

IN THE MATTER OF
MASTER LOCK COMPANY

COMPLAINT, FINDINGS, CONCLUSION, OPINION AND ORDER IN REGARD TO THE
ALLEGED VIOLATION OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT.
15, 1914, AS AMENDED

Docket 3386. Complaint, Apr. 22, 1938—Decision, Sept. 14, 1938

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—QUANTITY DISCOUNTS—
INDIVIDUAL ORDER SIZE COST AND LARGE ANNUAL AGGREGATE PURCHASE

Belief, in granting of additional discount to customers whose annual purchases generally exceed \$10,000, that orders received from such customer group are larger and fewer in number in proportion to customer purchases, and therefore cost seller less per dollar of sales to bill, pack, and ship than orders received from customers whose annual purchases usually amount to less, is frequently not supported by the facts, it appearing, on the contrary, that not only do customers in the lower group often place a smaller percentage of orders amounting to less than \$5 each than do customers allowed the additional discounts, but that they frequently also place larger percentage of orders exceeding \$100 each than do customers accorded such additional discounts, and that average size of individual order received by sellers from customers granted extra discounts is frequently less than average size of individual order received from customers not granted such discounts.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (A)—QUANTATY DISCOUNTS—
COST SAVINGS—SIZE OF ORDERS AND AGGREGATE PURCHASES

Aside from differences in methods of sale and delivery, savings in the cost of serving different customers result from the differences in the size of the orders placed by such customers, irrespective of their aggregate purchases for a given period of time, large orders being usually assembled, priced, packed, billed, and delivered at a lower cost per dollar of sales than small orders.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (A)—QUANTITY DISCOUNTS—
COST SAVINGS—AGGREGATE ANNUAL PURCHASE BASIS—AS ALONE JUSTIFYING

Where a corporation engaged in manufacture, sale and distribution of padlocks—Paid or allowed to buyers, aggregate annual purchases of which amounted to \$10,000, additional 5 percent discount, and in some cases additional allowance for freight, not granted to buyer competitors whose aggregate annual purchases fell below said sum, which additional discount or allowance, absent any evidence that it employed different methods of sale and delivery in serving customers not accorded such discount than it used in serving those granted same, or that it cost it less per dollar of sales to make shipments to first-named, than to last-named group, did not make only due allowance for differences in cost of manufacture, sale, or delivery resulting from differing methods or quantities in which padlocks were to such purchasers sold or delivered;

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With result that effect of such discrimination might be substantially to lessen competition or tend to create a monopoly in line of commerce in which jobber customers were engaged, and to injure, destroy, or prevent competition with recipients of benefits of such discrimination:

Held. That such practice in allowing additional discount of 5 percent and freight allowances to certain customers competitively engaged with others not given such discount or allowance, constituted discriminations in price in violation of Section 2 (a) of an act of Congress approved October 15, 1914, as amended.

Mr. A. W. DeBirney for the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Master Lock Co., hereinafter called respondent, since June 19, 1936, has been and is now violating the provisions of Section 2 (a) of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Public No. 212, the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (Public No. 692, the Robinson-Patman Act), hereby issues this its complaint against respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Wisconsin and has its principal office and place of business at 926 West Juneau Avenue in the city of Milwaukee, Wis.

PAR. 2. At all times since June 19, 1936, respondent has been and is now engaged in the business of manufacturing, selling and distributing padlocks. In the course and conduct of its said business, the respondent has been and is now manufacturing such locks at its place of business in the State of Wisconsin and has been and is now selling, shipping, and distributing such locks in commerce from its said place of business in the State of Wisconsin to various purchasers of said commodity located in the several States of the United States and in the District of Columbia. At all times since June 19, 1936, there has been and is now between respondent and purchasers of said commodity a course of trade and commerce in said commodity in and between the State of Wisconsin and the several other States of the United States and the District of Columbia.

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PAR. 3. The said respondent in the course and conduct of its business as aforesaid has been and is now in direct active competition with other persons, partnerships, and corporations similarly engaged in selling, shipping, and distributing padlocks. Some of such other corporations are Yale & Towne Manufacturing Co., of Stamford, Conn., and The Corbin Co., Inc., American Steel & Wire Co., The H. L. Judd Co., and Norwalk Lock Co., all located in New York, N. Y.

PAR. 4. Since June 19, 1936, in the course and conduct of its business described in paragraph 2 hereof and while engaged in trade and commerce between the State of Wisconsin and the other States of the United States and the District of Columbia, the respondent has been and is now discriminating in price between purchasers of said commodity of like grade and quality sold and shipped in commerce, as aforesaid by respondent to said purchasers and by them purchased from respondent in commerce for resale within the several States of the United States and the District of Columbia in that the respondent has been and is now allowing to some of said purchasers a larger discount from uniform prices at which said commodity was and is sold to them by respondent than the discount which respondent has been and is now allowing to other purchasers competitively engaged with those receiving the larger discount; additionally, respondent, in the course of such commerce, has been and is now allowing to some of said purchasers an additional allowance of an amount equal to freight payments from factory to purchaser on such purchases and not granting such allowance to purchasers competing with those receiving such freight allowances.

PAR. 5. The said respondent, in the course and conduct of its business as aforesaid, has been and is now selling to the following customers among others located in Chicago, Ill.: E. J. Ewert & Co., Inc., Johnson Bros. Hardware Co., Clark Barlow Hardware Co., Rehm Hardware Co., Stebbins Hardware Co., United Hardware Co., Butler Bros. and Hibbard, Spencer, Bartlett & Co. Customers of respondent are all granted a 50 percent discount from a uniform price list. Two of respondent's largest customers, Hibbard, Spencer, Bartlett & Co. and Butler Bros., are granted a further allowance of 5 percent which their competitors do not receive.

PAR. 6. Hibbard, Spencer, Bartlett & Co. are, in addition to the two preceding discounts, granted an allowance equal to the freight on their purchases from respondent. The aforesaid customers of respondent are competitively engaged among themselves in the jobbing of locks in the city of Chicago and elsewhere. Hibbard, Spencer, Bartlett & Co. and Butler Bros. actively compete with those who do.

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not receive freight allowances or the additional 5 percent discount referred to. Respondent represents that all padlock prices are quoted f. o. b. Milwaukee. By letter dated July 9, 1936, the respondent advised one of its jobbing customers in Chicago, namely W. D. Allen Manufacturing Co., as follows:

This will acknowledge your debit memorandum of July 8th for \$1.49 covering freight on the June 29th shipment.

We believe this memorandum was sent to us by mistake inasmuch as all Master Padlock prices are quoted f. o. b. Milwaukee, as you will recall, and we are therefore returning the debit to you with this letter, together with the freight bill.

PAB. 7. On January 8, 1938 respondent, in the course and conduct of its business as aforesaid, sold and shipped to Hibbard, Spencer, Bartlett & Co. a bill of goods and granted discounts as indicated by the following invoice:

MASTER LOCK COMPANY

World's Largest Exclusive Padlock Manufacturers

918-926 W. Juneau Avenue

Milwaukee, Wis., U. S. A.

JANUARY 8, 1937.

Sold to Hibbard, Spencer, Bartlett & Company, 211 East North Water Street,
Chicago, Illinois.

50 doz. No.	99 Greyhound Padlocks	\$3. 00	\$150. 00
20 "	105 Jewel Padlocks	4. 20	84. 00
6 "	510 Tirelocks	6. 00	36. 00
18 "	1400 Padlocks	6. 00	108. 00
50 "	500 Junior Padlocks	6. 00	300. 00
20 "	77 Jungle King Padlocks	6. 00	120. 00
20 "	7 Secret Service Padlocks	6. 00	120. 00
10 "	1 " " "	12. 00	120. 00
20 "	3 Little Giant Padlocks	9. 00	180. 00
2 "	99K Flat Key Blanks	. 10	. 20
6 "	1K Key Blanks	. 48	2. 88
			1221. 08
Less 50%-----			610. 54
			610. 54
Less 5%-----			30. 53
			580. 01
Less Freight-----			4. 42
			\$575. 59

