical preparations or salves, recommended and sold for treatment and cure of eczema, psoriasis, and other skin ailments under three different formulas, known as "Tarex No. 1," "Tarex No. 2," and "Tarex No. 3"; in advertisements thereof and testimonial letters issued, published, and circulated to and among the general public in various periodicals and publications and in other forms of printed matter—

Represented to prospective purchasers and to the public generally that use of said "Tarex" in its various forms constituted an effective remedy or cure for all cases of eczema, psoriasis, and other disorders and diseases of the skin, such as lesions, pimples, blisters, etc., irrespective of form of particular disorder or disease or cause or condition thereof;

The facts being that, in many instances, skin disorders and blemishes are the external manifestations of some internal malfunction or disorder, there is no one prescription that can be used in the treatment of all skin diseases, and that, to effect a cure, it is first necessary to discover cause of internal systemic condition and direct treatment thereto, and that eczema, constituting from 20 percent to 40 percent of all skin ailments and requiring, in its variations, specific and different treatments, is, in most instances, found to be an external manifestation of some internal intoxication, frequently found in the gastro-intestinal tract, and it is necessary, in many instances, to use methods and ingredients other than those provided by said preparations in order to relieve or remove such basic causes, and said preparations or formulas, long known to and used by medical profession, either singly or combined, do not constitute a competent or adequate remedy for treatment and cure of all types or cases of eczema, or of psoriasis, one of most difficult diseases, or for other forms of disorders and diseases of the skin, though possibly efficacious as palliative in some mild cases, and in treatment of some types of eczema, psoriasis and other skin disorders not caused by systemic or metabolic disorder;

With effect of misleading and deceiving purchasers and prospective purchasers of said products into erroneous and mistaken belief that they were effective in treatment and cure of all types of cases of eczema or psoriasis in all stages, and in treatment and cure of all known marks of skin ailments, such as lesions, etc., irrespective of form of particular disorder or disease or cause or condition thereof, and into purchase of said products in such erroneous beliefs, and of thereby diverting unfairly to it trade from competitors, including distributors of like and similar products, and those designed and sold for similar usage and who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products, and do not advertise and otherwise represent that such products have merit or therapeutic value which they do not possess:

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

Before *Mr. Robert S. Hall* and *Mr. Charles P. Vicini*, trial examiners.

Mr. Joseph C. Fehr, *Mr. Reuben J. Martin*, and *Mr. Allen C. Phelps* for the Commission.

Mr. Daniel Dougherty, of Los Angeles, Calif., 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 Tarex Co., 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 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, The Tarex Co., is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business located in Santa Monica, in the State of California. Respondent for more than 1 year last past has been, and still is, engaged in the manufacture of pharmaceutical preparations for the treatment and cure of eczema and psoriasis and other skin ailments, and in offering said products for sale and selling the same in commerce between the State of California and the several States of the United States and in the District of Columbia. When said products are sold, respondent transports or causes the same to be transported from its place of business in the State of California to the purchasers thereof located in States of the United States other than the State of California and in the District of Columbia. There has been for more than 1 year last past, and still is, a constant current of trade and commerce in said products so manufactured by respondent, between and among the various States of the United States and in the District of Columbia. Respondent is now and for more than 1 year last past has been in substantial competition with other corporations, and with individuals, partnerships, and firms engaged in the manufacture and compounding of like and similar products and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

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Respondent offers its said products to the purchasing public under three different formulas. Tarex No. 1 and Tarex No. 3 are sold and represented to the purchasing public as remedies for the treatment and cure of eczema in all stages. Tarex No. 2 is sold and represented to the purchasing public as a remedy for the treatment and cure of Psoriasis in all stages.

PAR. 2. In the course and conduct of its business, as aforesaid, the respondent, in soliciting the sale of and selling its products and for the purpose of creating a demand upon the part of the consuming public for said products now causes and for more than one year last past has caused advertisements and testimonial letters to be issued, published, and circulated to and among the general public of the United States in various periodicals and publications and in other forms of printed matter and in other ways. The respondent makes and has made to the general public many other unfair, false and misleading statements with reference to the alleged therapeutic value of said products and their effect upon the users thereof, a portion of which are as follows:

Eczema—Psoriasis quickly cleared.

Acts quickly to relieve and clear up blemishes.

* * * send for a Tarex Treatment No. 2, for Psoriasis * * * You will be amazed how quickly this treatment acts to clear up the unsightly scales and blemishes * * *

No matter how long you have suffered, or how bad your case may be, I urge you by all means to use Tarex No. 2.

