

IN THE MATTER OF
THE BRUNSWICK-BALKE-COLLENDER COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3
OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 3604. Complaint, Sept. 23, 1938—Decision, Dec. 7, 1942

Where a corporation which (1) had long been engaged in the manufacture and competitive offer and sale, among other commodities, of bowling pins and bowling supplies to, principally, owners and operators of bowling alleys; (2) produced from 65 to 80 percent of all of said products sold and distributed in the United States; (3) installed the alleys and furnished the pins and supplies on a lease basis for many years for the annual tournament for tenpin bowlers of the American Bowling Congress at a saving thereto of many thousands of dollars as compared with what it would otherwise have to pay for the alley installations and pins, without considering the cost of supplies and servicing; and (4) was the only manufacturer allowed to advertise bowling equipment at the tournaments in question, its said advertisements being forwarded to all participants;

In connection with a sales promotion plan which it inaugurated and carried on for several years as "The Brunswick \$34,000 Red Crown Bowling Sweepstakes," and under which it awarded substantial prizes in money and merchandise to the winning bowling teams and members thereof (required under conditions laid down by it to play for 7 consecutive weeks three games a week "Qualifying Round Play" and to engage under a similar weekly schedule in 6 weeks of so-called "Prize Play"), organized in five classes composed of teams of relatively equal skill, with prizes of equal value provided for all of the five classes, awarded both on weekly basis and on the basis of the best performance for the six weeks of "Prize Play"; and in connection with which it furnished to qualifying proprietors advertising material, entry blanks, and banners as official "Brunswick Sweepstakes Bowling Alleys"—

- (a) Made it a condition, in order for alleys to qualify for the sweepstakes contest, that their owners and operators must purchase four sets of their "King" pins or two sets of "King" pins and three sets of their "Queen" pins, and not less than \$15 worth of supplies for each alley in their establishments—quantities sufficient to supply the full requirements of the average alley for the full bowling season;
- (b) Engaged in an extensive advertising plan through advertisements in various periodicals distributed among such proprietors, and through advertising cartoons played upon the fear of losing business, through stressing the alleged reaction of customers of those alleys which had qualified and the dissatisfaction of customers of those who had not done so; and issued various advertising calculated to arouse the interest of bowlers in the sweepstakes for the purpose of inducing them to demand that the proprietors of the alleys in which they bowled qualify their establishments for the sweepstakes, and instructed their salesmen to call proprietors' attention to

such demand; intending thereby to bring at least 80 percent of all bowling establishments into the Sweepstakes plan;

With the result that a substantial number of proprietors who had previously purchased pins and supplies in whole or in part from competitors were induced to qualify their establishments, as aforesaid, and competitors were deprived of their patronage and suffered substantial loss; there was a tendency, through aforesaid contracts made with proprietors in order for latter to qualify for said contest, to eliminate as customers of competitors some 1,700 proprietors who owned and controlled a substantial portion of all the bowling alleys available to the public; proprietors were induced to purchase pins and supplies which they would not otherwise have purchased from it, and to purchase from it exclusively, without regard to comparative price or quality, and irrespective of their need or desire; trade was diverted from competitors to it, and by reason of its dominant position, competition in sale of such products was unreasonably restrained and lessened and there was a tendency to create in it a monopoly in the sale thereof; and the effect of such contracts—which constituted, in effect, contracts for sale of goods on the condition, agreement, or understanding that the proprietors should not use or deal in products of competitors—by reason of its dominant position and the number of contracts negotiated by it, was substantially to lessen competition and tend to create a monopoly in it in aforesaid products:

Held, (1) That such acts and practices were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein; and

(2) That said acts and practices, in requiring proprietors to enter into contracts to purchase pins and supplies sufficient for their requirements and for the entire season in order to qualify as aforesaid, and under which, in effect, they were not to use or deal in competitive supplies, with effect, by reason of its said dominant position, of substantially lessening competition and tending to create a monopoly in products in question, constituted a violation of section 3 of the Clayton Act.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Mr. Frank W. Sullivan of Mayer, Meyer, Austrian & Platt, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Act of Congress approved October 15, 1914 (Public No. 212, 15 U. S. C., sec. 12, *et seq.*, the Clayton Act), and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that The Brunswick-Balke-Collender Co. has violated the provisions of said acts, 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:

Count 1

PARAGRAPH 1. The Brunswick-Balke-Collender Co., hereinafter referred to as the respondent, is a corporation, organized and existing under the laws of the State of Delaware and has its principal office and place of business at 629 South Wabash Avenue, Chicago, Ill. The said respondent is now, and for many years prior hereto has been, engaged in the business of manufacturing, offering for sale, and selling, among other commodities, bowling pins, bowling balls, and miscellaneous bowling supplies and equipment, hereinafter referred to as bowling equipment, necessary for the play and conduct of the game known as American tenpins or duckpins, popularly known, and hereinafter referred to, as bowls, and in the course and conduct of its business the respondent has been, and is now, offering for sale, and has been, and is now, selling and shipping, bowling equipment in commerce across State lines to various purchasers thereof at said purchasers' respective places of business located in the several States of the United States other than the State from which said bowling equipment has been, and is now being, shipped by the respondent.

