

Syllabus

IN THE MATTER OF

J. C. WINTER & COMPANY, INC.

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

Docket 3563. Complaint, Aug. 30, 1938—Decision, Sept. 5, 1940

Where a corporation engaged in manufacture of various brands of cigars, including 5 cent cigars and 2 for 5 cent cigars, and in sale and distribution thereof to jobbers and retailers throughout the United States, in direct and substantial competition with various others likewise engaged in sale and distribution in commerce of such products—

- (a) Retained, displayed, and used, in brands, descriptions, and labels of machine-made cigars, depictions theretofore made use of for discontinued hand-made product, which displayed workman at table cutting tobacco leaves, with leaves at right and finished product at left, and words "R. J. Allen's" and "Hand Made," notwithstanding fact its said products were no longer, as understood from said words by purchasing public and as preferred by substantial part thereof, made entirely by hand, but were machine-made products; and
- (b) Set forth and made use of such words and legends in brands, labels, and descriptions of cigars made and sold by it, as "R. J. Allen's," "5¢ cigar now 2 for 5¢," and "2 for 5¢—R. J. Allen's," and displayed on containers of its 2 for 5 cent cigars, trade-mark depictions of workman, as above described, and such matter included therein as "Sumatra Wrapper" and "Havana Filler," notwithstanding fact products in question were not of same composition and quality as the original "R. J. Allen's" 5 cent cigar, as long known and understood as hand-made product with Havana filler and Sumatra wrapper, but were no longer made as aforesaid set forth, but of Pennsylvania filler and Connecticut binder of damaged and "flood" tobacco, with wrapper of Ohio, Connecticut, Florida, or Philippine tobacco, and it did not make use of same quality of tobacco in its 2 for 5 cent cigars as in its 5-cent product, and said 2 for 5 cent "R. J. Allen's" cigars, packaged and branded as aforesaid, were not of the quality and grade of the 5-cent "R. J. Allen's" cigar, as well known to purchasing and consuming public and sold by it for number of years prior to acts and practices above set forth, but were composed of inferior and less desirable tobacco, both as to filler, binder and wrapper;

With effect of misleading and deceiving consuming public, and causing it to purchase cigars, labeled, described, and designated as aforesaid, as hand-made, and manufactured with intent of being sold at retail for 5 cents each, or at price in excess of that actually asked, and as sold recently for such price, and as of same grade and quality as the "R. J. Allen's" cigars which formerly retailed for 5 cents, and with result, on account of such mistaken and erroneous beliefs, thus induced, that substantial portion of purchasing public was induced to buy such "R. J. Allen's" cigars from it, and trade thereby was diverted unfairly to it from competitors who truthfully represent quality and character of their products; to the 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.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Marshall Morgan for the Commission.

Mr. John Walsh and *Mr. Louis A. Spiess*, of Washington, D. C., for respondent.

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 J. C. Winter & Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, J. C. Winter & Co., Inc., whose principal office and place of business is located on South Pine Street, in Red Lion, Pa., was incorporated under the laws of the State of Pennsylvania in 1929. Respondent company is now, and for some years last past has been, engaged in the business of manufacturing various brands of cigars and selling and distributing the same to jobbers and retailers throughout the United States. The said cigars are manufactured by respondent at Red Lion, Pa., as aforesaid, where they are packed, branded, and labeled by respondent for sale and distribution to the purchasing public of the United States. In consummating such sales and in distributing such products, respondent causes the cigars so sold to be transported and delivered from its place of business in Red Lion, in the State of Pennsylvania, through and into various other States of the United States to the respective purchasers thereof at their respective points of location. In the course and conduct of its said business, the respondent has been, and is now engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of cigars, and offering such products for sale in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. The outer leaf or wrapper of a cigar comprises about 5 percent of the entire cigar, while the filler and binder, constituting 95 percent of a cigar, are the controlling factors in its size, strength, and flavor. The filler controls primarily the designed length, thickness, and shape of the cigar as rolled into a binder or binder wrapper of

Complaint

31 F. T. C.

desired size. The filler of the cheapest grades of cigars such as "2 for 5's," is composed principally of what is known as "scrap," the same being clippings from cigars in the process of manufacture.

PAR. 3. The words "Hand Made" when applied to cigars, now mean, and over a long period of years have meant, to dealers and to the purchasing public alike, that such cigars are made entirely by hand. There is a preference on the part of a large portion of the purchasing public, and of the tobacco trade, for cigars which are hand-made.

PAR. 4. In the course and conduct of its said business, as described in paragraph 1 hereof, respondent obtains orders for cigars through salesmen and solicitors and by mail.

The said cigars manufactured, sold, and distributed by respondent in interstate commerce, as set forth in paragraph 1 herein, are, and for several years last past have been, sold and distributed by respondent in large and substantial quantities under the brand name, among others, of "R. J. Allen's." The containers for such cigars are the usual and customary cigar boxes or cigar containers of 50 and 100 cigars each. A label, consisting of a paper band is attached to each cigar.

On the outside lid of a container formerly, and until recently, used by respondent appeared a pictorial representation of an operator sitting at a table cutting tobacco leaf with a knife, cigar leaf at his right, finished cigars piled at his left. Above this representation was the word "R. J. Allen's," and immediately below the words "Hand Made." This label in more detail appeared on the inside of the lid in attractive colors, the pictorial representation of the workman making cigars being accompanied in two places by the words in conspicuous type "Hand Made." Included in the design on the inside of the lid were representations also of packages labeled respectively "Sumatra Wrapper" and "Havana Filler." There also appeared on the inside lid of this container the expression "Now 2 for 5¢," printed in large conspicuous type.

Subsequently, in branding, describing, and labeling machine made cigars, respondent adopted and used, and still uses, the same pictorial representation which had theretofore been employed by it to designate or indicate, and which had been associated by the trade and consuming public with advertising employed by respondent to indicate, a hand-made cigar, that is, the pictorial representation of an operator sitting at a table cutting tobacco and making cigars by hand. While retaining and using the aforesaid pictorial representation, respondent superimposed over the former wording beneath the picture a long red sticker or strip bearing among others the wording:

"New Shape"
"Perfecto"

and such further legends as

"2 for 5¢—R. J. Allen's—2 for 5¢"

In the upper left hand corner of the inside lid in conspicuous type, easily legible, appears the following:

"5
2 for 5¢—R. J. Allen's,"

the first expression "5¢" having lines drawn through it and appearing immediately above and in juxtaposition to the expression "2 for 5¢."

Prior to the year 1932, respondent company did manufacture the "R. J. Allen's" brand of cigar in various shapes and sizes and of a grade to retail at 5 cents each. Said cigars were made both by hand and by machine. In the early part of the year 1932, however, such changes were made in the wrapper and filler of said cigar as to permit of its retailing at 2 for 5 cents, the wrapper and filler being made entirely of domestic tobacco and of grades that would permit said respondent to manufacture said cigars so that they could be sold to retailers at 1¾ cents each and the retailer could in turn retail them at 2½ cents each or 2 for 5 cents.

For some 2 years after said reduction in price was made, and as recently as October 1935, respondent employed labels on containers in connection with the interstate sale and shipment of said cigars on which, among others the following language appeared:

"Now 2 for 5¢"

Said labeling indicated that said cigars had recently been reduced in price, when such was not the fact, the cigars having been manufactured for the purpose and with the expectation of retailing at 2 for 5 cents.

Respondent, about October 1935, began, and continued to employ, labeling on the containers of its "R. J. Allen's" brand of cigars, manufactured as stated, for the purpose and expectation of being sold at 2 for 5 cents, reading as follows:

"5 2 for 5¢"

PAR. 5. In truth and in fact many of respondent's said cigars, sold and distributed by it in commerce as aforesaid, and packed and shipped in containers bearing as a part of their label the pictorial representation of a workman making cigars by hand, were not made by hand, but by machinery, and respondent's said cigars labeled respectively, and successively, on containers as "5¢ Cigar now 2 for 5¢"; and "Now 2 for 5¢"; or "5¢ 2 for 5¢", have not been sold currently or at any time for 5¢ but on the contrary were, and are, manufactured for the purpose and with the expectation of being

Findings

31 F. T. C.

sold at the price actually specified, namely, 2 for 5 cents, and are, and have been, made of material which would permit of the sale of such cigars at this price.

PAR. 6. The use by respondent on containers of the pictorial representation of a workman or operator making cigars by hand, which said pictorial representation had theretofore been employed by respondent to indicate hand-made cigars, and the use by respondent of the words, expressions, or legends, "Now 2 for 5¢"; "5¢ Now 2 for 5¢"; and "5¢ 2 for 5¢", has misled and deceived, and still misleads and deceives, said wholesale and retail dealers and the consuming public, and has caused them to purchase the cigars of respondent in the belief that said cigars, so labeled, described, and designated were manufactured for the purpose and with the intent of being sold at 5 cents each, or at a price in excess of that actually asked for them, and had been sold currently for such price. As a result of such false and misleading representations on the part of the respondent, the consuming public is being, and has been, injured, and trade is being diverted to respondent from said hereinbefore mentioned competitors. Thereby injury is done, and has been done, by respondent to competition in commerce among and between the various States of the United States and within the District of Columbia, and there is, and has been, placed in the hands of respondent's dealers and distributors an instrument by means of which they mislead and deceive, and have misled and deceived, the purchasing public.

PAR. 7. The acts and things above alleged to have been done, and the false representations alleged to have been made by respondent, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 30, 1938, issued and served its complaint in this proceeding upon the respondent, J. C. Winter & Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Marshall Morgan, attorney for the Commission, and in opposition to the allegations of said complaint by Louis A. Spiess, attorney for respondent, before John L. Hornor, trial examiner of the Commission theretofore duly designated

by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto; testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral 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, J. C. Winter & Co., Inc., whose principal office and place of business is located on South Pine Street in Red Lion, Pa., was incorporated under the laws of the State of Pennsylvania in 1929. Respondent is now, and for some years last past has been, engaged in the business of manufacturing various brands of cigars and selling and distributing the same to jobbers and retailers throughout the United States. The said cigars are manufactured by respondent at Red Lion, Pa., where they are packed, branded, and labeled by the respondent for sale and distribution to the purchasing public of the United States. In consummating such sales and in distributing such products, respondent causes the cigars so sold to be transported and delivered from its place of business in Red Lion, Pa., through and into the various other States of the United States to prospective purchasers thereof at their respective points of location. In the course and conduct of its said business, the respondent has been, and is now, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of cigars, and offering such products for sale in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. Respondent, in the regular course of business, prior to the year 1932, was selling and distributing large and substantial quantities of its cigars under the brand name "R. J. Allen's," packed in the usual and customary cigar boxes or containers of 50 or 100 cigars each. Said cigars were manufactured of a size and grade to retail at 5 cents each. On or about February 1, 1932, respondent changed the retail selling price of the "R. J. Allen's" brand of cigar from 5 cents to 2 for 5 cents.

On the outside lid of the containers, formerly used by respondent in the sale of 2 for 5 cents "R. J. Allen's" cigars, appeared a pictorial representation of a workman sitting at a table cutting tobacco

Findings

31 F. T. C.

leaves with a knife, cigar leaves at his right, finished cigars piled at his left. Above this representation was the following: "R. J. Allen's," and immediately below were the words "Hand Made." This representation in more detail appeared on the inside of the lid in attractive colors pictorially, of a workman making cigars, and was accompanied in two places by the words, in conspicuous type, "Hand Made." Included in the design on the inside of the lid were the representations also of packages labeled respectively "Sumatra Wrapper" and "Havana Filler." There also appeared on the inside lid of this container the expression "Now 2 for 5¢," printed in large conspicuous type, and on the outside end of the box the representation "R. J. Allen's," "5¢ cigar now 2 for 5¢." Subsequently, in branding, describing, and labeling machine-made cigars, respondent adopted and used, and still uses, the same pictorial representations of an operator sitting at a table cutting tobacco and making cigars by hand. While retaining and using this aforesaid pictorial representation, respondent superimposed over the former wording, beneath the picture, a long red sticker or strip bearing among others the wording "New Shape Perfecto," and such other statements as "2 for 5¢—R. J. Allen's—2 for 5¢," and in the upper left hand corner on the inside lid in conspicuous type appears the following:

"5¢

2 for 5¢—R. J. Allen's"

the first expression 5 cents having a line drawn through it and appearing immediately above in juxtaposition to the expression "2 for 5¢."

PAR. 3. Originally the "R. J. Allen's" cigar was composed of Havana filler and Sumatra wrapper and was sold at retail for 5 cents each. It was known in the trade and to the public as a "Hand Made" cigar. Later the respondent used only domestic tobacco in the manufacture of the "R. J. Allen's" cigar, the filler then being composed of tobacco originating in Pennsylvania, the binder being of tobacco originating in Connecticut, and the wrapper being composed of tobacco from Ohio, Connecticut, Florida, or the Philippine Islands.

Respondent, as stated, on or about February 1, 1932, reduced the price of his cigar branded "R. J. Allen's," and also made changes in the types of tobacco used in the filler and wrapper of the cigar, and manufactured this cigar to be resold thereafter by the cigar dealer at the retail price of 2 for 5 cents. The tobacco used by the respondent in the 2 for 5 cent "R. J. Allen's" cigar is not of the same quality and grade as that used in the 5-cent "R. J. Allen's" cigar but is

inferior thereto. After respondent began to manufacture the "R. J. Allen's" cigar to retail at 2 for 5 cents, the tobacco used in the manufacture of this cigar included tobacco damaged in harvesting and for this reason rejected by the manufacturers of cigars obtaining a higher price than 2 for 5 cents. This damaged tobacco was inferior in quality to the tobacco used by the respondent in the manufacture of the "R. J. Allen's" cigar which had sold for resale to the purchasing public at 5 cents. Other of the tobacco used in the "R. J. Allen's" cigar manufactured to retail at 2 for 5 cents was what is known in the trade as "flood" tobacco. In this instance, the tobacco had been badly damaged by water in the Connecticut floods of 1936.

The expression "flood tobacco" was quite common in Red Lion after the flood which occurred in March 1936 in New England States and more particularly in Connecticut, at which time substantial quantities of tobacco located in Connecticut were badly damaged by said flood. There were many tobacco warehouses located along the river front at Hartford, Conn., during the 1936 flood and the water at that point backed up many feet into these warehouses, in some instances as far up as the second and third story. This "flood tobacco" was brought to Red Lion in truckloads by the manufacturers of cigars. The respondent had tobacco stored in Hartford, Conn., since 1930, for use in the manufacture of its cigars manufactured to retail at 5 cents. After the flood of 1936, during which tobacco stored at Hartford, Conn., by the respondent was damaged by the flood, some of this "flood tobacco" was used by the respondent in the manufacture of its 2 for 5 cent cigar. Some of this "flood tobacco" brought into respondent's factory for use in the 2 for 5 cent cigars was offensive in appearance and had a bad odor. Only the best of this tobacco was used in the manufacture of cigars. That, according to the testimony, which did not seem fit for production was thrown into the garbage. All workmen were instructed to throw out that which "wasn't fit," and these instructions were observed.

PAR. 4. The trade-mark for the "R. J. Allen's" cigar was applied for at the United States Patent Office on December 30, 1932, and was formally registered at the Patent Office on May 9, 1933. This application set forth a drawing of the trade-mark consisting of a design containing a representation of a workman seated at a bench engaged in making cigars, boxes of cigars appearing to the right and the left. Above the head of the workman, in heavy black type, appears the legend "R. J. Allen's." Immediately below the hands of the workman, in prominent type, appear the words "Hand Made." Below and to the right of the workman appears the representation of a package

Findings

31 F. T. C.

marked "Sumatra Wrapper," and below and to the left of the workman the representation of another package marked "Havana Filler." In the statement made in applying for this trade-mark appears the following:

* * * This trade-mark has been continuously used and applied to said goods in applicant's business since November 1, 1922. * * *

The Commission finds that the words "Hand Made" when applied to cigars now mean, and over a long period of years have meant, to the purchasing public that cigars so designated and described are made entirely by hand, and there exists a preference on the part of a substantial portion of the purchasing public for cigars which are hand made.

This trade-mark has been used by the respondent in labeling cigars that did not contain Havana tobacco nor Sumatra wrapper and which were not hand-made. The Commission finds that prior to May, 1935, the "R. J. Allen's" cigar was manufactured by hand and subsequent to that date it has been manufactured by machine, and this machine-made cigar has been sold and distributed by the respondent under the label "Hand Made."

PAR. 5. For a number of years the respondent has manufactured both a 5 cent and a 2 for 5 cent cigar. The Commission finds that there is now, and always has been, a difference in the quality and type of tobacco used in its 5 cent and its 2 for 5 cent cigars. The tobacco used in the 5 cent cigar is greatly superior to that used in the 2 for 5 cent cigars.

The Commission further finds that the 2 for 5 cent "R. J. Allen's" cigar packaged in the boxes marked and branded as aforesaid is not, and was not, of the quality and grade of the 5-cent "R. J. Allen's" cigar that was well known to the purchasing and consuming public and which had been sold by the respondent as hereinabove set out for a number of years, but was composed of tobacco, both as to filler and binder and wrapper, that was inferior to and less desirable than the tobaccos used in the manufacture of the "R. J. Allen's" 5-cent cigar. Respondent has not made and sold a 5-cent "R. J. Allen's" cigar since about February 1, 1932.

PAR. 6. The Commission finds that respondent's price labeling "5¢ cigar now 2 for 5¢" and "5¢ 2 for 5¢" has conveyed, and does convey, the definite meaning to the consumer of cigars that "R. J. Allen's" 2 for 5 cent cigar is composed of the same quality, grade, and the same type of tobacco as that in the cigar branded "R. J. Allen's" manufactured and sold by respondent for resale to the consuming public at 5 cents each.

PAR. 7. The use by respondent on the containers of the pictorial representation of a workman or operator making cigars by hand, which said pictorial representation had theretofore been used by respondent to indicate "Hand Made" cigars, and the use by the respondent of the words, expressions or labels:

"Now 2 for 5¢," and
"5¢ Cigar Now 2 for 5¢,"

and of the words, expression or label:

"3¢ 2 for 5¢,"

have misled and deceived, and still mislead and deceive, the consuming public and have caused it to purchase the cigars of respondent in the belief that said cigars so labeled, described, and designated were "Hand Made"; were manufactured for the purpose and with the intent of being sold at retail at 5 cents each, or at a price in excess of that actually asked for them; had been sold recently for such price; and were of the same grade and quality as the "R. J. Allen's" cigars formerly retailing at 5 cents each. On account of such mistaken and erroneous beliefs, hereinabove set forth, a substantial portion of the purchasing public has been induced to purchase "R. J. Allen's" cigars from respondent, and thereby trade has been unfairly diverted to respondent from competitors who truthfully represent the quality and character of their products. In consequence thereof, injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before John L. Hornor, 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 Marshall Morgan, counsel for the Commission, and by Louis A. Spiess, counsel for the respondent,

Order

31 F. T. C.

and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, J. C. Winter and Co., Inc., a corporation, 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 cigars in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "hand-made" alone or in conjunction with any other words or expression of similar import and meaning to describe or to designate, or in any way to refer to, cigars which are not made by hand.

2. Using the legends or expressions, "5¢ cigar Now 2 for 5¢," or "5¢ 2 for 5¢," or "Now 2 for 5¢," or any other terms of similar import and meaning to designate, describe, or refer to the brand of cigars now sold under the brand name "R. J. Allen's."

3. Using the legends or expressions, "5¢ cigar Now 2 for 5¢," or "5¢ 2 for 5¢," or any other term indicating a reduction in price, to designate, describe, or refer to any brand of cigars, unless the brand of cigars so designated, described, or referred to has recently sold for the price stated and the cigars sold under the brand name are of the identical grade, type, and quality of those sold under the brand name when the indicated higher price was in effect.

4. Using the legend or expression, "Now 2 for 5¢," or any other term indicating a reduction in price, to designate, describe, or refer to any brand of cigars, unless the brand of cigars so designated, described, or referred to has recently sold at a price greater than the price indicated and the cigars sold under the brand name are of the identical grade, type, and quality of those sold under the brand name when the higher price was in effect.

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.

Syllabus

IN THE MATTER OF
BENJAMIN JAFFE, INDIVIDUALLY AND TRADING AS
NATIONAL PREMIUM COMPANY AND KING SALES
COMPANY

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

Docket \$662. Complaint, Dec. 10, 1938—Decision, Sept. 5, 1940

Where an individual engaged in sale of pen and pencil sets, billfolds, silverware, candid cameras, and various other articles, to purchasers in various other States and in the District of Columbia; in soliciting and in selling and distributing various articles dealt in by him—

Made use of game of chance, gift enterprise, or lottery scheme, under or pursuant to which he distributed or caused to be distributed to representatives and prospective representatives, advertising letters, order blanks, and push cards, for use in sale and distribution of his said products by operators of such cards, in accordance with scheme by which person selecting from various feminine names beneath said card's disks name corresponding to that concealed under card's master seal received candid camera or article of merchandise being thus disposed of, and person securing certain number received combination pen and pencil, and under which amount, if any, paid for chance was dependent upon number secured by chance in accordance with disk selected, and operator was compensated also by receipt of article of merchandise in question being thus disposed of; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with aforesaid sales plan or method, or one similar thereto and varying therefrom in detail only, involving distribution to purchasing public, wholly by lot or chance, of articles in question, and game of chance or sale of a chance to procure an article of merchandise at price much less than 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 are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and who refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his merchandise and by element of chance involved therein, and were thereby induced to buy and sell his products in preference to merchandise offered and sold by competitors who do not use same or equivalent method, and with effect, through use of such method and because of said game of chance, of unfairly diverting trade to him from his competitors aforesaid who do not use such or equivalent method; 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.