

Syllabus

IN THE MATTER OF
GROVE DISTILLERS & WINE COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2421. Complaint, May 31, 1935—Decision, June 26, 1936*

Where a corporation, engaged in the rectifying and sale at wholesale to jobbers and retailers, principally, of whiskies, brandies, rum, gin, cordials, and other spirituous beverages under basic permit from the Federal Alcohol Administration, and never applicant for a distiller's permit nor authorized by the government to produce distilled spirits from the grain, and which never distilled or owned a still, but purchased all of its distilled spirits requirements in bulk from distillers and rectified and blended or bottled such spirits for resale under its own brand names and, in some cases, under names and brands of customer wholesalers, jobbers, or retailers, and with equipment consisting of four bottling tanks and some rectifying receptacles, but with no distilling apparatus whatever—

Made use of a corporate name which included word "Distillers", and displayed said name on labels of its said products, and featured the same on its stationery and advertising in the course and conduct of its aforesaid business in competition with actual distillers and with other rectifiers who do not, through the use of such words as "Distilling", "Distiller", or "Distilleries" as a part of their corporate or trade names, misrepresent their status to the trade by reason of the definite significance long attached to word "Distillers" when used in connection with liquor industry and products thereof as meaning, to wholesalers and retailers therein and to the ultimate purchasing public, manufacturers of such liquors by a process of original distillation from raw materials;

With effect of (1) misleading and deceiving dealers and purchasing public into belief that it was a distiller and that the whiskies, gins, and other alcoholic beverages sold by it were made through process of original distillation from raw materials as aforesaid; of (2) inducing dealers and purchasing public, in response to preference of a substantial portion thereof for purchase of spirituous liquors prepared and bottled by its actual distillers to buy said whiskies, etc., bottled and sold by it, and thereby diverting trade to it from competitors who do not thus or otherwise misrepresent themselves as manufacturers by original distillation from raw materials of their whiskies and other alcoholic beverages; to the substantial injury of substantial competition in interstate commerce; and (3) furnishing its customers, through such potentially deceptive name, with means of representing it to their own retailer and jobber vendees and the ultimate consuming public, as a distiller, and its whiskies and other beverages as made or distilled by it from mash, wort or wash by one continuous process:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Complaint

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Before *Mr. John W. Bennett*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. Jacob Barash, of New York City, and *Mr. Aaron Last*, of Jersey City, N. J., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Grove Distillers & Wine Co., Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its office and principal place of business in the city of Jersey City, in said State. It is now, and for more than 1 year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, rum, and other spirituous beverages, and in the wholesaling of gins and wines, and selling all of such products at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, some located within the State of New Jersey and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, rums, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, rums, brandies, other spirituous beverages and wines, and in the sale thereof in commerce between and among the various States of the United States

and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing and selling at wholesale whiskies, gins, rums, brandies, other spirituous beverages and wines in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "distillers" when used in connection with the liquor industry and the products thereof has had, and still has, a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturers of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distillers" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the whiskies, gins, rums, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, rums, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, rums, and other spirituous beverages sold by them, and who truthfully use the words "distillery," "distilleries," "distillers", or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals, engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, rums, brandies, and other spirituous beverages,

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who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of liquor wholesalers who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, rums, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, rums, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort or wash, of whiskies, gins, rums, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on May 31, 1935, issued, and on June 3, 1935, served its complaint in this proceeding upon respondent, Grove Distillers & Wine Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by

PGad B. Morehouse, attorney for the Commission, before John W. Bennett, an examiner of the Commission, heretofore duly designated by it, and in defense of the allegations of the complaint by Jacob Barash, attorney for the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and briefs in support of the complaint and in defense thereto, oral arguments of counsel aforesaid having been waived; and the Commission having duly considered the same and being 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. Grove Distillers & Wine Co., Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 347 Grove St., Jersey City, in said State. It is now, and since its organization has been, engaged in the business of rectifying and selling at wholesale, principally to jobbers and retailers, whiskies, brandies, rum, gin, cordials, and other spirituous beverages under a basic permit from the Federal Alcohol Administration dated November 23, 1935, and designated as "Permit No. R-230." This permit was based upon its application dated October 17, 1935, and was issued "subject to compliance with all State and Federal laws."

Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol). Since its organization in December 1933 respondent has continuously been engaged in the aforesaid business. Respondent never applied for a distiller's permit, was never authorized by the Government to produce any distilled spirits from the grain, never distilled and never owned a still, but has purchased and now purchases all of its distilled spirits requirements in bulk from distillers and rectifies and then blends or bottles such spirits for resale in bottles under its own brand names and, in some cases, under the names and brands of its customers who are wholesalers, jobbers, or retailers. Its equipment consists of four bottling tanks and eight rectifying receptacles and tanks in a one-story and basement building and it has no distilling apparatus whatever. The words "Bottled by Grove Distillers & Wine Co., Inc.," and "F. A. C. A. R-230" appear on 10 of the 17 labels of respondent admitted in evidence. The spirituous

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liquors so bottled and labeled by respondent are sold under different brand names, among which is the "Grove" brand whiskey, a blend. On this and some of the other labels the words "Grove Distillers & Wine Co., Inc.," are in heavy type and quite prominent on that account. While the rectifier's license number appears upon the "Grove" label, and it is indicated thereon that the whiskey was blended by Grove Distillers & Wine Co., there is nothing there to negative the implication that respondent also was the distiller of this brand.

Respondent's corporate name is printed on its letterheads in large clear type, but at some time prior to the hearings it began stamping with a rubber stamp upon its stationery the words "Rectifiers of Spirits."

During the latter part of 1935 respondent was rectifying only about one-third of the products which it sold, merely bottling and selling the remainder of its bulk purchases.

When sold, respondent ships its bottled liquors so labeled which it has rectified or blended or simply bottled, to its jobber and dealer customers from its principal place of business aforesaid into and through various States of the United States to the purchasers thereof, located in States of the United States other than the State of New Jersey, in competition with distillers and rectifiers likewise engaged in the regular course of business in the sale of whiskies, brandies, rum, gin, cordials, and other spirituous beverages in commerce among the several States and the evidence shows that respondent's bottled liquors are offered for resale and sold by its said customers, both to retailers and the consuming public in States and territories co-extensive with the territories in which its competitors likewise offer spirituous beverages for sale to jobbers, retailers, and the consuming public. Respondent's sales and solicitations for sales are made principally within, but are not confined to, the State of New Jersey, sales and shipments being made in the regular course of its business to customers in the States of New York and Massachusetts. For example, during the months of November and December 1934, respondent sold 243 gallons; in March 1935, 30.6 gallons; in April 1935, 2.16 gallons; in October 1935, 126.25 gallons; in November 1935, 70 gallons; and in December 1935, 135 gallons of alcoholic beverages in interstate commerce. The Commission finds that respondent is in competition in interstate commerce with actual distillers and also with other rectifiers who do not, by the use of such words as "distilling," "distiller," or "distilleries," as a part of their corporate or trade names, misrepresent their status to the trade.

PAR. 2. For a long period of time the word "distillers" when used in connection with the liquor industry and the products thereof, has had and still has, a definite significance and meaning to the minds

of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit: the manufacturers of such liquors by a process of original distillation from raw materials.

The record contains the testimony of approximately 50 members of the public whose names were obtained from the classified section of telephone directories, including dentists, engineers, real estate men, public accountants, bond brokers, physicians, inspectors, and promoters. This testimony shows that the word "distillers," when used in connection with the distilled spirits or whiskey industry, signifies to them the manufacture of spirits from raw materials. Practically without exception, each of these members of the public, not only expressed a definite preference to buy packaged goods bottled by a distiller, but gave reasons which appeared to them to justify such preference.

The Commission therefore finds that a substantial portion of the purchasing public prefer to purchase spirituous liquors which have been prepared and bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, respondent's use of the word "distillers" as a part of its corporate name conspicuously printed on its stationery, advertising, and on the labels attached to the bottles in which it sells and ships its said liquors, has the capacity and tendency to, and does, mislead and deceive dealers and the purchasing public into the belief that respondent is a distiller and that the whiskies, gins, and other alcoholic beverages sold by respondent are by it manufactured through the process of original distillation from raw materials as aforesaid and such use of the word "distillers" has the capacity and tendency to, and does, induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other alcoholic beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not, by their corporate or trade names, or in any other manner, misrepresent that they are manufacturers by original distillation from raw materials of the whiskies, gins, and other alcoholic beverages by them sold, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 4. Activities in connection with the manufacture and sale of alcoholic beverages are divided among several classes of manufacturers, processors, and dealers. The initial process of manufacturing is in the hands of distillers. In the case of whiskey, these distillers manufacture their products by the distillation of fermented grain mash, which produces at lower temperatures of distillation the product called whiskey. This whiskey contains certain esters or flavoring elements, and also some ingredients which it is necessary to eliminate before the whiskey is entirely potable. After the distilla-

