

Syllabus

IN THE MATTER OF

WALTER KIDDE & COMPANY, INC., AMERICAN LA FRANCE
& FOAMITE INDUSTRIES, INC., C-O-TWO FIRE EQUIP-
MENT COMPANY, NATIONAL FOAM SYSTEM, INC., AND
FYROUT COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914, AND OF SEC. 3
OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AND AMENDMENTS
THERE TO

Docket 3929. Complaint, Oct. 18, 1939—Decision, Mar. 20, 1940

Where five corporations engaged in the manufacture or assembly of fire fighting equipment, including carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers, and in sale and distribution thereof to purchasers in the several States and in the District of Columbia, in competition among themselves, except insofar as such competition might have been hindered, lessened, restricted or restrained as below set forth; acting in concert with one another—

- (a) Fixed and agreed upon minimum prices and terms at which they were to and did sell parts, accessories, apparatus, and equipment used in manufacture or assembly of such systems and extinguishers, and including hose assemblies, cylinders, carrying straps, etc., and compiled and published such prices and terms thus agreed on and observed as "Schedule of Minimum Prices and Terms," as part of license agreements issued by one of their number to others under expired patent and unexpired patent governing successful manufacture, assembly and operation of aforesaid portable fire extinguishers, and to which license agreements schedule in question was affixed; and
- (b) Submitted, in response to invitation of Governmental agencies for competitive bids, bids which, pursuant to agreement and minimum price schedules aforesaid, were identical on such parts, accessories, apparatus, and equipment, and included, as listed in minimum schedule aforesaid, patented coupling, not controlled by or licensed to aforesaid maker of such license agreements, but sold by manufacturer thereof to anyone desiring to purchase same;

With result that such acts and practices of said manufacturers and assemblers in fixing and maintaining uniform prices of parts, accessories, and apparatus, as above set forth, actually hindered and prevented competition between and among them in sale of such parts, etc., in commerce, and had dangerous tendency so to do, and placed in them power to control and enhance prices and unreasonably restrained commerce in parts, accessories and apparatus aforesaid:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair methods of competition in violation of Section 5 of act of Congress approved Sept. 26, 1914, as amended; and

Where said license agreement maker—

Licensed one of other four concerns above set forth to make, sell, install and use invention set forth in such license agreement, under provision by which said licensee was required to purchase from it all of its requirements

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of parts, accessories and apparatus, whether for use by licensee in assembling completed units of aforesaid extinguishing systems or aforesaid portable fire extinguishers, or whether such parts, accessories and apparatus were to be resold by it separately from such completed units, and by which licensee parts, accessories and apparatus thus sold were charged for in accordance with agreed uniform price schedules, and practice of which licensee was to place with such licensing concern orders for fire fighting equipment received by it for manufacture and assembly in factory thereof, while purchasing from it all necessary parts, accessories and apparatus for Government orders received by licensee for assembly at licensee's place of business, and sale as manufactured by it:

Held, That such acts and practices of said licensing concern, in requiring licensee aforesaid to purchase from it all of its requirements of said parts, accessories, apparatus and equipment, as above set out, constituted violation of Section 3 of act of Congress approved Oct. 15, 1914, and amendments thereto.

Mr. Daniel J. Murphy for the Commission.

Darby & Darby, of New York City, for respondents, with whom also appeared *Jeffery, Kimball & Eggleston*, of New York City, for American La France & Foamite Industries, Inc., and *Mr. Frederick S. Duncan*, of New York City, for C-O-Two Fire Equipment Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the respondent herein named have violated the provisions of said act and it appearing to the 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 in count 1 hereof.

Also pursuant to the provisions of section 3 of an Act of Congress approved October 15, 1914 entitled "An Act to supplement existing laws against unlawful restraint and monopolies and for other purposes," commonly known as the Clayton Act, the Commission having reason to believe that the respondent, Walter Kidde & Co., Inc., has violated and now is violating the provisions of section 3 of said Act of Congress, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission issues this its complaint stating its charges in respect thereto in count 2 hereof.