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PAR. 8. The said respondent, in the course and conduct of its business as aforesaid, has been and is now selling to the following customers among others located in New York City, N. Y.: Worth Hardware Co., Inc., William L. Blumberg Co., Inc., Underhill-Clinch & Co., William Goldenblum & Co., Inc., Masback Hardware Co. and Butler Bros., New York branch. These customers are all competitively engaged with each other in the jobbing of locks. Respondent has been and is now selling to all customers at a uniform list price less 50 percent and additionally, its largest customer in New York City, Masback Hardware Co., and Butler Bros. are allowed a further 5 percent discount on goods of like grade and quality, which 5 percent their competitors do not receive.

PAR. 9. The said respondent, in the course and conduct of its business as aforesaid, has been and is now selling padlocks to Shapleigh Hardware Co. of St. Louis, Mo. The said Shapleigh Hardware Co. purchases padlocks from respondent at the uniform list price less 50 percent and an additional discount of 5 percent and an allowance equal to the freight charges from factory on its purchases from respondent. Respondent has been and is now likewise selling to numerous other customers located in St. Louis, Mo., and elsewhere, which customers are engaged in commerce in the jobbing of padlocks and in the course and conduct of such business are in direct active competition with the Shapleigh Hardware Co. and do not receive freight allowances or the additional 5 percent discount heretofore referred to.

PAR. 10. The said respondent, in the course and conduct of its business as aforesaid, has been and is now selling to numerous customers competitively engaged in commerce with another of its large customers, namely Belknap Hardware & Manufacturing Co. of Louisville, Ky. Such customers of respondent are engaged in the jobbing of padlocks in the city of Louisville and elsewhere and are in direct active competition in commerce with Belknap Hardware & Manufacturing Co. and do not receive the additional allowance of 5 percent heretofore referred to. On May 21, 1937 respondent sold to and shipped for Belknap Hardware & Manufacturing Co. to Thomasville, Ga., a bill of goods and granted discounts as indicated by the following invoice:

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MASTER LOCK COMPANY
World's Largest Exclusive Padlock Manufacturers
 918-926 W. Juneau Avenue
 Milwaukee, Wis. U. S. A.

MAY 21, 1937.

Sold To Belknap Hdwe. & Mfg. Company, Louisville, Kentucky

3 only #1 Padlocks, keyed alike-----	\$12. 00	\$3.00
Less 50%-----		1. 50

1.50

Shipped May 10 to:

Less 5%-----		. 08
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1.42

W. L. Ball & Son
 Thomasville,
 Georgia.

Parcel Post-----		. 22
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\$1.64

PAR. 11. Respondent in its sales in commerce, as aforesaid, generally pursues a policy of granting the additional 5 percent discount and freight allowance referred to above to customers whose cumulative annual purchases amount to in excess of \$10,000 a year. However, in connection with such policy, it grants and allows the 5 percent discount to Butler Bros. of Chicago, Ill., which maintain branches in Chicago, Ill., Boston, Mass., New York, N. Y., Minneapolis, Minn., and San Francisco, Calif. No single branch purchases amount to \$10,000 during a year. Generally the individual jobbers named herein who do not receive the 5 percent purchase in an amount between \$3,000 and \$5,000 a year.

PAR. 12. The effect of the discriminations in price of 5 percent and freight allowances may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which the respondent is engaged and in the line of commerce in which its customers are engaged, or to injure, destroy or prevent competition with respondent or those customers of respondent receiving the benefit of such discrimination or with customers of either of them.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Public No. 212, the Clayton Act), as amended by an act approved

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June 19, 1936 (Public No. 692, the Robinson-Patman Act), the Federal Trade Commission, on the 22d day of April A. D. 1938, issued its complaint against the respondent Master Lock Co. and caused such complaint to be served as required by law, in which it was charged that said respondent was and had been discriminating in price in commerce in violation of the provisions of said acts. On July 29, 1938, the respondent filed its answer in this proceeding denying unlawfully discriminating in price because of alleged savings effected in selling to jobbers whose annual purchases exceeded \$10,000. On August 24, 1938, the respondent filed its motion asking leave to withdraw its answer filed on July 29, 1938, and to file its substituted answer admitting all the material allegations of the complaint to be true and waiving intervening procedure, briefs, argument and final hearing, which answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, briefs, and oral arguments of counsel having been waived and the Commission having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Master Lock Co., respondent herein, is a corporation organized and existing under the laws of the State of Wisconsin and has its principal office and place of business at 926 West Juneau Avenue in the city of Milwaukee, Wis.

PAR. 2. At all times since June 19, 1936, respondent, Master Lock Co., has been and is now engaged in the business of manufacturing, selling, and distributing padlocks. In the course and conduct of its said business, the respondent has been and is now manufacturing such locks at its place of business in the State of Wisconsin and has been and is now selling, shipping, and distributing such locks in commerce from its said place of business in the State of Wisconsin to various purchasers of said commodity located in the several States of the United States and in the District of Columbia. At all times since June 19, 1936, there has been and is now between respondent and purchasers of said commodity a course of trade and commerce in said commodity in and between the State of Wisconsin and the several other States of the United States and the District of Columbia.

PAR. 3. Since June 19, 1936, in the course and conduct of its business described in paragraph 2 hereof and while engaged in trade and

commerce between the State of Wisconsin and the other States of the United States and the District of Columbia, the respondent has been and was when complaint issued discriminating in price between purchasers of said commodity of like grade and quality sold and shipped in commerce, as aforesaid by respondent to said purchasers and by them purchased from respondent in commerce for resale within the several States of the United States and the District of Columbia in that the respondent has been and was when complaint issued allowing to some of said purchasers a larger discount from uniform prices at which said commodity was and is sold to them by respondent than the discount which respondent has been and was allowing to other purchasers competitively engaged with those receiving the larger discount; additionally, respondent, in the course of such commerce, has been and was when complaint issued allowing to some of said purchasers an additional allowance of an amount equal to freight payments from factory to purchaser on such purchases and not granting such allowance to purchasers competing with those receiving such freight allowances.

PAR. 4. The said respondent, in the course and conduct of its business as aforesaid, sold to the following customers among others located in Chicago, Ill.; E. J. Ewert & Co., Inc., Johnson Bros. Hardware Co., Clark Barlow Hardware Co., Rehm Hardware Co., Stebbins Hardware Co., United Hardware Co., Butler Bros. and Hibbard, Spencer, Bartlett & Co. Customers of respondent are all granted a 50 percent discount from a uniform price list. Two of respondent's largest customers, Hibbard, Spencer, Bartlett & Co., and Butler Bros., were granted a further allowance of 5 percent which their competitors did not receive.

PAR. 5. Hibbard, Spencer, Bartlett & Co. were when the complaint issued, in addition to the two preceding discounts, granted an allowance equal to the freight on their purchases from respondent. The aforesaid customers of respondent are competitively engaged among themselves and with others in the jobbing of locks in the city of Chicago and elsewhere. Hibbard, Spencer, Bartlett & Co. and Butler Bros. actively compete with those who do not receive freight allowances or the additional 5 percent discount referred to.

PAR. 6. On January 8, 1938 respondent, in the course and conduct of its business as aforesaid, sold and shipped to Hibbard, Spencer, Bartlett & Co. a bill of goods and granted discounts as indicated by the following invoice:

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MASTER LOCK COMPANY

World's Largest Exclusive Padlock Manufacturers
918-926 W. Juneau Avenue
Milwaukee, Wis. U. S. A.

JANUARY 8, 1937.

