

IN THE MATTER OF  
**INTERSTATE BAKERIES CORPORATION (INTERSTATE  
BAKING CORPORATION),<sup>1</sup> THE CONTINENTAL BAKING  
COMPANY, THE SIOUX CITY BAKERY, LOCAL NO. 393  
OF THE CHAUFFEURS, ETC., UNION, ET AL.**

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

*Docket 3900. Complaint, Sept. 28, 1939—Decision, Feb. 6, 1941*

Where (1) three corporations and four individuals engaged in manufacture of bakery products at Sioux City, Iowa, and in sale thereof in said city and State and also, in case of certain of their number, in sale and distribution of such products in other States, and engaged in competition with one another, and with corporation which, with baking plant at Omaha, shipped therefrom its products to customers in Sioux City, and also with other bakeries located without State of Iowa and which were selling bakery products in said city last referred to, (2) an unincorporated association or labor union in said city, members of which did not operate bakeries and were not engaged in trade and commerce, but were employees of bakeries and operated delivery trucks belonging thereto, and (3) seven individuals, who were officers and members of said union; following strike at said city called by said union and its officers and members, including union drivers of bakery trucks, the stopping of work and prevention of sale and distribution of bakery products, and the initiation of negotiations between the bakers of said city and said union and its members—

Entered into an agreement under which, among other things, it was provided that "Within the corporate limits of Sioux City, Iowa, no bakery products shall be sold to independent bread or cake men for either retail or wholesale resale who were not operating wholesale or retail routes prior to January 1, 1938," and conformed thereto and made no sales of bakery products to persons who had not been operating wholesale or retail bakery routes in said city prior to date aforesaid;

With the result that—

(1) Independent route men who theretofore had been buying bakery products from bakeries located without the State and shipped and delivered in city aforesaid to themselves, by whom they were sold to general purchasing public, were forced, by the threats of members of said union, who, following said agreement, accosted such independent route men, to cease operations and go out of business;

(2) Corporation above referred to, with Omaha plant and which was not party to aforesaid contract and agreement and undertook to continue shipping, first directly and then indirectly, to independent route man in

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<sup>1</sup> Complaint dismissed, however, as to respondent named by terms of cease and desist order entered against other respondents joined in proceeding.

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said city, finally declined, after having its attention twice invited by said union and members to provision of contract and agreement undertaken by others, to sell and ship further, as aforesaid, its bakery products from its Omaha plant to said route man, who was thereby forced to discontinue sale of bakery products at said city and notwithstanding deposit by him with said corporation of cash bond of about \$100; and

(3) Sale of said bakery products in trade and commerce among and in the several States was unduly and unlawfully restricted and restrained, and public was deprived of the benefits that would flow from normal competition among and between said bakeries in said commerce, and competition was eliminated, with tendency and capacity of creating a monopoly in said Sioux City bakeries in sale in such commerce of said bakery products:

*Held*, That such understanding, agreement, combination, and conspiracy, and things done thereunder and pursuant thereto and in furtherance thereof, as above set forth, constituted unfair method of competition in commerce.

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

*Mr. Floyd O. Collins* for the Commission.

*Mr. John C. Grover*, of Kansas City, Mo., for Interstate Bakeries Corp.

*Mr. George Founce, Jr. and Mudge, Stern, Williams & Tucker*, of New York City, for The Continental Baking Co.

*Mr. Frank J. Margolin*, of Sioux City, Iowa, for The Sioux City Bakery.

*Sifford & Wadden*, of Sioux City, Iowa, for Metz Brothers Baking Co., Fred W. Lenhardt and Jake Schindler.

*Mr. Donald S. Peter*, of Sioux City, Iowa, for Emil A. Madsen.

*Mr. George M. Paradise*, of Sioux City, Iowa, for Anthony Pages.

*Mr. John W. Keane*, of Sioux City, Iowa, for Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union and the officers and members thereof.

COMPLAINT <sup>2</sup>

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 corporations, associations, firms, and individuals named in the caption hereof, hereinafter referred to as respondents, have been and are now using unfair methods of competition in commerce as commerce is defined in said act, and it appearing to the said Commission that a proceed-

<sup>2</sup> By stipulations entered into the record it was agreed that the correct names of respondents named in the complaint as Interstate Baking Corporation, Madsen Baking Co., and Jake Schindler were, respectively, Interstate Bakeries Corporation, Madsen Bakery, and Jake Schindler.

