

Syllabus

IN THE MATTER OF

JOSEPH SALADOFF AND SARA SALADOFF, INDIVIDUALLY, AND TRADING AS NOVELTY PREMIUM COMPANY

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

Docket 3505. Complaint, July 21, 1938—Decision, Nov. 18, 1940

Where two individuals engaged as owner and as general manager and sales manager of business in sale of candy, watches, clocks, guns, baby buggies, quilts, aluminum ware, and other articles of merchandise to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of like and similar articles of merchandise—

- (a) Sold and distributed their said merchandise by means of a game of chance, gift enterprise, or lottery scheme, pursuant to which they distributed and caused to be distributed to representatives, advertising or sales circulars, catalogues, and other advertising literature, and including (1) pull card upon one of such circulars for use in sale and distribution of 22 boxes of candy, ranging from 9 cents to 39 cents, under a plan by which particular box of candy and price to be paid therefor were determined by lot or chance by particular tab of card selected, and (2) other circulars with pull cards involving sales plans similar to that described and varying therefrom in detail only, and under which various plans operator was compensated by choice of remitting merchandise thus sold and receiving premiums selected by him from advertising literature of said individuals, or of deducting from amount thus received, and prior to remission thereof, designated cash premium; and

Supplied thereby to and placed in hands of others means of selling and distributing their said candy through game of chance or lottery scheme, in accordance with sales plan as aforesaid, by persons or representatives to whom they furnished and supplied said pull card devices and who made use thereof by purchasing, selling, and distributing such candy in accordance with such sales plan or method, as above described, involving game of chance or sale of chance to procure box of candy at price much less than usual retail price, and notwithstanding "Notice to Purchasers" on or above said card advising reader that it was his privilege to buy box of chocolates at price therefor printed on back of each slip by paying holder such price, and which notice, when called to attention of purchasers, did not result in refusal to take candy purchased by them in manner above indicated, contrary to an established public policy of the United States Government and in violation of criminal law, and in competition with many who are unwilling to adopt and use said or any other sales plan or method in the sale of their merchandise involving any game of chance or sale of a chance to win something of value by chance, or any sales plan or method contrary to public policy, and refrain therefrom:

Complaint

31 F. T. C.

With result that many persons, because of such element of chance involved in said sales plan or method as employed by such individuals, as above described, were induced to buy and sell their said candy in preference to that offered and sold by their competitors aforesaid, and trade, as result of use of such sales plan or method, was unfairly diverted to them from their competitors aforesaid, to their substantial injury in commerce; and

- (b) Made use of such false, deceptive, and misleading statements and representations in their said sales circulars and other advertising matter as "Free Gifts For All" and "Beautiful household gifts at absolutely no cost" and "We pay all shipping charges";

Facts being that none of their said articles, advertised as being free or without cost, were thus given away to their said operators or representatives, but said persons, before they received articles or premiums in question, had to sell or procure sale of aforesaid designated boxes of candy and remit amount procured by sale thereof, as above set forth, and, in case of selection of certain of said individuals' so-called premiums, were required to pay designated sum of money therefor, and said individuals did not pay all shipping charges, but operator or representative in certain instances was required to remit extra dollar to cover such charges in case of certain premiums;

With tendency and capacity to deceive and mislead substantial portion of purchasing public into mistaken and erroneous belief that such statements and representations were true and thereby cause public to purchase substantial quantity of their said merchandise as result thereof, and with result, through use of such statements and representations by said individuals, that trade was diverted unfairly to them from their competitors, many of whom, engaged in sale and distribution of candy or merchandise similar to that sold by said individuals, do not use such false, misleading, and deceptive statements and representations in connection with sale and distribution of their products; to their substantial injury 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.

Before *Mr. Randolph Preston*, trial examiner.

Mr. D. C. Daniel, *Mr. P. C. Kolinski*, and *Mr. L. P. Allen, Jr.*, for the Commission.