Sold to Hibbard, Spencer, Bartlett & Company, 211 East North Water Street,
Chicago, Illinois

50 doz. No. 99	Greyhound Padlocks	\$3. 00	\$150. 00
20 doz. 105	Jewel Padlocks	4. 20	84. 00
6 " 510	Tirelocks	6. 00	36. 00
18 " 1400	Padlocks	6. 00	108. 00
50 " 500	Junior Padlocks	6. 00	300. 00
20 " 77	Jungle King Padlocks	6. 00	120. 00
20 " 7	Secret Service Padlocks	6. 00	120. 00
10 " 1	" " "	12. 00	120. 00
20 " 3	Little Giant Padlocks	9. 00	180. 00
2 " 99K	Flat Key Blanks	. 10	. 20
6 " 1K	Key Blanks	. 48	2. 88
			1, 221. 08
Less 50%-----			610. 54
			610. 54
Less 5%-----			30. 53
			580. 01
Less Freight-----			4. 42
			\$575. 59

PAR. 7. The said respondent, in the course and conduct of its business as aforesaid, has been and is now selling to the following customers among others located in New York City, N. Y.; Worth Hardware Co., Inc., William L. Blumberg Co., Inc., Underhill-Clinch & Co., William Goldenblum & Co., Inc., Masback Hardware Co., and Butler Bros. New York branch. These customers are all competitively engaged with each other in the jobbing of locks. Respondent has been and was when complaint issued selling to all such customers at a uniform list price less 50 percent and additionally Masback Hardware Co. and Butler Bros. were allowed a further 5 percent discount on goods of like grade and quality, which 5 percent their competitors did not receive.

PAR. 8. The respondent, in the course and conduct of its business as aforesaid, has been and was, at the time the complaint issued, selling padlocks to Shapleigh Hardware Co. of St. Louis, Mo., at the uniform list price less 50 percent and did allow an additional discount of 5 percent and an allowance equal to the freight charges from factory on purchases from respondent. Respondent has been and is now likewise selling to numerous other customers located in

St. Louis, Mo., and elsewhere, which customers are engaged in commerce in the jobbing of padlocks and in the course and conduct of such business are in direct active competition with the Shapleigh Hardware Co. and who did not receive freight allowances or the additional 5 percent discount heretofore referred to.

PAR. 9. The said respondent, in the course and conduct of its business as aforesaid, has been and is now selling to numerous customers competitively engaged in commerce with another of its large customers, namely Belknap Hardware & Manufacturing Co. of Louisville, Ky. Such customers of respondent are engaged in the jobbing of padlocks in the city of Louisville and elsewhere and are in direct active competition in commerce with Belknap Hardware & Manufacturing Co. and do not and did not receive the additional allowance of 5 percent heretofore referred to.

PAR. 10. Respondent in its sales in commerce, as aforesaid, generally pursued a policy of granting the additional 5 percent discount and freight allowance referred to above to customers whose annual purchases amount to in excess of \$10,000 a year. However, in connection with such policy, it granted and allowed the 5 percent discount to Butler Bros. of Chicago, Ill., which maintain branches in Chicago, Ill., Boston, Mass., New York, N. Y., Minneapolis, Minn., and San Francisco, Calif. No single branch purchases amounted to \$10,000 during a year.

CONCLUSION AND OPINION

From the facts presented herein, the first question that arises concerns the respondent's offer of varying discounts to customers purchasing specified quantities of merchandise from the respondent annually.

Customers whose annual purchases from the respondent ordinarily amounted to less than \$10,000 were generally offered only a trade discount of 50 percent from list prices on individual shipments, while those whose annual purchases from the said respondent usually exceeded that amount were offered the aforesaid trade discount, plus an additional discount of 5 percent which was allowed on individual invoices.