PAR. 2. In the course and conduct of its business as aforesaid the respondent has been, and is now, engaged in active and substantial competition with other manufacturers and sellers of bowling equipment who, in competition with the respondent, have been, and are now, manufacturing bowling equipment and have been, and are now, offering for sale, selling and shipping bowling equipment in commerce across State lines to various purchasers thereof at said purchasers' respective places of business located in the several States of the United States other than the States from which said bowling equipment has been, and is now being, shipped by said other manufacturers and sellers.

PAR. 3. For many years prior hereto the respondent has manufactured and sold, and does now manufacture and sell, the greater part of all bowling equipment manufactured and sold in the United States, the respondent's production and sales thereof having been, and now being, in excess of the aggregate of its several competitors' production and sales.

PAR. 4. The game of bowls is played on hardwood runways known as bowling alleys and may be played by individuals or by teams of individuals. The owners and operators of bowling alleys are the principal purchasers of bowling equipment in the United States and are the principal customers of the respondent and of the respondent's

competitors. The greater number of bowling alleys in the United States are public alleys in the sense that the members of the general public are allowed to play the aforesaid game or to bowl thereon for a consideration fixed by the owners or operators of such alleys, who own or operate the same for profit and are dependent therefor upon the patronage and use of said alleys by the members of the general public.

PAR. 5. Prior to the month of February 1937, the respondent contrived, during said month announced, and thereafter extensively advertised and conducted on a national scale a certain contest which it termed "The Brunswick \$34,000 Red Crown Bowling Sweepstakes" and by which it offered and awarded substantial prizes in money and merchandise to the winning participants in said contest, which was governed by the following rules fixed and announced by the respondent, to wit:

(a) The contest was open to all five-men bowling teams which held membership in the American Bowling Congress, or bowled in bowling leagues sanctioned by the American Bowling Congress, and filed contest entry blanks with the respondent on or before, or postmarked not later than, October 24, 1937.

(b) Teams were required to play, and to complete prior to December 19, 1937, 21 games of bowls, played at the rate of 3 games per week for 7 consecutive weeks, which series of games was known as "Qualifying Round Play."

(c) On the basis of each team's average score in Qualifying Round Play each team entered in the contest was, at the close of such play, placed in one of five classes of teams, the membership of each class being selected from, and composed of, teams of more or less equal skill, as reflected by such teams' respective average scores in Qualifying Round Play.

(d) After the conclusion of Qualifying Round Play, and for a period of 6 consecutive weeks beginning January 24, 1938, teams were to engage in so-called "Prize Play," each team being required to play three games of bowls per week during such play. On the basis of scores established during Prize Play the respondent made six weekly awards of prizes consisting of \$250, \$150 and \$100 in cash to the teams in each class having, respectively, in their respective classes, the highest, the second highest and the third highest total scores for each respective week of Prize Play. To each member of the teams having the fourth, fifth, sixth, and seventh highest total scores in their respective classes during each respective week of Prize Play the respondent awarded a bowling ball.

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(e) At the conclusion of Prize Play the respondent awarded "Grand Prizes" of \$750, \$250, \$150 and \$100 in cash to the teams in each class having, respectively, in their respective classes, the highest, the second highest, the third highest, and the fourth highest total scores for the six weeks of Prize Play. To each member of each team having the fifth, sixth, seventh, eighth, and ninth highest total scores in their respective classes for the 6 weeks of Prize Play the respondent awarded a bowling ball, and to each member of each team having the tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth highest total scores in their respective classes during Prize Play the respondent awarded a pair of bowling shoes.

(f) In order to be eligible for the contest all teams were required to bowl all contest games in bowling alley establishments displaying the so-called "Official Brunswick Sweepstakes Emblem" and on so-called "Official Brunswick Sweepstakes Bowling Alleys," and each team was required to bowl its Prize Play in the same bowling establishment in which it had bowled its Qualifying Round Play.

(g) In order to qualify bowling alleys as "Official Brunswick Sweepstakes Bowling Alleys" the proprietors or operators of the bowling establishments in which bowling alleys were located were required to purchase from the respondent, and to display in their bowling establishments, the Official Brunswick Sweepstakes Emblem, in consideration for the sale of which said emblem by the respondent to said proprietors and operators the respondent required said proprietors and operators to purchase from it for each alley in their respective establishments not less than four sets of bowling pins at a price of \$45, more or less, and \$15 worth of miscellaneous bowling equipment, regardless of whether said proprietors or operators were or were not in need of, or did or did not desire to purchase, said bowling pins and miscellaneous bowling equipment or either of them for their bowling establishments or alleys, and in addition thereto the respondent required some of said proprietors or operators to employ the respondent to recondition or resurface some or all of the bowling alleys located in their respective bowling establishments at a cost to them of \$10 per alley, more or less, regardless of whether said proprietors or operators did or did not need or desire to have their said bowling alleys reconditioned or resurfaced.