Mr. Joseph Keough of *Levi, Mandel & Miller*, of Philadelphia, Pa., for respondents.

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 *Joseph Saladof* and *S. Saladof*, individually, and trading as *Novelty Premium Co.*, hereinafter referred to as respondents, have 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, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Joseph Saladof and S. Saladof, are copartners trading under the name of Novelty Premium Co., with their principal office and place of business located at 510 Arch Street, Philadelphia, Pa. Respondents are now, and for some time last past have been, engaged in the sale and distribution of watches, clocks, guns, bedspreads, chinaware, silverware, dresser sets, cosmetics, baby buggies, quilts, aluminum ware, dolls, candy, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause and have caused said products when sold to be shipped or transported from their place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are and have been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy and novelty merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute and have sold and distributed said candy by means of a game of chance, gift enterprise, or lottery scheme. Respondents advertise in newspapers of general circulation and distribute or cause to be distributed to representatives and prospective representatives certain advertising literature including a sales circular. Respondents' merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of boxes of candy and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of a box of candy and the price thereof. The name of the box of candy and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which box of candy they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what box of candy he is to receive and the price thereof, his name is written on the list opposite the named box of candy. Some of said boxes of candy have purported and represented retail values and regular prices greater than

Complaint

31 F. T. C.

the prices designated for them, but are distributed to the consumer for the price designated on the tab which he buys. The apparent greater values and regular prices of some of said articles of merchandise as compared to the price the prospective purchase would be required to pay in the event he secures one of said boxes of candy induces the members of the purchasing public to purchase the tabs or chances in the hope that they will receive boxes of candy of far greater values than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull card tabs receives a box of candy which has greater value and a higher regular price than the price designated for same on such tab, which of said boxes of candy a purchaser is to receive and the amount of money which a purchaser is required to pay are determined wholly by lot or chance.

When the person or representative operating the above card has succeeded in selling all of the tabs or chances, collected the amounts called for and remitted the said sums to the respondents, the said respondents thereupon ship to said representative the boxes of candy designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the boxes of candy to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondents sell and distribute and have sold and distributed various assortments of boxes of candy and furnish and have furnished various pull cards for use in the sale and distribution of such boxes of candy by means of a game of chance, gift enterprise, or lottery scheme. Respondents' sales plan or method varies in detail, but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish and have furnished the said pull cards use and have used the same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their candy in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their candy and the sale of such candy by and through the use thereof, and by the aid of said methods is a practice of the sort which is contrary to an established public policy of the Government of the United States, and in violation of criminal laws.

PAR. 4. The sale of candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a box of candy at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations

who sell and distribute candy in competition with the respondents as above alleged are unwilling to adopt and use said method or any other method involving a game of chance or the sale of a chance to win something by chance or any method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale of such candy in the manner above described and are thereby induced to buy and sell respondents' candy in preference to candy offered for sale and sold by competitors of respondents who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to and does unfairly divert trade and custom to respondents from their said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of their business as hereinabove related, respondents cause and have caused various false, deceptive, and misleading statements or representations to appear in their advertising matter as aforesaid, of which the following are examples, but are not all-inclusive:

Free gifts for all.

How to get your free gifts.

Beautiful, useful household gifts at absolutely no cost.

How to get your gifts without cost to you.

Amazingly high values in guaranteed premiums and assorted chocolates, also cash at absolutely no cost.

All shipping charges are paid by us.

The effect of the foregoing false, deceptive, and misleading statements or representations of the respondents in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the several States of the United States and the District of Columbia by inducing them to mistakenly believe that respondents give away certain of their said articles of merchandise without cost to their said representatives; that respondents' so-called premiums and candy are of high grade and superior quality; and that respondents prepay all charges on all of their said articles of merchandise.