Count 1

THE CHARGE UNDER FEDERAL TRADE COMMISSION ACT

PARAGRAPH 1. (a) Respondent Walter Kidde & Co., Inc., is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Delaware and having its principal place of business at 140 Cedar Street, New York, N. Y.

(b) Respondent American La France & Foamite Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York and having its principal place of business at Elmira, N. Y.

(c) Respondent C-O-Two Fire Equipment Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware and having its principal place of business at 560 Belmont Avenue, Newark, N. J.

(d) Respondent National Foam System, Inc. is a corporation, the place of whose incorporation is not known to the Commission, having its principal place of business at 1632 Sansom Street, Philadelphia, Pa.

(e) Respondent Fryout Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California and having its principal place of business at 90 West Street, New York, N. Y. It is a wholly owned subsidiary of respondent Walter Kidde & Co., Inc.

PAR. 2. The above-named corporate respondents are engaged in the manufacture and assembly of fire fighting equipment including carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers, and in the sale and distribution thereof to purchasers located in the several States of the United States and in the District of Columbia.

The respondents in the regular course of their business in the sale and distribution of fire fighting equipment, parts, accessories and apparatus thereof cause the same to be shipped and transported from the various points at which their manufacturing and assembling plants are located into and through the several States of the United States, other than the State of the origin of such shipments, and in the District of Columbia. They are in competition among themselves except insofar as such competition has been hindered, lessened, restricted, or restrained as hereinafter alleged.

PAR. 3. In the year 1933 and for several years prior thereto, there were two basic patents which govern the successful manufacture, assembly and operation of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers, to wit, the Rustige and Minor patents. The Rustige invention consists of a system of uniform piping which permits the continuous flow of carbon dioxide fluid and gas from a cylinder. The patent on this invention was issued by the United States Patent Office on March 30, 1920. The Minor invention consists of a discharge horn or nozzle which insures the successful application of carbon dioxide liquid and gas to a fire. The patent

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on this invention was issued by the United States Patent Office on May 27, 1930. Both of said basic patents were owned by respondent, Walter Kidde & Co., Inc.

PAR. 4. The respondent Walter Kidde & Co., Inc., under the Rustige and Minor patents, has, prior to 1933, entered into a licensing agreement with each of the other named respondents herein; said licensing agreements have been continued in effect to the present time:

(a) The agreements entered into between respondent Walter Kidde & Co., Inc. and respondents American La France & Foamite Industries, Inc. and C-O-Two Fire Equipment Co. grant licenses to said respondents to manufacture and sell the inventions set forth in the respective patents.

(b) The agreement entered into between respondent Walter Kidde & Co., Inc., and respondent National Foam System, Inc. grants a license to said respondent, to make, sell, install, and use the inventions set forth in the respective patents, but under the provisions of said agreement the respondent National Foam System, Inc., as licensee, is required to purchase from the respondent, Walter Kidde & Co., Inc., as licensor, all the parts, apparatus, and equipment pertinent thereto, necessary for the manufacture, sale and installation, and use of the said inventions.

(c) Attached to each of the licensing agreements, entered into by the respondent Walter Kidde & Co., Inc. with each of the other named respondents herein, is a schedule of minimum prices at which the respondents agree to sell carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers and all the parts, apparatus and equipment used in the manufacture or assembly of the said carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers. Said price schedules further provide and fix the prices on used parts, apparatus and equipment when traded in as part of the purchase price on new parts, apparatus and equipment.

PAR. 5. Supplementing said license agreements and in support thereof but without authority under the patents and license agreements described in paragraphs 3 and 4, the said respondents have done and performed, and still do and perform, the following:

(a) Said respondents agreed to fix and maintain and have fixed and maintained a uniform price in the sale of unpatented parts, accessories, apparatus, and equipment used in the manufacture, assembly, or operation of carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers.

(b) Said respondents agreed to fix and maintain and have fixed and maintained uniform prices in the sale of certain couplings, used as accessories on hose assemblies of carbon dioxide fire extinguishers, without the requirement of a license or other authority from the owner of a lawfully issued patent on said couplings.