PAR. 6. For the average or ordinary bowling alley located in the United States, and for the greater number of bowling alleys located in the United States, four sets of bowling pins and \$15 worth of miscellaneous bowling equipment are equal to or in excess of the

quantity of bowling pins and miscellaneous bowling equipment necessary to serve the requirements of said alleys for a full bowling season of 1 year, and are equal to or in excess of the quantity of bowling pins and miscellaneous bowling equipment purchased therefor by the proprietors or operators of said alleys for or during a full bowling season of 1 year, all of which was well known to the respondent prior to and at the time the respondent contrived the aforesaid contest and throughout the entire period during which said contest was advertised and conducted by the respondent.

PAR. 7. The respondent duly conducted said contest pursuant to the aforesaid rules thereof, except as hereinafter noted, and did sell to numerous proprietors and operators of bowling establishments located in the United States, and ship in commerce across State lines between and among the several States of the United States to said proprietors and operators, so-called Official Brunswick Sweepstakes Emblems, bowling pins and miscellaneous bowling equipment, and did demand and require that said proprietors and operators execute a written form of agreement providing that failure on their part to accept delivery of or to make payment for said bowling pins and miscellaneous bowling equipment at the time or times specified in said agreement operated to disqualify from the aforesaid contest all contest entrants bowling in the said proprietors' or operators' respective bowling establishments, and, except as hereinafter noted, the respondent did refuse to sell or ship so-called Official Brunswick Sweepstakes Emblems to any proprietors or operators of bowling establishments unless said proprietors or operators purchased from the respondent bowling pins and miscellaneous bowling equipment in the quantity and amount set forth above in subparagraph (g) of paragraph 5, without regard to whether said proprietors or operators needed or desired to purchase said bowling pins and miscellaneous bowling equipment or either of them. Many sales of bowling pins and miscellaneous bowling equipment which were shipped in commerce across State lines by the respondent to purchasers thereof were made by the respondent to proprietors or operators of bowling establishments who did not need or desire to purchase said bowling pins or miscellaneous bowling equipment or either of them, or if needing the same did not desire to purchase them from the respondent, but were required by the respondent to, and did, purchase said bowling pins and miscellaneous bowling equipment from the respondent in order to obtain from the respondent so-called Official Brunswick Sweepstakes Emblems necessary to qualify bowling alleys as so-called Official Brunswick Sweepstakes Bowling Alleys.

PAR. 8. In conducting the aforesaid contest and in selling and shipping in commerce across State lines, as aforesaid, bowling equipment and so-called Official Brunswick Sweepstakes Emblems the respondent:

(a) Induced some purchasers of said equipment and emblems to purchase the same by wilfully and falsely representing to said purchasers that competitors of said purchasers had qualified the bowling alleys in their respective establishments as Official Brunswick Sweepstakes Bowling Alleys, when such was not a fact.

(b) Coerced some purchasers of said equipment and emblems to purchase the same by threatening to open and operate in competition with said purchasers Official Brunswick Sweepstakes Bowling Alleys if such purchasers failed to qualify their respective alleys as such by purchasing said equipment and emblems.

(c) Wilfully and falsely represented to purchasers of said equipment and emblems that the aforesaid contest was being conducted without cost or expense to them, and that the respondent's price on said equipment had not been increased for the purpose of raising funds with which to defray the cost of said contest, when in truth and in fact said purchasers were required to purchase equipment and emblems as aforesaid in order to qualify their respective bowling alleys for said contest and the respondent had increased the price of bowling pins and other bowling equipment for the purpose of raising funds with which to defray the cost of said contest.

(d) Willfully and falsely represented to purchasers of said equipment that the terms and conditions upon which bowling alleys might be qualified for said contest were uniform and the same to all proprietors and operators of bowling establishments, when in truth and in fact the respondent permitted certain proprietors and operators of bowling establishments to qualify their respective alleys for said contest upon terms different from, and more favorable than, the terms accorded by the respondent to other and competing proprietors and operators of bowling establishments.

PAR. 9. The respondent's intent and purpose in announcing and conducting the aforesaid contest, and the results and effects of said contest, were and are to divert trade from the respondent's competitors to the respondent, to coerce and cause customers and prospective customers of respondent's competitors to refrain from purchasing bowling equipment from respondent's competitors and to purchase the same from the respondent exclusively, without regard to the comparative price or quality of bowling equipment manufactured and sold by the respondent and that manufactured and sold by the respondent's competitors and irrespective of whether said customers were or were not

in need of or did or did not desire to purchase said bowling equipment, to coerce and cause purchasers of bowling equipment to purchase such items and quantities thereof as were or might be required by the respondent, without regard to said purchasers' need or desires, to divert trade and patronage from proprietors or operators of bowling establishments who did not qualify the bowling alleys in their respective establishments as so-called Official Brunswick Sweepstakes Bowling Alleys and to transfer such trade and patronage to proprietors or operators of bowling establishments who did so qualify the bowling alleys in their respective establishments, to injure and oppress in their respective businesses competitors of the respondent and those proprietors and operators of bowling establishments who did not qualify the bowling alleys in their respective establishments as Official Brunswick Sweepstakes Bowling Alleys and unreasonably to restrain trade in the manufacture and sale of bowling equipment and in the operation of bowling establishments.