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ing by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Interstate Baking Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 118 West Forty-seventh Street, Kansas City, Mo. Said respondent operates, and at all times herein mentioned has operated, baking plants in numerous cities of the United States, including the city of Omaha, State of Nebraska, where it operates a baking plant under the trade name of Schulze Baking Co., from which plant it now ships, and at all times herein mentioned has shipped, bread, pastries, cakes, and other bakery products for human consumption to purchasers thereof located in the State of Iowa, and more particularly in the city of Sioux City in said State.

Respondent, Continental Baking Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 634 Rockefeller Center, New York, N. Y. It owns and operates, and at all times herein mentioned has owned and operated, baking plants in various cities of the United States, including Sioux City, Iowa.

Respondent, Sioux City Bakery, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business located at 815 West Seventh Street, in the city of Sioux City, Iowa, where it owns and operates, and at all times herein mentioned has owned and operated, a baking plant.

Respondent, Metz Brothers Baking Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business located at 408 Pearl Street, in the city of Sioux City, Iowa, where it owns and operates, and at all times herein mentioned has owned and operated, a baking plant.

Respondent, Fred W. Lenhardt, is an individual, trading and doing business under the name Quality Bakery, at Third and Sioux Streets, Sioux City, Iowa, where he owns and operates, and at all times herein mentioned has owned and operated, a baking plant.

Respondent, Emil A. Madsen, is an individual trading and doing business under the name Madsen Baking Co., at 2701 East Second Street, Sioux City, Iowa, where he owns and operates, and at all times herein mentioned has owned and operated, a baking plant.

Respondent, Jake Schintler, is an individual trading and doing business under the name Iowa Bakery Co., at 1312 Pierce Street, Sioux City, Iowa, where he owns and operates, and at all times herein mentioned has owned and operated, a baking plant.

Respondent, Anthony Pages, is an individual trading and doing business under the name Sunkist Cake and Pie Co., at 9 West Third Street, Sioux City, Iowa, where he owns and operates, and at all times herein mentioned has owned and operated, a baking plant.

PAR. 2. Respondent, Local No. 383, of the Chauffeurs, Teamsters, and Stablemen and Helpers Union is an unincorporated association whose membership is composed of chauffeurs, teamsters, stablemen and their helpers located in the city of Sioux City, Iowa, and in the territory adjacent thereto. The address of said respondent, Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union is 410½ Fifth Street, Sioux City, Iowa. Of its members the following now constitute, and since its organization have constituted, its executive committee and its officers, to wit:

Glenn Beaman, president.

Charles Cunningham, secretary-treasurer.

Jim Brookhart, trustee.

William Carlson, trustee.

O. G. Foster, trustee.

Ralph Johnson, trustee.

Howard Foutz, trustee.

Members of respondent Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union are operators of automobiles and other conveyances used in transporting and delivering bread, pastries, cakes and other bakery products in and into Sioux City, Iowa, and in the territory adjacent thereto, and constitute a class so numerous and which changes so often as to make it impractical to name all of them as parties respondent herein without manifest inconvenience and delay and the officers and members hereinabove named as respondents are made parties respondent in their individual capacity and as officers and members of the respondent, Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, and as representatives of the membership of said respondent as a class.

PAR. 3. In the course and conduct of their respective businesses, the respondents named in paragraph 1 hereof ship, or cause to be shipped, bread, pastries, cakes, and other bakery products, when manufactured by them, from their respective bakeries to the pur-

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chasers thereof located in various States of the United States other than the State of the origin of such shipments. There is now, and has been for more than two whole years last past, a constant current of trade in commerce between and among the various States of the United States, by all respondents named in paragraph 1 hereof in bread, pastries, cakes, and other bakery products.

PAR. 4. There are bakeries outside of the State of Iowa which sell and distribute bread, pastries, cakes, and other bakery products in the State of Iowa, and as part of said sale, ship, or cause to be shipped, said products from their respective places of business in these other States to the purchasers thereof located in the State of Iowa. In the course and conduct of their respective businesses, the respondents named in paragraph 1 hereof have been, and are now, in competition with these bakeries situated in States other than the State of Iowa in making and seeking to make sales of their bakery products in the State of Iowa.