* * * No matter what you have used without success in the past or how long you have suffered with Eczema or kindred diseases, I say to you that Tarex No. 2 is not just another treatment. This is evidenced by the scores of Psoriasis sufferers who have used this particular treatment with astounding success.

* * * Skin specialists know that so-called cure-alls cannot successfully treat all skin ailments, therefore we have prepared each form of Tarex to treat a specific disorder.

* * * Tarex No. 2 is a specialized treatment for Psoriasis only. Tarex No. 1 is another famous formula developed especially for Eczema. These effective preparations can be obtained only from The Tarex Company, Sole Distributors, Santa Monica, California.

* * * it is remarkably effective in cases which have lasted even for years, such as Weeping Eczema, Salt Rheum, Tetter with pus, and Eczema which often is seen with varicose veins being raw, itchy and red with scales and scabs.

Tarex may be applied to the most sensitive skins or affected areas as it contains no harmful ingredients.

Tarex for Eczema. Especially recommended for advanced and chronic cases.

Important. The important point is to keep Tarex on the affected area so it can do its work. Relief from itching can usually be expected immediately. When Tarex is used according to directions, it exhibits an almost magical effect

in severe cases of eczema, returning most of them to a normal, healthy condition in a very short time.

Eczema and varicose veins * * * certain eczematous conditions among older people * * * called Hemastatic Eczema * * * can expect remarkable results from the Tarex treatment. Severe cases have responded to Tarex in a short time.

PAR. 3. The statements and representations set forth in paragraph 2 hereof, have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's products into the erroneous and mistaken beliefs that:

(a) The use of Tarex No. 1, and Tarex No. 3, are effective treatments and cures for eczema.

(b) The use of Tarex No. 2, is an effective treatment and cure for Psoriasis.

(c) All three forms of Tarex are effective in the treatment and cure of all the known marks of skin ailments, such as lesions, pimples, blisters, scales, scabs, cuts, fissures, redness, wetness or dryness.

Whereas, in truth and in fact the formulas of respondent's said products, either singly or combined, do not and will not constitute a competent or adequate remedy for the treatment and cure of eczema, psoriasis and other forms of diseases and ailments of the skin. Respondent's said products do not cure users thereof of eczema, psoriasis, and other diseases and ailments of the skin.

Further, the number of users and endorsers of respondent's said products is greatly exaggerated. In truth and in fact, the representations made by the respondent that its said products when used will cure all varieties of eczema and psoriasis and other ailments and diseases of the skin in all stages are grossly exaggerated, false, misleading, and untrue as said products will not accomplish in all cases the results claimed for them.

PAR. 4. There are among the competitors of the respondent in interstate commerce manufacturers of like and similar products who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products and who do not advertise and otherwise represent that such products have merit or therapeutic value which they do not have.

PAR. 5. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous beliefs described in paragraph 3 hereof and into the purchase of respondent's products in such beliefs. Thereby trade is unfairly diverted to respondent from respondent's competitors in interstate commerce referred to in paragraph 4 and as a consequence thereof substantial injury is done by respondent to competition in interstate commerce.

PAR. 6. Said acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair

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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 the Federal Trade Commission Act, the Federal Trade Commission, on September 21, 1936, issued and served its complaint in this proceeding upon respondent, The Tarex Co., a corporation charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin and Allen C. Phelps, attorneys for the Commission, and in opposition to the allegations of the complaint by Daniel Dougherty, attorney for the respondent, before Charles P. Vicini, an Examiner of the Commission theretofore duly designated by it; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint; the answer thereto, testimony and evidence and brief of counsel for the Commission (respondent having filed no brief and not having requested oral argument); and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Tarex Co., is a corporation existing and doing business under and by virtue of the laws of the State of California, and was organized in 1935. Its principal office and place of business is located at 847 South Sycamore Avenue, in the city of Los Angeles, in the State of California. Since its incorporation, respondent has been, and still is, engaged in the sale and distribution of pharmaceutical preparations in the form of salves recommended and sold for the treatment and cure of eczema, psoriasis, and other skin ailments. When sold, respondent transports or causes said products to be transported from its place of business in Los Angeles, Calif., to the purchasers thereof located in other States of the United States, in the District of Columbia, and in Alaska. There has been for more than 1 year last past, and still is, a course of trade in said products so distributed and sold by respondent in commerce be-

tween and among the various States of the United States, in the District of Columbia, and in Alaska. Respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations, with firms, partnerships, and individuals engaged in the manufacture and compounding of like and similar products and in the sale thereof in commerce between and among the various States of the United States, in the District of Columbia, and in Alaska.