PAR. 10. The effects and results of the conduct by the respondent of the aforesaid contest have been and now are to cause and require many customers of respondent's competitors to cease purchasing bowling equipment from respondent's competitors and to purchase the same exclusively from the respondent, to cause many prospective customers of respondent's competitors to purchase bowling equipment exclusively from the respondent, to deprive many purchasers of bowling equipment of the privilege of purchasing the same from respondent's competitors and the right freely to purchase such equipment or items thereof in such amounts and at such times as they wish and from such sources as they desire to patronize, to restrict and limit purchasers of bowling equipment to the purchase of the respondent's bowling equipment exclusively and to deprive such purchasers and the general public of the benefit of free and active competition in the manufacture and sale of bowling equipment, substantially to injure competition in the manufacture and sale of bowling equipment, unduly and unreasonably to hinder, obstruct, restrain, and lessen competition in the manufacture and sale of bowling equipment and to tend to create in the respondent a monopoly in the manufacture and sale of bowling equipment.

PAR. 11. The acts and practices of the respondent as herein alleged are all to the prejudice of competitors of the respondent and of the public, have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, competition in the sale of bowling equipment in commerce within the intent and meaning of the Federal Trade Commission Act, have unreasonably restrained such commerce in bowling equipment, and constitute unfair methods

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of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Count 2

PARAGRAPH 1. Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of Count 1 of this complaint are, by reference, incorporated herein and made a part of this paragraph.

PAR. 2. The effect of the acts and practices of the respondent as herein alleged and the sale by the respondent of bowling equipment and so-called Official Brunswick Sweepstakes Emblems in the manner and form and under the circumstances above set forth has been and is now, substantially to lessen competition in the manufacture and sale of bowling equipment and has tended, and now tends, to create in the respondent a monopoly in the manufacture and sale of bowling equipment within the intent and meaning of section 3 of the above-mentioned Act of Congress approved October 15, 1914 (15 U. S. C., sec. 14), and the aforesaid acts and practices of the respondent and the sale by respondent of bowling equipment and so-called Official Brunswick Sweepstakes Emblems in the manner and form and under the circumstances above set forth, with the effect aforesaid, constitute violations of said section 3 of the Act of Congress approved October 15, 1914 (15 U. S. C., sec. 14).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and pursuant to the provisions of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission, on September 23, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, The Brunswick-Balke-Colender Co., a corporation, charging it with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act and also charging it with violation of the provisions of section 3 of said Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes." 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 Daniel J. Murphy, attorney for the Commission, and in opposition

to the allegations of the complaint by Frank W. Sullivan, attorney for the respondent, before Edward E. Reardon, a 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, this proceeding regularly came on for final hearing before the Commission on said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel; 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, The Brunswick-Balke-Collender Co., is a corporation, organized and existing under the laws of the State of Delaware and has its principal office and place of business at 629 South Wabash Avenue, Chicago, Ill. The said respondent is now, and for many years last past has been, engaged in the business of manufacturing, offering for sale, and selling, among other commodities, bowling pins and bowling supplies. In the course and conduct of its said business, respondent causes and has caused said products, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said bowling pins and bowling supplies in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business the respondent has been, and is now, engaged in active and substantial competition with other manufacturers and sellers of bowling pins and bowling supplies, who, in competition with respondent, have been and are now offering for sale, selling, and shipping bowling pins and bowling supplies in commerce among and between the various States of the United States.

PAR. 3. For many years the respondent has manufactured and sold the greater part of the bowling equipment manufactured and sold in the United States, and respondent's production and sales of tenpins and bowling supplies are in excess of the aggregate of its several competitors and constitute from 65 to 80 percent of all the tenpins

and bowling supplies sold and distributed in the United States. The owners and operators of bowling alleys are the principal purchasers of tenpins and bowling supplies in the United States and are the principal customers of the respondent and of the respondent's competitors. The greater number of bowling alleys in the United States are public alleys in the sense that members of the general public are allowed to play thereon for a consideration fixed by the owners or operators of such alleys, who own or operate the same for profit and who are dependent therefor upon the patronage and use of said alleys by the members of the general public.

PAR. 4. Prior to the month of February 1937, the respondent inaugurated, and during said month announced and thereafter extensively advertised and conducted on a national scale, a certain contest which was termed "The Brunswick \$34,000 Red Crown Bowling Sweepstakes," by which it offered and awarded substantial prizes in moneys and merchandise to winning participants in said contest, which was governed by certain rules announced by respondent. The rules of said contest were as follows:

(a) The contest was open to all 5-men bowling teams which held membership in the American Bowling Congress or bowled in bowling leagues sanctioned by the American Bowling Congress.

(b) Teams were required to play, and to complete prior to December 1937, 21 games of tenpins played at the rate of 3 games per week for 7 consecutive weeks, which series of games was known as "Qualifying Round Play."

(c) On the basis of each team's average score in Qualifying Round Play, each team entered in the contest was, at the close of such play, placed in one of five classes of teams, the membership of each class being selected from, and composed of, teams of more or less equal skill as reflected by such team's respective average scores in Qualifying Round Play.