(c) Said respondents agreed to submit and have submitted identical bids on said parts, accessories, apparatus, and equipment, where competitive bids were called for by Governmental agencies.

(d) Said respondents have used and are now using other methods and means designed to suppress and prevent competition and restrict and restrain the sale of parts, accessories, apparatus, and equipment used in the manufacture, assembly and operation of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers.

PAR. 6. The acts and practices of the respondents as alleged in paragraph 5 hereof are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of parts, accessories, apparatus and equipment used in the manufacture, assembly, and operation of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices on all such commodities; have created in the respondents a monopoly in the sale of said parts, accessories, apparatus and equipment in such commerce; have unreasonably restrained such commerce in the said parts, accessories, apparatus and equipment and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Count 2

THE CHARGE UNDER THE CLAYTON ACT

PARAGRAPH 1. Paragraphs 1a and 3 of count 1 hereof are hereby incorporated and made a part of this charge to precisely the same extent and if each and all of them were set forth in full and repeated verbatim in this count. Paragraphs 2 and 4b of count 1 hereof are hereby incorporated and made a part of this charge, but only to the extent that the same refer and apply to the respondent Walter Kidde & Co., Inc.

PAR. 2. Under the provisions of the license agreement granted by respondent Walter Kidde & Co., Inc., to National Foam System, Inc., the said respondent as licensor agrees to sell to National Foam System, Inc., as licensee, and said licensee agrees to purchase from said licensor, all the parts, apparatus and equipment necessary for the manufacture, sale, installation, and use of carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers.

The effect of the aid provisions in said license agreement may be, is, and has been, to substantially lessen competition or tend to

create a monopoly in respondent in commerce between and among the various States of the United States and in the District of Columbia in parts, apparatus and equipment necessary for the manufacture, sale, installation and use of carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers.

PAR. 3. The aforesaid acts of respondent constitute a violation of the provisions of section 3 of the hereinabove mentioned act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, (The Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and amendments thereto, the Federal Trade Commission on October 18, 1939, issued and served its complaint in this proceeding upon the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said acts. On December 13 and 14, 1939, the respondents filed their answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and their counsel and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent Walter Kidde & Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its principal place of business at 140 Cedar Street, New York, N. Y.

(b) Respondent American La France & Foamite Industries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its principal place of business at Elmira, N. Y.

(c) Respondent C-O-Two Fire Equipment Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its principal place of business at 560 Belmont Avenue, Newark, N. J.

(d) Respondent National Foam System, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its principal place of business at 1632 Sansom Street, Philadelphia, Pa.

(e) Respondent Fyrout (referred to in the complaint as Fryout) Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California and having its principal place of business at 90 West Street, New York, N. Y. It is a wholly owned subsidiary of respondent Walter Kidde & Co., Inc.

PAR. 2. The above-named corporate respondents are engaged in the manufacture and/or assembly of fire fighting equipment including carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers, and in the sale and distribution thereof to purchasers located in the several States of the United States and in the District of Columbia.

The respondents, in the regular course of their business in the sale and distribution of fire fighting equipment, parts, accessories, and apparatus thereof, cause the same to be shipped and transported from the various points at which their manufacturing and/or assembling plants are located into and through the several States of the United States, other than the State of the origin of such shipments, and in the District of Columbia. They are in competition among themselves excepting insofar as such competition may have been hindered, lessened, restricted, or restrained as hereinafter set forth.

PAR. 3. Respondent Walter Kidde & Co., Inc., was the assignee of two patents, known as the Rustige and Minor patents, which governed the successful manufacture, assembly, and operation of carbon dioxide portable fire extinguishers. The Rustige patent expired on or about March 30, 1937. The Minor patent was issued by the United States Patent Office on May 27, 1930, and covered a fire-extinguishing method which supplies carbon dioxide liquid from a container to one or more discharge nozzles so constructed or supplemented as to prevent the entrainment of air, together with the necessary appurtenances for carrying out the method. Prior to the expiration of the Rustige patent, respondent Walter Kidde & Co.,

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Inc., issued license agreements, based on both of said patents, to the respondents, which license agreements have continued in force to the present time.

