

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

Complaint

mash, wort, or wash of the products dealt in by them; to the substantial injury of substantial competition in interstate commerce:

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

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

Mr. PGad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

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 Lawrence F. Milan, 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 said 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 an individual trading under the laws of the State of Maryland, under the name and style of Catonsville Distilling & Distributing Co., with principal office and place of business in the city of Catonsville in said State. He is now, and for more than 1 year last past has been, engaged as a wholesale liquor dealer, purchasing and reselling whiskies, gins, and other spirituous beverages 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 his said business he causes his said products when sold to be transported from his place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of his business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals and with corporations, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, 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; in the course and conduct of his business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in

Complaint

22 F. T. C.

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

PAR. 2. For a long period of time the word "Distilling" 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 manufacturing 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 distillers.

PAR. 3. In the course and conduct of his business as aforesaid, by the use of the word "Distilling" in his trade name, printed on his stationery and on the labels attached to the bottles in which he sells and ships his said products, and in various other ways, respondent represents to his customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that respondent is a distiller and that the whiskies, gins, and other spirituous beverages therein contained were by him 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, gins, and other spirituous beverages by him so labeled, sold, and transported. Respondent 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, 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, and other spirituous beverages 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 firms, corporations, partnerships, and individuals engaged in business as wholesalers of liquors, purchasing and reselling whiskies, gins, and other spirituous beverages 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 beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by him 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 beliefs, to purchase the whiskies, gins, and other spirituous beverages sold by the respondent, thereby diverting trade to respondent from his 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 such products, 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 June 27, 1935, issued, and on June 28, 1935, served its complaint in this proceeding upon respondent Catonsville Distilling & Distributing Co., 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, respondent failing to make answer thereto, testimony and evidence in support

Findings

22 F. T. C.

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 theretofore duly designated by it, and no testimony in defense of the allegations of the complaint was offered. The testimony and evidence in support of the complaint were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and evidence, briefs and oral argument having been waived by the respondent and the respondent having under oath admitted that the material allegations set forth in the complaint were true and the Commission having duly considered all of the foregoing 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. Respondent is an individual trading under the laws of the State of Maryland, under the name and style of Catonsville Distilling & Distributing Co. with principal office and place of business at 115 Prospect Ave., in the city of Catonsville, in said State. Between the dates of December 9, 1933, and May 14, 1935, he was engaged as a wholesale liquor dealer, purchasing, reselling and shipping from his place of business in the State of Maryland to customers in several States of the United States and in the District of Columbia, whiskies, gins, and other spirituous beverages. His purchasers are wholesalers and retailers located in the State of Maryland, in several other States and in the District of Columbia.

In the course and conduct of his business, he caused his said products when sold to be transported from his place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of his business as aforesaid, respondent was in substantial competition with other individuals and with corporations, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, 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; in the course and conduct of his business as aforesaid, respondent was in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various

756

Findings

States of the United States and in the District of Columbia; and in the course and conduct of his business as aforesaid respondent was in substantial competition with other individuals and with firms, corporations, and partnerships engaged in business as wholesalers of liquors, purchasing and reselling whiskies, gins, and other spirituous beverages in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. For a long period of time and while this respondent was so engaged in business as aforesaid, the word "distilling" 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 manufacturing 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 distillers.

PAR. 3. In the course and conduct of his business as aforesaid respondent bought bulk whiskey, having it bottled for him by various dealers, and for a period of time he bottled it for himself. He did no rectifying, blending, distilling, or brewing; and while in business averaged about 5,000 gallons in sales a month, to retailers such as taverns and wholesalers. His premises and place of business cover a lot of about the size of a city block, a residence, and a shed. At one time he had some stills but they were taken out without ever having been operated and he never received any distiller's permit from the Federal Government. His equipment consisted of no storage tanks, some bottling tanks, bottling machines, filters, and the ordinary bottling equipment. He employed at one time as many as 25 persons, including 12 salesmen who traveled over Maryland, Pennsylvania, and into the District of Columbia, and advertised his wares through the medium of magazines. On May 14, 1935, respondent caused to be formed a corporation known as the Catonsville Distilling & Distributing Corp., which has not yet engaged in the liquor business but it is contemplated that it will so engage at some future date.

In the course and conduct of his business as aforesaid, the Commission finds that by the use of the word "Distilling" in his trade name, printed on his stationery and on the labels attached to the bottles in which he sold and shipped his said products, and in various other ways, respondent represented to his customers and furnished them with the means of representing to their vendees, both retailers and the ultimate consuming public, that respondent was

Findings

22 F. T. C.

a distiller and that the whiskies, gins, and other spirituous beverages therein contained were by him manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not now and never was a distiller, does not now and never did distill the said whiskies, gins, and other spirituous beverages by him so labeled, sold, and transported. Respondent does not now and never did 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 were among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufactured and distilled from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully used 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 sold and shipped such products. There were also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who did 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 sold and shipped their said products. There were also among such competitors firms, corporations, partnerships, and individuals engaged in business as wholesalers of liquors, purchasing and reselling whiskies, gins, and other spirituous beverages who did 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 sold and shipped their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, was calculated to and had the capacity and tendency to and did mislead and deceive dealers and the purchasing public into the beliefs that respondent was a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent were manufactured and distilled by him from mash, wort, or wash, as aforesaid, and was calculated to and had the capacity and tendency to and did induce dealers and the purchasing public acting in such beliefs to purchase the whiskies, gins, and other spirituous beverages sold by the respondent, thereby diverting trade to respondent from his competitors who did not by their corporate or trade names or in any other manner misrepresent that they were manufacturers

756

Order

by distillation from mash, wort, or wash, of such products, and thereby respondent did substantial injury to substantial competition in interstate commerce.

No assurance is in sight that respondent, if not prohibited, would not resume and continue its former acts and practices as hereinbefore set out.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances hereinbefore described, were to the prejudice of the public and respondent's competitors, and were 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, testimony and evidence taken before John W. Bennett, an examiner of the Commission, theretofore duly designated, in support of the charges of said complaint, no testimony having been offered in opposition thereto and respondent having admitted that the material allegations of said complaint are true and waived all further proceedings, including briefs and oral arguments, 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 Lawrence F. Milan, trading as Catonsville Distilling & Distributing Co., his agents, salesmen, and employees, in connection with the offering for sale or sale by him in interstate commerce of whiskies, gins, and other spirituous beverages do forthwith cease and desist from:

Representing, through the use of the word "distilling" in his trade name, on his stationery, advertising, or on the labels attached to the bottles in which he sells and ships said products, or in any other way by word or words of like import, (a) that he is a distiller of whiskies, cordials, or any other spirituous beverages; or (b) that the said whiskies, cordials, or other spirituous beverages were by him manufactured through the process of distillation; or (c) that he owns, operates, or controls a place or places where any such products are by him manufactured by a process of original and continu-

Order

22 F. T. C.

ous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

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

Syllabus

IN THE MATTER OF

E. F. AGEE, TRADING AS COMMERCIAL EXTENSION
UNIVERSITY, ETC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2729. Complaint, Feb. 21, 1936—Decision, June 29, 1936*

Where an individual, engaged in the sale, by correspondence, of a secretarial course and of a business administration course, through agents supervised by regional managers and instructed by him in the type of sales talk to be given to prospective students and in the manner of presenting and executing written applications for enrollment, and conducting said business from rooms in which his employees, never exceeding eighteen in number, were engaged in correcting lessons, and preparing and mailing correspondence courses to students and prospective students, and to his agents, and to other persons, etc., and which were not used for class room instruction or library facilities or residence of students or for any other purpose except as hereinabove set forth, and with some six thousand students or more, chiefly minors, contact with which was through such agents and by correspondence—

- (a) Made use of words "Extension University" or "Extension College" in trade names used by him in conduct of his said business, and represented to prospective students and students, and to their parents or guardians, that he or his business was a university or college, or that the business was a branch thereof, and otherwise affiliated therewith, and that he conducted a large residence school, to the operations of which the correspondence courses were merely incidental;

Facts being, he did not operate a college or university or educational institution organized for teaching and study in the higher branches of learning and in which the education imparted is universal, embracing many branches and which possesses power to confer degrees indicating proficiency in the branches thereof, as generally accepted by public from terms "University" or "College," and had never conducted residence classes of instruction, and his said business was not an extension of such an institution;

- (b) Informed prospective students and their parents or guardians that former had been specially selected for an offer of enrollment in said courses because of their high scholastic standing, and that aforesaid agents were duly appointed "Registrars" of said individual, doing business as above set forth, and empowered to select persons for offers of enrollment and to offer prospects selected a specially low price for advertising purposes, and that low price offered consisted only of costs of material, and normal charge for tuition would not be made for said specially selected students and that regular price for identical course was much higher than such alleged exceptional price, and, in some cases, that it was two or three times as high;

Facts being none of said agents were specially designated registrars and all had identical powers and none was authorized to make any such selection for advertising or any other reason, and price quoted was one and the same to all, and there was no selection on account of high scholastic standing or for any other reasons, and course was never offered at cost