(d) After the conclusion of Qualifying Round Play and for a period of 6 consecutive weeks beginning January 24, 1938, teams were to engage in so-called "Prize Play," each team being required to play 3 games of tenpins per week during such play. On the basis of scores established during Prize Play, the respondent made 6 weekly awards of prizes, consisting of \$250, \$150, and \$100 in cash to the teams in each class having, respectively, in their respective classes the highest, the second highest, and the third highest total scores for each respective week of Prize Play. To each member of the teams having the fourth, fifth, sixth, and seventh highest total scores in their respective classes during each respective week of Prize Play, the respondent awarded a bowling ball.

(e) At the conclusion of Prize Play, the respondent awarded "grand prizes" of \$750, \$250, \$150, and \$100 in cash to the teams in each class having, respectively, in their respective classes, the highest, the second highest, the third highest, and the fourth highest total scores for the past 6 weeks of Prize Play. To each member of each team having the fifth, sixth, seventh, eighth, and ninth highest total scores in their respective classes for the six weeks of Prize Play, the respondent awarded a bowling ball, and to each member of each team having the tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth highest total scores in their respective classes during the Prize Play, the respondent awarded a pair of bowling shoes.

(f) All teams were required to bowl all contest games, including Qualifying Round Play, in bowling-alley establishments displaying the official Brunswick Bowling Sweepstakes Emblem and on so-called Official Brunswick Sweepstakes Bowling Alleys, and each team was required to bowl its Prize Play in the same Official Brunswick Sweepstakes bowling establishments where Qualifying Round Play was bowled. Similar contests were conducted by the respondent during the 1938-39 season and also during the 1939-40 season.

PAR. 5. The Brunswick Sweepstakes contest applied only to the game of tenpins and did not apply to the games of candlepins and duckpins, which are played with pins of different size and shape, with different weights of balls, and under different rules than the game of tenpins.

PAR. 6. For the purpose of maintaining uniformity in its Sweepstakes contests, the respondent required that all teams competing in the Sweepstakes must have a membership in the American Bowling Congress. The American Bowling Congress was organized in 1895 for the purpose of regulating the game of tenpins and promulgates rules, regulations, and specifications to govern the game of tenpins. All members of the Congress who participate in contests sanctioned by the American Bowling Congress must bowl only upon alleys complying with the specifications of the American Bowling Congress and certified by it. These specifications cover the dimensions of the alleys, which must not be less than 41 inches and not more than 42 inches in width. The length must be 60 feet from the foul line to the center of the head pin, with a clear run back of the foul line of not less than 15 feet, the pin spots to be 12 inches apart, with rear pins 3 inches from the pit edge of the alleys. The specifications also cover the dimensions and weight of the pins and the weight, size, and balance of the bowling balls.

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PAR. 7. The American Bowling Congress since 1901 has conducted an "Annual Tournament" for tenpin bowlers. The number of participants in these tournaments has been steadily growing in each succeeding tournament. The 1940 tournament, held in Detroit, Mich., had 32,000 contestants and lasted sixty-two days. For the conduct of these tournaments, the respondent, each year, except for the year 1907, has installed the alleys and furnished the pins and supplies on a lease basis and has serviced the alleys during the tournament. In the 1940 tournament, the respondent installed and serviced forty alleys and provided approximately 6,000 sets of tenpins on a lease basis for a consideration of \$12,500. In addition, the respondent is the only manufacturer allowed to advertise bowling equipment at these tournaments, for which privilege the respondent pays \$1,000 for an advertisement in the tournament schedule, which is forwarded to all participants. If the American Bowling Congress were to pay for said alley installations the cost would be from \$60,000 to \$64,000 at \$3,000 to \$3,300 a set of two alleys, and the cost of pins would be about \$71,000 at \$11.85 a set, making a total of approximately \$133,000 without considering the cost of supplies and servicing of the alleys.

PAR. 8. There has been a marked increase in the number of bowlers and the interest in bowling, as indicated by the membership in the American Bowling Congress. The membership of the American Bowling Congress was as follows for the respective seasons:

Season:	Teams
1935-36.....	51,743
1936-37.....	63,153
1937-38.....	91,975
1938-39.....	103,330
1939-40.....	130,560

Teams consist of from 5 to 7 members. There has likewise been a marked increase in the value of bowling alleys and accessories manufactured in the United States, as shown by the biannual census of manufacturers issued by the United States Department of Commerce, which lists such values as follows:

1933.....	\$475,350
1935.....	1,613,801
1937.....	3,231,719

PAR. 9. There are approximately 7,500 to 8,000 bowling alley proprietors in the United States. This total includes many establishments which could not qualify under the specifications provided by the rules of the American Bowling Congress and also establishments operating duckpin and candlepin alleys. Approximately 70 percent to 85 percent of the alleys are used for tenpins. In 1940 there were

4,700 tenpin bowling establishments certified by the American Bowling Congress. There were at least 1,769 proprietors of bowling alleys who qualified for respondent's 1937 Sweepstakes contest.