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tion process has been completed, the whiskey is placed in wooden barrels, charred on the inside, and stored in bonded warehouses, which are separate and distinct from the distillery, being located in a different and separate building. The whiskey thus distilled is usually held for an aging process, which removes certain undesirable elements from the product by absorption or other elimination, by means of the charred wood on the inside of the container. After it is considered fit for market, it may be sold by the distiller in bulk to rectifiers, or the rectifiers may acquire the bulk whiskey by buying bonded warehouse certificates. After the Government tax has been paid on the product it may be transferred to tanks in rectifying establishments, and there the whiskey may be bottled and labeled. Distillers are permitted to bottle "Straight Whiskey" in the warehouse and to sell the bottled goods to wholesalers. Distillers may have rectifying plants, separate from the distillery and warehouse, operated under a rectifier license. It is then ready for sale in wholesale and retail channels of trade and may be sold by rectifiers to wholesalers and retailers or it may be sold by rectifiers only to wholesalers, and the wholesalers may in turn make sales to retailers. These retailers include package goods stores and proprietors of drinking places, where the liquor is sold by the glass to consumers.

Each distiller operates under a specific Federal license carrying the symbol "D" with a number, indicating the designation of his license to do a distilling business. The rectifier operates under a license designated by the symbol "R" with a number, which indicates the designation of his license to do business as a rectifier. The wholesaler does business under a wholesaler's license with the symbol "L. L." and a number, indicating the designation of his license. The retail dealer is licensed under the symbol "L." While the distiller may also take out a rectifier's license and a wholesaler's license, and a rectifier may take out a wholesaler's license, no class of manufacturers or dealers is permitted to do business in the other class without qualifying in the class in which that business is ordinarily conducted. Besides the Federal regulations, there are elaborate State regulations requiring additional State licenses.

Many distillers do business under the name of distillers. Some have the words "distiller" or "distilleries" or "distilling" in their corporate names and others advertise themselves as distillers or are known as distillers. The words "distillers," "distillery," "distilling," or "distilleries" in the whiskey trade for a long period of time have definitely signified the true distilling process of manufacturing whiskey from fermented mash. Distillers who are also rectifiers bottle their goods and come into competition with dealers doing business such as is conducted by respondent. They also come into

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competition with rectifiers in the sale of straight whiskies, bottled in warehouses. A distiller who also operates a rectifying plant, having both kinds of permits, may use either the "R" symbol or the "D" symbol, depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or his rectifier's permit. If spirits other than those of the distiller's distillation have been blended, rectified, and bottled in the distiller's rectifying plant, the label thereon will read "Blended and Bottled by ----- Distilling Company," or simply "Bottled by ----- Distilling Company," so that it is not possible to determine merely from the presence of the phrase "Blended and Bottled By," or the phrase "Bottled By" on the label whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller. There are many rectifiers, wholesalers, and jobbers selling in the same territories as respondent who do not have the words "distillers" or "distilleries" in their corporate names and do not use that designation in connection with their sales activities.

The words "distiller," "distillers," "distilling," and "distilleries," used in the corporate names of concerns which are rectifiers and wholesalers, in fact confer a distinct advantage to the concerns using them or one of them in the sale of their products to dealers and in the sale by dealers to consumers. The whole record in this case supports this statement, with scarcely an exception.

It appears from this record that in the sale of its products, the use by respondent of the word "distillers" in its corporate name, gives it an unfair competitive advantage over a rectifier who does not use the word "distiller" or any other word connoting a distilling process in its corporate name or otherwise. Some of the labels of respondent unqualifiedly imply that respondent is a distiller. The aforesaid use by respondent of the word "Distillers" is of a potentially deceptive character, since respondent does not own, operate, or control any place or places where spirituous beverages are manufactured by a process of original and continuous distillation from mash, wort or wash, or other raw materials. By such potentially deceptive name respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and jobbers and the ultimate consuming public that it is a distiller and that the said whiskies, gins, and other alcoholic beverages therein contained were by it manufactured through the process of original distillation from raw materials. Such representations are untrue.

PAR. 5. The aforesaid representations by respondent have the capacity and tendency to, and do, mislead and deceive dealers and the purchasing public into the belief that respondent is a distiller and that the whiskies, gins, and other alcoholic beverages sold by respondent

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ent have been manufactured or distilled by it from mash, wort or wash by one continuous process; and such representations have the capacity and tendency to, and do, induce dealers and the purchasing public, acting in such beliefs to purchase the whiskies, gins, and other alcoholic beverages so labeled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names, or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances hereinbefore described, are to the prejudice of the public, and respondent's competitors, and are unfair methods of competition in interstate commerce, and constitute a violation of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before John W. Bennett, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein by PGad B. Morehouse, counsel for the Commission, and by Jacob Barash, counsel for respondent, oral arguments having been waived, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Grove Distillers & Wine Co., Inc., its agents, salesmen, and employees, in connection with the offering for sale or sale by it in interstate commerce of whiskies, brandies, rum, gin, cordials, and other spirituous beverages, do forthwith cease and desist from—

Representing, through the use of its corporate name on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships its said products or in any other way by word or words of like import, (a) that it is a distiller of whiskies, brandies, rum, gin, cordials, and other spirituous beverages; or (b) that the said whiskies, brandies, rum, gin, cordials, and other spirituous beverages

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were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where such beverages are manufactured by the process of distillation, unless and until the said respondent shall own, operate, or control a place or places where such whiskies, brandies, rum, gin, cordials, and other spirituous beverages are by it manufactured through a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed.

It is further ordered, That the said respondent within 30 days from and after the date of the service upon it of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF

LAWRENCE F. MILAN, TRADING AS CATONSVILLE DISTILLING & DISTRIBUTING COMPANY

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

Docket 2461. Complaint, June 27, 1935—Decision, June 29, 1936

Where an individual engaged in the purchasing of bulk whiskey and in procuring the bottling thereof for him by various dealers and also in the bottling thereof himself, for a period, and in purchase, resale and shipment of whiskies, gins, and other spirituous beverages to wholesalers and retailers in the several States and in the District of Columbia, in substantial competition with (1) individuals and concerns engaged in manufacture by distillation of such beverages and in sale thereof among the various States and in said District, and (2) those engaged in purchasing, rectifying, blending, bottling, and selling same, and (3) those engaged as wholesalers in purchasing and reselling such products, as above set forth—

Included word "Distilling" in his trade-name and made use thereof on stationery and labels attached to bottles in which he sold and shipped his products, and thereby and in various other ways, represented to customers that he was a distiller and that the whiskies, etc., therein contained were by him made through process of distillation from mash, wort, or wash, and furnished such customers with means of thus misrepresenting him to their retailer vendees and to ultimate consuming public;

Facts being he neither owned, operated, nor controlled any place or places where such beverages were made by such process of distillation, as definitely implied and understood by wholesalers and retailers and the ultimate purchasing public from word "Distilling," as meaning manufacture of such liquors by process of original and continuous distillation from such mash, wort, or wash, through continuous closed pipes and vessels until manufacture thereof is completed;

With effect of misleading and deceiving dealers and purchasing public into belief that he was a distiller and that the whiskies, etc., sold by him were made and distilled by him as aforesaid, and of inducing such dealers and purchasing public, a substantial portion of which prefers to buy such liquors prepared and bottled by distillers, to purchase such whiskies, etc., and thereby divert trade to him from competitors, among whom there are those who (1) manufacture and distill, as aforesaid, products sold by them and truthfully use words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names and on their stationery and advertising and on the labels of the bottles of their products, (2) those engaged in purchasing, rectifying, blending, bottling, and selling their products, and (3) those engaged as wholesalers in purchasing and reselling the same, and who do not use aforesaid words as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels of their bottles, nor through their corporate or trade names or otherwise misrepresent themselves as manufacturers by distillation from