

Complaint

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IN THE MATTER OF
OLD GOLD DISTILLERS, INC.

COMPLAINT 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 TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933

Docket 2375. Complaint, Apr. 23, 1935—Order, July 2, 1936

Consent order requiring respondent, its agents, etc., in connection with offer and sale of whiskies, brandies, etc., in interstate commerce, to cease and desist from—

Use of word "Distillers" in its corporate name, etc., or representing that it is a distiller of brandies, etc., or that its said whiskies, etc., were made by it through process of distillation or that it owns, operates, etc., a place where such beverages are made by such process, unless and until it shall own, operate, etc., such a place, where they are made, through process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels till manufacture thereof is completed; and from

Using words "Importer", "Importers", or "Imported" on its letterheads, etc., in soliciting sale of its said products or otherwise representing that it is an importer of whiskies, etc., unless and until it shall actually become engaged in the business of importing such products into the United States from other countries; and

Ordered further that complaint be dismissed as to count two, charging violation of National Industrial Recovery Act.

Mr. PGad B. Morehouse for the Commission.

Weinrob & Feldman, of Chicago, Ill., 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 Old Gold Distillers, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and in violation of the Act of Congress approved June 16, 1933, known as the National Industrial Recovery 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:

Count One

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its

office and principal place of business in the city of Chicago, in said State. It is now and since its organization in 1934 has been engaged in the business of purchasing whiskies, brandies, wines, rums, and gins, and other spirituous beverages, both domestic and imported, and in the sale thereof in regular course of trade and commerce between and among the various States of the United States and the District of Columbia. In the usual course and conduct of its business it causes said products when resold by it to be transported from its place of business in the city of Chicago aforesaid, into and through various other States of the United States to the purchasers thereof, consisting of wholesalers, retailers, and the purchasing public, some of whom are located within the State of Illinois and some of whom are located in various 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 at all times since its organization has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, brandies, rums, gins, and other spirituous beverages, and in the sale thereof in constant 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 and has been since its organization, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing and reselling at wholesale and retail, whiskies, brandies, wines, rums, gins, and other spirituous beverages, in a constant course of trade and 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 with the products of such industry 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, individuals, partnerships, or corporations who manufacture such liquors by the process of distillation; and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled by actual distillers and manufacturers 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 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

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consuming public that the said whiskies, brandies, rums, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation, when, as a matter of fact, the respondent is not a distiller, does not distill the said whiskies or other spirituous liquors by it so bottled, labeled, sold, and transported, and does not own, operate, or control a place or places where such beverages are manufactured by the process of distillation.

PAR. 4. In the course and conduct of its business as aforesaid, by the use of the words "importer," "importers" or "imported" on its letterheads and in other advertising matter used to solicit the sale of and selling its products as aforesaid, respondent has represented and does represent that it is an importer of said whiskies, brandies, wines, rums, gins, and other spirituous beverages, and that there has been no profit, expense, or charge of a "middleman" between the exporter of said products and respondent, which said expense, profit, or charge is passed on to respondent's vendees and through them to the ultimate purchaser thereof. As a matter of fact, such imported liquors as are purchased and resold by respondent are purchased from others who have imported the same, and who have resold said imported products to respondents at a profit, charge, or expense of a "middle man" which has been passed on by respondent to its vendees and through its vendees to the ultimate purchaser thereof, and has been included in the sale price of such products, and respondent is not an importer of the said liquors.

PAR. 5. There are among the competitors of respondent engaged in the sale of spirituous liquors as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill whiskies, brandies, rums, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," "distilling" as a part of their corporate names and on their stationery 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 and reselling at wholesale and retail and to the purchasing public, whiskies, brandies, rums, gins, and other spirituous beverages who do not use the words "distilleries," "distillery," "distillers," or "distilling" as a part of their corporate names nor on their stationery 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 importing whiskies, brandies, wines, rums, gins, and other spirituous beverages who truthfully use the words "importer," "importers," or "imported" on

their stationery, other advertising matter, and on the labels attached to the bottles in which they resell and transport said products. There are others among such competitors who do not in any manner misrepresent that they are the actual importers of whiskies, brandies, wines, rums, gins, and other spirituous beverages which have been imported.

PAR. 6. The representation by respondent as set forth in paragraph 3 hereof, is calculated to and has a capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, brandies, rums, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it and has a capacity to and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, brandies, rums, gins, and other spirituous beverages purchased and resold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate names or in any other manner misrepresent that they are manufacturers by distillation of whiskies, brandies, rums, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 7. The representation by respondent as set forth in paragraph 4 hereof is calculated to, has a tendency and operates to mislead and deceive dealers and the purchasing public into the belief that they are purchasing such of respondent's beverages as contain on the labels thereof the words "importer," "importers," or "imported" from the actual importers thereof, and also into the belief that they are thus saving the expense, profit, or charge of a "middleman"; and is calculated to and has a capacity and tendency to and does induce dealers and the purchasing public, acting in either or both of such beliefs, to purchase the whiskies, brandies, wines, rums, gins, and other spirituous beverages thus advertised, labelled, and sold by respondent, thereby diverting trade to respondent from its competitors who truthfully use the words "importer," "importers," or "imported," on beverages which have been imported; and thereby diverting trade also from those others of its competitors who do not in any manner misrepresent that they are the actual importers of such whiskies, brandies, wines, rums, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 8. 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

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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.

Count Two

PARAGRAPH. 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its office and principal place of business in the city of Chicago, in said State. It is now and since its organization in 1934 has been engaged in the business of purchasing whiskies, brandies, wines, rums, and gins, and other spirituous beverages, both domestic and imported, and in the sale thereof in regular course of trade and commerce between and among the various States of the United States and the District of Columbia. In the usual course and conduct of its business it causes said products when resold by it to be transported from its place of business in the city of Chicago aforesaid, into and through various other States of the United States to the purchasers thereof, consisting of wholesalers, retailers, and the purchasing public, some of whom are located within the State of Illinois and some of whom are located in various 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 at all times since its organization has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, brandies, rums, gins, and other spirituous beverages, and in the sale thereof in constant 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 and has been since its organization in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing and reselling at wholesale and retail, whiskies, brandies, wines, rums, gins, and other spirituous beverages, in a constant course of trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 2 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 2 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though

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the several averments of said paragraph 2 of said count one were repeated verbatim.

PAR. 3. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 3 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 3 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 3 of said count one were repeated verbatim.

PAR. 4. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 4 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 4 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 4 of said count one were repeated verbatim.

PAR. 5. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 5 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 5 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 5 of said count one were repeated verbatim.

PAR. 6. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 6 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 6 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 6 of said count one were repeated verbatim.

PAR. 7. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 7 of count one of this complaint, to the same extent as though the allegations thereof were set out at length herein and said paragraph 7 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph

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of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 7 of said count one were repeated verbatim.

PAR. 8. Under and pursuant to Title I of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195 C. 90), the President of the United States, by Executive Order No. 6182, of June 26, 1933, as supplemented by Executive Order No. 6207, of July 21, 1933, and Executive Order No. 6345 of October 20, 1933, delegated to H. A. Wallace as Secretary of Agriculture certain of the powers vested in the President of the United States by the act aforesaid.

Under and pursuant to the delegation of such powers, the said Secretary of Agriculture pursuant to section 3 (d) of the act and Executive orders under the act, upon his own motion presented a Code of Fair Competition for the Distilled Spirits Rectifying Industry after due notice and opportunity for hearing in connection therewith had been afforded interested parties, including respondent, in accordance with Title I of the National Industrial Recovery Act and applicable regulations issued thereunder, to the President of the United States who approved the same on the 9th day of December 1933, thereby constituting the said code a Code of Fair Competition within the meaning of the said National Industrial Recovery Act, for the regulation of the aforesaid industry.

In his written report to the President, the said Secretary of Agriculture made, among others, the following findings with respect to the said code in the following words, to wit:

That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of said Act in that the terms and provisions of such code tend: (a) to remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purposes of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

By his approval of the said code on December 9, 1933, the President of the United States, pursuant to the authority vested in him by Title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive order, wherein he adopted and approved the report, recommendations and findings of the said Secretary of Agriculture, and order that the said Code of Fair Competition be, and the same thereby was approved, and by virtue of the National Industrial Recovery Act aforesaid, the following provision of article V of said Code became and still is one of the standards of

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fair competition for the Distilled Spirits Rectifying Industry and is binding upon every member of said industry and this respondent:

The following practices constitute unfair methods of competition and shall not be engaged in by any member of the industry:

SECTION 1. *False Advertising.*—To publish or disseminate in any manner any false advertisement of any rectified product. Any advertisement shall be deemed to be false if it is untrue in any particular, or if directly or by ambiguity, omission or inference it tends to create a misleading impression.

PAR. 9. The use by respondent of the word "distillers" in its corporate name, printed upon its stationery and on the labels attached to the bottles in which it sells and ships such products and in various other ways; and the use by respondent of the words "importer," "importers," or "imported" on the labels attached to the bottles in which it sells and ships certain of its products, and used in various other ways, constitutes false advertising within the meaning of the aforesaid provision of said article V and tends to and does create the misleading impression that respondent is engaged in the business of distilling spirits and selling spirits, and that the spirituous beverages so sold and transported by it have been bottled at a distillery by the original distillers thereof, and that some of said products have been imported by respondent, all contrary to the provisions of section 1, article V, of the Code aforesaid.

PAR. 10. The above alleged methods, acts, and practices of the respondent are and have been in violation of the standard of fair competition for the Distilled Spirits Rectifying Industry of the United States. Such violation of such standard in the aforesaid transactions in interstate commerce and other transactions which affect interstate commerce in the manner set forth in paragraphs 6 and 7 hereof, are in violation of Section 3 of Title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission upon the written waiver of the respondent, of taking of testimony, findings as to facts, filing of briefs, oral argument and all other intervening procedure, as well as the consent of said respondent that an order shall issue herein for it to cease and desist from methods of competition charged in the complaint, and the Commission being fully advised in the premises, having thereupon concluded that respondent has violated Section 5 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."

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It is now ordered, That the respondent, Old Gold Distillers, Inc., its agents, salesmen, and employees, in connection with all whiskies, brandies, rums, gins, and other spirituous beverages by it in interstate commerce hereafter sold or offered for sale, do cease and desist from:

(1) The use of the word "Distillers" in its corporate name, on its stationery, 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 representing, (a) that it is a distiller of brandies, rums, gins, and other spirituous beverages; or (b) that the said whiskies, brandies, rums, gins, or other spirituous beverages 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, rums, gins, 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; and from:

(2) Using the words "Importer," "Importers," or "Imported" on its letter heads and other advertising matter used to solicit the sale of and sell its products as aforesaid or in any other manner representing that it is an importer of whiskies, brandies, rums, wines, gins, and other spirituous beverages, unless and until it shall actually become engaged in the business of importing said products into the United States from other countries.

(3) *It is further ordered,* That the aforesaid complaint be and the same is, hereby dismissed as to count two thereof.

It is further ordered, That the said respondent within 60 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.

MEMORANDUM

The Commission as of the same date issued similar orders, excepting the importer representation feature, in the cases of Liberty Distilleries, Inc., Docket 2388, in which complaint issued as of May 14, 1935, and Rex Distilling Co., Docket 2396, in which complaint issued as of May 17, 1935, *Mr. PGad B. Morehouse* representing the Commission, and *Mr. Alfred L. Bennett*, of Washington, D. C., representing respondent Liberty Distilleries, Inc.

Complaint

IN THE MATTER OF
MORGEN DISTILLING CORPORATION

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 TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933

Docket 2371. Complaint, Apr. 22, 1935—Decision, July 6, 1936

Where a corporation engaged in the purchasing, rectifying, blending, and bottling of whiskies, brandies, rums, and other spirituous beverages, and in the sale thereof in competition with actual distillers and with other rectifiers, and neither owning, operating, nor controlling any place or places where spirituous beverages are made by a process of original and continuous distillation from mash, wort, or wash or other raw materials, and never applicant for a distiller's permit nor authorized by the Government to produce, nor producer of, any distilled spirits, which it purchased in bulk as required and bottled under its own brand names and under those of its wholesaler, jobber, or retailer customers—

Conspicuously printed on its stationery and advertising and on the labels attached to the bottles in which it sold and shipped its liquors, word "Distilling" as part of corporate name, with effect of misleading and deceiving dealers and purchasing public, substantial portion of which prefers purchase of liquor prepared and bottled by the actual distiller, into belief that it was a distiller, plant and operations of which, ordinarily, are more extensive and costly than the rectifier's, and that the whiskies and other alcoholic beverages sold by it were by it made through process of original distillation from raw materials, as aforesaid, and as long understood from term, and of inducing them, in such beliefs, to purchase such whiskies, etc., bottled and sold by it, and with tendency thereby to divert trade to it from competitors who do not, through their corporate or trade names or in any other manner, misrepresent themselves as manufacturers by original distillation from raw materials, as aforesaid, to the substantial injury of substantial competition, and with effect of representing to customers through such potentially deceptive name and of furnishing them with the means of representing to their retailer and jobber vendees and ultimate consuming public, that it was a distiller, and that the whiskies and other alcoholic beverages thus labeled were by it made through process of original distillation as aforesaid:

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 for the Commission.

Mr. Nathaniel Seaman, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Com-