

IN THE MATTER OF
CAMPBELL'S DISTILLERIES, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 2471. Complaint, June 28, 1935—Decision, Aug. 28, 1936

Where a corporation engaged in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in selling its aforesaid products to wholesalers and retailers in various States and the District of Columbia, in substantial competition with (1) other corporations, individuals, and firms engaged in manufacture, by true distillation, of whiskies, etc., from mash, wort, or wash, and in sale thereof, and (2) other corporations, etc., engaged in purchasing, rectifying, etc., whiskies, gins, and other spirituous beverages dealt in by them, and in sale thereof as aforesaid, and which, respectively, as manufacturers and distillers from mash, wort, or wash, or owners or operators of places where spirituous liquors are made by process of original distillation from such mash, wort, or wash through continuous closed pipes and vessels until manufacture thereof is complete, as long understood by wholesale and retail liquor trade and ultimate consuming public from word "distilleries," truthfully used said word or words "Distillery," "Distilling," or "Distillers," as part of their corporate or trade names and on their stationery, catalogs, and advertising, and on their labels attached to the bottles in which they sell and ship their products; or as purchasers, rectifiers, etc., of the whiskies, etc., dealt in by them, do not use such various words as above set forth—

Represented through use of word "Distilleries" in its corporate name, printed on its stationery, catalogs, advertising, and on labels attached to the bottles in which it sold and shipped its said products, and otherwise, to its customers and furnished same with means of representing to their retailer-vendees and consuming public that it was a distiller and that the whiskies, etc., contained by it were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it never was a distiller and did not distill said whiskies, etc., nor own, operate, or control any place where spirituous liquors were made by process of original and continuous distillation from mash, wort, or wash;

With effect of misleading and deceiving dealers and purchasing public into belief that it was a distiller and that said whiskies, etc., were made or distilled by it from mash, etc., by one continuous process, and of inducing dealers and purchasing public, in such belief, to buy such whiskies, etc., rectified and bottled by it, and of thereby diverting trade to it from competitors who did not, by their corporate or trade names or in any other manner, misrepresent themselves as distillers, and with capacity and tendency so to mislead and deceive; to the substantial injury of substantial competition in commerce;

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. John L. Hornor*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. E. George Aaron, of Camden, N. J., for *Phineas H. Wittenberg*, receiver for Campbell's Distilleries, Inc.

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 Campbell's Distilleries, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its office and principal place of business in the city of Camden, in said State. It is now, and for more than one year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other spirituous liquors from mash, wort, or wash, 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 for more than one year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous liquors and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 2. For a long period of time the word "Distilleries" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, places where spirituous liquors are manufactured by a process of original distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilleries" in its corporate name, printed on its stationery, catalogs, advertising, and labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the said whiskies, gins, and other spirituous liquors 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, and other spirituous liquors by it so bottled, labeled, sold, and transported. Respondent does not own, operate, or control any place or places where spirituous liquors are manufactured by a process of original and continuous 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 liquors 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, catalog, 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 liquors who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof, are calculated to and have a capacity and tendency

to and do mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous liquors sold by respondent are manufactured or distilled by it from mash, wort, or wash by one continuous process and are calculated to and have the capacity and tendency to and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other spirituous liquors rectified and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved, September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on June 28, 1935, issued and on June 29, 1935, served its complaint in this proceeding upon respondent, Campbell's Distilleries, Inc., 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 P. B. Morehouse, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it and no testimony or evidence was introduced in opposition thereto; the testimony and evidence in support of the allegations of said complaint were duly recorded and filed in the office of the Commission; thereafter respondent applied for permission to file with the Commission a supplemental and amended answer waiving further hearings on the charges set forth in the complaint in this proceeding, stating that it does not contest the said proceeding and that it admits all of the material allegations of the complaint to be true, and that the Commission might, without further evidence or other interven-

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ing procedure, make, issue and serve upon the respondent findings as to the facts and an order to cease and desist from the violations charged in the said complaint; 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 is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its office and principal place of business in the city of Camden, in said State. For more than one year prior to January 1, 1935, it was engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof 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 caused its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent, at the same time was in substantial competition with other corporations and with individuals, partnerships, and firms then and now engaged in the manufacture by true distillation of whiskies, gins, and other spirituous liquors from mash, wort, or wash, 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 was in substantial competition with other corporations and with individuals, firms, and partnerships then and now engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous liquors 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 "Distilleries" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, places where spirituous liquors are manufactured by a process of original distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manu-

facture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilleries" in its corporate name, printed on its stationery, catalogs, advertising, and labels attached to the bottles in which it sold and shipped its said products, and in various other ways, respondent represented to its customers and furnished them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it was a distiller and that the said whiskies, gins, and other spirituous liquors 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 now and never was a distiller, does not now and never did distill the said whiskies, gins, and other spirituous liquors by it so bottled, labeled, sold, and transported. Respondent does not now and never did own, operate, or control any place or places where spirituous liquors are manufactured by a process of original and continuous distillation from mash, wort, or wash.

PAR. 4. There were among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufactured and distilled from mash, wort, or wash, whiskies, gins, and other spirituous liquors sold by them and who truthfully used the words "distillery," "distilleries," "distillers" or "distilling" as a part of their corporate or trade names and on their stationery, catalogs, advertising, and on the labels of the bottles in which they sold and shipped such products. There were 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 liquors who did not use the words "distillery," "distilleries," "distilling" or "distillers" as a part of their corporate or trade names, nor on their stationery, catalogs, advertising, nor on the labels attached to the bottles in which they sold and shipped their said products.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof, were calculated to and had a capacity and tendency to and did mislead and deceive dealers and the purchasing public into the beliefs that respondent was a distiller and that the whiskies, gins, and other spirituous liquors sold by respondent were manufactured or distilled by it from mash, wort, or wash by one continuous process and were calculated to and had the capacity and tendency to and did induce dealers and the purchasing public, acting

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in such beliefs, to purchase the whiskies, gins, and other spirituous liquors rectified and bottled by the respondent, thereby diverting trade to respondent from its competitors who did not by their corporate or trade names or in any other manner misrepresent that they were distillers, and thereby respondent did substantial injury to substantial competition in interstate commerce.

PAR. 6. Pursuant to an involuntary petition in bankruptcy filed April 25, 1935, in the United States District Court for the District of New Jersey respondent ceased to engage in its aforesaid business sometime in the early part of the year 1935, and in the month of October 1935, its stock on hand, equipment and other assets were sold by receiver and trustee in bankruptcy under the order of that Court. Nothing appears to show that respondent's corporate existence has not been maintained or that in the future it might not, unless prohibited therefrom, again engage in business as a rectifier and resume the acts and practices above described.

CONCLUSION

The aforesaid acts and practices 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."

ORDER TO CEASE AND DESIST

The respondent herein having filed its answer to the complaint in this proceeding, which came on to be heard by the Federal Trade Commission upon the complaint of the Commission, the said answer of respondent, testimony and evidence taken before John L. Horner, an examiner of the Commission theretofore duly designated by it in support of the charges of said complaint; no testimony being offered in opposition thereto and respondent thereafter having applied to the Commission for permission to file as a supplemental amended answer a draft of answer thereupon by it submitted, and the Commission having duly considered the same:

It is hereby ordered, That the said application be and the same is hereby granted, and that the said supplemental amended answer be and the same is hereby filed.

And the said respondent, in and by its said supplemental amended answer having waived further hearings on the charges set forth in

the complaint in this proceeding and having stated therein that it does not desire to contest the same and that it admits all of the material allegations of the complaint to be true, and that the Commission may, without further evidence or other intervening procedure make, issue and serve upon the respondent, findings as to the facts and an order to cease and desist from the violations of law charged in the complaint, 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 hereby further ordered, That the respondent, Campbell's Distilleries, Inc., its agents, salesmen, and employees, in connection with the offering for sale or sale by it in interstate commerce of whiskies, gins, and other spirituous beverages, do cease and desist from:

Representing through the use of the word "Distilleries" 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 any other spirituous beverages; (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 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.

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IN THE MATTER OF

CALAFO COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2508. Complaint, Aug. 6, 1935.—Decision, Aug. 28, 1936*

Where a corporation, engaged in offer and sale, through dealers and directly, of a powder, and of a liquid preparation as remedies for and treatment of asthma and hay fever, through internal application, and through burning the "Inhalettes" or cigarettes and inhalation of vapor or smoke therefrom, respectively; in advertising its said medical preparations through newspapers, radio broadcasts, pamphlets, circulars, and other printed matter enclosed therewith, and through form letters mailed direct to prospective customers—

- (a) Falsely represented and implied that use thereof would cause asthma and hay fever to disappear like magic, and that distressing symptoms thereof would disappear and user of said preparations regain health; and
- (b) Represented and implied that said preparations constituted a competent and effective remedy for treatment of said ailments and were safe for all users and superior to other treatments or remedies therefor;

With effect of misleading and deceiving many persons afflicted with one or both of said diseases into believing that such preparations possessed therapeutic efficacy claimed, and that such various representations were true and of causing such persons, because of said erroneous beliefs, to buy same, and of unfairly and substantially diverting thereby trade to it from competitors who do not misrepresent their products, and with tendency and capacity so to mislead and deceive; to the injury of said competitors and that of public:

Held, That such acts and 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*, trial examiner.

Mr. Edw. W. Thomerson for the Commission.

Canepa & Castruccio, of Los Angeles, Calif., 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 Calaf Company, Incorporated, 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 it appearing to