PAR. 4. Affixed to, and forming a part of, each of the license agreements, entered into by respondent Walter Kidde & Co., Inc., with each of the other respondents, is a "Schedule of Minimum Prices and Terms."

The said schedule of minimum prices and terms included uniform prices at which respondents agreed to sell, and did sell, parts, accessories, apparatus and equipment used in the manufacture or assembly of the said carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers. Included among said parts listed in the price schedules were: hose assemblies, cylinders, carrying straps, etc.

PAR. 5. All of the respondents, pursuant to the agreement to maintain the uniform prices as listed in the said minimum price schedules, have submitted identical bids on said parts, accessories, apparatus, and equipment, in response to invitations of governmental agencies for competitive bids.

The Bureau of Supplies and Accounts of the United States Navy Department, on June 3, 1937, issued an invitation for competitive bids for hose assemblies, in "Schedule 919," to be opened June 25, 1937. There were three lots involved in Schedule 919: Lot 936 covered the delivery to the Supply Officers, Navy Yard, Brooklyn, N. Y., of 800 hose assemblies described in said invitation as "Assemblies, hose, discharge, flexible, inside diameter $\frac{1}{4}$ inch," for use with portable 15-pound carbon dioxide fire extinguisher; Lot 937 covered the delivery of 400 similar hose connections to the Supply Officer, Navy Yard, Mare Island, Calif.; Lot 937-A covered the delivery of 300 similar units to the Supply Officer, San Diego, Calif. All the respondents named herein, in response to said invitation, filed bids on each of the 3 lots and the bids of each respondent were identical and were the same as the figures then appearing in the agreed minimum price schedule.

PAR. 6. The particular type of coupling used and included in the hose assemblies, which hose assemblies were the subject matter of the bid invitations referred to in the preceding paragraph is not manufactured by respondent Walter Kidde & Co., Inc., or by any of the respondent licensees. Said coupling is itself a patented item manufactured by Flex-O-Tube Co., of Detroit, Mich., under Patent No. 1752976 which is owned by the said Flex-O-Tube Co. Flex-O-Tube Co. has never licensed respondent Walter Kidde & Co., Inc., or any of the respondents named herein to manufacture said couplings.

The minimum price schedules attached to the license agreements referred to herein included a minimum price allotted to the said patented coupling. No license agreement or other authorization exists between Flex-O-Tube Co. and respondent Walter Kidde & Co., Inc., authorizing or requiring the latter to include the said patented coupling as one of the items in minimum price schedules. Flex-O-Tube Co. has sold the said patented couplings to the respondents named herein and will sell the said patented couplings to any one who desires to buy them.

PAR. 7. The license agreement issued on December 2, 1935, by respondent Walter Kidde & Co., Inc., to respondent National Foam System, Inc., licensed National Foam System, Inc., to make, sell, install, and use the inventions set forth in the license agreement. Respondent National Foam System, Inc., does not manufacture carbon dioxide fire-extinguishing systems, or carbon dioxide portable fire extinguishers, or any of the parts, accessories or appurtenances thereto. The license issued by respondent Walter Kidde & Co., Inc., is in reality not a license to manufacture but one to assemble the parts, accessories and apparatus purchased from the licensor.

Under said agreement respondent National Foam System, Inc., is required to purchase from respondent Walter Kidde & Co., Inc., all of its requirements of the said parts, accessories and apparatus, whether the said parts, accessories and apparatus were to be used by respondent National Foam System, Inc., in assembling completed units of carbon dioxide fire extinguishing systems or carbon dioxide portable fire extinguishers, or whether said parts, accessories and apparatus were to be resold, by respondent National Foam System, Inc., separately from said completed units. When said parts, accessories, and apparatus were sold, by National Foam System, Inc., separately from complete units the prices charged for same were in accordance with the agreed uniform price schedules.

PAR. 8. In most instances when the respondent National Foam System, Inc., obtains orders for carbon dioxide fire-fighting equipment, such orders are placed by respondent National Foam System, Inc., and the equipment so ordered is manufactured and assembled at the factory of respondent Walter Kidde & Co., Inc. However, on Government orders for carbon dioxide fire-fighting equipment received by the respondent National Foam System, Inc., the said respondent National Foam System, Inc., purchases all the necessary parts, accessories and apparatus from the respondent Walter Kidde & Co., Inc., and assembles the parts at its place of business in Philadelphia, Pa., and sells the said equipment as being manufactured by it.

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CONCLUSION

The acts and practices of the respondents in fixing and maintaining uniform prices of parts, accessories and apparatus as herein set out in paragraphs 4, 5, and 6, are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented competition between and among respondents in the sale of said parts, accessories, and apparatus in commerce; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in said parts, accessories and apparatus and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act; and the acts and practices of the respondent Walter Kidde & Co., Inc., in requiring the respondent National Foam System, Inc., to purchase from it all of its requirements of said parts, apparatus, and equipment as herein set out in paragraphs 7 and 8 constitute a violation of section 3 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914, and amendments thereto.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents and a stipulation as to the facts entered into between counsel representing the respondents and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusions based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act and that the respondent Walter Kidde & Co., Inc., has violated the provisions of section 3 of an Act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes";

It is ordered, That the respondents, Walter Kidde & Co., Inc., American La France & Foamite Industries, Inc., C-O-Two Fire Equipment Co., National Foam System, Inc., and Fyrout Co., Inc., their officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution, in commerce as defined in the Federal Trade Commission Act, of parts, accessories, and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire extinguishing systems and carbon dioxide port-

able fire extinguishers, do forthwith cease and desist from doing and performing by understanding, agreement, or combination, between or among any two or more of said respondents, or with others, the following acts and things:

1. Fixing, or fixing and maintaining the sale or purchase price for parts, accessories, and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers.

2. Compiling, publishing, and distributing any list of prices for the parts, accessories, and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers.

3. Filing bids where competitive bids are called for by Governmental agencies or other buyers for parts, accessories, and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers.

It is further ordered, That the respondent Walter Kidde & Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce as defined in the Clayton Act of parts, accessories and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Making any sale or contract for the sale of parts, accessories, and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers, for use or resale, or fix a price charged therefor on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of the said respondent.

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

IN THE MATTER OF

M. LINKMAN & COMPANY

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

Docket 4018. Complaint, Feb. 5, 1940—Decision, Mar. 20, 1940

Where a corporation engaged in manufacture of pipes and in sale and distribution thereof, including certain assortments which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme, when sold and distributed to consumers thereof, and which consisted of (1) number of Dr. Grabow pipes, together with punchboard, for use in sale and distribution of such products, and cigarettes supplied by dealer-operator of board, under plan and in accordance with board's explanatory legend, by which customers securing by chance certain numbers or legends paid for their chances amounts ranging from 1¢ to 5¢ and received nothing and those securing certain other legends or punching last slip in each of four sections into which board was divided received, as case might be, one of said pipes or package of cigarettes supplied as above set forth; and (2) various assortments of merchandise with various other lottery devices for use in distribution thereof to purchasing public by means of game of chance, gift enterprise, or lottery scheme involving substantially same sales plans or methods employed as that above described and varying therefrom in detail only—

Sold such assortments, together with said lottery devices, to dealer purchasers by whom devices in question were used in sale and distribution of its said merchandise in accordance with such sales plans or methods, and thereby supplied to and placed in the hands of others means of conducting lottery in sale of its said products in accordance with such plans or methods as above set forth, involving in sale of merchandise to purchasing public game of chance or sale of chance to procure article without cost, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use said or any methods involving use of a game of chance or sale of a chance to win something by chance, or any other method contrary to public policy and refrain therefrom;

With the result that many persons were attracted by its said methods and by element of chance involved in sale of such merchandise in manner above described, and were thereby induced to buy and sell its products in preference to merchandise offered and sold by said competitors who do not use same or equivalent methods, and with result, through use of said methods and because of said game of chance, of unfairly diverting trade in commerce to it from its competitors aforesaid who do not use such or equivalent sales plans or methods, to the substantial injury of competition in commerce:

Held, That such acts and practices under the circumstances set forth were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.