PAR. 5. The respondents named in paragraph 1 hereof constitute a group in the baking business in Sioux City, Iowa, which is so large and influential in the trade area in and around Sioux City, Iowa, as to be able to control and influence the flow of trade and commerce in bread, pastries, cakes, and other bakery products within, to, and from said trade area. Said respondents have been, and would now be, in free and active competition with one another and with bakeries and dealers in bread, pastries, cakes and other bakery products in the sale and distribution of said products in said commerce and in said trade area but for the wrongful and unlawful understanding, agreement, combination, and conspiracy, and the unlawful acts and practices done thereunder and pursuant thereto as hereinafter set out.

PAR. 6. There are now, and have been for a number of years last past, so-called independent route men who buy bread, pastries, cakes, and other bakery products from bakeries and resell the same both to stores for resale and direct to consumers, in the trade area in and around the city of Sioux City, Iowa. Some of these independent route men were in business and operating routes on and prior to January 1, 1938, and others began after January 1, 1938. These independent route men and some of the respondents named in paragraph 1 hereof, purchase bread, pastries, cakes, and other bakery products from bakeries located both in Iowa and other States and when such purchases are made by them from bakeries located in States other than Iowa, said bakeries ship, or cause to be shipped,

their products from their respective places of business to these purchasers thereof in the State of Iowa.

PAR. 7. On or about August 12, 1938, the respondent entered into, and thereafter carried out, and are still carrying out, an understanding, agreement, combination, and conspiracy to suppress, hinder, and lessen competition in the interstate sale and distribution of bread, pasteries, cakes, and other bakery products in the trade area in and around Sioux City, Iowa.

PAR. 8. Pursuant to said understanding, agreement, combination, and conspiracy, and in furtherance thereof, the respondents have done, among other acts and things, the following:

1. Agreed to prevent, and did prevent, independent route men who were not in business in the trade area in and around Sioux City, Iowa, prior to January 1, 1938, from obtaining bread, pastries, cakes, and other bakery products to sell either at wholesale or retail in said trade area.

2. Agreed to set apart and did set apart as a class of approved dealers who could, and did, sell bread, pastries, cakes, and other bakery products in said trade area, the respondents named in paragraph 1 and the independent route men who were in business prior to January 1, 1938.

3. All of the respondents named in paragraph 1 except respondent, Interstate Baking Corporation, did enter into on August 12, 1938, and thereafter carried out, contracts with respondent, Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, which contracts provide, in part, as follows: "Within the corporate limits of Sioux City, Iowa, no bakery products shall be sold to independent bread or cake men for either retail or wholesale resale who were not operating wholesale or retail routes prior to January 1, 1938".

4. Respondent, Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union (a) exacted and procured pledges from the signers of said contracts and from bakeries and dealers not signers of said contracts, particularly from respondent Interstate Baking Corporation, to adhere to and enforce the provisions of said contracts and to carry out the plans therein set forth; (b) intimidated and harassed and used force and violence against independent route men who sought to enter business subsequent to January 1, 1938, to prevent their delivering bakery products in said trade area; and (c) intimidated, harassed, and used force and violence against bakeries and dealers who did not sign such contracts of August 12, 1938, to persuade, induce, and compel them to stop selling their products to

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independent route men who were not in business prior to January 1, 1938, and also to prevent their selling to bakeries and dealers who intended to resell their products to such independent route men.

5. Used and engaged in other cooperative and concerted actions and violent and coercive methods and practices in carrying out the aforesaid understanding, agreement, combination, and conspiracy.

PAR. 9. Each of the respondents at the times mentioned herein acted in concert with one or more of the other respondents in doing and performing the acts and things herein alleged in furtherance of the understanding, agreement, combination, and conspiracy hereinbefore set out.

