

Syllabus

IN THE MATTER OF

BUNTE BROTHERS, INC.

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

Docket 2695. Complaint, Jan. 29, 1936—Decision, Sept. 7, 1938

Where a corporation engaged in Illinois in manufacture, sale, and distribution, to and through 95 percent of said State's candy jobbers, of chance or so-called "break and take" assortments, demand for which by school children is stimulated by advertising, and purchase of which by them is made in preference to "straight" goods by reason of chance or gaming feature connected therewith, and sale of which through same type of channels is in direct competition with candies so packed as to be displayed and sold as "straight" goods only, and with purchase of which chance goods from jobber by retailer are often included by latter, for his convenience and preference, entire candy requirements thereof—

Sold to wholesalers, jobbers, and retailers in various States of the United States, and particularly in the State of Illinois as aforesaid, such chance assortments, composed of (a) number of individually wrapped penny caramels of uniform size, shape, and quality, together with number of larger pieces of candy to be given as prizes to purchasers securing by chance one of a relatively few of said caramels, concealed color of which differs from that of majority, and also together with box of candy to be given to purchaser of last of said caramels in assortment, and (b) of large number of units of similar pieces of penny candy, together with number of larger pieces to be given as prizes to those securing by chance relatively few of aforesaid uniform pieces, colored centers of which differ from majority thereof; knowingly so assembled and packed that without alteration or rearrangement such assortments might be and were used, exposed, and sold by retailer buyers thereof to purchasing and consuming public in accordance with aforesaid sales plan and by lot or chance; in competition with others located in various other States and engaged in manufacture, sale, and distribution of such products in commerce between and among the various States and particularly from their respective States of manufacture to said State of Illinois, and sale of whose products in such interstate commerce, as "chance" or "break and take," "draw," or "deal" assortments, may not lawfully be made, and including large number specifically prohibited by order of Commission from thus selling in such commerce their said products;

With result that use of such chance assortments and methods of sales and distribution in said State of its candies, made available practically wherever candy is sold therein and sold by many retailers who attract children's patronage from nearby schools, encouraged gambling among children, enticed by element of chance to purchase candy thus sold in preference to other or so-called "straight" goods, salesmen who could offer in said State

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various chance assortments of candy possessed tremendous advantage in soliciting jobber's business over one who did not have such assortments, some of out-of-State manufacturers experienced marked decrease in their "straight" goods in said State when sale of chance assortments, and particularly of "break and take" variety, was active therein, and sale of "straight" candy was adversely affected by that of such assortments, and trade and custom was diverted to it from its competitors who sold and distributed only "straight" merchandise, and there were excluded from Illinois market competitors unwilling to, or restrained from, use of such chance assortment method in sale and distribution of their candies, and there was capacity and tendency so to do, and to create in it a monopoly of the Illinois candy trade; and

With further result that such use had direct and powerful burdensome effect upon interstate commerce in candies from other States to the State of Illinois, and gave it unreasonable preference over competitors in other States through reducing amount of business in straight candies that might be competed for by manufacturers in other States, by amount that chance assortments detract from the sale of straight goods to ultimate purchasers or consumers, and by eliminating from interstate competition all sales of straight candies to dealers who desire chance assortments and who prefer to buy their chance assortments and straight goods from a single salesman in one lot, and by securing for it (1) sympathetic access to prospective purchasers denied to its competitors from other States, and (2) orders for straight candies from dealers who have purchased its chance assortments and who, to fill out a sizeable order, for convenient shipment, or for other reasons, will add thereto their requirements of straight candies:

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

Before *Mr. Miles J. Furnas*, *Mr. Irving D. Royal*, and *Mr. W. W. Sheppard*, trial examiners.

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

Mr. Samuel G. Clawson and *Mr. L. R. Krein*, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes." the Federal Trade Commission, having reason to believe that Bunte Brothers, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Act 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 the State of Illinois with its principal office and place of

business located in the city of Chicago, State of Illinois. It 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 and jobbers and to retail dealers located at points in the various States of the United States and causes the said products, when so sold, to be transported from its principal place of business in the city of Chicago, Ill., to purchasers thereof in the State of Illinois, and to purchasers in other States of the United States at their respective places of business; the candy manufacturing industry in the United States represents a capital investment in excess of \$150,000,000, with an annual value of product exceeding \$250,000,000; most of the product of the industry is known in its trade circles as "straight goods" but a further distinguishing feature is the maintenance and promotion of certain widely known and nationally advertised items or "lines" for which the consuming public of the country maintains a consistent demand and which articles consequently form a defined current of commerce throughout the several States of the Union. The straight goods and nationally advertised lines are not sold, nor designed to be sold, under a plan constituting a lottery or involving an element of chance, as hereinafter set forth. In the course and conduct of said business, respondent is in competition with other corporations and with individuals and partnerships located in the various States of the Union other than the State of Illinois, who are engaged in the manufacture, sale, and distribution of said straight goods and nationally advertised lines in commerce between and among the various States of the United States, and particularly from the States of their domicile to the State of Illinois.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent sells to wholesale dealers and jobbers and to retail dealers in the State of Illinois certain packages or assortments of candies. The said assortments of candies are composed of a number of caramels of uniform size, shape, and quality each contained within a wrapper together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said caramels in the following manner:

The majority of the said caramels in said assortments have the same color, but a small number of said caramels have a different color. The said pieces of candy of uniform size, shape, and quality in said assortment retail at the price of 1 cent each, but the purchasers who procure one of said candies having a color different from the majority of said candies are entitled to receive and are to be given free of charge one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of aforesaid

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caramel candy of a uniform size, shape, and quality in each of said assortments is entitled to receive and is to be given free of charge one of the larger pieces of candy heretofore referred to. The color of said caramels is effectively concealed from purchasers and prospective purchasers until selection has been made and the wrapper removed. The aforesaid purchasers of said candies who procure a candy having a color different from the majority of said pieces of candy in said assortments thus procure one of the said larger pieces of candy wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers referred to in paragraph 2 hereof, to whom respondent sells its assortments, resell said assortments of candy to retail dealers in the State of Illinois 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 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 as above alleged involves a game of chance or the sale of a chance to procure larger pieces of candy. Respondent's said assortments are handled by many retail dealers located in the vicinity of schools attended by children whose patronage is attracted by the element of chance involved in the sales plan. Such practices are a sort long condemned by the common law and criminal statutes; the sale of such and similar assortments in interstate commerce has been declared unlawful by the Supreme Court of the United States and orders have been issued by this Commission restraining competitors of respondent from the use of the same and similar methods in connection with their sales in interstate commerce.

By reason of said facts, many persons, firms, and corporations located in the several States and engaged in selling and shipping into the State of Illinois straight goods and nationally advertised lines of candy in competition with respondent are under a moral and legal compulsion not to adopt such practices and do refrain from adopting them, and many reluctantly yield to the practice to avoid the loss of their business. The use of said method by respondent gives it an undue preference in the candy traffic and operates unjustly against those competitors of respondent who are required to refrain from the use of such method.

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 and to purchase their other candy requirements from respondent in preference to candies offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods.

PAR. 6. The use of said method by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from its said competitors in interstate commerce who do not use the same or equivalent methods; to exclude from said candy trade all competitors in such commerce who are unwilling to and who do not use the same or equivalent methods; 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 equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method in the State of Illinois by respondent has a direct, dominant, burdensome, and retarding effect upon the normal flow of interstate commerce in "straight goods" and nationally advertised "lines" of candies heretofore described, moving from other States of the Union into the State of Illinois by reducing shipments in interstate commerce to the State of Illinois of such candies; retarding the normal increase in volume of such goods shipped in interstate commerce to the State of Illinois; and in some instances causing a complete cessation of interstate movement of certain "lines" of "straight goods" sought to be shipped in interstate commerce to the State of Illinois. The use of said method by respondent has the tendency and capacity unfairly to eliminate from said candy trade in the State of Illinois all actual competitors from other States of the Union who sell and ship candy into the State of Illinois and to exclude therefrom all competitors who do not adopt and use said method or equivalent methods.

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 January 29, 1936, issued and served its complaint in this proceeding upon respondent, Bunte Brothers, Inc., 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 P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by Samuel G. Clawson and L. R. Krein, attorneys for the respondent, before Miles J. Furnas, Irving D. Royal, and W. W. Sheppard, examiners for 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 other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation, organized in 1903, existing and doing business under the laws of the State of Illinois, with its principal office and place of business located at 3301 Franklin Boulevard, Chicago, Ill. It 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 in the various States of the United States, and particularly in the State of Illinois.

PAR. 2. The candy industry in the United States represents a capital investment of approximately \$150,000,000, with the annual dollar volume of the product of the industry exceeding the sum of \$250,000,000. The greater part of this product is referred to in the candy trade as "straight merchandise" or "straight goods." The term "straight goods" is used to describe those products which are normally sold at a stated price per unit, and not sold, or designed to be sold, to consumers under any plan constituting a lottery or involving an element of chance. Some "straight goods" are nationally advertised so as to create a consumer demand for them, which gives rise to a

defined current of commerce throughout the several States of the United States from the States of manufacture of such nationally advertised candy. Respondent, in the conduct of its business, is in competition with other corporations and with individuals and partnerships, located in various States of the United States other than the State of Illinois, that are engaged in the manufacture, sale, and distribution of candies and confections in commerce between and among the various States of the United States, and particularly from the States in which said products are manufactured to the State of Illinois.

Some of the product of the industry is sold in assortments involving the use of chance in the sale and distribution thereof to the ultimate purchasers or consumers. Such chance assortments are variously referred to in the industry as "break and take," "draw," or "deal" assortments. While they may vary in minor details, all of them operate under the principle of making the amount of return to the purchaser dependent upon chance. The sale, in interstate commerce, of such assortments involving chance has been declared unlawful by the Supreme Court of the United States, and at the time testimony was closed in this proceeding there were outstanding, against 127 competitors of respondent, orders requiring them to cease and desist from the use of such methods in connection with their sales in interstate commerce.

PAR. 3. In the course and conduct of its business, respondent sells to dealers in the State of Illinois certain assortments involving the use of chance in the sale and distribution thereof to ultimate purchasers. One of these assortments is composed of a number of wrapped caramels of uniform size, shape, and quality, a number of larger pieces of candy, and a box of candy, which larger pieces and box of candy are to be given as prizes to purchasers of certain of the caramels in the following manner:

The majority of the caramels in the assortment have the same color, but a small number of them have a different color. All of the caramels of uniform size, shape, and quality in the assortment retail at the price of 1 cent each; but every purchaser who procures one of the caramels having a color different from the majority in the assortment is entitled to receive, and is given, without additional charge, one of the larger pieces of candy heretofore referred to. The purchaser of the last piece of caramel candy of uniform size, shape, and quality in each assortment is entitled to receive, and is given, without additional charge, a box of candy. The color of the caramels is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The purchaser

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of said caramels who procures one having a color different from the majority in the assortment thus obtains one of the larger pieces of candy wholly by lot or chance.

This assortment was sold to the candy trade in Illinois during the summer months of the year 1935, and was designated "Summer Bar Assortment." It is a chance assortment known as "break and take," and was so identified by respondent. While it varies from the assortment described in the complaint in the particular concerning the last prize, it is nevertheless identical in principle, and was so admitted by respondent.

Respondent also manufactures, and distributes in the State of Illinois, another chance assortment designated as "Ta-Ka-Flyer Bar Assortment." Its principle of sale and distribution is the same as that of the assortment described in the complaint, and it was so identified by the respondent. It is a chance assortment of the type known as "break and take," consisting of 160 pieces of candy, of which 20 have differently colored centers. The units with differently colored centers are used to identify winners of prizes; in other words, the purchaser procuring a unit with a differently colored center receives one of the larger pieces of candy as a prize, without additional charge. The units are sold to ultimate purchasers at the price of 1 cent each. Respondent's volume of sales of its "Ta-Ka-Flyer Bar Assortment" in the State of Illinois was 40,000 assortments in 1935, and 86,000 assortments in 1936.

The above described chance assortments were distributed to 95 percent of the candy jobbers in the State of Illinois through the services of 16 full-time salesmen employed by respondent, during the years 1935 and 1936. The dollar volume of respondent's sales of penny candies in Illinois in 1935 was \$275,400. In 1936 it was \$314,400, of which the chance assortments of the "break and take" variety constituted approximately 23 percent. Such "break and take" assortments are distributed by the jobbers to retail dealers, so that they may be seen practically wherever candy is sold in the State of Illinois.

PAR. 4. The above described assortments are assembled and packed by respondent in such a manner that they may be used by retail dealers for sale and distribution to the public by lot or chance without alteration or rearrangement. Respondent has knowledge that the candy packed in such assortments will be sold to the consuming public by retail dealers by lot or chance. The retail dealers to whom said assortments are sold and distributed expose the same for sale, and sell the candy to the purchasing public in accordance with the above-described sales plan.

PAR. 5. Respondent's above described assortments are sold and distributed by many retail dealers located in the vicinity of schools, and they attract the patronage of school children. School children purchase candies from the "break and take" assortments in preference to buying "straight candies," because of the chance or gaming feature connected with the "break and take" assortment. Advertising methods are used to stimulate such demand among children. Witnesses from the candy industry, comprising manufacturers, salesmen, jobbers, and retailers, testified that the sale of such "break and take" assortments teaches and encourages gambling among children, who comprise the principal purchasers and consumers of candy sold in this manner.

PAR. 6. Candies so packed as to involve the element of chance in their sale and distribution are in direct competition with candies so packed as to be sold only as straight goods, and are so displayed to prospective customers. All candies are sold through the same type of merchandising channels. Jobbers who handle chance assortments also handle straight goods. Many retail dealers prefer to buy all of their candies from one jobber because of the convenience of dealing with only one salesman, one order blank and one bill to be paid. Such retail dealers who desire chance assortments will, therefore, buy all of their candy requirements from a jobber who sells chance assortments.

PAR. 7. The representatives of 48 candy manufactures, with plants located in 13 other States of the United States and shipping in excess of an annual volume of \$1,440,000 of straight candies from their plants to the State of Illinois, found that their failure to carry chance assortments, particularly of the "break and take" type, has been, and is, a decided handicap in securing business in the State of Illinois. Some of these representatives had called on dealers who needed "straight candies" for their stock of merchandise and who would have purchased the "straight goods" offered for sale by these representatives, but because such dealers also desired chance assortments and preferred to give the whole order to one salesman, it was impossible to sell anything to them.

Representatives of the above mentioned candy manufacturers located outside of the State of Illinois discovered that a salesman who can offer chance assortments of candy has a tremendous advantage in soliciting business from jobbers over one who does not have such chance assortments. This was variously described as a "leeway," an "advantage," and an "in." Ability to display a chance assortment creates advantage in many ways. Often the offer of a chance assortment to a jobber will attract interest that otherwise does not exist,

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and will act as a "door opener" or an "order opener." Having interested the jobber and sold him chance assortments, the jobber will then add to the same order his requirements of straight goods, because of the convenience of one shipment.

PAR. 8. The sale of straight candy is adversely affected by the sale of chance assortments of candy in Illinois, particularly of the "break and take" variety. This adverse effect was shown by a reduction in the volume of straight goods sold in Illinois.

Some out-of-State manufacturers experienced a marked decrease in their sales of straight goods in Illinois at times when the sale of chance assortments, particularly of the "break and take" variety, was active in Illinois. A representative of a New York manufacturer suffered a marked decline in his sales of straight candies in the Illinois market in May and June of 1935 over sales of straight candies in the same market in May and June of 1934. The sale of chance assortments of the "break and take" variety was particularly active in Illinois in May and June of 1935. The sales of a Pennsylvania manufacturer of a competing confection, chewing gum, in Illinois in September and October of 1935 were but 74 percent and 62 percent, respectively, of his sales in the same market during the same months in 1934. The sale of chance assortments of candies, particularly of the "break and take" variety, was very active in Illinois during September and October 1935, far more so than during the same months in 1934. The presence in the Illinois market of 40,000 of respondent's "break and take" chance assortments during the year 1935 was a strong factor contributing to the sales declines these interstate competitors of respondent suffered. A New York manufacturer was repeatedly asked by his Chicago sales representative to distribute a chance assortment of the "break and take" variety, but he felt under a moral compulsion not to resort to such practices. Rather than indulge in the same, he withdrew entirely from the Illinois market.

A competitor of respondent, located in the State of Wisconsin, who had been ordered by this Commission to cease and desist from selling "break and take" candy assortments in interstate commerce, within a 4-month period following the date of such order, suffered an 80 percent reduction of sales in Illinois from the \$60,000 volume rate of the preceding year. This Wisconsin competitor's telephone and telegraph expense to Illinois had declined, advertising expense to the State had been cut \$150, and the company had discontinued one of its Illinois salesmen. The Illinois business of another Wisconsin competitor of respondent, who had been doing an annual volume of \$100,000 of candy business in Illinois, and against whom the Com-

mission had issued a similar order, was adversely affected 20 percent. These particular competitors are located within 100 miles of the Illinois market, and their loss of business is due directly to the presence of "break and take" candy in the Illinois candy market.

PAR. 9. Respondent's competitors from other States would be placed on an equal competitive basis if respondent ceased the sale and distribution of chance assortments in Illinois. A substantial portion at least of the people who now buy candies from chance assortments would purchase candy of some kind, regardless of the method of sale and distribution, so that absence of chance assortments would result in an increase in the total volume of business done in straight candies.

PAR. 10. Respondent's sale and distribution of "break and take" candy assortments as set forth in these findings is a lottery scheme, game of chance, or gambling method. It encourages gambling among children, who are enticed by the element of chance to purchase candy thus sold in preference to straight candy. Respondent's use of such method in the sale and distribution of its candies has the capacity and tendency to, and did and does, divert trade and custom to itself from its competitors who sell and distribute only straight candies; it has the capacity and tendency to, and in some cases did and does, exclude from the Illinois market competitors who are unwilling to use the chance assortment method in the sale and distribution of their candies or who are restrained from so doing; and it has the capacity and tendency to create in respondent a monopoly of the Illinois candy trade.

Respondent's use of chance assortments in the sale and distribution of its candies in Illinois has a direct and powerful burdensome effect upon interstate commerce in candies from other states to the State of Illinois, and gives respondent an undue and unreasonable preference over competitors located in other states, in that it:

(a) Reduces the amount of business in straight candies that may be competed for by manufacturers in other States, by the amount that chance assortments detract from the sale of straight goods to ultimate purchasers or consumers.

(b) Eliminates from interstate competition all sales of straight candies to dealers who desire chance assortments and who prefer to buy their chance assortments and straight goods from a single salesman in one lot.

(c) Secures for respondent sympathetic access to prospective purchasers denied to its competitors from other States.

(d) Secures for respondent orders for straight candies from dealers who have purchased its chance assortments and who, to fill out a size-

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able order, for convenient shipment, or for other reasons, will add thereto their requirements of straight candies.

CONCLUSION

The aforesaid acts and practices of respondent, Bunte Brothers, Inc., are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition 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 and the answer of respondent, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by P. C. Kolinski, Counsel for the Commission, and by L. R. Krein, Counsel for the respondent, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Bunte Brothers, Inc., a corporation, its officers, directors, agents, representatives, and employees, in the offering for sale, sale, and distribution of candy, in the State of Illinois, do cease and desist from:

1. Selling and distributing to dealers candy or other confections so packed and assembled that sales of such candy or other confections to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise;

2. Supplying to or placing in the hands of dealers assortments of candy or other confections which are used or which may be used without alteration or rearrangement of the contents of such packages or assortments to conduct a lottery, game of chance, or gift enterprise in the sale and distribution of candy or other confections contained in said assortments;

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 with different colored centers, together with larger pieces of candy, which said larger pieces of candy are to be given as prizes to the purchasers procuring pieces of candy with centers of particular colors.

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.

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IN THE MATTER OF
COHEN BROTHERS CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3297. Complaint, Jan. 12, 1938—Decision, Sept. 7, 1938*

Where a corporation engaged in sale and distribution of knitted outerwear to retailers and others in the various States and in the District of Columbia—Represented to retailers and members of the public that items of wearing apparel were composed of “cashmere,” through labels affixed thereto on which appeared featured name “Kashmoor,” and through advertisement thereof in newspapers and periodicals of interstate circulation under said featured name, and such as “knitted dresses with that luxuriously soft cashmere feel,” notwithstanding fact said items were not in fact that apparel composed of cashmere, i. e., as long definitely understood in minds of consuming public from word, as meaning wool of the Tibetan or Kashmir goat, and, as such, held in great public esteem and confidence on the part of the consuming public and retailers, and preferred by substantial proportion of public over apparel made from other fabrics;

With result of placing in the hands of retailers an instrument and means whereby they might pass off and sell aforesaid products as and for “cashmere,” and of misleading and deceiving substantial portion of purchasing public into erroneous belief that aforesaid representations were true, and into purchase of such items by reason of such erroneous beliefs thus brought about, and of thereby unfairly diverting trade to it from competitors engaged in whole-sale sale and distribution of knitted outerwear and who do not misrepresent the material of which their said wear is made:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Mr. Harold Rogers Lhove, of New York City, 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 Cohen Brothers Corporation, 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: