

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

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France and imported therefrom and rightfully and truthfully represent said products as such, and others who deal in and sell such articles made and compounded in United States without in any manner representing same as made or compounded in Paris or France, and others who in no manner misrepresent place of manufacture, origin, or virtues or functions of their said products:

Held, That such acts and practices, under the conditions and circumstances set forth, were all to the injury and prejudice of the public and of competitors of said corporation and its said private brand manufacturer-vendor, and constituted unfair methods of competition.

Before *Mr. John W. Addison*, trial examiner.

Mr. Astor Hogg for the Commission.

Levy & Levy, of New Haven, Conn., 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 Johnson Wholesale Perfume Co., Inc., a corporation, also trading as Allen's Cut-Rate Shops and Allied Cut-Rate Shops, 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 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, Johnson Wholesale Perfume Co., Inc., a corporation, and also trading as Allen's Cut-Rate Shops and Allied Cut-Rate Shops, is and at all times hereinafter mentioned has been a corporation organized and existing under and by virtue of the laws of the State of Connecticut, with its principal place of business located in the city of New Haven, in said State. It is now and for more than 1 year last past has been engaged in the sale and distribution of perfumes, cosmetics, and other toilet preparations, through 16 retail stores which it owns, located in the States of Rhode Island and Connecticut and in the Commonwealth of Massachusetts.

Jay H. Schmidt is an individual trading under his own name and under the name and style Jay H. Schmidt Perfumer, with his factory and principal place of business located in the city of New York, State of New York. He is now and for more than 1 year last past has been engaged in the manufacture and sale of perfumes, cosmetics, and other toilet preparations. His sales are to wholesalers and retailers located throughout the various States of the United States and in the District of Columbia and, pursuant to such sales,

shipment is made from his place of business in the State of New York into and through various States of the United States other than the State of the point of origin of such shipment, and in the District of Columbia. For more than 1 year last past said Jay H. Schmidt has sold and shipped and still sells and ships his said products from his factory in the State of New York to respondent in the city of New Haven in the State of Connecticut, and said respondent, during said period of time, has reshipped and still reships said products from time to time to its said retail stores.

There are in the United States other persons, firms, and corporations engaged in the manufacture and sale and distribution of similar competing products, who, pursuant to such manufacture and sale, ship their products into and through the various States of the United States other than the States of the point of origin of such shipments, and with such other persons, firms, and corporations the respondent and Jay H. Schmidt, an individual trading under the name and style of Jay H. Schmidt Perfumer, are, and at all times hereinafter mentioned have been in active and substantial competition.

PAR. 2. In the course and conduct of the business of respondent and Jay H. Schmidt Perfumer, as described in paragraph 1 hereof, they have unlawfully, knowingly, and with intent so to do, engaged in a conspiracy, common understanding, combination, and agreement between and among themselves, to label, mark, brand, and designate perfumes, cosmetics, and other toilet preparations for the purpose of sale and distribution in commerce between and among various States. In pursuance of such conspiracy, common understanding, combination, and agreement theretofore entered into as aforesaid, said Jay H. Schmidt Perfumer, in manufacturing the products which he sold to respondent, at the instance and request and under the direction of respondent has placed upon said products labels bearing the words and designations hereinafter listed, and after so labeling, marking, and designating such products, the said Jay H. Schmidt Perfumer, has sold and shipped said products from his place of business in the State of New York to said respondent, located in New Haven, Conn., and said respondent, after receiving said products as aforesaid, has sold and distributed, and does sell and distribute said products so labeled, marked, and designated, in competition with other persons, firms, and corporations selling similar products in commerce between and among the various States of the United States.

Pursuant to such conspiracy, combination, agreement, and common understanding theretofore entered into, as aforesaid, and in the

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course of and for the purpose of promoting the sale and distribution of said products in commerce, from said manufacturer, Jay H. Schmidt Perfumer, through respondent's stores to the general consuming public, respondent in like manner has caused and continues to cause quantities of said products to be labeled, branded, designated, and marked, and to be sold in competition, as aforesaid.

PAR. 3. Said labels, marks, brands, and designations used by respondent and said Schmidt as above alleged, read as follows:

D'Vora Lasting Nail Polish, Mme. D'Vora, Paris, New York;
 D'Vora Hand Lotion, Mme. D'Vora Laboratories, New York;
 Arlene Richards Facial Aesthetics, Finishing Lotion, Arlene Richards Laboratories, Paris, New York;
 Arlene Richards Tissue Cream . . . A food for skin and tissues, helping nature to fill out hollows, lines, and wrinkles. Arlene Richards Laboratories, New York;
 Arlene Richards Facial Aesthetics Cleansing Cream . . . Arlene Richards Laboratories, New York;
 Arlene Richards Astringent—Arlene Richards Laboratories, Paris, New York;
 Dr. La Morse Glycerine and Rose Water, Dr. La Morse Laboratories, New York;
 Genuine Dr. La Morse Antiseptic . . . Dr. La Morse Laboratories, New York, U. S. A.;

Dr. La Morse Pure Glycerine, Dr. La Morse Laboratories, New York.

The labels, marks, brands, and designations made and caused to be made by respondent and said Jay H. Schmidt Perfumer, as hereinabove alleged, are each and all false and misleading in these respects, to wit:

(1) Neither the said Jay H. Schmidt Perfumer nor the respondent had or has any factory or laboratory in Paris, nor were said products manufactured or compounded in Paris, but, on the contrary, were manufactured and compounded in the United States.

(2) Respondent has and had no factory or laboratory in New York.

(3) The "tissue cream" referred to did not and does not possess such properties as to be a food to the human skin or tissues and neither does it nor will it help nature to fill out hollows and wrinkles.

(4) The products labeled and branded with the name "Dr. La Morse" were not compounded or manufactured under the direction of, or in accordance with, the formula of a doctor of medicine, of dental surgery or of pharmacy, nor prescribed or compounded by a chemist. The said name, "Dr. La Morse", is fictitious, and no such person has any connection with any laboratory or factory engaged in manufacturing or compounding perfumes, cosmetics, or other toilet preparations in the State of New York or elsewhere.

(5) The use of the word "Paris" on the labels of respondent's products, is calculated to convey, and does convey to the minds of

the purchasing and consuming public, that said products so labeled are imported from Paris, France, when in truth and in fact the said products were manufactured and compounded within the United States.

PAR. 4. Perfumes, cosmetics, and toilet preparations manufactured or compounded in France and imported into the United States have, for many years, enjoyed widespread popularity, good will, and demand among the trade and consuming public throughout the United States, many of whom consider and believe that perfumes, cosmetics, and other toilet preparations manufactured or compounded in France are superior in quality and other desired characteristics to such commodities manufactured in the United States, and many of the consuming public throughout the United States purchase perfumes, cosmetics, and other toilet preparations manufactured in France and imported into the United States in preference to perfumes, cosmetics, and other toilet preparations manufactured in the United States.

PAR. 5. The aforesaid labeling, branding, and designating of respondent's said perfumes, cosmetics, and other toilet preparations as set out herein, have the capacity and tendency to mislead and deceive many of the consuming public into the erroneous belief that respondent's said perfumes and cosmetics are manufactured in Paris, France, and imported into the United States, and cause them to purchase same on account of such erroneous belief.

The aforesaid labeling and branding of "tissue cream" have the capacity and tendency to mislead and deceive many of the consuming public into the erroneous belief that such products were manufactured or compounded in a laboratory and under the direction and supervision of "Dr. La Morse", and cause them to purchase same on account of such erroneous belief.

PAR. 6. There are, among the competitors of respondent referred to hereinabove, many who deal in and sell perfumes and cosmetics manufactured in Paris, France, and imported into the United States, and who rightfully and lawfully represent such perfumes and cosmetics as being so manufactured and imported; there are others of said competitors who deal in and sell perfumes and cosmetics manufactured in the United States, and who in no manner represent that such perfumes and cosmetics are manufactured in Paris, France. There are others of said competitors who deal in and sell products similar to those sold by respondent who in no wise misrepresent their origin or their qualities, or represent that they are manufactured or compounded by a doctor, a chemist, or a pharmacist when they are not so manufactured or compounded.

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PAR. 7. Respondent's acts and practices, all as in this complaint before set out, tend to unfairly divert business from and otherwise to injure and prejudice its said competitors.

PAR. 8. The above alleged acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors 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 the 27th day of June 1935, issued and served its complaint in this proceeding upon respondent, Johnson Wholesale Perfume Co., Inc., a corporation and also trading as Allen's Cut-Rate Shops and Allied Cut-Rate Shops, 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 in said complaint, were introduced by Astor Hogg, attorney for the Commission, before John W. Addison, an examiner of the Commission heretofore duly designated by it, and in defense of the allegations of the complaint by Herman M. Levy, attorney for respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding 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 defense thereto, and the Commission having duly considered the same, and being 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, Johnson Wholesale Perfume Co., Inc. also trading as Allen's Cut-Rate Shops and as Allied Cut-Rate Shops, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business located at New Haven, Conn. It is now, and has been for more than nine years last past, engaged in the sale and dis-

tribution of cosmetics and toilet preparations through twenty retail stores which it owns, located in the States of Rhode Island and Connecticut and in the Commonwealth of Massachusetts, which stores are operated either under the name of Allen's Cut-Rate Shops or Allied Cut-Rate Shops. In the sale of such products respondent is now, and has been, in substantial competition with other corporations, and with firms, individuals, and partnerships, engaged in the sale and distribution of cosmetics and toilet preparations in commerce among and between the various States of the United States.

Jay H. Schmidt is an individual trading under his own name and under the name and style of Jay H. Schmidt, Perfumer, with his factory and principal place of business located in the city of New York, State of New York. He is now, and for several years last past has been, engaged in the manufacture of cosmetics and toilet preparations and in the sale and distribution thereof in commerce between and among the various States of the United States, causing said products when sold by him to be shipped from his place of business in the State of New York to purchasers thereof located in States other than the State of New York. In the course and conduct of his said business, said Jay H. Schmidt is, and has been at all times herein mentioned, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution in interstate commerce of cosmetics and other toilet preparations.

Jay H. Schmidt is a private-brand manufacturer of cosmetics and other toilet preparations. For more than three years last past said Schmidt has sold and shipped, and still sells and ships, cosmetics and other toilet preparations manufactured under specifications of the respondent, from his factory in the State of New York to respondent located at New Haven, Conn., where such products are stored temporarily in the warehouse of the respondent located at that point; thereafter, and depending upon the need, respondent ships such products by its own trucks from its warehouse located in New Haven, Conn., to its stores located in the States of Connecticut, Massachusetts, and Rhode Island.

PAR. 2. Jay H. Schmidt, under the specifications and direction of respondent, manufactures and labels in his factory in New York City, some fifty different items of cosmetics for respondent. All the products manufactured by Jay H. Schmidt and sold to and resold by respondent are manufactured in the United States—none of them are manufactured in France or in any other foreign country. In many instances, Jay H. Schmidt furnishes respondent the finished products.

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that is to say, products that have been manufactured by him and placed in containers on which containers Schmidt pasted labels such as are hereinafter set out. When Schmidt furnishes the so-called finished products he (Schmidt) attaches labels, such as are hereinafter set out, to the finished products as directed by respondent. At other times Jay H. Schmidt sells and ships the products manufactured by him from his place of business in New York City to respondent located at New Haven, Conn., in bulk, and respondent in New Haven, Conn., places the labels, such as are hereinafter set out, on the containers of the products.

PAR. 3. In the course and conduct of its business as aforesaid, by means of labels affixed to the packages and containers in which its cosmetics are distributed and sold, and reading as follows:

D'Vora Lasting Nail Polish,
Mme. D'Vora, Paris, New York,
Arlene Richards * * * Finishing
Lotion * * * Arlene Richards
Laboratories, Paris, New York,
Arlene Richards Astringent,
Laboratories, Paris, New York,
D'Vora Liquid Face Powder,
Paris, New York,
Arlene Richards Wave Set,
Arlene Richards Laboratories,
Paris, New York,

and through its servants, agents, and employees in its various stores, respondent represents that said cosmetics are manufactured in Paris, France, and imported into the United States.

PAR. 4. Cosmetics manufactured in France have for many years enjoyed widespread popularity and good will and demand among the trade and consuming public throughout the United States, many of whom believe and consider that cosmetics manufactured in France are superior in quality to cosmetics manufactured in the United States and that such cosmetics manufactured in France have other characteristics more desirable than cosmetics manufactured in the United States. Many of the consuming public throughout the United States purchase cosmetics manufactured in France and imported into the United States in preference to purchasing cosmetics manufactured in the United States. To label a domestic cosmetic as one of French origin causes such cosmetic to have added sales value and enables dealers in the cosmetic so labeled to sell same more readily than would otherwise be the case.