The additional discount of 5 percent offered by the respondent to customers whose annual purchases generally exceeded \$10,000 was apparently predicated on the belief that the orders received from this customer group were both larger and fewer in number, in proportion to their purchases, and therefore cost the respondent less per dollar of sales to bill, pack, and ship, than the orders received

from customers whose annual purchases usually amounted to less than \$10,000. This belief, however, is frequently not supported by the facts. On the contrary, not only do customers in the last named group frequently place a smaller percentage of orders amounting to less than \$5 each than do the customers allowed the additional discounts, but they frequently also place a larger percentage of orders exceeding \$100 each than do customers accorded additional discounts. Furthermore, the average size of the individual order received by sellers from customers granted an extra discount is frequently less than the average size of the individual order received from customers not granted that discount.

Aside from differences in methods of sale and delivery, savings in the cost of serving different customers result from the differences in the size of the orders placed by such customers, irrespective of their aggregate purchases for a given period of time. Large orders are usually assembled, priced, packed, billed, and delivered at a lower cost per dollar of sales than small orders. In the instant case there is no evidence that the respondent employed different methods of sale and delivery in serving the customers not accorded the 5 percent discount than it used in serving those receiving the said discount, nor that it cost the respondent less per dollar of sales to make shipments to the first named group than to the group last named.

The difference in price between padlocks sold to customers whose annual purchases generally amount to \$10,000 and those sold to customers whose annual purchases generally amount to less than \$10,000, as aforesaid, constitutes a discrimination and the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which the jobbers are engaged and to injure, destroy, or prevent competition with the recipients of the benefits of such discrimination. Such discrimination is not one that makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which padlocks are to such purchasers sold or delivered.

The practice by the respondent, Master Lock Co., of allowing the additional discount of 5 percent and the freight allowances granted to certain customers competitively engaged with others not given such additional discount or allowances constitutes discrimination in price in commerce in violation of Section 2 (a) of said Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes."

Order

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 the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion, which findings and conclusion are hereby made a part hereof, that said respondent has violated the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended.

It is ordered, That the respondent, Master Lock Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of padlocks in interstate commerce or in the District of Columbia, do forthwith cease and desist from continuing to practice the discrimination in price adjudged illegal in the aforesaid findings and conclusions, or from directly or indirectly in any other manner, discriminating in price by paying or granting freight allowances or discounts, the effect whereof may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which customers of the respondent are engaged, or to injure, destroy or prevent competition with any person receiving the benefit of such discrimination, except where such discount makes only due allowance for differences in cost which have been achieved with respect to individual sales made to a particular buyer.

It is further ordered, That the said respondent, Master Lock Co., within 60 days from the date of the service upon it of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF

JOHN B. ARATA

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

Docket 3464. Complaint, June 21, 1938—Decision, Sept. 20, 1938

Where an individual engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to the consumers thereof, and which were composed of (1) number of pieces of candy of varying sizes, together with corresponding number of small slips of paper or tickets, number concealed within which, and ranging from one to five, determined, in accordance with chance selection of penny purchaser, size of piece received, or (2) of other assortments and methods of sale and distribution varying in detail, but similar in method or plan—

Sold, to dealers and retailers, for display and resale to purchasing public in accordance with aforesaid sales plan, such assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its product in accordance with such plan, involving game of chance or sale of a chance to secure piece of candy at price greatly below normal retail price thereof, contrary to an established public policy of the United States Government, and in violation of the criminal laws, and in competition with many who, unwilling to offer or sell candy so packed and assembled, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance or any other method contrary to public policy, refrain therefrom;

With capacity and tendency to induce purchasers to buy his said products in preference to candy offered and sold by competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing same and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase such candy, thus packed and sold by him, in preference to that offered and sold by said competitors who do not use same or equivalent method, and with tendency and capacity, because of said game of chance, to divert to him trade and custom from his competitors as aforesaid, exclude from said trade all competitors who are unwilling to and do not use such or equivalent or similar method as unlawful, lessen competition in said trade and tend to create monopoly thereof in him and such other distributors as use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

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

Mr. Henry C. Lank and Mr. D. C. Daniel for the Commission.
Mr. Ned Stein, of Philadelphia, Pa., for respondent.