PAR. 10. The manufacture of tenpins is confined to approximately six manufacturers, including the respondent and one manufacturer who sells and has sold its entire output to the respondent for the past 18 years. The sales of tenpins made by the respondent for the years 1935-38 are as follows:

	<i>Sets of tenpins</i>
1935 -----	51,500
1936 -----	76,304
1937 -----	87,747
1938 -----	92,619

PAR. 11. The respondent manufactures three grades of tenpins which are known as King pins, Queen pins, and Duke pins. All of these pins are manufactured from maple wood and comply with the American Bowling Congress specifications. The King pin is the best quality tenpin manufactured by the respondent. It was introduced in April 1936 at the price of \$10.75 per set, which price was increased to \$11.85 per set effective October 1, 1936. Respondent's second quality pin, the Queen pin, was sold at the price of \$8.95 per set until October 1, 1936, at which time the price was increased to \$9.45 per set. Respondent's third quality pin, the Duke pin, was sold at \$5.95 per set until October 1, 1936, at which time the price of this pin was increased to \$6.45 per set.

PAR. 12. For the purpose of promoting a widespread interest in respondent's Sweepstakes contest and giving all classes of bowlers an opportunity to participate, regardless of their proficiency, teams were divided into five classes, as follows:

Class A—5-man teams whose 3-game series score in Qualifying Round Play averaged over 2,950.

Class B—5-man teams whose 3-game series score in Qualifying Round Play averaged between 2,650 and 2,949.

Class C—5-man teams whose 3-game series score in Qualifying Round Play averaged between 2,400 and 2,649.

Class D—5-man teams whose 3-game series score in Qualifying Round Play averaged between 2,100 and 2,399.

Class E—5-man teams whose 3-game series score in Qualifying Round Play averaged under 2,100.

The Qualifying Round Play consisted of 21 games played in 7 successive weeks, and under the above classification a bowler having a low average game had the same opportunity for the prize awards as a better bowler, as each bowler would compete with others in his same class. The prize awards were the same for each class.

PAR. 13. In order to qualify their alleys for the Sweepstakes contest promoted by the respondent, it was necessary for proprietors of bowling alleys to purchase from the respondent four sets of King pins or two sets of King pins and three sets of Queen pins for each and every alley in their establishments and, in addition thereto, to purchase not less than \$15 worth of supplies for each and every alley in their establishments. Upon making such purchases from the respondent the establishments then became Official Brunswick Sweepstakes bowling establishments and were furnished by the respondent with various advertising material, entry blanks, and banners.

PAR. 14. During the year 1937 the respondent placed advertisements in various periodicals distributed among bowling-alley proprietors, of which the following is a typical example:

ATTENTION BOWLING PROPRIETORS

We suggest that you

**DO NOT PLACE ANY ORDERS
FOR TENPINS
OR CONTRACT FOR
RESURFACING OF ALLEYS**

until you hear

**THE BIGGEST PROFIT
MAKING NEWS IN
BOWLING HISTORY**

from your BRUNSWICK salesman

WAIT NOW AND AVOID REGRETS LATER

PAR. 15. The advertising plan of the respondent was based upon two elements—the opportunity for profit and fear of losing business, with primary stress being placed by the respondent on the fear motive in its advertising and selling campaign.

Several advertising cartoons issued by the respondent depicted bowlers in high glee because the proprietors of the bowling establishments where they bowled had “tied in” with the Brunswick Sweepstakes, and such bowlers were variously quoted as follows:

The proprietor of our place has the interest of bowlers at heart 100%.

Mighty swell of our proprietor to get us in this! I am glad we bowl here!

I am sure glad our team bowls at this place.

Other bowlers are depicted as dissatisfied because their proprietors had not “tied in” with the Brunswick Sweepstakes, and such bowlers were variously quoted as follows:

I am going to see our league secretary about moving out of this joint! We're going where we'll get a crack at that \$34,000 prize list and I don't mean maybe!

Just because we bowl at the wrong place we weren't in the money! That burns me up!

PAR. 16. Various advertising was also issued by the respondent calculated to arouse the interest of the bowler in the Sweepstakes for the purpose of inducing bowlers to demand that the proprietors of alleys in which they bowled qualify their establishments for the Sweepstakes. Salesmen were instructed to call the attention of the proprietors to this result, as is indicated by the following typical statement issued by respondent to its salesmen:

Bowlers' interests are going to be focused on this tournament. Never before has there been one of this size without 1 penny's expense to anyone. They see these entry blanks all over town (we expect to print millions of them), they see the banners in all the better places, they see the buttons on the fellows' coats. They notice posters on the bulletin boards. Don't you see how all this is going to make almost everyone in this community want to participate? If they can't get into this tournament they're going to want to know why. Every operator tying into this plan will be able to say "come and get it." The fellows who don't go along are going to be out in the cold. You know and I know that bowling teams don't always stay at the same alley year after year. Many of them have left alleys and gone to other places for less important reasons than through inability to participate in this gigantic tournament. I don't see how a single proprietor who has the interests of his bowlers at heart could think of passing up a plan such as this to help himself and the bowlers at the same time.

Practically everybody in your community is going to know about it. * * * Bowlers are going to be interested right off the bat and this is all put out right at the beginning of the season. If they're bowling at a place that is not a part of this campaign there is a chance that they may even organize another team and come to a place where they can participate.

PAR. 17. It was the respondent's plan to bring at least 80 percent of all bowling establishments into the sweepstakes plan, and the fear motive was to be chiefly used for this purpose. This is indicated by instructions issued to salesmen, which read in part as follows:

Therefore, we know that we are putting it very low when we say that this campaign will cost your company well over \$50,000. For that reason we expect every salesman to sell better than 80% of the bowling alleys in each territory. We cannot permit salesmen to attack with this plan in a weak and haphazard manner. Each man should study the sales story that follows and learn it. * * * Your company is growing rapidly and is on the lookout for top notch men to advance up the ladder. We cannot continue with men who don't take advantage of opportunities such as this well planned campaign. In other words, this campaign will be used as a yardstick to measure the ability of our salesmen. Anyone who cannot make his quota with a plan as perfect as this one does not deserve the title of "Brunswick Salesman."

SELLING INSTRUCTIONS

There are only two outstanding reasons for anyone in business to make a purchase:

- (1) In order to make a profit.
- (2) Fear of losing customers in case purchase is not made.

Findings

35 F. T. C.

It is granted that there are other reasons, but their importance is so small in comparison to the two stated above that they can be entirely overlooked at this time. Thus, in planning your sales story ask yourself "Am I building a picture of profit coming to this man and at the same time am I making him see that there is a great possibility of his losing business, losing customers, if he does not enter into this idea?" Have every statement of yours lead up to or prove these two outstanding points. This is not cheap talk as developed by schools of salesmanship. It is the result of years of successful selling experience and has *always* succeeded in getting the business regardless of the product sold. In the sales story which follows, note how each and every part of this campaign is used to sell the product on the *profit* or *fear* idea.

PAR. 18. The respondent duly conducted said contest pursuant to the rules hereinbefore described and did sell to numerous proprietors and operators of bowling establishments located in the United States, bowling pins and miscellaneous bowling pins and miscellaneous bowling supplies, viz, four sets of King pins or two sets of King pins and three sets of Queen pins and \$15 worth of supplies for each alley in the establishment of such proprietors and operators.

PAR. 19. Based upon the testimony of operators and proprietors of bowling establishments and upon the testimony of dealers in, and salesmen of, bowling pins and bowling supplies, the Commission finds that four sets of King pins or two sets of King pins and three sets of Queen pins three sets of Queen pins and \$15 worth of miscellaneous supplies for each alley are sufficient to supply the full requirements of the average bowling alley for the full bowling season. A substantial number of the proprietors of bowling alleys who were induced by the respondent to qualify their establishments for the sweepstakes plan had previously purchased bowling pins and bowling supplies in whole or in part from competitors of the respondent. As a result, competitors of respondent were deprived of the patronage of such proprietors and suffered a substantial loss of customers and of sales because of respondent's sweepstakes plan.

PAR. 20. The contracts made by the respondent with proprietors of bowling establishments in order to qualify for the sweepstakes contest, by reason of the quantity purchases required in such contracts, had a tendency to eliminate as customers or prospective customers of respondent's competitors approximately 1,769 proprietors of bowling establishments who own or control a substantial portion of all the bowling alleys available to the public, and respondent's competitors were thereby precluded from an opportunity to sell bowling pins or bowling supplies to such alleys which had been so qualified. Furthermore, as a result of respondent's advertising and sales campaign, proprietors of bowling establishments were induced, through fear of losing business and through demands of bowling

customers, to qualify their alleys for respondent's sweepstakes contest and to purchase bowling pins and supplies from the respondent which they would not otherwise have purchased from the respondent.

PAR. 21. Through the use of the aforesaid acts and practices by the respondent, trade has been diverted from respondent's competitors to respondent through and by means of respondent's sweepstakes plan, and customers and prospective customers of respondent's competitors have been induced to refrain from purchasing bowling pins and supplies from respondent's competitors and to purchase the same from the respondent exclusively, without regard to the comparative price or quality of the bowling pins and supplies manufactured and sold by the respondent and those manufactured and sold by respondent's competitors, and irrespective of whether said customers were or were not in need of, or did or did not desire to purchase, said bowling pins and supplies.

PAR. 22. The Commission further finds that by reason of the dominant position of the respondent in the sale and distribution of bowling pins and bowling supplies, the use of the acts and practices by the respondent as herein described, has substantially injured competition in the sale of bowling pins and supplies, has unduly and unreasonably hindered, obstructed, restrained, and lessened competition in the manufacture and sale of said bowling pins and supplies, and has a tendency to create in the respondent a monopoly in the manufacture and sale of bowling pins and bowling supplies and to deprive purchasers and the general public of the benefit of free and active competition in the manufacture and sale of bowling pins and supplies.

PAR. 23. The Commission further finds that the contracts made by the respondent with the various bowling-alley proprietors in order to qualify their alleys for the "Brunswick \$34,000 Red Cross Bowling Sweepstakes," by reason of their requirement that such proprietors purchase sufficient bowling pins and supplies to fill their needs or requirements for the bowling season, constituted, in effect, contracts for the sale of goods on the condition, agreement, or understanding that such proprietors should not use or deal in bowling pins or bowling supplies of competitors of the respondent; and, by reason of the dominant position held by the respondent in the sale and distribution of bowling pins and bowling supplies and the number of contracts negotiated by the respondent, the effects of such contracts were substantially to lessen competition and tend to create a monopoly in the respondent in bowling pins and bowling supplies.

Order

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CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of said respondent's competitors, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act; and the acts and practices of the respondent in requiring proprietors of bowling alleys to enter into contracts to purchase a quantity of bowling pins and bowling supplies sufficient for their requirements for the entire bowling season in order to qualify their bowling establishments for the "Brunswick \$34,000 Red Cross Bowling Steepstakes," with the effect that such contracts constituted a condition, agreement, or understanding that such purchasers shall not use or deal in bowling pins or bowling supplies of respondent's competitors have, by reason of the dominant position of the respondent in the sale and distribution of bowling pins and bowling supplies, the effect of substantially lessening competition and a tendency to create a monopoly in bowling pins and bowling supplies, and constitute a violation of section 3 of the Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton 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 the respondent, testimony and other evidence taken before Edward E. Reardon, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral arguments of counsel; 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 and has violated the provisions of that certain act of the Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

It is ordered, That the respondent, The Brunswick-Balke-Collender Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device in con-

nection with the offering for sale, sale, and distribution of bowling pins, bowling supplies, bowling equipment, or other similar products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any sales promotion plan or method of sale which includes the promotion or operation of any bowling contest which requires a bowling-alley proprietor, in order to qualify for such contest, to purchase from the respondent all or substantially all of his bowling pins, bowling supplies, or bowling equipment for the bowling season during which such contest is held.

2. The use of any sales promotion plan or contest for the purpose, or having the effect, of coercing bowling-alley proprietors into purchasing all or substantially all of their bowling pins, bowling supplies, or bowling equipment from respondent.

It is further ordered, That the respondent, The Brunswick-Balke-Collender Co., a corporation, and its officers, agents, representatives, and employees directly or through any corporate or other device in connection with the sale, or the making of any contract for the sale, of bowling pins, bowling supplies, bowling equipment, or other similar products in commerce as "commerce" is defined in that Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, do forthwith cease and desist from:

1. Selling, or making any contract for the sale of, bowling pins, bowling supplies, bowling equipment, or other similar products on the condition, agreement, or understanding that the purchaser thereof shall not use bowling pins, bowling supplies, bowling equipment, or other similar products other than those acquired from the respondent;

2. Using any sales promotion plan or method of sale which includes the promotion or operation of any bowling contest which requires a bowling alley proprietor to purchase or agree to purchase all or substantially all of his bowling pins, bowling supplies, or bowling equipment for the bowling season, where such sale or contract of sale is in effect a sale on the condition, agreement, or understanding that the purchaser thereof shall not use bowling pins, bowling supplies, or bowling equipment not manufactured or sold by the respondent.

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.

IN THE MATTER OF
THE WIRE ROPE & STRAND MANUFACTURERS
ASSOCIATION, INC., ET AL.

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

Docket 4443. Complaint, Jan. 3, 1941—Decision, Dec. 8, 1942

Where an Association, originally organized to meet the requirements of the National Industrial Recovery Act; and 15 member corporations, which (1) were engaged in the manufacture and interstate sale and distribution of ordinary nonpatented wire rope, comprising about 80 to 85 percent of the total volume of wire rope produced by them, to distributors and dealers and also direct to users, including various Federal, State, and municipal governmental agencies, at delivered prices; which (2) together did about 85 percent of all such business in the United States, with only two competitors; which (3) were in competition with one another and with the two concerns above referred to, except insofar as such competition had been restricted or forestalled, as below set forth; and which (4) to the extent that they acted collusively and collectively in the pricing and distribution of wire rope in the United States, were in a position to dominate and control prices for the product involved;

Acting concertedly and through their said Association—

- (a) Following the filing of list prices and discounts with the Code Authority under the National Recovery Act—which gradually became uniform, with the consequence that resulting delivered prices on May 27, 1935, the date of the Schechter Supreme Court decision invalidating the Act referred to, were uniform—acquiesced in a practice by three of their smaller manufacturer members under which such manufacturers sold their wire rope at an additional 5 percent chain discount;
- (b) Published, after the adoption of the Code and notwithstanding the rejection by the Administrator of a proposal so to do, their price list schedules, sales terms, and base and chain discounts, with the effect of making in each case complete delivered sales prices;
- (c) Continued, at the time of the adoption of the Code, their practice of quoting and selling only on a delivered zone basis;
- (d) Filed a formula setting forth in detail the method for the order in which base and chain discounts—i. e., respectively, discounts from list prices and special discounts to different classes of customers—were to be applied and the number of decimals to be used in developing net delivered prices, and continued use of said formula after the Schechter decision; and continued also to publish and allow the same chain discounts to all classes of customers except Governmental agencies as were allowed on May 27, 1935;
- (e) From July 13, 1935 on, by common understanding, allowed the Federal Government, in sealed bids, a chain discount which exceeded that published by them on aforesaid date by a uniform amount and which was the same for all with the exception of aforesaid three smaller manufacturers who