PAR. 6. In truth and in fact, none of respondents' so-called premiums or gifts are given away "free" or "without cost," but said so-called premiums or gifts which are represented as being "free" or "without cost" to said representatives are either purchased with labor by them or the prices of said so-called premiums or gifts are included in the prices of other articles of merchandise which representatives must sell or procure the sale of before said so-called premiums or gifts

Findings

31 F. T. C.

can be procured by them. For a number of said so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered. Respondents' so-called premiums and candy are not of a high grade and superior quality, but on the contrary are of a very cheap, low grade, and inferior quality. Respondents do not pay all shipping charges on their said products, but said representatives are required to pay certain specified sums of money as shipping charges on a number of respondents' said articles of merchandise.

PAR. 7. The use by respondents of the false, deceptive, and misleading statements or representations set forth herein has had and now has the tendency and capacity to mislead and deceive, and has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such statements or representations are true, and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are among the competitors of respondents, as mentioned in paragraph 2 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements or representations concerning their products. By the statements or representations aforesaid, trade is unfairly diverted to respondents from such competitors and as a result thereof substantial injury is being, and has been, done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition 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 the 21st day of July 1938, issued and thereafter served its complaint in this proceeding upon respondents Joseph Saladoff and Sara Saladoff (named in the complaint as Joseph Saladof and S. Saladof), individually, and trading as the Novelty Premium Co., charging them 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 respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel, P. C.

1379

Findings

Kolinski, and L. P. Allen, Jr., attorneys for the Commission, before Randolph Preston, a trial examiner of the Commission, theretofore duly designated by it. Joseph Keough appeared as counsel for the respondents. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding came on for final hearing before the Commission on said complaint, the answer thereto, testimony in support thereof, and brief in support of the complaint (respondents having filed no brief), and oral argument having been waived, 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. Respondents Joseph Saladoff and his wife Sara Saladoff (named in the complaint as Joseph Saladof and S. Saladof), are individuals doing business under the name of the Novelty Premium Co. with their principal place of business located at 510 Arch Street, Philadelphia, Pa. Said business is owned by respondent Sara Saladoff and is operated and conducted by Joseph Saladoff, who is general manager and sales manager thereof. Respondents are now, and for 10 years last past have been, engaged in the sale of candy, watches, clocks, guns, baby buggies, quilts, aluminum ware, and other articles of merchandise in commerce between and among various States of the United States and in the District of Columbia. Respondents cause, and have caused, said products, when sold, to be shipped or transported from their place of business aforesaid to purchasers thereof located in various States of the United States other than the State of Pennsylvania and in the District of Columbia at their respective points of location. There is now, and has been for more than 10 years last past, a course of trade by said respondents in such merchandise in commerce between and among various States of the United States and in the District of Columbia. In so conducting said business respondents were, and are, in competition with other individuals and with partnerships, firms, and corporations engaged in the sale and distribution of like and similar articles of merchandise as those sold by respondents, in commerce between and among various States of the United States and in the District of Columbia.

PAR. 2. In so conducting their said business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, said merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondents' said business is, and has been,

conducted in substantially the following manner: Respondents distribute, and have distributed, and cause, and have caused, to be distributed to representatives advertising or sales circulars, catalogs, and other advertising literature. One of the said circulars has been used in the sale and distribution of articles of said merchandise in substantially the following manner: Upon said circular there is a device commonly known as a pull card. Said pull card contains a number of partially perforated tabs, on the reverse side of each of which there appears the name of the box of candy the purchaser is to receive and the price thereof. The prices of said boxes of candy range from 9 cents to 39 cents each. The total amount collected from the sale of said 22 boxes of candy is \$7.67. Each purchaser separates or pulls one of the said tabs from said device. The prices and the names of the boxes of candy are so concealed that the purchasers and prospective purchasers are unable to ascertain which boxes of candy they are to receive or the amounts they are to pay until after said tabs are separated or pulled from said card. After a tab is pulled the name of the purchaser is written in a blank space reserved therefor opposite said device. Many of said boxes of candy have greater retail values than the amounts to be paid therefor. Which of said boxes of candy a purchaser is to receive and the sum of money to be paid by him are thus determined wholly by chance. On another of respondents' said sales circulars the prices of the boxes of candy sold thereby vary from 9 cents to 44 cents, but the sale plan used in connection therewith is the same as the one hereinabove described, varying only in detail.