PAR. 10. The understanding, agreement, combination, and conspiracy and the acts and things done thereunder pursuant thereto and in furtherance thereof as hereinbefore alleged, have had, and do have the capacity, tendency, and effect of unlawfully restricting and restraining the movement in commerce between and among the several States of the United States of bread, pastries, cakes, and other bakery products, and more particularly the movement of said products in commerce between the State of Iowa and States surrounding it; of unduly and unlawfully restraining and restricting trade in such products in said commerce; of monopolizing in the respondents named in paragraph 1 hereof and the independent route men who were in business prior to January 1, 1938, the sale and distribution of said products in the trade area in and around Sioux City, Iowa; and the capacity and tendency to substantially enhance the prices of such baking products to the consuming public in said area and maintaining said prices at artificial levels, and otherwise to deprive the consuming public in said area of the benefit of normal competition between and among the respondents named in paragraph 1 hereof, the independent route men who were in business prior to January 1, 1938, and the independent route men who have sought to engage in business since January 1, 1938.

PAR. 11. Said understandings, agreement, combination, and conspiracy and the things done thereunder in pursuance thereto as above alleged, 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 September 28, 1939, issued and served its complaint in this proceeding upon the respondents

Interstate Bakeries Corporation, a corporation; The Continental Baking Co., a corporation; The Sioux City Bakery, a corporation; Metz Brothers Baking Co., a corporation; Fred W. Lenhardt, an individual trading as Quality Bakery; Emil A. Madsen, an individual trading as Madsen Bakery; Jake Schindler, an individual trading as Iowa Bakery Co.; Anthony Pages, an individual trading as Sunkist Cake and Pie Co.; Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, an unincorporated association, and Glenn Beamen, Charles Cunningham, Jim Brookhart, William Carlson, O. G. Foster, Ralph Johnson, and Howard Foutz, individually and as officers and members of Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, and as representatives of other members thereof, charging them with entering into and carrying out an understanding, agreement, combination, and conspiracy to suppress, hinder, and lessen competition in the interstate sale and distribution of bread, pastries, cakes, and other bakery products in the trade area in and around Sioux City, Iowa; in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Floyd O. Collins, attorney for the Commission, and in opposition to the allegations of the complaint by John C. Grover, attorney for respondent Interstate Bakeries Corporation; George Faunce, Jr., attorney for respondent Continental Baking Co.; B. L. Sifford, attorney for respondents Metz Brothers Baking Co., Fred W. Lenhardt, an individual trading as Quality Bakery, and Jake Schindler, an individual trading as Iowa Bakery Co.; John W. Keene, attorney for respondent Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, an unincorporated association, and Glenn Beamen, Charles Cunningham, Jim Brookhart, William Carlson, O. G. Foster, Ralph Johnson, and Howard Foutz, individually and as officers and members of Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, and as representatives of other members thereof; Frank J. Margolin, attorney for respondents Sioux City Bakery; Donald S. Peter, attorney for respondent Emil A. Madsen, doing business as Madsen Bakery, and George M. Paradise, attorney for Anthony Pages, an individual trading as Sunkist Cake and Pie Co., before John L. Hornor, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence was duly recorded and filed at the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answers

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thereto, testimony and other evidence, brief in support of the complaint and brief of Interstate Bakeries Corporation, oral argument not having been requested; 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, Interstate Bakeries Corporation, is a corporation organized and existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 118 West Forty-seventh Street, Kansas City, Mo. It operates, among other things, a baking plant at Omaha, Nebr., under the trade name Schulze Baking Co., and is engaged in the baking and sale of bread, pastries, cakes, and other bakery products for human consumption.

Respondent, Continental Baking Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 100 West Tenth Street, Wilmington, Del. It is engaged in the manufacture and sale of bakery products at, among other locations, Sioux City, Iowa.

Respondent, Sioux City Bakery, is a corporation organized, existing, and doing business under the laws of the State of Iowa with its office and principal place of business located at 815 West Seventh Street, Sioux City, Iowa. It is engaged in the manufacture and sale of bakery products.

Respondent, Metz Brothers Baking Co., is a corporation existing and doing business under and by virtue of the laws of the State of Iowa with its principal office and place of business in Sioux City, Iowa. It is engaged in the business of baking bread, rolls, and doughnuts and in the sale thereof.

Respondent, Fred W. Lenhardt, is an individual engaged in the operation of baking bread under the trade name of Quality Bakery with its office and principal place of business located in Sioux City, Iowa. He is engaged in the sale and distribution of bakery products.