Respondent offers its said products, which are sold and represented as remedies for human ailments, to the purchasing public under three different formulas, known as "Tarex No. 1", "Tarex No. 2" and "Tarex No. 3." Said preparations are packaged to sell at \$3.00 for 2½ ounces, the only size package sold. Some ⅛ ounce and ¼ ounce packages are from time to time distributed as free samples. Tarex No. 1 and Tarex No. 3 are sold and represented to the purchasing public as remedies for the treatment and cure of eczema in all stages. Tarex No. 2 is sold and represented to the purchasing public as a remedy for the treatment and cure of psoriasis in all stages.

Said preparations are manufactured for respondent by the Brunswick Drug Co. of Los Angeles, Calif., from formulas submitted to said drug company by the respondent. Tarex No. 1 contains and is made up of the following ingredients: Crude coal tar, corn starch, zinc oxide, and yellow petrolata. Tarex No. 2 contains and is made up of the following ingredients: Ammoniated mercury, 7½%; salicylic acid, 5%; and equal parts of lanoline hydrous and petrolata. Tarex No. 3 contains and is made up of the following ingredients: Sulphur precipitate, 2%; salicylic acid, 2%; and equal parts of cold cream and lanoline hydrous.

PAR. 2. In the course and conduct of its business, as aforesaid the respondent, in soliciting the sale of and selling its products and for the purpose of creating a demand upon the part of the consuming public for said products, now causes and for more than 1 year last past has caused, advertisements and testimonial letters to be issued, published and circulated to and among the general public of the United States in various periodicals and publications and in other forms of printed matter. In said advertisements respondent makes and has made to the general public many unfair, false, and misleading statements with reference to the alleged therapeutic value of its said products and their effect upon the users thereof, a portion of which are as follows:

Eczema—Psoriasis quickly cleared.

Acts quickly to relieve and clear up blemishes.

* * * send for a Tarex Treatment No. 2, for Psoriasis * * * You will

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be amazed how quickly this treatment acts to clear up the unsightly scales and blemishes * * *

No matter how long you have suffered, or how bad your case may be, I urge you by all means to use Tarex No. 2.

* * * No matter what you have used without success in the past or how long you have suffered with Eczema or kindred diseases, I say to you that Tarex No. 2 is not just another treatment. This is evidenced by the scores of Psoriasis sufferers who have used this particular treatment with astounding success.

* * * Skin specialists know that so-called cure-alls cannot successfully treat all skin ailments, therefore we have prepared each form of Tarex to treat a specific disorder.

* * * Tarex No. 2 is a specialized treatment for Psoriasis only. Tarex No. 1 is another famous formula—developed especially for Eczema. These effective preparations can be obtained only from The Tarex Company, Sole Distributors, Santa Monica, California.

* * * it is remarkably effective in cases which have lasted even for years, such as Weeping Eczema, Salt Rheum, Tetter, with pus, and Eczema which often is seen with varicose veins being raw, itchy and red with scales and scabs.

Tarex for Eczema. Especially recommended for advanced and chronic cases.

Tarex may be applied to the most sensitive skins or affected areas as it contains no harmful ingredients.

Important. The important point is to keep Tarex on the affected area so it can do its work. Relief from itching can usually be expected immediately. When Tarex is used according to directions, it exhibits an almost magical effect in severe cases of eczema, returning most of them to a normal, healthy condition in a very short time.

Eczema and varicose veins * * * certain eczematous conditions among older people * * * called Hemastatic Eczema * * * can expect remarkable results from the Tarex treatment. Severe cases have responded to Tarex in a short time.

PAR. 3. By means of the foregoing statements, the respondent represents to the purchasers, prospective purchasers and to the public generally that the use of Tarex in its various forms is an effective remedy or cure for all cases of eczema, psoriasis, and other disorders and diseases of the skin, such as lesions, pimples, blisters, scales, scabs, cuts, fissures, redness, wetness, or dryness, irrespective of the form of the particular disorder or disease or the cause or condition thereof. Such statements and representations have the capacity and tendency to mislead and deceive, and do mislead and deceive, purchasers and prospective purchasers of respondent's products into the erroneous and mistaken beliefs that Tarex No. 1 and Tarex No. 3, when used, are effective in the treatment and cure of all types or cases of eczema in all stages; and that Tarex No. 2, when used, is effective in the

treatment and cure of all types or cases of psoriasis in all stages; and that all three of said forms of Tarex, when used, are effective in the treatment and cure of all the known marks of skin ailments, such as lesions, pimples, blisters, scales, scabs, cuts, fissures, redness, wetness, or dryness, irrespective of the form of the particular disorder or disease or the cause or condition thereof.

PAR. 4. In truth and in fact, the formulas of respondent's said products, either singularly or combined, do not, and will not constitute a competent or adequate remedy for the treatment and cure of all types or cases of eczema and psoriasis and other forms of disorders and diseases of the skin. Regardless of quantities of each of the ingredients in said formulas, Tarex in its various forms, or any or all of the ingredients contained therein in any combination, do not constitute a specific cure or remedy for any known form of eczema, psoriasis, or any other known form of skin disease or disorder.

In many instances, skin disorders and blemishes are the external manifestations of some internal malfunction or disorder, and in order to effect a cure it is first necessary to discover the cause of the internal systemic condition, and treatment must be directed thereto. If the cause of the systemic disorder can be determined, and removed, the external or skin symptoms of such disorder will naturally clear up.

Some diseased conditions of the skin, especially those caused by or associated with a systemic or metabolic disorder, are often of a serious nature and in such a disease as syphilis, which is at times manifested by a skin disorder, sometimes prove fatal if neglected or improperly treated. Among the so-called "skin diseases" which are generally associated with or caused by metabolic or systemic disorders are various forms of eczema, an inflammatory disease of the skin usually classified by dermatologists into (1) atopic eczema, (2) contact eczema, (3) mycotic eczema, and (4) so-called chronic infectious seborrheic eczema. This disease constitutes from 20% to 40% of all skin ailments, and its several variations require specific and different treatment. Eczema in its various forms is in most instances found to be an external manifestation of some internal intoxication frequently found in the gastro-intestinal tract as a result of taking something into the body by way of food or drink that is toxic or poisonous to the individual. In some instances, the formulas for respondent's products known as Tarex No. 1 and Tarex No. 3 may be efficacious as palliatives and will help to alleviate some mild cases, but they cannot be used in all cases of eczema. It is necessary, in many instances, to use methods and ingredients other than those pro-

vided by respondent's products in order to reach or remove the basic causes of eczema.

Psoriasis, a diathesis not related to and not as common as eczema, is one of the most difficult diseases to cure. One so afflicted usually has a congenital or inborn predisposition to have the disease, which usually manifests itself by a peculiar discoloring, thickening, and separation of the nails and dark blotches, circumscribed and varying in size anywhere from a pinhead to large plaques covering large areas over the body. Characteristic locations of the disease are the scalp, elbows, knees, and sacrum, and it may involve the entire body. There are various methods of treating psoriasis, but no one form or method of treatment has been found that is generally satisfactory.

The evidence establishes that the method of treating ailments, disorders and diseases of the skin, which method is followed by the medical profession generally, is, in all cases, to conduct an exhaustive diagnosis, including a detailed history of the diseased condition for the purpose of determining the cause and condition thereof, if possible. The diseased condition is then treated in accordance with generally accepted methods of treatment employed by the medical profession for the particular disorder or ailment. Such treatment may include correction of the diet, administration of internal and external medicines, X-ray treatments and treatments of the nerves if the disorder is caused by a nervous condition of the patient. No one medicine or type of treatment alone, however, is employed by physicians in the treatment of all diseased conditions of the skin.

Tarex in its various forms is not an effective and competent remedy or cure for eczema or psoriasis of any form or type. Said preparations are likewise ineffective as a competent cure or remedy for other disorders and ailments manifested by diseased conditions of the skin if the skin disease is caused by or associated with a systemic or metabolic disorder, or if caused by syphilis. Nor is Tarex in its various forms an effective and competent remedy or cure for all forms of skin disorders irrespective of the nature or form of the disorder or the cause or condition thereof, nor will it alleviate all cases. Tarex may at times prove effective as a palliative in the treatment of some types of eczema, psoriasis, and other skin disorders not caused by a systemic or metabolic disorder, but by reason of the ingredients in its various forms it cannot and should not be used in all cases of skin diseases.

Respondent maintains no clinic or consultation room wherein purchasers of its products are afforded an opportunity for a medical examination and there is no medical doctor connected with respond-

ent's business. Respondent's products are sold indiscriminately to purchasers who can and do attempt self-medication without the proper and necessary advice as to their condition and the proper treatment therefor.

PAR. 5. Based upon the testimony and other evidence in this record, it is found that the use of Tarex in its various forms will not permanently eliminate or cure eczema, psoriasis, and other skin disorders and ailments, irrespective of the form of the particular disorder or the cause or condition thereof. There is nothing extraordinary or unique about the formulas underlying Tarex in its various forms. Said formulas and the ingredients they represent have been known to and used by the medical profession for many years. Dermatologists do not use said formulas exclusively, in the treatment of ailments, disorders, and diseases of the skin. The individual case requires more than a general formula.

From the testimony and other evidence of record, it is established, and the Commission so finds, that there is not any one prescription that can be used in the treatment of all skin diseases and that there is not any one medication that can be used continuously in the treatment of all types or cases of any one skin disease or skin ailment.

PAR. 6. There are among the competitors of the respondent in commerce as herein set out, distributors of like and similar products or other products designed and sold for similar usage who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products and who do not advertise and otherwise represent that such products have merit or therapeutic value which they do not have.

PAR. 7. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive and do mislead and deceive, purchasers and prospective purchasers into the erroneous beliefs described in paragraph 3 hereof and into the purchase of respondent's products in such beliefs. Thereby, trade is diverted unfairly to respondent from respondent's said competitors in commerce between and among the various States of the United States, and in the District of Columbia, and in Alaska.

CONCLUSION

The aforesaid acts and practices of the respondent, The Tarex Co., a corporation, are to the prejudice and injury of the public and of respondent's competitors, 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 complaint of the Commission, the answer of respondent, testimony and other evidence taken before Charles P. Vicini, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (respondent having filed no brief and not having requested oral argument); 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, The Tarex Co., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of pharmaceutical preparations for the treatment and cure of eczema, psoriasis and other diseases and ailments of the skin, now designated as "Tarex No. 1," "Tarex No. 2," and "Tarex No. 3" or any other preparations containing substantially similar ingredients or possessing substantially similar properties, whether sold under those names or under any other names, in commerce as defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or indirectly, in any manner:

(a) That said preparations constitute competent and effective treatments for eczema and psoriasis in any form, or for all the known marks of skin ailments, such as lesions, pimples, blisters, scales, scabs, cuts, fissures, redness, wetness or dryness, or any other forms or marks of skin diseases or skin ailments, unless such representations are limited to representations that said preparations will serve as palliatives or temporarily alleviate those types of said diseases and disorders which are not caused by, or associated with, a systemic or metabolic disorder, or are not caused by syphilis;

(b) That said preparations constitute competent and effective remedies and cures for eczema and psoriasis in any form, or for all the known marks of skin ailments, such as lesions, pimples, blisters, scales, scabs, cuts, fissures, redness, wetness or dryness, or any other forms or marks of skin diseases or skin ailments.

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

Syllabus

IN THE MATTER OF
DERAN CONFECTIONERY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3111. Complaint, Apr. 24, 1937—Decision, June 3, 1938*¹

Where a corporation engaged in manufacture and sale of candy, including such "break and take," "draw," or "deal" assortments as 150 penny, chocolate-covered balls, together with 24 packages or boxes of candy, secured without further charge by chance purchasers of those balls, concealed center of which, unlike majority, were colored pink, and together with two still larger packages or boxes, secured by purchaser of last chocolate-covered ball in assortment—

- (a) Sold said assortments to dealers, so assembled and packed that they could be and were displayed for sale to public, without alteration or rearrangement, in accordance with aforesaid sales plan, by said dealers or their customer-vendees, and with knowledge and intent that said assortments should thus be resold without alteration or rearrangement to purchasing public by retail dealer by lot or chance, in violation of public policy and in competition with concerns, many of whom do not manufacture and sell such "break and take," "draw," or "deal" assortments, but sell their "straight" merchandise in competition with the other;

With result of putting at a disadvantage competitors, many of whom regard such sale or distribution by lot or chance as morally bad, as encouraging gambling among children, as injurious to the industry, and as placing in the hands of retail merchants a means of violating the laws of the several States, and some of whom refuse, for such reasons, to sell candy so packed that it can be resold to public by lot or chance, and from whom trade was unfairly diverted, due to retailers' purchase of said "draw" or "deal" candy from it and others employing the same or similar methods, as more readily salable; and

- (b) Represented to customers and prospective customers that certain of its products were composed of malted milk covered with chocolate, through use of words "chocolate malted milk balls," notwithstanding fact some of said balls were not made in substantial part of said product, but contained only sufficient malted milk to give a malted milk flavor;

With effect of unfairly diverting trade to it from competitors selling and distributing confections made of malted milk and from those dealing in products similar to its own who do not falsely thus designate their said similar products, and of enabling it and its dealers to mislead and deceive the consuming public into purchasing its said product in the erroneous belief that it was made from malted milk:

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

¹ Order published as modified August 3, 1938.