

Syllabus

IN THE MATTER OF
JACOB SIEGEL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3403. Complaint, May 16, 1940¹—Decision, Apr. 28, 1943*

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of men's clothing, including overcoats and topcoats made of its "Alpacuna" fabric which had a face or pile composed of about 50 percent alpaca, 20 percent mohair, and 30 percent wool, worked in the case of the overcoats but not of the topcoats, into a cotton backing comprising about 30 percent of the entire fabric—

- (a) Represented that such fabric was made entirely of wool through statements and depictions in advertising matter included in swatch books which it supplied to dealers and which were frequently displayed by them to the purchasing public, and through advertising copy furnished to dealers for their use in advertising its said coats in their trade areas, of which they made frequent and repeated use;
- (b) Represented, as aforesaid, that its said fabric contained guanaco hair and that the Angora goat hair used therein was imported from Turkestan or some other Asiatic country;

The facts being that, while the fabric used by it in its topcoats was a wool and hair material, such was not true as to the overcoats in which the aforesaid cotton backing constituted about 30 percent of the fabric, and while in its more recent advertising it referred to said fact, such reference was usually in smaller and less conspicuous type than other portions of the advertisement, and, the overcoats being full-lined, the prospective purchaser had little opportunity to observe such backing when examining the garment; guanaco was used in neither coat, and presence thereof in cases in which guanaco hairs might accidentally find their way into shipments of alpaca was negligible in amount; and such Angora goat hair or mohair as was used therein was not imported from any foreign country but was a domestic product obtained from Texas; and

- (c) Made use of word "Alpacuna" to designate its aforesaid fabric with result of falsely implying that its coats contained vicuna fiber;

With tendency and capacity to deceive a substantial portion of the purchasing public with respect to the fiber content of such coats and the origin of the materials used therein, and, as a result, to cause it to purchase substantial quantities thereof:

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

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

Mr. George W. Williams for the Commission.

Montgomery & McCracken, of Philadelphia, Pa., for respondent.

¹ Amended.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Jacob Siegel Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Jacob Siegel Co., is a corporation, organized and doing business under the laws of the State of Pennsylvania, with its office and principal place of business at 317 North Broad Street, Philadelphia, Pa. Respondent is now, and for some time past has been, engaged in the business of manufacturing, selling, and distributing men's overcoats and topcoats, among which are garments known as "Alpacuna" coats. Respondent causes said coats, when sold, to be transported from the State of Pennsylvania to the purchasers thereof located at points in various other States of the United States and in the District of Columbia. There is now, and has been during all the time herein mentioned, a course of trade by respondent in said overcoats and topcoats in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, respondent is now, and has been during all times herein mentioned, engaged in substantial competition with various other corporations and with individuals and firms engaged in offering for sale and selling and distributing overcoats and topcoats in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its coats by retailers for resale and by members of the purchasing public for use, respondent has made use of, and now uses various types of advertising matter purporting to be descriptive of its said "Alpacuna" coats and their quality and desirability. This advertising matter consisting of swatch books and advertising copy for use by retailers in their own advertising of respondent's coats is caused to be transported by respondent from its place of business in Pennsylvania to its retail customers located in the various States of the United States.

The swatch book of samples sent by respondent to its retailers contains samples of goods from which "Alpacuna" overcoats and "Alpacuna" topcoats are made, which said swatch books also contain the following advertising material: A simulated pictorial hemisphere

above which are the words "From the four corners of the world," and from points on this run four lines on which appear pictorial representations and words as follows: (1) An Angora goat, with these words underneath: "Strength from the Asiatic Angora." (2) A sheep with these words underneath: "Durability from the American sheep." (3) A Guanaco with these words underneath: "Silkiness from the Peruvian Guanaco;" and (4) An Alpaca with these words underneath: "Richness from the South American Alpaca."

In addition to said swatch book of samples, the respondent furnishes advertising copy to retail dealers to be so used by said retail dealers and which was, and is, so used by respondent's retailers in their advertising in newspapers having a general circulation in the various States of the United States, and which advertising copy contained among others the following statements and representations:

Q. What is ALPACUNA?

A. Alpacuna fabric is made from the rare foreign hairs and wool of the Alpaca, Angora, Guanaco and Texas Sheep.

Q. Is this an unusual combination?

A. Yes, this combination of hair and wool is the result of 9 years of scientific laboratory research work by a textile genius.

Studying the sources of the famous Alpacuna fabric is a real geography lesson. From the South American Andes we took the warm, light, silky hairs of the Alpaca. From the valleys of Old Peru we took the fine, lustrous coat of the Guanaco. From the plains of Turkestan we took the sturdy, durable hairs of the Angora. From the Texas Panhandle we chose the thickest, warmest, and richest sheeps' wool. They were all brought together, and scientifically blended into a fabric that's unmatched for richness, luxury, warmth, light weight, long wear.

In the manner and through the means above stated, the respondent represents or implies that the material "Alpacuna" is an all-wool and hair fabric containing guanaco or vicugna or vicuna, and that it also contains the foreign fur, hair, or wool of the Angora goat from the plains of Turkestan.

In addition to the advertisements set out above, the respondent also furnishes to its retail dealers other advertising copy to be used by said retail dealers, and which was, and is, so used by respondent's retailers in their advertising in newspapers having a general circulation in the various States of the United States, in which said copy the composition of said fabric is not disclosed though the name of the fabric, to wit, "Alpacuna" is prominently featured without qualification.

The use of the term "Alpacuna" by the respondent as descriptive of the fabric used in the manufacture of its overcoats and topcoats constitutes a representation by said respondent to members of the

Complaint

36 F. T. C.

purchasing public that said fabric is composed entirely, or at least of a substantial quantity, of the fur, wool, or hair of the Alpaca and the Vicuna, and places in the hands of retailers a means and instrumentality by which such dealers are enabled to increase their own sales by representing that said overcoats and topcoats are all wool and composed entirely, or at least of a substantial quantity, of the fur, wool, and hair of the Alpaca and Vicuna, thus deceiving the purchasing public.

PAR. 4. The representations made by respondent with reference to the composition or content of said alpacuna fabric are deceptive, misleading, and false. In truth and in fact the fabric "Alpacuna" is not an all-wool and hair fabric, but contains 32 percent by weight of cotton. The formula for the manufacture of said material as used by the Continental Mills, Inc., located at Armat and Lena Streets, Philadelphia, Pa., in the manufacture of material No. 2650, which is manufactured exclusively for the respondent and which is the fabric marketed by the respondent under the name of "Alpacuna" is as follows:

	<i>Percent</i>
Alpaca.....	30.6
Mohair.....	13.6
Wool.....	23.6
Cotton.....	32.0

The cotton content of said fabric appears in the overcoat material only, not in the topcoat material, and is used as a backing for the wool and hair composing the remainder of the fabric. The cotton backing is concealed from the purchasing public by reason of a full lining placed in said overcoats which makes the cotton content not discernible to the purchaser. Both the topcoat fabric and the overcoat fabric known as "Alpacuna" contain no fur, hair, or wool of the guanaco, vicugna, or vicuna. Said fabric known as "Alpacuna" furthermore does not contain the foreign fur, hair, or wool of the Angora of the plains of Turkestan, but instead said wool is obtained from the domestic Angora goat of the State of Texas.

PAR. 4A. In addition to the above-mentioned advertising matter, respondent attaches a permanent cloth label and a medal, the latter by a string, to each of the topcoats and overcoats, both of which pass thereon to the consuming public. In the various advertisements and swatch books and on said labels and medals appears the legend or slogan, "There is only one Alpacuna coat." As the topcoats are exposed to ordinary and customary examination by purchasers and are readily discovered to be composed entirely of wool, or wool and a hair commonly classified by a substantial portion of the trade and

general public as wool, respondent represents to the purchasers thereof that the overcoats which, as above stated, bear the same name and are sold under the same trade-mark, as the topcoats are of the same composition as the topcoats, when in truth and in fact, as above set forth, the overcoats are composed of approximately one-third cotton. Also, such acts, practices and methods of the respondent supply retailers means whereby they may, and actually do, make like untrue representations to the ultimate purchasers and consuming public.

The use of the legend or slogan in the manner above set forth had, and has, the capacity and tendency to mislead and deceive a substantial portion of the purchasers thereof, and supplies retailers with means whereby they may mislead and deceive their customers, into the erroneous and mistaken belief that the overcoats are of the same fiber content as the topcoats and are the same in all particulars, except as to weight.