Respondent, Emil A. Madsen, is an individual doing business under the trade name Madsen Bakery with his office and principal place of business located at Sioux City, Iowa. He is engaged in the manufacture and sale of bakery goods, pies, and pastry. He manufactures and sells no bread.

Respondent, Jake Schindler, is an individual doing business under the trade name Iowa Bakery Co., with office and principal place of business located in Sioux City, Iowa. He is engaged in the manufacture and sale of bread and other bakery products.

Respondent, Anthony Pages, is an individual doing business under the trade name Sunkist Cake and Pie Co. with his office and place of business located at Sioux City, Iowa. He is engaged in the manufacture and sale of bread, pastries, cakes, and other bakery products.

Respondent, Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, is an unincorporated association, located at Sioux City, Iowa. Respondents, Glenn Beamen, Charles Cunningham, Jim Brookhart, William Carlson, O. G. Foster, Ralph Johnson, and Howard Foutz, are individuals and officers and members of Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union and are also representatives of the other members of said Union with their principal place of business located in Sioux City, Iowa.

PAR. 2. Respondent, Interstate Bakeries Corporation, upon receipt of orders, shipped its products from its place of business in Omaha, Nebr., to its customers located in Sioux City, Iowa.

Respondent, Continental Baking Co., shipped its bakery products from its bakery at Sioux City, Iowa, across State lines to purchasers located in South Dakota, Minnesota, and Nebraska. The salesmen take out a loaf of bread and put bread in the store without it having been previously ordered.

Respondent, Sioux City Bakery, sells and distributes its products in the State of Iowa.

Respondent, Metz Brothers Baking Co., sells and distributes its products in Sioux City, Iowa; Yankton, S. Dak.; and Norfolk, Nebr. This merchandise is transported on respondent's trucks and sold from the truck without previous order having been given therefor.

Respondent, Fred W. Lenhardt, an individual doing business under the trade name of Quality Bakery, sells and delivers his products only in the State of Iowa.

Emil A. Madsen, an individual doing business under the trade name Madsen Bakery, sells and distributes his products only in the State of Iowa.

Respondent, Jake Schindler, an individual doing business under the trade name Iowa Bakery Co., sells and distributes his products in Sioux City, Iowa, and through the medium of four operators who transport bread and bakery products on their own trucks from Sioux City, Iowa, to customers in States other than the State of Iowa.

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These products have not been previously ordered and are sold to the store owners in the towns where the stores are located. When customers need a special order for bakery products, they will telephone the bakery and give the order therefor to be later delivered.

Respondent, Anthony Pages, is an individual doing business under the trade name of Sunkist Cake and Pie Co. and sells and distributes his bakery products only in Sioux City, Iowa.

Respondent, Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, is an unincorporated association located in Sioux City, Iowa. The individual respondents, Glenn Beamen, Charles Cunningham, Jim Brookhart, William Carlson, O. G. Foster, Ralph Johnson, and Howard Foutz are officers and members of said Union. Respondent Union and its members do not operate bakeries and are not engaged in trade and commerce, but the members of said Union are employees of bakeries and operate delivery trucks belonging to the different bakeries.

PAR. 3. Each of the aforesaid respondents, other than respondent union and its members, was in competition with the other respondents and with other bakeries located outside of the State of Iowa which were selling bakery products in Sioux City, Iowa.

PAR. 4. In 1938 the respondent union, its officers, and members called a strike at Sioux City, Iowa, and all the union drivers of bakery trucks joined therein, stopped work, and prevented the sale and distribution of bakery products. Negotiations were then entered into between Sioux City bakeries and the respondent union and its members and an agreement was reached which was evidenced by a written contract that contained, among other things, the following provisions:

Within the corporate limits of Sioux City, Iowa, no bakery products shall be sold to independent bread or cake men for either retail or wholesale resale who were not operating wholesale or retail routes prior to January 1, 1938.

