

Syllabus

IN THE MATTER OF

OLD COLONEL DISTILLERY, INC., OLD COLONEL
DISTRIBUTING COMPANY AND JOSEPH SCHIFF

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2678. Complaint, Jan. 4, 1936—Decision, July 8, 1936

Where two corporations and an individual, who owned, operated, and controlled the same, and exercised executive management thereof, engaged as rectifiers and wholesalers of liquors in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in selling same among the various States and in the District of Columbia, in substantial competition with, (a) others engaged in the manufacture by distillation of whiskies, etc., and in the sale thereof, and (b) with others similarly engaged in purchasing, rectifying, etc., spirituous beverages and in selling same as aforesaid—

Represented, through use of word "Distillery" in corporate name of said first concern, output of which was wholesaled by second, and on stationery and advertising and on labels attached to bottles of their said products, and in other ways, to their customers, and furnished latter with means of representing to such customers' vendee-retailers and to the ultimate consuming public as purchasers of their said products, that the whiskies, etc., thus containered and bottled were made by said first-named corporation through process of distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture of product was completed, as long definitely understood by wholesale and retail trade and ultimate purchasing public from said industry's use of word "Distillery";

Facts being said corporation was not a distiller or distillery and did not distill its said whiskies, etc., thus bottled, labeled, and sold, nor own, operate, or control any place or places where such beverages were made by process of distillation from mash, wort, or wash;

With effect of misleading and deceiving dealers and purchasing public into belief that such whiskies, etc., were made and distilled by said first corporation as aforesaid, and of inducing dealers and purchasing public, on part of a substantial portion of which there is a preference for buying spirituous liquors prepared and bottled by actual distillers thereof, to purchase same in such belief, and of thereby diverting trade to them from their competitors who do not, through their corporate or trade names, or in any other manner, misrepresent that they are manufacturers by distillation from mash, etc., of whiskies and other spirituous beverages, and with capacity and tendency so to mislead and deceive, etc.; to the substantial injury of substantial competition in commerce:

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

Mr. PGad B. Morehouse for the Commission.

Mr. Lawrence S. Grauman, of Louisville, Ky., for respondents.

Complaint

22 F. T. C.

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 Colonel Distillery, Inc., Old Colonel Distributing Co., and Joseph Schiff, hereinafter referred to as respondents, have been and are 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, Old Colonel Distillery, Inc., is a corporation organized, existing, and doing business under the laws of the State of Kentucky with its office and principal place of business in the city of Louisville, in said State. Respondent, Old Colonel Distributing Co., is a corporation organized, existing, and doing business under the laws of the State of Kentucky and has the same office and principal place of business as respondent Old Colonel Distillery, Inc. Respondent, Joseph Schiff, is an individual, owning, operating, controlling, and exercising executive management of the aforesaid two corporate respondents. Respondents and each of them are now, and for more than one year last past have been, engaged in the business of rectifiers and wholesalers 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 their said businesses, they cause their said products, when sold, to be transported from their 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 Kentucky and some located in other States of the United States and the District of Columbia. In the course and conduct of their businesses as aforesaid, respondents are now, and for more than one year last past have 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 their businesses as aforesaid, respondents are now, and for more than one year last past have been in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blend-

ing, 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 "Distillery" 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, a place where such liquors are manufactured 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 their businesses as aforesaid, respondent Joseph Schiff manages the affairs of respondent Old Colonel Distillery, Inc., as a rectifier causing its entire output to be sold to the corporate respondent Old Colonel Distributing Co., which operates as the wholesaler for the respondents and each of them and by the use of the word "Distillery" in the corporate name of the respondent Old Colonel Distillery, Inc., printed on its stationery and advertising, and on the labels attached to the bottles in which it and the other respondents sell and ship the said products, and in various other ways, respondents and each of them represent to their customers and furnish 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 the respondent Old Colonel Distillery, Inc., manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when as a matter of fact, respondent Old Colonel Distillery, Inc. is not a distiller or a distillery, and does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and by the other respondents so 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 respondents and each of them 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 competi-

Findings

22 F. T. C.

tors, 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.

PAR. 5. Representation by respondents and each of them, 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 respondents, and each of them are manufactured and distilled by them 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 respondents and each of them thereby diverting trade to respondents and each of them from their 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 respondents and each of them do 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 respondents and each of them are to the prejudice of the public and the competitors of respondents and each of them 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 January 4, 1936, issued, and on January 6, 1936, served its complaint in this proceeding upon the respondents, Old Colonel Distillery, Inc., and Old Colonel Distributing Company, corporations, and Joseph Schiff, an individual, charging them, and each of them, with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondents, and each of them,

891

Findings

filed answer thereto admitting all of the material allegations of the complaint to be true, and stating that the Commission might make, enter, issue, and serve upon them, and each of them, without hearing, without further evidence and without other intervening procedure, an order to cease and desist from the violations of law charged in the complaint, and said answer 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 and answer, 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. Respondent, Old Colonel Distillery, Inc., is a corporation organized, existing, and doing business under the laws of the State of Kentucky with its office and principal place of business in the city of Louisville, in said State. Respondent, Old Colonel Distributing Company, is a corporation organized, existing, and doing business under the laws of the State of Kentucky and has the same office and principal place of business as respondent Old Colonel Distillery, Inc. Respondent, Joseph Schiff, is an individual, owning, operating, controlling, and exercising executive management of the aforesaid two corporate respondents. Respondents and each of them are now, and for more than one year last past have been, engaged in the business of rectifiers and wholesalers 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 their said businesses, they cause their said products, when sold, to be transported from their 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 Kentucky and some located in other States of the United States and the District of Columbia. In the course and conduct of their businesses as aforesaid, respondents are now, and for more than one year last past have 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;

Findings

22 F. T. C.

and in the course and conduct of their businesses as aforesaid, respondents are now, and for more than one year last past have 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 "Distillery" 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, a place where such liquors are manufactured 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 their businesses, as aforesaid, respondent Joseph Schiff manages the affairs of respondent Old Colonel Distillery, Inc., as a rectifier, causing its entire output to be sold to the corporate respondent Old Colonel Distributing Company, which operates as the wholesaler for the respondents and each of them and by the use of the word "Distillery" in the corporate name of the respondent Old Colonel Distillery, Inc., printed on its stationery and advertising, and on the labels attached to the bottles in which it and the other respondents sell and ship the said products, and in various other ways, respondents and each of them represent to their customers and furnish 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 the respondent Old Colonel Distillery, Inc., manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when as a matter of fact, respondent Old Colonel Distillery, Inc., is not a distiller or a distillery, and does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and by the other respondents so 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 respondents and each of them, 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.

PAR. 5. Representation by respondents and each of them, 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 respondents and each of them are manufactured and distilled by respondent, Old Colonel Distillery, Inc., 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 respondents and each of them, thereby diverting trade to respondents and each of them from their 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 respondents and each of them do substantial injury to substantial competition in interstate commerce.

CONCLUSION

The methods and practices of said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and competitors of respondents and each of them, 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 been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of respondents, waiving hearing on the charges set forth in the said complaint and stating that they and each of them admit all of the

Order

22 F. T. C.

material allegations of the complaint to be true, and that without further evidence or intervening procedure the Commission may make, issue, and serve upon them and each of them findings as to the facts and an order to cease and desist from the violations of law 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 entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914,

It is now ordered, That the respondents, Old Colonel Distillery, Inc., Old Colonel Distributing Company, a corporation, and Joseph Schiff, an individual, and the agents, salesmen, and employees of them and each of them, in connection with all whiskies, gins, and other spirituous beverages by them and each of them in interstate commerce hereafter sold or offered for sale do cease and desist from:

Representing through the use of the word "Distillery" in the corporate name of the respondent, Old Colonel Distillery, Inc., printed on its stationery, advertising or on the labels attached to the bottles in which it and the other respondents sell and ship the said products, or in any other way by word or words of like import representing, (a) that the respondent, Old Colonel Distillery, Inc., is a distiller of whiskies, gins, and other spirituous beverages; or (b) that the said whiskies, gins, and 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 respondents, and each of them, within 60 days from and after the date of the service upon them of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they, and each of them, are complying and have complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

MEYER BRODIE AND MORRIS WHITE, DOING BUSINESS
AS M & M BAG AND SUIT CASE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2658. Complaint, Dec. 12, 1935—Decision, July 9, 1936*

Where a firm engaged in the manufacture of leather luggage, about 65 percent of which was made from the inferior split leather or cut or layer of the hide remaining after top grain or surface had been removed therefrom—Conspicuously stamped said products, thus made, "Warranted Walrus Grained Leather," and stamped or represented or designated luggage made by it from such split leather as "leather," without indicating in any way that same was not covered with top grain or genuine leather;

With tendency and capacity to confuse, mislead, and deceive members of public into believing that luggage, thus stamped by it, was covered with outside or top layer of hide, as understood by trade and consuming public from terms "top grain leather," "grained leather," "genuine leather," "genuine cowhide," "warranted leather," "warranted cowhide," and "leather," as applied to leather products, and with effect of inducing them to buy luggage thus stamped because of such erroneous belief, and with tendency and capacity to divert trade to it from competitors who sell such products covered with split hide and truthfully thus label the same, and from sellers of top grain leather covered luggage:

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

Before *Mr. Joseph A. Simpson*, trial examiner.

Mr. William L. Pencke for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Meyer Brodie and Morris White, copartners, doing business under the firm name and style of M & M Bag and Suit Case Company, have been, and are now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to 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. That said respondents, Meyer Brodie and Morris White are copartners, doing business under the firm name and style