The labels, marks, brands, and designations made and caused to be made by respondent and said Jay H. Schmidt, as hereinabove set out, are each and all false and misleading in that neither the said Jay H. Schmidt nor the respondent had, or has, any factory or laboratory in Paris. Neither the D'Vora Lasting Nail Polish nor the Arlene Richards Finishing Lotion nor the Arlene Richards Astringent nor the D'Vora Liquid Face Powder nor the Arlene Richards Wave Set nor any of respondent's products was manufactured or compounded in Paris, France, or in France. There is no such person as "Arlene Richards." There are no "Arlene Richards Laboratories" in existence.

PAR. 5. In aid of the sale of one of its cosmetics, designated as "Arlene Richards Tissue Cream," by means of labels affixed to the containers in which said cream is sold and distributed, and reading as follows:

Arlene Richards Tissue Cream,
a Food For the Skin and Tissues,
Helps Nature to Fill Out the
Hollows, Lines, and Wrinkles,
Arlene Richards Laboratories,
New York,

respondent represents that said tissue cream is a food for the skin and tissues, and helps nature to fill out hollows, lines, and wrinkles.

The said cream, hereinabove referred to, has the following quantitative and qualitative analysis:

	<i>Percent</i>
Water.....	12.00
Sodium borate.....	0.66
Ash.....	0.01
Chloroform soluble.....	86.50
Other ingredients.....	0.83
Saponification value on the chloroform soluble matter.....	37.3
Iodine value on the chloroform material.....	17.5

The Commission finds that a face cream can only have a therapeutic value or effect when it serves as a vehicle for medicinal agents in the cream, which medicinal agents are capable of producing such effect. The undisputed medical testimony of record shows, and the Commission finds, that the Arlene Richards Tissue Cream, as above mixed and compounded, does not serve as a vehicle for or contain any medicinal agent capable of producing any therapeutic effect and it is not a food for the skin and tissues and it does not help nature to fill out hollows, lines, and wrinkles as represented by respondent, and respondent's said representations, therefore, are false and misleading.

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PAR. 6. The aforesaid labeling and designating of said cosmetics as set out herein have the capacity and tendency to mislead and deceive the purchasing public into the erroneous beliefs that said cosmetics are manufactured or compounded in Paris, France, or in France and then imported into the United States, that the tissue cream designated and labeled as "Arlene Richards Tissue Cream" is a food for the skin and tissues and helps nature to fill out hollows, lines, and wrinkles. Said labeling and designating of such products as aforesaid have the capacity and tendency to induce the purchasing public to purchase said products because of the erroneous beliefs engendered, as above set forth.

The said labeling and designating of the said cosmetics as set out herein places in the hands of the clerks in respondent's stores an instrument and means whereby said clerks may pass off said products and sell said products as French or manufactured in France.

PAR. 7. The Commission finds that the respondent has unlawfully, knowingly, and with the intent so to do, engaged in a conspiracy, common understanding, combination, and agreement with said Schmidt to falsely label, brand, and designate cosmetics for sale and distribution in interstate commerce as aforesaid, and has in fact falsely and fraudulently labeled and caused to be falsely and fraudulently labeled such products, and shipped and caused to be shipped the same in interstate commerce, and has offered for sale and sold to the consuming public such products so falsely and fraudulently labeled and branded.

PAR. 8. There are among the competitors of respondent and Jay H. Schmidt, referred to in paragraph 1 hereinabove mentioned, many who deal in and sell cosmetics that have been manufactured in France and imported into the United States, and who rightfully and truthfully represent said cosmetics to be such. There are others of said competitors who deal in and sell cosmetics manufactured and compounded in the United States who in no manner represent their said cosmetics to be manufactured or compounded in Paris, France, or in France. There are others of said competitors who in no manner misrepresent the place of manufacture or origin or virtues or functions or properties of their said products. Respondent's acts and practices hereinbefore set out tend to unfairly divert business from and otherwise injure said competitors.

PAR. 9. The manufacturer of said cosmetics, Jay H. Schmidt, on June 10, 1935, stipulated and agreed with the Commission, voluntarily, to discontinue the aforesaid unfair practices.

CONCLUSION

The aforesaid acts and practices of said respondent under the conditions and circumstances described in the foregoing findings are all to the injury and prejudice of the public and of respondent's competitors and the competitors of Jay H. Schmidt and constitute unfair methods of competition in commerce and are in violation of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and briefs filed herein, 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 respondent, Johnson Wholesale Perfume Co., Inc., also trading as Allen's Cut-Rate Shops and Allied Cut-Rate shops, or trading under any other name or names, its officers, directors, agents, representatives, servants, and employees, in connection with the offering for sale, sale or distribution in interstate commerce of cosmetics or toilet preparations hereby cease and desist from:

1. Directly or indirectly entering into, engaging or taking part in any agreement, combination, conspiracy, collusion, concerted action, or concerted course of conduct with Jay H. Schmidt or with any other person, firm, or corporation to label, mark, brand, advertise, or designate for interstate sale or distribution cosmetics or toilet preparations compounded or manufactured in the United States with the words "Paris" or "France" or with any other word, words, or representation indicating or importing that such toilet preparations or cosmetics have been compounded or manufactured in Paris, France, or in France or imported into the United States.

2. Directly or indirectly causing, or aiding or abetting Jay H. Schmidt or any other person, firm, or corporation to cause toilet preparations or cosmetics, manufactured or compounded, in the United States, to be labeled, marked, branded, advertised, or represented

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with the words "Paris" or "France" or with any other word, words, or representation indicating or importing that such toilet preparations or cosmetics have been compounded or manufactured in Paris, France, or in France or imported into the United States.

3. Directly or indirectly entering into, engaging, or taking part in any agreement, combination, conspiracy, collusion, concerted action, or concerted course of conduct with Jay H. Schmidt or with any other person, firm, or corporation to represent in any manner whatsoever that Arlene Richards Tissue Cream, mixed and compounded in accordance with the formula as set forth in the findings herewith, or any other cream or cosmetic of the same or substantially the same composition or ingredients is a food for the skin or tissues or that it will help nature fill out hollows, lines or wrinkles.

4. Directly or indirectly causing, or aiding or abetting Jay H. Schmidt or any other person, firm, or corporation to cause, to represent in any manner whatsoever that Arlene Richards Tissue Cream, mixed and compounded in accordance with the formula as set forth in the findings herewith, or any other cream or cosmetic of the same or substantially the same composition or ingredients is a food for the skin or tissues or that it will help nature to fill out hollows, lines or wrinkles.

It is further ordered, That respondent shall, within 30 days after the date of service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF
DISTILLERS EXCHANGE, INC.

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

Docket 2475. Complaint, June 28, 1935—Decision, July 21, 1936

Where a corporation engaged in wholesaling spirituous beverages, i. e., chiefly whiskies, gins, and cordials, and in buying bottled goods from distillers in various States, and, in small quantities, from rectifiers, and in selling same to wholesalers, jobbers, retailers, and retail package stores, and advertising in newspapers to a limited extent, and by the sending out of from 4 to 6 thousand circulars every 4 months, and doing a monthly business of about \$125,000, and neither owning, operating, nor controlling any place or places where alcoholic beverages are made by process of original and continuous distillation from mash, wort, or wash, and not a distiller, and in substantial competition, as thus engaged, with distillers, rectifiers, and other wholesalers whose bottled goods reach retail stores for sale in same States and territories in which its goods are offered—

- (a) Made use of words "Distillers" and "Exchange," as included in its corporate name, on stationery, catalogs, advertising, and labels attached to bottles in which it sold and shipped its said products, and in various other ways, and represented thereby to customers that it was a distiller and that the said whiskies, gins, and other alcoholic beverages thus contained were by it made through process of distillation from mash, wort, or wash, and furnished its said customers with means of thus representing it to their vendees, both retailers and ultimate consuming public; and
- (b) Represented, through use of words "Distillers Exchange" in its corporate name, to customers and prospective customers, that it was operating, a place where distillers engaged in trading or bartering spirits or liquors of equivalent values, and that the whiskies, gins, etc., by it so labeled, sold, and distributed, were commodities which had been so exchanged, notwithstanding fact it did not operate or control an exchange or place where commodities are bartered or traded for equivalent articles, and its business was clearly not an exchange as usually understood from word;

With effect of misleading dealers and purchasing public into beliefs that it was a group or association of distillers, operating an exchange, and that it was a distiller, or group of distillers, and that whiskies, etc., sold by it had been made or distilled by it or them from mash, wort, or wash, by one continuous process, and with capacity and tendency so to do, and with effect of inducing dealers and purchasing public, acting in such beliefs, to buy such whiskies, etc., thus labeled and sold by it, and thereby divert trade to it from its competitors who do not, through their corporate or trade names, or in any other manner, misrepresent themselves as distillers; 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.