Said written contract was signed by, or on behalf of, all respondents except Interstate Bakeries Corporation. After said contracts and agreements were signed by said respondent Union and said respondents Sioux City bakeries, said respondents Sioux City, Iowa, bakeries, conformed to the terms of said contract and agreement and made no sales of bakery products to persons who had not been operating wholesale or retail bakery routes in Sioux City, Iowa, prior to January 1, 1938. Respondent, Interstate Bakeries Corporation, did not sign this contract and agreement.

PAR. 5. Prior to said respondents, other than respondent Interstate Bakeries Corporation, entering into this contract and agreement,

there were independent route men buying bakery products from bakeries located outside of the State of Iowa and having said bakery products shipped into Sioux City, Iowa, which products were delivered to them by the transportation companies and said bakery products were sold by said independent route men to the general purchasing public. After the said agreement was entered into by said respondents, members of the respondent Union accosted the said independent route men and by threats forced them to cease their operation and go out of business.

PAR. 6. The Interstate Bakeries Corporation did not sign a written contract with respondent union but subsequent to the signing of the aforesaid contract and agreement by and on behalf of the respondent union and the respondents, Sioux City, Iowa, bakeries, other than the Interstate Bakeries Corporation, the respondent, Interstate Bakeries Corporation, sold bakery products to an independent route man named Bolen located at Sioux City, Iowa, for resale to the purchasing public and shipped said bakery products from its Omaha, Nebr., plant to Bolen and Sioux City, Iowa. The respondent union, its officers, and members, called to the attention of the respondent Interstate Bakeries Corporation that the selling of bakery products to Bolen was in violation of the contract signed by the other respondents which provides that:

Within the corporate limits of Sioux City, Iowa, no bakery products shall be sold to independent bread or cake men for either retail or wholesale resale who were not operating wholesale or retail routes prior to January 1, 1938.

Whereupon, the Interstate Bakeries Corporation stopped selling bakery products to Bolen. The Interstate Bakeries Corporation sought to continue selling to Bolen by shipping bakery products to a Mr. Berg at South Sioux City, Nebr., and requested Mr. Bolen to secure these products from Mr. Berg at his place of business. Respondent union then called attention to respondent, Interstate Bakeries Corporation, that selling to Bolen through Berg was a deliberate subterfuge to defeat the terms and provisions of the said contract and agreement referred to above and of respondent, Interstate Bakeries Corporation's promise of compliance with respondent union's request. Thereafter, respondent, Interstate Bakeries Corporation, cooperating with respondent union, declined to sell and ship its bakery products from its plant at Omaha, Nebr., to Mr. Bolen or Mr. Berg and Mr. Bolen was thus forced by respondents to discontinue the sale of bakery products at Sioux City, Iowa, although he had on deposit with respondent Interstate Bakeries Corporation a cash bond of approximately \$100.

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PAR. 7. Each of said respondents, except Interstate Bakeries Corporation, acted in concert and in cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove set forth in furtherance of said understanding, agreement, combination, and conspiracy.

PAR. 8. Said understanding, agreement, combination, and conspiracy and the things done thereunder and pursuant thereto and in furtherance thereof as hereinabove set forth have had and do have the effect of unduly and unlawfully restricting and restraining the sale of said bakery products in trade and commerce between, among, in, and with the several States of the United States; of unduly and unlawfully restricting and restraining trade and commerce in said bakery products in said commerce; of depriving the public of the benefits that would flow from the normal competition among and between the respondent bakeries in said commerce; of eliminating competition, with a tendency and capacity of creating a monopoly in said Sioux City, Iowa, bakeries in the sale of said bakery products in said commerce.

## CONCLUSION

Said understanding, agreement, combination, and conspiracy, and the things done thereunder and pursuant thereto, and in furtherance thereof, as set forth above, constitutes an unfair method 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 answers of respondents, 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 the complaint and in opposition thereto, briefs filed herein, oral argument not having been requested, and the Commission having made its findings as to the facts and its conclusion that the respondents, The Continental Baking Co., a corporation; The Sioux City Bakery, a corporation; Metz Brothers Baking Co., a corporation; Fred W. Lenhardt, an individual trading as Quality Bakery; Emil A. Madsen, an individual trading as Madsen Bakery; Jake Schindler, an individual trading as Iowa Bakery Co.; Anthony Pages, an individual trading as Sunkist Cake and Pie Co.; Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, an unincorporated association; and Glenn Beamen,

