

IN THE MATTER OF
SHUPE-WILLIAMS CANDY COMPANY

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

Docket 2708. Complaint, Jan. 31, 1936—Decision, Aug. 4, 1938

Where a corporation engaged in manufacture and sale of "straight" goods candy, and also of so-called "break and take," "draw," "deal," or "chance" candy, purchase of which latter type is preferred by many consumers because of gambling feature connected with sale thereof, and sale of which, with opportunity of obtaining a prize or becoming a winner, teaches and encourages gambling among children, who comprise a substantial number of the purchasers and consumers of such type, and particularly where penny a sale, and sale of which type (considerable proportion of which, in the 5-cent units, along with "straight" candy, is sold in service stations, drug stores, cigar stands, taverns, and cafes), in the penny sale units is injurious to industry involved and, in penny candy trade, diverts trade in volume from the concerns who do not use such assortments, and operates to prejudice of public—

Sold, to wholesalers, jobbers, and retailers, certain assortments of candy which were so packed and assembled as to involve, or were designed to or might involve, use of a lottery scheme when sold and distributed to consumers thereof, and which assortments consisted of (1) a number of penny pieces of uniform size and shape, together with a number of larger pieces to be given as prizes to those purchasers of such uniform pieces, colored centers of which differed from that of the majority, together with a small package of candy secured free of charge by purchaser of last piece in assortment, and also together with explanatory display cards for retailers' use; and (2) candy bars, with push cards, for distribution to consuming public under plan by which 5-cent purchaser received, in accordance with legends pushed from card by chance and explanatory statement contained thereon, from one to five bars, with purchaser of last push receiving six;

Assembled and packed in such a manner that they were designed to be used and were used and resold, with its knowledge and intent, without alteration or rearrangement, to the purchasing public by lot or chance by retailers thereof, contrary to public policy and in competition with many manufacturers who offer and sell their "straight" goods candy in the territory served by it in competition with the "chance" and "straight" candy of it and others selling similar or like assortments, and in competition with many who regard such sale and distribution as contrary to public policy, as morally bad, and as encouraging gambling, and especially among children, and as injurious to the industry in resulting in the merchandising of a chance or lottery instead of candy, and as providing retailers with means of violating the public policy and the laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed and assembled that it can be resold to public by lot or chance;

With result that retailers, finding more salable such candy, bought from it, and others employing such methods of sale as to said "chance" candy, their entire candy, and including "straight" merchandise, requirements, trade in

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both "straight" and "chance" candy was diverted to it and such others from competitors who did not follow such practices and who could compete on even terms in the sale of "straight" candy only by likewise furnishing to retailers candy for sale by the same or similar devices, and sales of which "straight" candy of such competitors, unwilling to follow such a practice, showed a marked decrease, and with results that public and competitors were prejudiced and injured and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in industry involved:

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

Before *Mr. Charles P. Vicini* and *Mr. Henry M. White*, trial examiners.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.

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 Shupe-Williams Candy 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 of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation, organized under the laws of Utah with its principal office and place of business in the city of Ogden, State of Utah. Respondent is now, and for several years last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States, and causes said products, when so sold, to be transported from its place of business in the city of Ogden, State of Utah, to purchasers thereof in other States of the United States at their respective places of business, and there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy, between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy 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 and

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

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

The majority of the said pieces of candy of uniform size, shape, and quality, have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size, shape, and quality, retail at the price of 1 cent each, but the purchaser who procures one of the said candies having a center of a different color than the majority, is entitled to receive, and is to be given free of charge, one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of candy in said assortment is entitled to receive, and is to be given free of charge, the small box of candy. The color of the center of said pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candy having a center colored differently from the majority thus procure one of the said larger pieces of candy wholly by lot or chance, and the purchaser of the last piece of candy in the said assortment thus procures the small box of candy wholly by lot or chance.

The respondent furnishes to said wholesale and retail dealers, with said assortment, a display card to be used by the retail dealer in offering said candy to the public. The display card bears a legend or statement informing the prospective purchaser that the said candy is being sold in accordance with the above-described sales plan.

