

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

Complaint

22 F. T. C.

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 District of Columbia and some located in various States of the United States. 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; 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 and selling at wholesale whiskies, gins, and other spirituous beverages 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 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 bever-

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

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, 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.

Order

22 F. T. C.

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.

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 the 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."

It is now ordered, That the respondent, International Distilling & Distributing Corporation, its agents, salesmen, and employees, in connection with all whiskies, gins, and other spirituous beverages by it in interstate commerce hereafter sold or offered for sale, do cease and desist from:

Representing through the use of the word "Distilling" 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 whiskies, gins, and other spirituous beverages; or (b) that the said whiskies, 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, 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.

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

Memoranda

in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

Memoranda

The Commission as of the same date issued similar consent orders following substantially similar complaints in four other distillery cases, in which Commission was represented by *Mr. PGad B. Morehouse* and respondents were represented as set forth below:

Sunrise Distilling Corp. Docket 2424. Complaint, June 4, 1935. Rectifier and wholesaler of whiskies, gins, and other spirituous beverages, with office and principal place of business in Chicago. *Mr. Fred A. Caskey*, of Washington, D. C., for respondent.

La Salle Distillery, Inc. Docket 2432. Complaint, June 8, 1935. Rectifier and wholesaler of whiskies, etc., with office and principal place of business in Stamford, Conn. *Mr. E. Gaynor Brennan*, of Stamford, Conn., for respondent.

Old Rose Distilling Co. Docket 2438. Complaint, June 18, 1935. Wholesaler and distributor of whiskies, gins, and other alcoholic beverages, with office and principal place of business in Chicago. *Mr. Charles W. Hills*, of Chicago, Ill., for respondent.

Raritan Distillers Corp. Docket 2442. Complaint, June 18, 1935. Rectifier and wholesaler of whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages, with office and principal place of business in Perth Amboy, N. J. *Mr. John W. Hildrop*, of Washington, D. C., for respondent.¹

United Distillers Corp. Docket 2449. Complaint, June 20, 1935. Wholesaler and rectifier of whiskies, gins, etc., with office and principal place of business in Providence, R. I. *Mr. Daniel Miles Sweeney*, of Washington, D. C., for respondent.

¹ By Commission order dated July 6, 1937, foregoing order was vacated and set aside, and it was further ordered that prosecution of Commission's complaint be resumed in accordance with its regular procedure.

IN THE MATTER OF
GUS MARTEL

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2553. Complaint, Sept. 18, 1935—Decision, July 8, 1936

Where an individual engaged in the sale of correspondence courses of instruction in physical culture and development and health restoration and in training for boxing and fighting, and in the sale, as incident thereto, of books, pamphlets, and other articles, in competition with others similarly engaged; in advertising his courses in newspapers and periodicals and other publications of general circulation and in enrollment blanks, pamphlets, circular letters, and other printed matter—

- (a) Misrepresented his ability and qualifications for teaching the various arts included in said courses, through the making of such statements as that he was the "amateur lightweight, knockout champion of the world," and that he had shown one of two famous prize fighters, one of his secret copyright blows with which said individual had knocked out his opponent in their contest;

Facts being there was no such title, and the blow used by the victor in aforesaid contest was an ordinary one, not peculiar to any system, and one used by all fighters;

- (b) Misrepresented the effectiveness of his said courses and the ability of the ordinary subscriber thereto to assimilate the information contained therein and to benefit therefrom to the extent represented, through making such statements as that he imparted four secret copyright knockout blows which "work every time," etc., and enable anyone using them to "go right in and knock them all out," and that his so-called "double knockout, lightning shift" doubled the pupil's reach, speed, and punching power, with a knockout in either hand, and his course taught a pupil to stand on a handkerchief without being hit and to be "punch proof and fearless," and aforesaid knockout blows could be learned immediately, without fail, by either amateur or professional, so that he could "go right in," etc., without fail, and that pupil, if neither amateur nor professional, could accomplish such results after ten or fifteen days' practice or practice for a few minutes daily for a few weeks;

Facts being blows referred to were not secret but known to fighters generally, and did not work every time, etc., and were not and could not be copyrighted, though literature used in courses was, shift referred to, while making knockout possible, was used by others and the defenses and parries to blows in question were well understood by all informed fighters, acquisition of knowledge of how to stand on a handkerchief, etc., does not enable any but the very clever to accomplish first result claimed, though instruction could not make pupil punch proof, and results claimed were far in excess of any that could ordinarily be expected by purchasers, including length of time required to assimilate knowledge furnished and lead to accomplishment of any such results as represented, which likewise varied with different individuals; and