Charles Cunningham, Jim Brookhart, William Carlson, O. G. Foster, Ralph Johnson, and Howard Foutz, individually, and as officers and members of Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union and as representatives of other members thereof, have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondents, The Continental Baking Co., a corporation; The Sioux City Bakery, a corporation; Metz Brothers Baking Co., a corporation; Fted W. Lenhardt, an individual trading as Quality Bakery; Emil A. Madsen, an individual trading as Madsen Bakery; Jake Schindler, an individual trading as Iowa Bakery Co.; Anthony Pages, an individual trading as Sunkist Cake and Pie Co.; Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, an unincorporated association; and Glenn Beamen, Charles Cunningham, Jim Brookhart, William Carlson, O. G. Foster, Ralph Johnson, and Howard Foutz, individually, and as officers and members of Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union and as representatives of other members thereof, their agents, servants, and employees in connection with the offering for sale, sale, and distribution of bread, pastries, cakes, and other bakery products in commerce as commerce is defined in the Federal Trade Commission Act do forthwith cease and desist:

1. Entering into or carrying out any agreement or understanding, the purpose or effect of which is to hinder, lessen, or suppress competition in the purchase, sale, and distribution in said commerce of bread, cakes, or other bakery products.

2. Enforcing or attempting to enforce by any method or means any understanding or agreement, the purpose or effect of which is to lessen or suppress competition in the purchase, sale, and distribution in said commerce of bread, cakes, pastries, and other bakery products.

3. Entering into any agreement to classify dealers for the purpose or with the effect of hindering or preventing any dealer or any class of dealers from obtaining bread, pastries, cakes, or other bakery products in said commerce for resale or carrying out or enforcing any such agreement of classification.

4. The use of threats or other coercive methods or practices pursuant to agreement or understanding with each other or with others to prevent any bakery or dealer or route man from purchasing and receiving or selling and delivering bread, pastries, cakes, or other bakery products in said commerce.

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*It is further ordered,* That the respondents other than the Interstate Bakeries Corporation shall, within 60 days after service on 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.

*It is further ordered,* That the complaint as to the Interstate Bakeries Corporation be and the same hereby is dismissed.

## Syllabus

## IN THE MATTER OF

## JACOBS CANDY COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3586. Complaint, Sept. 14, 1938—Decision, Feb. 7, 1941*

Where a corporation engaged in manufacture of candy and nut confections and in interstate sale and distribution of certain assortments thereof which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold or distributed to consumers thereof, and which included (a) number of small bars of candy, number of medium sized bars and number of large bars, together with four-section punchboard for use in sale and distribution of said candy in accordance with plan and board's explanatory legend by which fact as to whether purchaser received, for 5 cents paid, small or medium sized bars was dependent upon securing of particular numbers by purchasers, and in accordance with which last number in each section entitled purchaser to one of the large bars, and under which purchaser who did not qualify by one of numbers calling for one of said bars, or last number in one of said four sections, received nothing for his money, (b) number of small boxes of candy and package containing 5-pound box and pillow, together with punchboard for use in sale and distribution of said products under a plan in accordance with which, and board's explanatory legend, amount paid for chance was dependent upon number obtained, and the securing of said small boxes were likewise dependent upon the obtaining of certain numbers by purchasers, and under which purchaser securing number corresponding with that concealed under card's master seal became entitled to the 5-pound box of candy and pillow, and those who did not qualify by obtaining number calling for one of small boxes or that corresponding to that under master seal received nothing for their money, and (c) various other assortments which were similar to those hereinbefore described and varied therefrom in detail only—

Sold such assortments to dealers in many States and retailers by whom, as direct to indirect purchasers thereof, they were exposed and sold to purchasing public in accordance with aforesaid sales plans or methods, constituting game of chance or sale of a chance to procure an article of merchandise at price much less than normal retail price thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in accordance with such sales plans, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with those who sell and distribute like or similar merchandise in commerce but are unwilling to use said or any other sales plans or methods involving game of chance or sale of a chance to win something thereby, or any other sales plan or method contrary to public policy, and refrain therefrom;

With the result that many persons, because of said element of chance involved in said sales plans or methods employed by it as above described, were