

IN THE MATTER OF
GLADE 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 2848. Complaint, June 19, 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 and distribution of which, with opportunity of obtaining a prize or becoming a winner, teaches and encourages gambling, and large portion of which, along with "straight" candy, where unit of sale is 5 cents, is sold in service stations, pool halls, drug stores, cigar stands, taverns, and cafes—

Sold, to 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) candy bars with push cards for distribution to consuming public under plan by which 5-cent purchaser received, in accordance with particular number or legend pushed from card by chance, one or more than one bar, with last push on card also securing additional bars; and (2) number of packages of candy of varying size, with punchboards for distribution to consuming public under plan by which specified packages, or nothing other than privilege of a punch, were secured by the 5-cent purchasers, in accordance with the particular numbers punched by chance, and as announced on the board's explanatory legend;

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 and 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 as injurious to the industry in resulting in the merchandising of a chance or lottery instead of candy, and as providing retailers with a 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;

With result that retailers, finding more saleable such candy, bought from it and others employing such methods of sale, trade in both "straight" and "chance" candy was diverted to it and others using similar methods from said competitors who did not follow such practices, sales of exclusive "straight" candy competitors, who could compete on even terms in the sale of their products only by furnishing to retailers candy to be sold by use of same or similar devices, showed a marked decrease in their unwillingness to do so, public and competitors were prejudiced and injured, and there was a restraint

680

Complaint

upon and a detriment to the freedom of fair and legitimate competition in the 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 Glade 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, Glade Candy Co., is a corporation organized and operating under the laws of the State of Utah, with its principal office and place of business located at 232 South Fifth East Street, Salt Lake City, Utah. Respondent is now, and for several years last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States, and causes and has caused its said products, when so sold, to be transported from its principal place of business in Salt Lake City, 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 said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers 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.

(a) One of said assortments, manufactured and distributed by the respondent, is composed of a number of boxes of assorted chocolate

Complaint

27 F. T. C.

candies, together with a device commonly called a "punchboard." The said boxes of candy are distributed to the consuming public by means of said punchboard in the following manner: The sales by means of said punchboard are 5 cents each, and when a punch is made from said board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing the prospective customer as to which numbers receive a box of candy. The purchasers of the last punch on each of three sections of the board each receive a box of chocolate candy. On a so-called 200-hole board 14 numbers call for a prize box of candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by punching the last number on the board receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5 cents each, and a purchaser who obtains one of the numbers calling for a box of candy receives the same for the price of 5 cents. The numbers on said board are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy in said assortment are thus distributed to purchasers of punches from said board wholly by lot or chance.

(b) Another of said assortments is designated and described by respondent as "Play Ball," and consists of a number of candy bars together with a device commonly called a push card. The 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 as follows:

ALL WINNERS	NO BLANKS
HOME RUN.....	Receives 5 candy bars
3 Base Hit.....	Receives 4 candy bars
2 Base Hit.....	Receives 3 candy bars
1 Base Hit.....	Receives 2 candy bars
Base on Balls.....	Receives 1 candy bar
Foul Ball.....	Receives 1 candy bar
Out.....	Receives 1 candy bar

Last sale receives 6 Candy Bars

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 fact as to whether

a purchaser receives one candy bar, two candy bars, four candy bars, five candy bars, or six candy bars for the price of 5 cents is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments, resells 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 plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its product in accordance with the sales plans hereinabove set forth, and said sales plans have the capacity and tendency 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 box of candy.

The use by respondent of said method in the sale of candy, and the sale of candy 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.

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

Findings

27 F. T. C.

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 purchaser 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 method, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged. Said method, 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 June 19, 1936, issued and thereafter served its complaint in this proceeding upon the respondent, Glade 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 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 order 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 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 p. m. in the Commission's office in Washington, D. C., and gave due notice thereof to respondent and its counsel 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 respondent 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, Glade Candy Co., is a corporation organized under the laws of the State of Utah, with its principal office

Findings

27 F. T. C.

and place of business located at 232 South Fifth East Street in Salt Lake City, Utah. Respondent is now and for several years last past has been engaged in the manufacture of candy in Salt Lake City and in the sale and distribution thereof to retail dealers and jobbers located in the State of Utah and in the States of Nevada, Wyoming, Idaho, and Colorado. 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 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 Midwestern 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 jobbers and retail dealers certain assortments of candy so packed and assembled as to involve, or which are designed to 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 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 number or legend is disclosed. Sales are 5 cents each, and the card bears a statement or statements informing customers and prospective customers that all the numbers or legends pushed from said card receive one bar of candy, but that certain specified numbers or legends receive one or more additional bars of candy. The push card also bears a legend stating that the last push on the card receives a specified number of additional bars of candy. All purchasers receive one bar of candy, but purchasers obtaining the specified numbers or legends receive additional bars of candy of the same size and quality. The numbers or legends on said card are effectively concealed from the purchaser or prospective purchaser until a push or sale has been made and the particular push separated from the card. The additional bars of candy in said assortment are thus distributed to purchasers of pushes from said card wholly by lot or chance.

Respondent also distributes several assortments composed of a number of packages of candy of varying size, together with a device commonly called a "punchboard." The said packages of candy are distributed to the consuming public by means of said punchboard, in the following manner: The punchboard has a number of holes in which slips of paper bearing numbers are secreted. The slips of paper and the numbers thereon are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular slip of paper separated from the board. The punchboard has printed at the top thereof various statements or legends informing purchasers and prospective purchasers that certain numbers receive specified packages of candy. Sales are 5 cents each, and the packages of candy contained in said assortment are distributed to the consuming public in accordance with the legends at the top of said punchboard. The fact as to whether a purchaser receives one of the packages of candy or nothing other than the privilege of punching a number from said board 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 "draw" or "deal" assortments, and may be designated as "chance" candy. Assortments of candy without the lot or chance feature 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 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, and 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 "draw" or "deal" assortments, otherwise designated as "chance" candy, and such manufacturers and distributors have allowed their local representatives to procure pushcards and punchboards and candies separately by interstate shipment and thus to assemble "chance" candy assortments and to use and dispose of such assortments in intrastate commerce so as to avoid the distribution of such assortments in interstate commerce. The majority

Findings

27 F. T. C.

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 Nevada, Wyoming, Idaho, and Colorado, 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, as is the case with the "chance" candy assortments distributed by this respondent, 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 jobbers or to retailers, are absolute sales, and respondent retains no control over said assortments after they are delivered to the 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 for resale to retail dealers and to retail dealers direct of the assortments of candy described 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.

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

680

Order

finds that many competitors regard such sale and distribution as contrary to public policy, as morally bad and encouraging gambling; 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 candy from respondent and others employing the same methods of sale, and thereby trade in both "straight" candy and "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.

Order

27 F. T. C.

It is ordered, That the respondent, Glade Candy Co., a corporation, its officers, directors, 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 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 packages or assortments of candy which are used, or may be used, without alteration or rearrangement of the contents of such packages or 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. 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," or a device commonly called a "punchboard," for use, or which may be used, in distributing or selling said candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "push card," or a device commonly called a "punchboard," either with packages or 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, Glade 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.

Syllabus

IN THE MATTER OF

HARRY A. RIPPNER AND LOUIS G. RIPPNER, DOING BUSINESS AS JOHN HANCOCK PEN COMPANY

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

Docket 3244. Complaint, Oct. 13, 1937—Decision, Aug. 4, 1938

Where two individuals, engaged in the sale and distribution of fountain pens among the several States and in the District of Columbia, in competition with many who sell and distribute such products and do not misrepresent the character or quality thereof, in advertising the same by circulars sent through the mails—

- (a) Falsely represented that the customary and usual retail value or price of their said pens was greatly in excess of the advertised price, and that said products were obtainable at the price advertised for only a limited time, through such statements as "A \$5.00 VALUE FOR ONLY 60¢—THIS CERTIFICATE is worth \$4.40 To You For a Limited Time Only," facts being that pens in question were intended to be and were sold in usual course of trade without certificate for a price of approximately 60 cents, as advertised, such certificate did not have a value of \$4.40 or any value whatever, and offer to sell was not limited as to time, but was regular or customary offer or price asked for such pens in usual course of trade;
- (b) Represented that their said pens were of a character and quality different from and superior to those of comparable price, and were equal in value to pens costing from \$5 upward, through such statements as "A \$5.00 value," etc., "This certificate and 60 cents entitles the sender to one of our Genuine Indestructible \$5.00 VACUUM FILLER SACKLESS FOUNTAIN PENS," "This pen holds 200% more ink than any ordinary fountain pen on the market," and "Instead of spending our advertising appropriation on Radio," etc., "we have adopted this plan of introducing our pens," facts being pens, as above set forth, did not have a value of \$5, but a much smaller value, were not different from or superior to competitive pens selling for approximately the same amount, and did not hold 200 percent more ink than any ordinary fountain pen on the market;
- (c) Represented, as aforesaid, that the said pens had an unbreakable barrel, and that the nib thereof was of "Duragold," unbreakable and guaranteed for lasting smoothness in writing, facts being that said pen points were not gold or gold alloy, as imported or implied by use of said term, but were very thinly gold plated, and aforesaid statements and representations were misleading;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into mistaken and erroneous belief that aforesaid representations were true, and into purchase of their said product by reason of such belief, and with result that trade was diverted unfairly to them from competitors who do not adopt, use, or follow similar acts and practices in connection with sale of their respective products; to the substantial injury of competition in commerce:

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