When the person or representative operating the said card or device has sold all of the said boxes of candy in the manner described and collected the amounts charged therefor, he may either remit the whole amount to respondents who thereupon will ship to him the boxes of candy thus sold together with the premium he has selected from the advertising literature of the respondents as compensation for his services, or said representative may first deduct a designated cash premium as compensation for selling said boxes of candy in lieu of such premium and remit the balance to respondents. Said person or representative, in turn, distributes said boxes of candy to the individual purchasers thereof. The premiums heretofore referred to are illustrated and described in respondents' said circulars or catalogs, and the person or representative desiring such premium may make his selection therefrom.

Immediately above the pull card there is printed the following:

NOTICE TO PURCHASERS

On the back of each slip is printed the price of a box of chocolates. If after deliberation you decide that you want to buy the box of chocolates pay the

holder of this folder the price shown on the slip. If you do not want the box of chocolates you need not buy.

The Commission finds that such notice was not always called to the attention of the purchasers and that when called to their attention none of them refused to take the candy purchased by them in the manner aforesaid on account of said notice.

PAR. 3. The Commission finds that the persons or representatives to whom respondents have furnished and supplied said pull card devices have used same in purchasing, selling, and distributing respondents' candy in accordance with sales plan or method as described in paragraph 2 hereof. Respondents have thus supplied to, and placed in the hands of, other persons a means of selling and distributing said candy by means of a game of chance or lottery scheme in accordance with said sales plan as aforesaid. The use of said sales plan by respondents in the sale and distribution of their merchandise is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal law.

PAR. 4. The Commission finds that the sale of said candy in the manner described in paragraph 2 hereof involves a game of chance or sale of chance to procure a box of candy at a price much less than the usual retail price. Respondents have many competitors who sell and distribute like or similar merchandise in commerce between and among various States of the United States and the District of Columbia who are, and have been, unwilling to adopt and use said sales plan or method in the sale of their merchandise or any other sales plan or method involving any game of chance or the sale of a chance to win something of value by chance or any sales plan or method which is contrary to public policy and such competitors refrain therefrom. Because of said element of chance involved in the said sales plan or method as employed by respondents, as hereinbefore described, many persons have been induced to buy and sell respondents' candy in preference to that offered for sale and sold by respondents' said competitors.

PAR. 5. The Commission finds that in conducting their said business, as hereinabove described, respondents cause, and have caused, various false, deceptive, and misleading statements and representations to appear in their said sales circulars and other advertising matter which said statements and representations are in part as follows:

Free gifts for all.

How to get your gifts free.

We pay all shipping charges.

Everything for your home.

Findings

31 F. T. C.

Beautiful household gifts at absolutely no cost.

Amazingly high values in guaranteed premiums and assorted chocolates—also cash—at absolutely no cost.

All shipping charges are paid by us.

By such statements and representations the respondents in offering for sale and selling said articles of merchandise mislead, and have misled, deceive, and have deceived, a substantial number of the members of the purchasing public into the mistaken belief that respondents give away certain of their said articles of merchandise without cost to the operators of said pull cards or devices and, further, that the said respondents pay all shipping charges on all of their said articles of merchandise thus advertised as being free.

PAR. 6. The Commission finds that, in truth and in fact, none of the respondent's said articles so advertised as being free or without cost are given away without cost to said operators or representatives but that the said operators or representatives, before they receive such articles of merchandise or premiums, must sell or procure the sale of the aforesaid designated boxes of candy and remit the amount procured by the sale thereof as aforesaid, and in addition thereto persons selecting some of respondents' so-called premiums are also required to pay a designated sum of money therefor. Respondents do not pay all shipping charges, for in certain instances the said operator or representative must remit an extra dollar to cover shipping charges of certain premiums.

PAR. 7. The Commission finds that said statements and representations are false, deceptive, and misleading and have had, and now have, the tendency and capacity to deceive and mislead a substantial portion of the purchasing public into the mistaken and erroneous belief that said statements and representations are true, and to cause the public thereby to purchase a substantial quantity of respondents' merchandise as the result thereof. There are, and have been, many of respondents' competitors who are, and have been, engaged in the sale and distribution of candy or merchandise similar to that sold by respondents who do not use such false and misleading and deceptive statements and representations in connection with the sale and distribution of their products.

PAR. 8. As a result of the use of said sales plan or method hereinbefore described, and of said statements and representations made by respondents, trade is being, and has been, unfairly diverted to respondents from their said competitors and substantial injury is being, and has been, done to said competitors by respondents in commerce between and among various States of the United States and in the District of Columbia.

1379

Order

CONCLUSION

The acts and practices of the respondents, as hereinabove found, are all to the prejudice and injury of the public and of respondents' 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 respondents, testimony, and other evidence taken before Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondents having offered no proof in opposition thereto), brief filed herein by counsel for the Commission (respondents not having filed brief and oral argument having been waived), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Joseph Saladoff and Sara Saladoff, individually and trading as Novelty Premium Co., or trading under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of candy, watches, clocks, guns, baby buggies, quilts, aluminum ware, or any other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards or other devices which are to be used, or may be used, in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme;

2. Shipping, mailing, or transporting to agents or to distributors or to members of the public, push or pull cards, punchboards, or other devices which are to be used, or may be used, in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

4. Using the terms "free" or "at absolutely no cost" or any other terms of similar import or meaning to describe or refer to merchandise offered as compensation for distributing respondents' merchan-

Order

31 F. T. C.

dise unless all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the terms "free" or "at absolutely no cost" or any other terms of similar import or meaning and there is no deception as to the price, quality, character, or any other feature of such merchandise or as to the services to be performed or sums of money to be paid in connection with obtaining such merchandise.

5. Representing that respondents pay shipping charges on their merchandise, when in fact they do not pay such charges.

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.

Order

IN THE MATTER OF
EVERY SALT COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 2248. Order, Nov. 19, 1940

Modified order, pursuant to provisions of section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which prior order of October 17, 1939, 29 F. T. C. 1132, required respondent, its officers, etc. (following Commission's complaint, etc., findings, and order of November 28, 1936, 23 F. T. C. 1047, placement of matter *in fieri* pending decisions in related salt cases, and the making of such decisions therein), to cease and desist from (1) using word "smoke," etc., to designate, etc., salt offered and sold by it and which had not been directly subjected to action and effect of smoke from burning wood, etc., for curing, preserving, smoking, or flavoring meats, and from (2) representing that its said "Every Sugar Curing Smoke Salt" does the complete job of curing and smoking meat, or that meat, by treatment with such product, acquires therefrom same taste, etc., as meat acquires from treatment with salt and subsequent exposure to smoke of burning wood, as in said original proceeding required, and in said cease and desist order set forth—

Requiring respondent, its officers, etc., in connection with offer, etc., in interstate commerce, of salt, to cease and desist from using word "smoke" or other words signifying smoke or implying use thereof, to designate or describe salt offered, etc., for curing, preserving, smoking or flavoring meats, unless such salt has been subjected to action and effect of smoke from burning wood, as in such modified order set forth, and subject to added provision permitting use of terms "condensed smoke" or "liquid smoke" in enumeration or statement of ingredients of such salt, in the event of the addition thereto of a refined concentrate resulting from destructive distillation of wood, and in sufficient quantity to impart to such salt flavor of smoke, as below set forth in detail.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on November 28, 1936, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of Section 5 of the Federal Trade Commission Act and on October 17, 1939, issued and subsequently served its order to cease and desist; and it further appearing that on March 23, 1940, the United States Circuit Court of Appeals for the Fourth Circuit rendered its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars and directed