

## Syllabus

IN THE MATTER OF  
POTOMAC DISTILLING CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2443. Complaint, June 19, 1935.—Decision, July 7, 1936*

Where a corporation engaged in purchasing, rectifying, blending, and bottling whiskies, gins, cordials, and other spirituous beverages, including the rectifying of alcoholic spirits through use of a still or stills employed by it in production of gin through redistillation of alcohol, bought by it, over juniper berries and other aromatics, and in selling said whiskies, etc., in substantial competition with (a) other corporations and individuals and concerns engaged in manufacture by distillation of whiskies and other spirituous beverages, and in sale thereof among the various States and in the District of Columbia, and (b) with other corporations, etc., engaged in business of purchasing, rectifying, blending, and bottling whiskies, etc., and in sale thereof in commerce as aforesaid—

Represented to customers, through use of word "Distilling" in its corporate name, printed on its stationery and advertising and on the labels attached to the bottles in which it sold and shipped its said products, and through the featuring of such name when accompanied by words "Bottled By", and in various other ways, and furnished such customers with means of representing to their vendees and to ultimate consuming public, that it was a distiller and that the whiskies and other spirituous beverages thus contained and labeled were by it made through process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture of the liquor was complete, as long definitely understood by wholesale and retail liquor industry and ultimate purchasing public from word "Distilling";

Notwithstanding fact that it was not a distiller and did not distill whiskies, etc., thus bottled, labeled, sold, and transported by it, nor own, operate, nor control any place or places where such beverages were made by process of distillation from mash, wort, or wash, but purchased its distilled spirits requirements from distillers and then rectified, bottled, and sold same in commerce to its wholesale and retail customers;

With effect of misleading and deceiving dealers and purchasing public into belief that it was a distiller and that the whiskies, etc., sold by it were made and distilled by it from mash, etc., as aforesaid, and of inducing dealers and purchasing public, on the part of a substantial portion of which there is a preference for purchase of spirituous liquors prepared and bottled by distillers, to buy the whiskies and other spirituous beverages bottled and sold by it, and of thereby diverting trade to it from competitors who do not, through their corporate or trade names or otherwise, misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies and other spirituous beverages, and with capacity and tendency so to mislead and deceive, etc.; to the substantial injury of substantial competition:

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*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.

*Mr. Raphael I. Levin*, of Baltimore, Md., 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 Potomac 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, existing, and doing business under the laws of the State of Maryland, with its office and principal place of business in the city of Baltimore, in said State. It is now, and for more than one year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials, and other spirituous beverages and selling the same 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, 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, cordials, 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

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individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials, 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 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 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 it is a distiller and that the whiskies, gins, cordials, 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, cordials, 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, cordials, 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, cordials, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "dis-

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tillers," 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, cordials 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 beliefs, to purchase the whiskies, gins, cordials, 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, cordials, 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 19, 1935, issued, and on June 21, 1935, served its complaint in this proceeding upon respondent Potomac 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 first 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 theretofore duly designated by it, no testimony in defense being offered. Said testimony and evidence in support of the allegations 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, the aforesaid testimony and evidence and a substituted answer of respondent filed April 8, 1936, stating that respondent desired to waive hearing on the charges set forth in the complaint, not to contest the proceeding, that it admitted all of the material allegations of the complaint to be true and that without further evidence or other intervening procedure, the Commission might make, issue, and serve upon the respondent findings as to the facts and an order to cease and desist from the violations of law charged in the complaint; the filing of briefs and oral arguments being waived; and the Commission having duly considered 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 a corporation organized, existing, and doing business under the laws of the State of Maryland, with its office and principal place of business at 2700 Wilmarco Ave., in the city of Baltimore, in said State. It is now, and for more than one year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials, and other spirituous beverages and selling the same 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, 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, cordials, 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 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, cordials, and other spirituous beverages and in the sale thereof in commerce be-

tween 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 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. 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).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they came from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery or at any rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the ——— Company". If the distilled spirits therein contained are bottled by a distiller either in his distillery, or are spirits of his own distillation bottled in his rectifying plant, the distiller may, and does, put "Distilled and Bottled by ——— Company". If, in the distillery's rectifying plant, other spirits have been blended or rectified, he puts "Blended and Bottled by ——— Company". Finally, blown (usually in the bottom) of each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler, viz, a "D" for a distillery and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit.

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## Findings

Thus "R-169" designates this respondent. A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol, depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or his rectifier's permit.

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.

This respondent purchases its distilled spirit requirements from distillers and then rectifies, bottles, and sells the same in interstate commerce to its wholesale and retail customers.

PAR. 4. 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 and to the ultimate consuming public, that respondent is a distiller and that the whiskies, cordials, 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, cordials, 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.

There were introduced as Commission's exhibits, four of such labels. Those attached to the bottles in which respondent sells and ships straight whiskey bear the legend:

Bottled By  
POTOMAC DISTILLING CORP.

the respondent's said name being in larger and more conspicuous type than the words "Bottled By". The labels attached to the bottles in which respondent sells and ships its blended whiskey bear the legend:

A POTOMAC PRODUCT  
Blended and Bottled By  
Potomac Distilling Corp.

and on these labels the words "A Potomac Product" are in larger type and more conspicuous than either the phrase "Blended and Bottled By", or the corporate name of respondent.

In the course and conduct of its business as aforesaid respondent has, upon its premises, a still or stills which it uses in the production of gin by a process of rectification whereby alcohol, purchased but not produced by respondent, is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distiller, as defined by section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. However, existing regulations, and regulations proposed under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. 977), and which regulations are presently expected to become effective as of August 15, 1936, provide that rectifiers who redistill purchased alcohol over juniper berries and other aromatics may call such resulting product "distilled gin," and require that the labels state who distilled it. This is to enable the rectifier to have the benefit of the distinction between gin produced by such method and "cold" or compound gin prepared by mixing alcohol with essential oils.

The Commission finds, therefore, that under the foregoing circumstances respondent is authorized to continue to use in interstate commerce, the term "Distilling" in its corporate name insofar and only insofar as it is used with exclusive reference to the gin which respondent produces according to the aforesaid process.

PAR. 5. 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, cordials, 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, cordials, 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. 6. Representation by respondent, as set forth in paragraph 4 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, cordials, and other spirituous beverages sold by the respondent are manufactured and

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## Order

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 beliefs, to purchase the whiskies, cordials, 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, cordials, and other spirituous beverages, 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 issued on June 19, 1935, and served on June 21, 1935, the answer of respondent admitting the truth of the material allegations of the complaint and waiving all further proceedings herein, and 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 being offered in opposition thereto, 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 Potomac Distilling Corporation, its agents, salesmen, and employees, in connection with the offering for sale or sale by it in interstate commerce of whiskies, cordials, and other spirituous beverages, except gins produced by a process of rectification whereby alcohol purchased but not produced by respondent is redistilled over juniper berries and other aromatics, do 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

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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 distiller 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.

## Complaint

IN THE MATTER OF

INTERNATIONAL DISTILLING & DISTRIBUTING  
CORPORATIONCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2423. Complaint, June 4, 1935—Order, July 8, 1936*

Consent order requiring respondent wholesaler, its agents, etc., in connection with all whiskies, etc., sold or offered by it in interstate commerce, to cease and desist from representing, through use of word "Distilling" in its corporate name on its stationery, etc., that it is a distiller of whiskies, gins, and other spirituous beverages or that such whiskies, etc., were by it made through process of distillation or that it owns, etc., place or places where they are thus made, unless and until it shall own, etc., such places where such whiskies, etc., are by it made through process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture thereof is complete.

*Mr. PGad B. Morehouse* for the Commission.

*Cooke & Beneman*, of Washington, D. C., 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 International Distilling & Distributing 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, existing, and doing business under the laws of the State of Maryland, having its principal place of business in the city of Washington, District of Columbia. It is now, and for more than one year last past has been, engaged in the business of a wholesaler of liquors, 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 its said business, it causes its said products when sold