(b) Another assortment manufactured and distributed by respondent is composed of a number of candy bars, together with a device commonly called a push card. Candy contained in said assortment is distributed to purchasers in the following manner:

The push card has a number of partially perforated discs, and when a push is made and the disc separated from the card, a legend is disclosed. Sales are 5 cents each, and the card bears statements informing

customers and prospective customers that certain specified legends entitle customer to one bar of candy, that certain other specified legends entitle the customer to two bars of candy, that certain other specified legends entitle the customer to three bars, that certain other specified legends entitle the customer to four bars of candy, and that other specified legends entitle the customer to five bars of candy. The legends on the discs or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disc separated from the card. The number of bars of candy which a customer receives for the price of 5 cents is thus determined wholly by lot or chance.

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

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

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

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

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

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

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 31, 1936, issued and thereafter served its complaint in this proceeding upon the respondent, Shupe-Williams Candy 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, testimony and other evidence in support of the allegations of the complaint were introduced by P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the

complaint by D. B. Van Dyke, H. L. Mulliner, and F. W. James, attorneys for the respondent, before Charles P. Vicini and Henry M. White, examiners of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the oral argument of Henry C. Lank, counsel for the Commission. The respondent was not represented, although duly notified of the time and place of such hearing; and the Commission, after duly considering the matter, and being fully advised in the premises, on June 17, 1937, issued and served its findings as to the facts and its conclusion drawn therefrom and its orders to cease and desist from the practices complained of.

On May 10, 1938, the respondent, by its attorney, Walter G. Moyle, filed a motion to vacate the findings as to the facts and the order to cease and desist theretofore entered by the Commission on June 17, 1937, and further moved the Commission for leave to file a motion to modify the findings as to the facts and the order to cease and desist and for leave to file brief in support of said motion to modify and for leave to present oral argument in support of said motion. The Commission, after duly considering the motion to vacate the findings as to the facts and the order to cease and desist and the record, and being fully advised in the premises, issued its order dated May 16, 1938, vacating the findings as to the facts and the order to cease and desist previously issued on June 17, 1937, and further, on May 16, 1938, entered and issued its order granting respondent leave to file brief on or before June 15, 1938, in support of its motion to modify, and setting the matter for oral argument for June 28, 1938, at 2:00 p. m. in the Commission's offices in Washington, D. C., copies of which orders were duly served upon respondent.

On May 31, 1938, attorney Walter G. Moyle withdrew his appearance as counsel for respondent. No brief on behalf of respondent was filed on or before June 15, 1938, or subsequent thereto, and respondent was not represented at the hearing scheduled for June 28, 1938, whereupon on July 5, 1938, the Commission reset the matter for oral argument before the Commission on July 18, 1938, at 2:00 p. m. in the Commission's offices in Washington, D. C., and gave due notice thereof to respondent and its attorneys of record. On July 15, 1938, attorney H. L. Mulliner withdrew his appearance as counsel for respondent. The proceeding regularly came on for hearing before the Commission as scheduled on July 18, 1938, and re-

spondent again not being represented, the Commission took the said matter under advisement.

The Commission now having duly considered the matter on the entire record and being 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, Shupe-Williams Candy Co., is a corporation organized under the laws of the State of Utah, with its principal office and place of business located at 2605 Wall Avenue in the city of Ogden, State of Utah. Respondent is now and for several years last past has been engaged in the manufacture of candy in the city of Ogden and in the sale and distribution thereof to retail dealers, wholesalers, and jobbers located in the State of Utah and in the States of Idaho, Nevada, Wyoming, Montana, Colorado, Arizona, and Oregon. It causes said candy, when sold, to be shipped or transported from its principal place of business in the State of Utah to purchasers thereof in Utah and in the other States of the United States as mentioned above. In so carrying on said business, respondent is and has been engaged in interstate commerce, and is and has been engaged in active competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States. Manufacturers and distributors of candy who are located in the eastern and mid-western portions of the United States offer for sale and sell their products in the same territory in which respondent offers for sale and sells its straight and chance candies, and in competition with the respondent.

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 so packed and assembled as to involve, or which are designed to or may involve, the use of a lottery scheme when sold and distributed to the consumers thereof.

Several of such assortments manufactured, sold, and distributed by respondent are composed of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy and a small package of candy, which larger pieces of candy and small package of candy are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following

manner: The majority of the said pieces of candy of uniform size and shape have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size and shape retail at the price of 1 cent each, but the purchaser who procures one of the said candies having a center of a different color from the majority is entitled to receive and is to be given free of charge one of the said larger pieces of candy in said assortment. The purchaser of the last piece of candy in said assortment is entitled to receive and is to be given free of charge the small package of candy contained in said assortment. The color of the center of said pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy selected broken open. The purchasers of said candies having a center colored differently from the majority thus procure one of the said larger pieces of candy or the small package of candy wholly by lot or chance. The respondent furnishes to said wholesale and retail dealers with said assortments a display card to be used by retail dealers in offering said candy to the public. The display card bears a legend or statement informing purchasers and prospective purchasers that the said candy is being sold in accordance with the above described sales plan.

Respondent has also distributed and does distribute assortments of candy which are composed of a number of bars of candy, together with a device commonly called a "push card." The said bars of candy are distributed to the consuming public by means of said push card in the following manner: The push card has a number of partially perforated discs, and when a push is made and the disc separated from the card a legend is disclosed. Sales are 5 cents each, and the card bears statements informing customers and prospective customers that certain specified legends entitled the customer to one bar of candy; that certain other specified legends entitled the customer to two bars of candy; others to three bars of candy; others to four bars of candy; others to five bars of candy; and that the purchaser of the last push is entitled to six bars of candy. The legend on the discs or pushes are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular disc separated from the card. The fact as to whether a purchaser receives one, two, three, four, five, or six bars of candy for the price of 5 cents is thus determined wholly by lot or chance.

PAR. 3. The candy assortments involving the lot or chance feature, as above described, are generally referred to in the candy trade or industry as "break-and-take," "draw," or "deal" assortments, and

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may be designated as "chance" candy. Assortments of candy without the lot or chance features in connection with their resale to the public are generally referred to in the candy trade or industry as "straight" goods. These terms will be used hereafter in these findings to distinguish these separate types of assortments.

PAR. 4. The wholesale dealers or jobbers to whom respondent sells its assortments resell the same to retail dealers. Respondent also sells its said assortments direct to retail dealers. Numerous retail dealers purchase the assortments described in paragraph 2 above from respondent either directly or indirectly, in such retail dealers display the said assortments for sale to the public as packed by respondent, and the candy contained in said assortments is generally sold and distributed to the consuming public in accordance with respondent's sales plans, as above described.

As a result of complaints and orders to cease and desist issued by it, a number of manufacturers and distributors of candy have discontinued their interstate shipment of "break-and-take," "draw," or "deal" assortments, otherwise designated as "chance" candy, and such manufacturers and distributors have allowed their local representatives to procure push cards and punch boards and candies separately by interstate shipment and thus to assemble "chance" candy assortments and to use and dispose of such assortments in intra-state commerce so as to avoid the distribution of such assortments in interstate commerce. The majority of the candy sold and distributed by respondent is "straight" merchandise, but all of its salesmen also offer its "chance" candies to respondent's customers in the States of Idaho, Nevada, Wyoming, Montana, Colorado, Arizona, and Oregon, as well as in the State of Utah, and its sales of "chance" candy assortments are substantial.

A large portion of chance candy assortments where the unit of sale is 5 cents are sold in service stations, pool halls, drug stores, cigar stands, taverns, and cafes. The evidence shows that such retail outlets do not restrict their offering to chance assortments but also offer and sell straight candies and confections.

PAR. 5. All sales made by respondent, whether to wholesalers and jobbers or to retailers, are absolute sales, and respondent retains no control over said assortments after they are delivered to the wholesale dealer or jobber or retail dealer. The assortments are assembled and packed in such manner that they are designed to be used and are used by the retail dealer for distribution to the purchasing public by lot or chance without alteration or rearrangement. In the sale and distribution to jobbers and wholesale dealers for resale to retail dealers and to retail dealers direct of the assortments of candy de-

scribed in paragraph 2 respondent has knowledge that said candy will be resold to the purchasing public by retail dealers by lot or chance, and it packs such candy in the way and manner described so that, without alteration, addition, or rearrangement thereof, it may be resold to the public by lot or chance by said retail dealers.

PAR. 6. There are in the United States many manufacturers of candy selling and offering for sale such candy in the territory served by this respondent who do not manufacture and sell "chance" assortments of candy and who offer for sale and sell their "straight" goods in interstate commerce in competition with the "chance" and "straight" candy of respondent and others selling similar or like assortments, and trade and custom are unfairly diverted to respondent and others offering similar assortments from such competitors because of the gambling or lottery feature connected with the "chance" assortments as hereinabove described. Witnesses from several branches of the candy industry testified in this proceeding, and the Commission finds that many consumers prefer to make purchases from "chance" candy assortments because of the gambling feature connected with its sale. The sale and distribution of "chance" candy which has connected with its sale the means or opportunity of obtaining a prize or becoming a winner teaches and encourages gambling among children, who comprise a substantial number of the purchasers and consumers of this type of candy, particularly where the unit of sale is 1 cent.

The record shows that the "chance" candies involving 1 cent sales are injurious to the candy industry and in the penny candy trade divert trade in volume from the concerns that do not use such method, and are to the prejudice of the public.

PAR. 7. The sale and distribution of candy by the retailers by the methods described herein is the sale and distribution of candy by lot or chance and constitutes a lottery or gaming device. The Commission finds that many competitors regard such sales and distribution as contrary to public policy, as morally bad and encouraging gambling, especially among children; as injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy; and as providing retail merchants with a means of violating the public policy and the laws of the several States. Because of these reasons, some competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. The retailers, finding that they can dispose of candy more easily by the "chance" method, buy all candy, even "straight" candy, from respondent and others employing the same methods of sale as to the said "chance" candy, and thereby trade in both "straight" candy and

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"chance" candy is diverted to respondent and others using similar methods from said competitors who do not use said methods. Such competitors can compete on even terms in the sale of "straight" candy only by furnishing to retailers candy to be sold by the use of the same or similar devices. This they are unwilling to do, and their sales of "straight" candy show a marked decrease. The use of such methods by respondent, in the sale and distribution of its candy, is prejudicial and injurious to the public and its competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 8. The Commission further finds that the sale and distribution in interstate commerce of assortments or packages of candy so packed and assembled as to enable retail dealers, without alteration, addition, or rearrangement, to resell the same to the consuming public by lot or chance is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of 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 and Henry M. White, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein, 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, Shupe-Williams Candy Co., a corporation, its officers, agents, representatives, and employees, in the offering for sale, sale, and distribution in interstate commerce of candy, do cease and desist from:

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

2. Supplying to or placing in the hands of retail and wholesale dealers and jobbers assortments of candy which are used, or may be used,

without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail pieces of candy of uniform size and shape having centers of a different color, together with larger pieces of candy and a small package of candy, which said larger pieces of candy and small package of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

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

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

It is further ordered, That the respondent, Shupe-Williams Candy Co., 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
OSTLER CANDY COMPANY

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

Docket 2837. Complaint, June 8, 1936—Decision, Aug. 4, 1938

Where a corporation engaged in manufacture and sale of "straight" candy and also of so-called "break and take," "draw," "deal," or "chance" candy, purchase of which latter type is preferred by many consumers because of gambling feature connected with sale thereof, and sale of which, with opportunity of obtaining a prize or becoming a winner, teaches and encourages gambling among children, who constitute substantial number of purchasers and consumers of such type where penny a sale, and use of which type, considerable proportion of which, along with straight candy, is sold in service stations, drug and cigar stores, cafes, pool halls, and taverns, is injurious to industry involved and, in penny-candy trade, diverts business from concerns who do not use such assortments and operates to prejudice of public—

Sold, to wholesalers and to retailers, various assortments of candy which were so packed and assembled as to involve, or were designed to or might involve, use of a lottery scheme when sold and distributed to consumers thereof, and which assortments consisted of (1) candy bars and push cards for distribution to consuming public under plan by which 5-cent purchaser received, in accordance with numbers or legends pushed from card by chance and explanatory statement contained thereon, one, or more bars, with purchaser of last push also receiving additional bars, as specified; (2) assortments involving same principle or sales plan, where unit was 1 cent, rather than 5 cents, and in some of which larger, instead of additional, pieces of candy were given as prizes, and in others of which articles of merchandise were thus furnished; and (3) a number of wrapped penny pieces of uniform size and shape, together with some larger pieces to be given as prizes to those purchasers of such uniform pieces, the color of which differed from that of the majority;

Assembled and packed in such manner that they were designed to be used and were used and resold, with its knowledge and intent, without alteration or rearrangement, to the purchasing public by lot or chance by retailers thereof, contrary to public policy and in competition with many manufacturers who offer and sell their "straight" goods candy in the territory served by it in competition with the "straight" and "chance" candy of it and others selling similar or like assortments, and in competition with many who regard such sale and distribution as contrary to public policy, as morally bad, and as encouraging gambling, and especially among children, and as injurious to the industry in resulting in the merchandising of a chance or lottery instead of candy, and as providing retailers with means of violating the public policy and the laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance;