

IN THE MATTER OF
GENERAL DISTILLERS, LTD.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2402. Complaint, May 22, 1935—Decision, July 18, 1936

Where a corporation engaged as rectifier and wholesaler of liquors, and in making gin by redistillation of purchased alcohol over juniper berries and other aromatics, and neither owning, operating nor controlling any place where beverages are made by original distillation from grain, fruit, or vegetable mash, wort, or wash, other than still for making of gin as aforesaid, nor distilling any beverage, but purchasing and bottling the whiskies, gins, and other spirituous beverages dealt in by it, and selling same in competition with genuine distillers, investment and expenses of which are, in general, greater than those of rectifiers, and with others engaged like itself, and who respectively truthfully used words "Distillery", "Distillers", "Distilleries", or "Distilling" as part of their corporate names and on stationery and labels, or did not thus use such words—

Displayed, on stationery and on labels attached to bottles in which it sold and shipped its said beverages, word "Distillers", as included in its corporate name, together with such words as "Distilled and bottled by", or "Bottled by", or "Made by", as case might be, and, on back labels on whiskey bottles, name of actual distiller thereof;

With effect of misleading and deceiving dealers and purchasing public into belief that whiskies, etc., sold by it were by it made and distilled from mash, wort, or wash, and of inducing dealers and purchasing public, among a substantial portion of which there is a preference for purchase of liquors bottled by actual distillers and manufacturers thereof, to buy said whiskies, etc., thus bottled and sold by it, and of thereby diverting trade to it from competitors who do not, by their corporate name or in any other manner, misrepresent themselves as manufacturers by distillation from mash, wort, or wash, of whiskies, gins and other spirituous beverages, and with capacity and tendency so to mislead, etc., and to induce dealers and purchasing public to buy its products in preference to those of truthful competitors; to the substantial injury of substantial competition in commerce:

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. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

Mr. Edw. W. Thomerson and *Mr. PGad B. Morehouse* for the Commission.

Mr. Clyde C. Sherwood, of San Francisco, Calif., for respondent.

¹ Count 2 of the complaint, under the National Industrial Recovery Act, dismissed.

Complaint

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 General Distillers, Ltd., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and in violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act," and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Count 1

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of California with its offices and principal place of business in the city of San Francisco in said State. It is now, and has been since its organization in October 1933, engaged in the business of a rectifier and wholesaler of liquors, purchasing 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 California 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 at all times since its organization has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, 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, and has been since its organization, 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

Complaint

23 F. T. C.

the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "distillers" when used in connection with the liquor industry and 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 manufacturers 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 bottled by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distillers" in its corporate name, printed on its stationery and on 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, 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, 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 names and on their stationery, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, 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 names, nor on their stationery, 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 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 name 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.

Count 2

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of California with its offices and principal place of business in the city of San Francisco in said State. It is now, and has been since its organization in October 1933, engaged in the business of a rectifier and wholesaler of liquors, purchasing 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 California 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 at all times since its organization has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, 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

Complaint

23 F. T. C.

the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and has been since its organization, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, 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.

PARAGRAPHS 2, 3, 4, AND 5. As grounds for these paragraphs of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraphs 2, 3, 4, and 5 of count 1 of this complaint to the same extent as though the several allegations thereof were set out at length and in separate paragraphs herein, and the said paragraphs 2, 3, 4, and 5 of count 1 of this complaint are incorporated herein by reference and adopted as the allegations of paragraphs 2, 3, 4, and 5, respectively, of this count, and are hereby charged as fully and as completely as though the several averments of the said paragraphs of count 1 were separately set out and repeated verbatim.

PAR. 6. Under and pursuant to title I of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195, c. 90), the President of the United States, by Executive Order No. 6182, of June 26, 1933, as supplemented by Executive Order No. 6207, of July 21, 1933, and Executive Order No. 6345 of October 20, 1933, delegated to H. A. Wallace, as Secretary of Agriculture, certain of the powers vested in the President of the United States by the aforesaid act.

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

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

That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of the said

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

By his approval of the said code on December 9, 1933, the President of the United States, pursuant to the authority vested in him by title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive order, wherein he adopted and approved the report, recommendations and findings of the said Secretary of Agriculture, and ordered that the said code of fair competition be, and the same thereby was approved, and by virtue of the National Industrial Recovery Act aforesaid, the following provision of article V of said code became and still is one of the standards of fair competition for the distilled-spirits-rectifying industry and is binding upon every member of said Industry and this respondent:

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

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

PAR. 7. The use by respondent of the word "distillers" in its corporate name, printed upon its stationery and on the labels attached to the bottles in which it sells and ships such products and in various other ways, constitutes false advertising within the meaning of the aforesaid provision of said article V and tends to and does create the misleading impression that respondent is engaged in the business of distilling spirits from mash, wort, or wash and that the spirituous beverages by it so sold and transported have been bottled by the original distillers thereof, all contrary to the provisions of section 1, article V, of the code aforesaid.

PAR. 8. The above alleged methods, acts, and practices of the respondent are and have been in violation of the standard of fair competition for the distilled-spirits-rectifying industry of the United States. Such violation of such standard in the aforesaid transactions in interstate commerce and other transactions which affect interstate commerce in the manner set forth in paragraph 5 of count 1

hereof, are in violation of section 3 of title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act, as amended.

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 May 22, 1935, issued and on May 27, 1935, served its complaint in this proceeding upon respondent General Distillers, Ltd., a 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 Edward W. Thomerson, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission, heretofore duly designated by it; and by PGad B. Morehouse, attorney for the Commission thereafter by the Commission duly substituted to take testimony in the place and stead of said W. W. Sheppard; and in defense of the allegations of the complaint by Clyde C. Sherwood, attorney for the respondent; and said testimony and evidence were 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. General Distillers, Ltd., is a corporation existing and doing business under and by virtue of the laws of the State of California as a rectifier and wholesaler of liquors since February 1, 1934, having its principal office and place of business at 136 Front Street, San Francisco, Calif. It purchases and bottles whiskies, gins, and other spirituous beverages and sells 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 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 at all times since its organization has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, 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, and has been since its organization, 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. 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

Findings

23 F. T. C.

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. Thus "R-156" 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 permit, and at least one large distiller, namely, Hiram Walker & Sons, uses its "R number" exclusively. Knowledge of these details is not widespread among the retail trade, and is very limited to the general public. All whiskies, whether emanating from distilleries or rectifiers, are generally in the trade conceded to be "distilled products."

It is not always possible to determine 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.

PAR. 3. Respondent in the course and conduct of its business uses its name printed on its stationery and on the labels attached to the bottles in which it sells and ships its said beverages. The name on its labels for gins which it produces by redistillation of neutral spirits with aromatics is preceded by " * * * Distilled and Bottled By." On its whiskey labels the name is preceded by the words "* * * Bottled By" and white labels on the back of its whiskey bottles give the name of the actual distiller of the whiskey. On the labels for its liqueurs and Pisco John Punch the name is preceded by the words "Made By."

Respondent is a rectifier and not a distiller. It does not own, operate, or control any place where beverages are made by original distillation from grain, fruit, or vegetable mash, wort, or wash, and it does not distill any beverage. It has a still which it uses in making gin by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, but this redistillation does not make respondent a distiller as defined by United States Code, title 26, section 241, regulating internal revenue, nor as commonly understood by the public and the liquor industry. As shown by the testimony of many witnesses who for long periods of time had been and still were actively engaged in the liquor industry, including distillers, wholesalers, and retailers, and by the testimony of representative members of the consuming public, for a long period the word "dis-

tilling" when used in connection with the liquor industry and with products thereof has had, and still has, the definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public of making beverages by original distillation from grain, fruit, or vegetable mash.

In general the investment and expenses of the distiller are greater than those of the rectifier.

Much of the "distilled" gin on the market is produced by companies who do distill their own alcohol and produce gin therefrom by redistillation in exactly the same manner that respondent produces its gins—not under any distillery permit, but under a rectifying permit. These distiller-rectifiers place on their gin labels: "Distilled by _____ Distillers." There are distilleries which produce gin by the same process in the distillery by one continuous process and the tax is paid at the completion of the process, that is, after the alcohol becomes gin, so that although the final redistillation process is the same as that of respondent, yet it is all done in a distillery and the distiller has control over the process from the mash to the gin. Thus it includes original or primary distillation through closed pipes and vessels, as well as the final process of redistillation over the juniper berries.

Section 5 of the Federal Alcohol Administration Act, approved August 29, 1935, dealing with unfair competition and unlawful practices in the industry, provides that it shall be unlawful to sell in bottles any distilled spirits in interstate or foreign commerce unless they are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, as will prohibit deception of the consumer with respect to such products.

Existing regulations and regulations proposed under this act define "distilled gin" as the distillate by original distillation or redistillation of neutral spirits with aromatics.

The regulations further provide that on labels of domestic distilled spirits bottled by or for the actual distiller thereof, there shall be stated the words "distilled by" and immediately thereafter the name of such distiller and the place where distilled.

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, 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 names and on their stationery, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and

individuals engaged in the business of purchasing, 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 names, nor on their stationery, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. A substantial portion of the purchasing public does prefer to buy spirituous liquors bottled by the actual distillers and manufacturers thereof, and such representation is a misrepresentation in fact, and has a tendency to mislead and deceive dealers and the purchasing public, with the resultant tendency to induce them to buy respondent's products in preference to the products of truthful competitors.

The opinion and preference of the consuming public is illustrated by the following brief references to representative testimony on this point:

A person that distills liquor, I would imagine, would attempt to put forth a better product because of the fact his reputation as a distiller would be at stake, whereas, a person who blends liquors and sells them just as a distributor, I would imagine, that if the liquor was not just exactly right, he would say his reputation as a manufacturer was not concerned;

Generally speaking, I prefer to buy it from the distiller, I say that generally; if you happened to know who the rectifier was and he shows you what he was blending, then you would know what distiller made the product and what was going into the blend; in that case you might be just as well satisfied, but, generally speaking, "distillery" would mean more to me;

If he saw the word "distillers" in the firm name of a concern on its labels, that would influence him to purchase it over another product which did not have on it those words, because he would have confidence that that firm would be more certain to deliver a product that had no deleterious matter in it for beverage purposes, and he would take it that such firm had actually distilled and bottled it and that would be his reason for buying from them.

The testimony clearly showed and the Commission finds that a prestige attaches in the minds of the wholesale trade to the distiller, and that that prestige is an advantage in overcoming sales resistance; that in the mind of the wholesale trade and the public, the belief that a distiller controlling the making of such products from start to finish, with all the ingredients going into them within its own establishment, is an advantage, together with uniformity; and that the use of the word "distilling" or "distiller" in a trade or corporate name of a concern gives it an advantage over concerns who do not pursue or practice such characterizations, and who do not purport to be manufacturers when they are not.

The Commission therefore finds that the representations of respondent through use of the word "Distillers" in its corporate name as aforesaid 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 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 name 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 complaint was issued in two counts. Count 1 specifically charged a violation of the Federal Trade Commission Act, and count 2 charged that the practices of respondent, as hereinbefore set out, were unfair methods within the meaning of the Federal Trade Commission Act because they were in violation of section 3 of title I of the National Industrial Recovery Act, which was invalidated by the decision of the United States Supreme Court in the case of *A. L. A. Schechter Poultry Corporation et al v. United States*.¹ For that reason the Commission has dismissed the complaint as to count 2 thereof.

PAR. 7. Because of 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 to August 15, 1936, providing that rectifiers who redistill purchased alcohol over juniper berries and other aromatics may sell such resulting product "distilled gin," and requiring that the labels state who distilled it, the Commission has excepted gins produced by respondent by redistillation of alcohol over juniper berries and other aromatics from the prohibitions of its order.

CONCLUSION

The practice 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."

¹ 295 U. S. 495.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission issued on May 22, 1935, and served on May 27, 1935, the answer of the respondent, testimony and evidence taken before W. W. Sheppard, an examiner of the Commission heretofore duly designated by it, and before John W. Addison, a substituted examiner of the Commission thereafter duly designated by it to take testimony in the place and stead of the said W. W. Sheppard, and testimony and evidence taken in opposition thereto, briefs filed herein, oral arguments of the counsel aforesaid 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 General Distillers, Ltd., a corporation, its agents, salesmen, and employees, in connection with the offering for sale or sale by it in interstate commerce of whiskies, gins, or other spirituous beverages (except gins produced by it through 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 "Distillers" 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 distiller of whiskies, gins or 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 any such products (including gins) 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.

It is further ordered, That the said complaint be and the same is hereby dismissed as to count two thereof.

Syllabus

IN THE MATTER OF

JOHNSON WHOLESALE PERFUME CO., INC., AND ALSO
TRADING AS ALLEN'S CUT-RATE SHOPS AND ALLIED
CUT-RATE SHOPSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2463. Complaint, June 27, 1935—Decision July 21, 1936*

Where a corporation engaged in sale and distribution of cosmetics and toilet preparations, through twenty retail stores owned by it in several States; in pursuance of a conspiracy and understanding falsely to label, brand, and designate cosmetics for sale and distribution in interstate commerce and to offer and sell such products, thus labeled, branded, and designated, to consuming public, entered into by it with a private brand manufacturer of such preparations, who sold some fifty items of said various products, made to its specifications, and marked or labeled and designated as requested by it, or in bulk for its marking or labeling—

- (a) Sold certain nail polishes, finishing lotions, astringents, face powders, and wave sets in packages and containers labeled, as case might be, "D'Vora Lasting Nail Polish. Mme. D'Vora, Paris, New York", or "Arlene Richards * * * Finishing Lotion * * * Arlene Richards Laboratories, Paris, New York", and through its servants, agents, and employees in its various stores, falsely represented that said preparations were made in Paris, France, and imported into the United States, facts being they were neither made nor compounded in Paris or in France, and there was no such person as Arlene Richards nor were there any Arlene Richards Laboratories in existence;
- (b) Represented through labels affixed to containers of its said Arlene Richards Tissue Cream, that said preparation was a food for skin and tissues and helped nature to fill out hollows, lines and wrinkles, facts being that a face cream can only have therapeutic value or effect when it serves as a vehicle for medicinal agents therein capable of producing such effect, and said cream, as mixed and compounded, did not serve as a vehicle for or contain any medicinal agent of such a nature and was not a food for skin tissues and did not help nature, as above represented;

With capacity and tendency to mislead and deceive purchasing public into erroneous belief that said cosmetics were made or compounded in Paris or in France, and imported to the United States, and that aforesaid tissue cream was a food for skin and tissues and helped to fill out hollows, etc., and to induce purchasing public to buy said products because of erroneous beliefs, thus engendered, and in response to preference of many of consuming public for cosmetics in fact there made, and long favorably regarded by trade and by consuming public throughout United States, and with effect of placing in hands of its clerks an instrument or means whereby they might pass off and sell said products as French, or made in France, and with tendency unfairly to divert business from and otherwise injure competitors, including many who deal in and sell cosmetics made in