PAR. 5. Over a period of many years fabrics made of all-wool or wool and hair have established a reputation as possessing superior cold-resistance qualities over fabrics made from cotton or other materials. Purchasers and prospective purchasers of topcoats and overcoats, on account of such reputation, have a decided preference for such all-wool or wool and hair fabrics over fabrics composed in part of cotton. Purchasers and prospective purchasers of topcoats and overcoats also have a decided preference for vicuna over alpaca, guanaco, angora, sheep's wool, or other similar wool, by reason of its fine quality and reputation, which preference also covers the combination of vicuna and alpaca over the combinations of wool in overcoat and topcoat fabrics.

PAR. 6. There are among the competitors of respondent many who do not misrepresent their fabrics and overcoats.

PAR. 7. The acts and practices of the respondent, as above alleged, in the course of selling and offering for sale its overcoats and topcoats in commerce as described herein, have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasers thereof into the erroneous belief that said representations are true, and into the purchase of respondent's overcoats and topcoats because of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade has been diverted unfairly to the respondent from those of its competitors referred to in paragraph 6 hereof who do not misrepresent their overcoats and topcoats. In consequence thereof, injury has been, and is being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 6, 1938, issued and thereafter served its complaint in this proceeding upon the respondent, Jacob Siegel Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Subsequently, the Commission issued and served upon the respondent an amended complaint charging the respondent with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said amended complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George W. Williams, attorney for the Commission, and in opposition thereto by Montgomery & McCracken, attorneys for the respondent, before Edward E. Reardon, a trial examiner of the Commission theretofore duly designated by it. Subsequently the Commission entered its order directing that said amended complaint be amended to conform to the evidence theretofore taken in this proceeding, and further directing that such evidence be adopted as evidence in connection with the second amended complaint. It was further directed by the Commission that said second amended complaint, containing the amendments made pursuant to said order, be issued and served upon the respondent. Pursuant to such direction said second amended complaint was issued on May 16, 1940, and thereafter served upon the respondent. Subsequently and after the filing of respondent's answer to said second amended complaint, additional testimony and other evidence were introduced before said trial examiner in support of and in opposition to the allegations of said second amended complaint, which testimony and other evidence, together with all of the testimony and other evidence originally taken in this proceeding, were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said second amended complaint, respondent's answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions thereto, briefs in support of and

in opposition to the complaint, and oral argument, 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. The respondent, Jacob Siegel Co., is a corporation, organized and doing business under the laws of the State of Pennsylvania, with its office and principal place of business located at 317 North Broad Street, Philadelphia, Pa. Respondent, is now, and for many years last past has been, engaged in the manufacture, sale, and distribution of men's clothing, including certain overcoats and topcoats designated by respondent as "Alpacuna" coats.

PAR. 2. In the course and conduct of its business, respondent causes and has caused its coats, when sold, to be transported from its place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its coats in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations, and with individuals and firms, engaged in the sale and distribution of overcoats and topcoats in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In 1929 respondent, in cooperation with certain textile specialists, developed a certain fabric for use in the making of men's overcoats. This fabric, designated by respondent as "Alpacuna" fabric, has a face or pile which is composed of approximately 50 per cent alpaca, 20 percent mohair, and 30 percent wool. The fibers making up this face are worked into a cotton backing. Of the entire fabric (face and backing) the face comprises approximately 70 percent and the cotton backing 30 percent.

Respondent states that its purpose in using the under surface or backing was to duplicate as nearly as possible the natural coat of the animals supplying the fibers, the backing representing the skin of the animal and the fibers representing the hairs or wool growing from the skin. The reason given for the use of a cotton rather than a worsted backing is that the former is more finely and closely woven, and that this makes possible the obtaining of a denser face of hair

and wool fibers than would be permitted by a worsted material. It was thought also that the cotton backing would add to the durability of the garment.

A year or two after the development of the overcoat fabric, respondent began the manufacture of topcoats. The material used in the topcoats is essentially the same as the face of the overcoating fabric, the principal difference between the two garments being that in the topcoat the cotton backing is omitted in order to make the garment lighter. A further difference is that the overcoat is full lined whereas the topcoat has very little lining. The fabrics used in the coats are not manufactured by respondent but are made by another concern according to specifications supplied by respondent.

PAR. 5. Respondent's coats are sold to the public through retail dealers. In the course and conduct of its business and for the purpose of inducing the purchase of its coats by dealers, and subsequently by the purchasing public, respondent makes use of various methods of advertising. One of such methods is the use of swatch books or books containing samples of the fabrics, which are placed by respondent in the hands of dealers purchasing its coats and also in the hands of dealers regarded by respondent as prospective purchasers. Such books are frequently displayed by dealers to the purchasing public. Some of these swatch books contain, among other advertising matter, a drawing or pictorial representation of a hemisphere, above which appears the legend, "From the Four Corners of the World." From various geographical locations shown on this hemisphere lines run to drawings or pictures of certain animals and under each of these pictures a further legend appears. Under the picture of an Angora goat appears the legend, "Strength from the Asiatic Angora." Under the picture of a sheep appears the legend, "Durability from the American sheep." Under the picture of a guanaco appears the legend, "Silkiness from the Peruvian Guanaco," and under the picture of an alpaca appears the legend, "Richness from the South American Alpaca."

Respondent also furnishes to its dealers suggested advertising copy for use by such dealers in advertising respondent's coats in newspapers published in the trade areas served by such dealers. Frequent and repeated use has been made by the dealers of this advertising copy. In certain of the copy the following advertising matter appears:

Ques. What is Alpacuna?

Ans. Alpacuna fabric is made from the rare foreign hairs and wool of the Alpaca, Angora, Guanaco, and Texas Sheep.

Ques. Is this an unusual combination?

Ans. Yes, this combination of hair and wool is the result of 9 years of scientific laboratory research work by a textile genius.

Studying the sources of the famous Alpacuna fabric is a real geography lesson. From the South American Andes we took the warm, light, silky hairs of the Alpaca. From the valleys of Old Peru we took the fine, lustrous coat of the Guanaco. From the plains of Turkestan we took the sturdy, durable hairs of the Angora. From the Texas Panhandle we chose the thickest, warmest, and richest sheep's wool. They were all brought together, and scientifically blended into a fabric that's unmatched for richness, luxury, warmth, light weight, long wear.

PAR. 6. Through the use of these representations and others of a similar nature the respondent has represented, directly or by implication, that the fabric used in its coats is made entirely of wool or of wool and hair; that such fabric contains guanaco hair; and that the Angora goat hair used in such fabric is imported from Turkestan or some other Asiatic country.

PAR. 7. While the fabric used in respondent's topcoats is a wool and hair material, this is not true as to the overcoats, in which the cotton backing constitutes approximately 30 percent of the entire fabric. In some of its more recent advertising matter the respondent has referred to the fact that its overcoats contain cotton backing. However, such reference is usually in smaller and less conspicuous type than the other portions of the advertisement. In view of the fact that the overcoats are full lined, the prospective purchaser has little or no opportunity to observe the cotton backing when examining the garment.

In neither the overcoat nor the topcoat is guanaco hair used. It appears from the evidence that occasionally guanaco hairs may find their way into shipments of alpaca received by the mill which manufactures the fabrics for respondent, but in such cases the presence of the guanaco hairs is due entirely to accident and the amount is negligible. The Angora goat hair or mohair used in the fabrics is not imported from Turkestan or any other foreign country, but is a domestic product and is obtained from Angora goats raised in Texas. During the oral argument before the Commission it was stipulated by counsel for respondent that the defense of the proceeding was abandoned insofar as the points with respect to the guanaco hair and the importation of the mohair were concerned.

PAR. 8. The Commission therefore finds that the representations made by the respondent with respect to its coats, as set forth in paragraphs 5 and 6 hereof, are false, misleading, and deceptive.

PAR. 9. Another issue raised in the complaint is whether the name "Alpacuna" used by respondent to designate its coats is misleading, as representing or implying that the coats contain fiber obtained from the animal known as the vicuna. It is insisted by respondent that the name "Alpacuna" is merely a coined trade name made up by

combining the first five letters of the word "alpaca" with the suffix "una," that the suffix was incorporated into the name only because it provided a euphonious ending, and that the name has no reference to vicuna fiber. Respondent further insists that the name has no significance in the trade or to the purchasing public other than as a mere trade name, or possibly as indicating an alpaca content, that it is not understood by dealers or consumers as indicating that the coats contain vicuna fiber.

Respondent's position finds support in the testimony of a number of witnesses. On the other hand, a number of other witnesses, including both persons in the trade and members of the consuming public, testified that to them the name "Alpacuna" indicated that the coat contained both alpaca and vicuna fiber, the presence of vicuna fiber being implied by the "cuna" portion of the name. Upon consideration of the entire record, the Commission is of the opinion that while in some cases the name might not be understood by prospective purchasers as indicating the presence of vicuna fiber, in a substantial number of other instances it would indicate the presence of such fiber. It is undisputed that respondent's coats contain no vicuna fiber. The Commission therefore finds that the name "Alpacuna" is misleading and deceptive to a substantial portion of the purchasing public in that it represents or implies to such persons that respondent's coats contain material which they do not in fact contain.

PAR. 10. The Commission finds further that the use by the respondent of the foregoing representations with respect to its coats, including the use of the name "Alpacuna," has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the fiber content of such coats and the origin of the materials used in such coats, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's coats as a result of the erroneous and mistaken belief engendered by such representations. In consequence thereof, substantial trade has been diverted unfairly to the respondent from its competitors, many of whom do not misrepresent their products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the second amended complaint of the Commission, the answer of respondent, testimony, and other evidence taken before Edward E. Reardon, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence and the exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Jacob Siegel Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's coats now designated "Alpacuna" coats, or any other coats of substantially similar composition, under whatever name sold, do forthwith cease and desist from:

1. Representing that respondent's coats contain guanaco hair.
2. Representing that the Angora goat hair or mohair used in respondent's coats is imported from Turkestan or any other foreign country.
3. Representing through the use of drawings or pictorial representations, or in any other manner, that respondent's coats contain fibers or materials which they do not in fact contain.
4. Representing that coats made of fabrics which have a cotton backing are composed entirely of wool or of wool and hair.
5. Using any advertising matter or causing, aiding, encouraging, or promoting the use by dealers of any advertising matter which purports to disclose the constituent fibers or materials of coats composed in part of cotton, unless such advertising matter clearly discloses such cotton content along with such other fibers or materials.
6. Using the word "Alpacuna," or any other word which in whole or in part is indicative of the word "vicuna," to designate or describe respondent's coats; or otherwise representing, directly or by implication, that respondent's coats contain vicuna fiber.

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.

It is further ordered, That no provision in this order shall be construed as relieving respondent in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the authorized Rules and Regulations thereunder.

Commissioner Freer dissenting in part:

Commissioner Freer dissents from so much of the order as wholly prohibits the continued use of the trade name "Alpacuna" for the reason that this trade name, which has been in use for more than 13 years, is a valuable business asset, and is neither deceptive per se, nor is the testimony concerning its tendency or capacity to deceive sufficiently clear and convincing as to render such prohibition of its use necessary in the public interest.

A majority of the Commission do not agree with either Commissioner Freer's statements of fact or his conclusions of law.

Order

IN THE MATTER OF
LEE BOYER'S CANDY

MODIFIED CEASE AND DESIST ORDER

Docket 4265. Order, April 28, 1943

Modified order, pursuant to provisions of section 5 (i) of the Federal Trade Commission Act, and in accordance with decree below referred to, in proceeding in question, in which original order issued on August 6, 1941, 33 F. T. C. 881, and in which Circuit Court of Appeals for Ninth Circuit, on May 25, 1942, in *Lee Boyer's Candy v. Federal Trade Commission*, 128 F. (2d) 261, 34 F. T. C. 1857, rendered its opinion and on said date issued also its final decree modifying said order of the Commission in certain particulars and affirming the same as modified—

Requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of candy, to cease and desist from selling the same through lottery schemes, push or pull cards, punchboards, etc., as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on August 6, 1941, the Commission made its findings as to the facts herein and concluded therefrom that the respondent, Lee Boyer's Candy, a corporation, has violated the provisions of section 5 of the Federal Trade Commission Act, and issued and subsequently served its order to cease and desist; and it further appearing that on May 25, 1942, the United States Circuit Court of Appeals for the Ninth Circuit rendered its opinion, and on May 25, 1942, issued its final decree affirming the aforesaid order of the Commission by modifying said order in certain particulars.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said decree.

It is ordered, That the respondent, Lee Boyer's Candy, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of candy or any other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Selling or distributing any merchandise so packed and assembled that sales of said merchandise to the public are to be made by means of a game of chance, gift enterprise or lottery scheme;