

Syllabus

IN THE MATTER OF
ESBECO DISTILLING CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 2428. Complaint, June 6, 1935—Decision, July 6, 1936*

Where a corporation engaged in the purchase of whiskies, brandies, and gins from distillers, and in rectifying, bottling, and selling same to wholesalers and retailers in the several States, and doing no distilling prior to its one year lease of two distilleries, nor theretofore operator, nor owner, of any still other than one purchased for production of gin by redistillation of purchased alcohol, nor applicant for permit to produce distilled spirits, which it purchased in bulk from distillers—

Displayed on labels of alcoholic beverages sold by it prior thereto, its corporate name and word "Distilling," as included therein, in larger type than phrase "Bottled by" or "Blended and Bottled by," which, as case might be, followed in type of considerably smaller size, and conspicuously displayed said name in its advertising and on its business letterheads, and there represented itself as "Producers of Fine Whiskies," as well as "Rectifiers and Wholesale Liquor Dealers," and sold its bottled liquors, thus labeled, and rectified, blended, or bottled by it, to its jobber and dealer customers in competition with distillers and rectifiers who do not, through use of such words as "Distilling," "Distiller," or "Distilleries" as a part of their corporate or trade names, misrepresent their status to the wholesale and retail trade, and to ultimate purchasing public, to which word "Distilling" has long definitely signified manufacture of liquor by process of original distillation from raw materials, and on the part of a substantial portion of which public there is a preference for the purchase of liquor prepared and bottled by the actual distillers thereof;

With effect of misleading and deceiving dealers and purchasing public 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, etc., sold by it were made by it through process of original distillation as aforesaid, and of inducing them in such belief to purchase such whiskies, etc., and thereby divert trade to it from its competitors who do not, through their corporate or trade names or in any other manner, misrepresent themselves as manufacturers by original distillation, as above set forth, of their beverages, to the substantial injury of substantial competition in commerce, and with effect, through such potentially deceptive name, of representing to its customers and furnishing them with a means of representing to their retailer and jobber vendees and the ultimate consuming public, that it was a distiller and that said whiskies, etc., thus containered and labeled, were made by it through process of original distillation:

Held, That such acts and 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. Fred A. Caskey, of Washington, D. C., and *Mr. Lawrence A. Jacobson*, of Chicago, Ill., for respondent.

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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 Esbeco Distilling 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 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 a corporation organized and existing under the laws of the State of Delaware and doing business under the laws of the State of Connecticut, with its principal office in the city of Wilmington, State of Delaware, and principal place of business in the city of Stamford, State of Connecticut. It is now, and for more than one year last past has been, engaged in the business of a rectifier and wholesaler of liquors, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same 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, consisting of wholesalers and retailers, some located within the State of Connecticut 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 one 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, 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 one 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, and other spirituous beverages and in the sale thereof 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 "distilling" when used in connection with the liquor industry and the products thereof has

had and still has a definite significance and meaning in 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 the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilling" 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, 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, 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, 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, and bottling 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 belief that the whiskies, gins, 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 ca-

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capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, 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, 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 June 6, 1935, issued, and on June 8, 1935, served its complaint in this proceeding upon respondent, Esbeco Distilling 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 Lawrence A. Jacobson, attorney for the respondent; and said testimony and evidence was 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. Esbeco Distilling Corporation is a rectifier, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 25 Jefferson Street in the city of Stamford, State of Connecticut. It was organized originally March 24, 1933, under the name of Esbeco Beverage Co., but on November 22, 1934, by an amendment to its corporate charter, changed to its present name. It has a capital stock of \$5,000 divided into shares of \$1 each. It is now, and since its organization has been, engaged in the business of purchasing whiskies, brandies, and gins from distilleries in Kentucky and other States and, after rectifying and bottling them, selling them to wholesalers and retailers located in the several States of the United States, including Connecticut, New York, New Jersey, Kentucky, and North Carolina, in the approximate volumes of 4,000 or 5,000 gallons a month as of about January 1935. Its business is a growing one. Respondent sells liquors only in the form of straight whiskies or blends of straight whiskies and it buys its gin already bottled and labels it afterwards. Its gin trade is comparatively small. It now conducts, and has conducted, this business under a basic permit from the Federal Alcohol Administration designated as "Permit No. R-37," 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 April 1933, respondent has continuously been engaged in the aforesaid business.

Respondent had not up to the time of the hearings in this proceeding, to-wit, December 4, 1935, used any still or stills. A short time before that date it had acquired one, but had not used it. This still was an ordinary gin still with a capacity of about 300 gallons per year to be used for the redistillation of alcohol, purchased but not produced by respondent, over juniper berries and other aromatics for the production of gin. No distilling had been done in respondent's establishment up to the time of the hearings. Respondent had three processing tanks and three bottling tanks with complete bottling facilities and the other equipment ordinarily incident to the distilled spirits rectifying industry.

After proceedings in this case were commenced and shortly prior to the time of the hearings, respondent had entered into negotiations for the lease by it of two distilleries, one in Kentucky and another

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in Maryland, whereby respondent for a period of one year will control and operate said distilleries at least one day a month and under which leases respondent is required to take 200 barrels per month of said distilled spirits. This amounts to a substantial part, if not practically all, of respondent's present distilled spirits requirements.

It is a common practice in the liquor industry for a distillery to be leased for a certain number of days' run per month in this manner. When this is done the lessee actually controls and operates said distillery during those days; the name of the owner of the distillery, which is required by law to be posted conspicuously at the front of the premises, comes down and the name of the lessee goes up. During the period of said lease the distillery is operated under the full control and at the direction of the lessee under the lessee's distiller's bond, approved by the Alcohol Tax Unit, and upon the lessee's full responsibility, and the specific whiskey distilled upon that day or days belongs to the lessee and is stored in barrels bearing the lessee's name. Also, before the lease can commence operations, a basic distiller's permit has to be obtained from the Federal Alcohol Administration. Pursuant to this understanding respondent has obtained in due course two distiller's basic permits, one "D-702" dated February 27, 1936, and another "D-703" dated March 5, 1936, covering respectively operations in the aforesaid two distilleries. The leases in question are for one year, but may be renewed or abandoned. Respondent is now bottling distilled spirits produced in the aforesaid manner under such leases and said actual operation of leased runs of said distilleries was commenced subsequent to the closing of the taking of testimony in this case.

Other than as hereinabove indicated, 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 all of its distilled spirits requirements in bulk from distillers and rectified and then blended or bottled such spirits for resale in bottles under its own brand names, and in about nine-tenths of the cases, under the names and brands of its customers who are wholesalers, jobbers, or retailers.

The alcoholic beverages so sold by respondent are sold in bottles, the labels on which contain the words "Distilling" as a part of its corporate name. The name "Esbeco Distilling Corporation," in larger type, is preceded by the phrase "Bottled by" or "Blended and Bottled by," as the case may be, such phrases appearing in type of a considerably smaller size, but which type is perfectly legible upon examination. On the respondent's business letterheads respondent corporation is represented as "Producers of Fine Whiskies," as well as "Rectifiers and Wholesale Liquor Dealers."

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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. 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 "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 wholesalers and retailers in such industry and to the ultimate purchasing public, to wit: the manufacturing 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 "Distilling," 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, and prior to the time when under its distillery leases as aforesaid the respondent began to produce its own distilled spirits requirements in a distillery by it for that purpose controlled, respondent's use of the word "distilling" as a part of its corporate name conspicuously printed on its stationery, advertising, and on the labels attached to the bottles

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in which it sold and shipped its said liquors, had the capacity and tendency to, and did, mislead and deceive dealers and the purchasing public into the belief that respondent was a distiller and that the whiskies, gins, and other alcoholic beverages sold by respondent were by it manufactured through the process of original distillation from raw materials as aforesaid and such use of the word "Distilling" 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 alcoholic beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who did not then and do not now, 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 did 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 distillation 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 proprie-

tors 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 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 "distilling" or "distilleries" in their corporate names and do not use that designation in connection with their sales activities.

Rectifying of alcoholic products, as hereinabove indicated, including the rectifying of whiskey, like the distilling of alcoholic prod-

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ucts, is done under strict Government supervision and under Government license. Ordinarily it requires a less extensive plant and a smaller investment. In the distilling process the distillery must be entirely separate and distinct from all other buildings. In connection with the distillery there must be provided a bonded warehouse in an entirely separate building. Bonds, as a rule, guaranteeing taxes in the distillery business are much larger than in the rectifying business, and in the rectifying business the processes may be all conducted in one building. The reception or storage tank may be in one building. In practice, very limited space is required by the small rectifiers.

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 "Distilling" in its corporate name, gave it an unfair competitive advantage over a rectifier not using the word "Distilling" or any other word connoting a distilling process in its corporate name or otherwise. Some of the labels of respondent unqualifiedly implied that respondent was a distiller. The aforesaid use by respondent of the word "Distilling" was of a potentially deceptive character, since prior to 1936 respondent did not own, operate, or control any place or places where spirituous beverages were manufactured by a process of original and continuous distillation from mash, wort or wash, or other raw materials. By such potentially deceptive name respondent represented to its customers and furnished them with the means of representing to their vendees, both retailers and jobbers and the ultimate consuming public that it was 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 were untrue.

PAR. 5. The aforesaid representations by respondent had the capacity and tendency to, and did, mislead and deceive dealers and the purchasing public into the belief that respondent was a distiller and that the whiskies, gins, and other alcoholic beverages sold by respondent were manufactured or distilled by it from mash, wort, or wash by one continuous process; and such representations 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 alcoholic beverages so labeled and sold by the respondent, thereby

diverting trade to respondent from its competitors who did not then, and do not now, by their corporate or trade names, or in any other manner misrepresent that they are distillers, and thereby respondent did substantial injury to substantial competition in interstate commerce. The Commission finds that this respondent has been using unfair methods of competition in commerce. The fact that subsequent to the closing of testimony in this case respondent began to produce a substantial part of its distilled spirits requirements under one day a month leased run of two distilleries for a period of one year and under distillers permits constitutes no assurance that unless prohibited from so doing, respondent may not, upon or before the expiration of said leases, resume the foregoing acts and practices.

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, constituting 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, no testimony having been offered in opposition thereto, brief filed herein by PGad B. Morehouse, counsel for the Commission, and by Lawrence A. Jacobson, counsel for respondent, oral arguments of both counsel 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 Esbeco Distilling Corporation, its agents, salesmen, and employees in connection with the offering for sale or sale by it 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 its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a dis-

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tiller of whiskies, cordials, or any other spirituous beverages; or (b) that the said whiskies, cordials, 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 any such products are by it manufactured by a process of original and continuous 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 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.

Syllabus

IN THE MATTER OF
DR. S. B. HEININGERCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2683. Complaint, Jan. 10, 1936—Decision, July 6, 1936*

Where an individual engaged in the manufacture of sets of false teeth from impressions made by the laity of their own teeth and gums with material sent them by him for such purpose, and in the sale and shipment by mail to purchasers of such dental plates, in competition with numerous prosthetic dentists and with laboratories engaged in the manufacture and distribution of dentures; in advertising his said products in rural newspapers and in periodicals of interstate circulation reaching, in the main, readers in rural communities and small towns, and through other advertising media—

- (a) Represented that purchasers could make as correct impressions of their own teeth and gums as members of the dental profession, through such statements as "I have thousands of satisfied customers all over the country," etc., "I have been making dental plates that really fit for many years by mail," "My system has been so perfected that I have not the slightest doubt I am able to make you a satisfactory set of teeth";
- (b) Represented that from impressions sent to him as aforesaid he could make sets of artificial teeth which would give full power of mastication and look and feel better than wearer's own teeth, through such statements as "Enable you to chew your food properly and improve your health," "My plates look and feel even better than your own teeth," "Will * * * give to the wearer full power of mastication," and "Your teeth will look as natural as your own. Nature could hardly do more"; and
- (c) Represented that his aforesaid artificial teeth fit as well and are as comfortable as those made in the usual way, through such statements as "I am pioneer in this country in making teeth in this fashion and my methods have been so satisfactory that I believe I am able to give you better fitting and more comfortable teeth than you can get any other way," "In spite of lower income you can be wearing the finest there is in dental plates," "You cannot buy better plates anywhere;"

The facts being that technical difficulties are such that it is ordinarily impossible for a dentist or dental laboratory, from an impression taken by a layman of his own teeth and gums, to make a denture that will give full power of mastication, look and feel better than the wearer's own teeth, or fit as well and be as comfortable as those made in the usual way by members of the dental profession;

With capacity and tendency to lead purchasers and prospective purchasers into accepting aforesaid representations as true, and with effect of inducing them to purchase his said dentures in such erroneous belief, to their consequent injury, and of unfairly diverting trade to said individual from competitors, among whom there are thousands of prosthetic dentists and many dental laboratories who do not misrepresent their products or that they can achieve results such as claimed by him; to the substantial injury of substantial competition in commerce: