

Syllabus

IN THE MATTER OF
ACME DISTILLERIES, INC.

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 2370. Complaint, Apr. 22, 1935—Decision, Sept. 29, 1936

Where a corporation engaged in rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages, and neither distilling such whiskies, etc., by process of original and continuous distillation through closed pipes and vessels until manufacture is complete, nor owning, operating, or controlling a place or places where such beverages are made by process of distillation, but purchasing its distilled spirits requirements from distillers, and selling its said rectified and bottled products among the various States, in competition with corporations, firms, etc., engaged in manufacture and distillation of whiskies, etc., and who truthfully use words "Distillery," "Distilleries," "Distillers," or "Distilling" as part of their corporate or trade names and on their stationery and on labels of bottles in which they sell and ship such products, and in competition with corporations, etc., engaged in rectifying, blending, and bottling whiskies, etc., and who do not use said words as a part of their said names, etc.—

Represented, through use of word "Distilleries" in its corporate name, printed on its stationery and on labels attached to bottles in which it sold and shipped its said products, and in various other ways, that its said whiskies, brandies, rum, gin, and other spirituous beverages, thus contained and labeled, were by it made through process of distillation, and furnished its said customers with means of similarly misrepresenting said products as thus made to their own customer retailer vendees and to ultimate consuming public, as case might be;

With effect of misleading and deceiving dealers and purchasing public into belief that said whiskies, etc., sold by it were by it made and distilled, and with capacity and tendency so to do and to induce dealers and purchasing public, in such belief, to buy said whiskies, etc., thus rectified, blended, and bottled by it, and with effect of diverting trade thereby to it from competitors who did not, through their trade or corporate names, or in any other manner, misrepresent that they were manufacturers by distillation of whiskies, and other spirituous beverages; to the substantial injury of substantial competition in commerce:

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

Before Mr. John W. Bennett, trial examiner:

Mr. PGad B. Morehouse and Mr. DeWitt T. Puckett for the Commission.

Nash & Donnelly, of Washington, D. C., and Mr. I. William Schimmel, of Baltimore, Md., for respondent.

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

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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 Acme Distilleries, Inc., 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 this its complaint, stating its charges in that respect as follows:

Count 1

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business in the city of Baltimore in said State. It is now and since its organization in 1934 has been engaged in the business of rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business it causes its said products when sold by it to be transported from its place of business in the city of Baltimore aforesaid to the purchasers thereof consisting of wholesalers and retailers, some located in the State of Maryland and others located in various other States of the United States and in the District of Columbia. In the course and conduct of its business, 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, brandies, rum, gin, and other spirituous beverages and in the sale thereof 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 rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof 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 of such industry has had and still has a definite significance and meaning to

the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, a place or places where such liquors are manufactured by the process of distillation; and a substantial portion of the purchasing public prefer to buy spirituous liquors bottled by actual distillers and manufacturers thereof.

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 and on the labels attached to the bottles in which it sells and ships its said products and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies, brandies, rum, and gin, and other spirituous beverages therein contained were by it manufactured through the process of distillation, when, as a matter of fact, the respondent is not a distiller, does not distill the said whiskies or other spirituous liquors by it so bottled, labeled, sold, and transported, and does not own, operate, or control a place or places where such beverages are manufactured by the process of distillation.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous liquors as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill whiskies, brandies, rum, gin, 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 rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages who do not use the words "distilleries," "distillery," "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. The representation by respondent as set forth in paragraph 3 hereof, is calculated to and has a capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, brandies, rum, gin, and other spirituous beverages sold by the respondent are manufactured and distilled by it and induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, brandies, rum, gin, and other spirituous beverages rectified, blended, and bottled 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 of whiskies, brandies, gin, rum, and other spirituous bev-

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erages, 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 and by virtue of the laws of the State of Maryland, with its principal office and place of business in the city of Baltimore in said State. It is now and since its organization in 1934 has been engaged in the business of rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business it causes its said products when sold by it to be transported from its place of business in the city of Baltimore aforesaid to the purchasers thereof consisting of wholesalers and retailers, some located in the State of Maryland and others located in various other States of the United States and in the District of Columbia. In the course and conduct of its business, 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, brandies, rum, gin, and other spirituous beverages and in the sale thereof 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 rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof between and among the various States of the United States and in the District of Columbia.

PAR. 2. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 2 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 2 of count 1 of this complaint is incorporated herein by

reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 2 of said count 1 were repeated verbatim.

PAR. 3. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 3 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 3 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 3 of said count 1 were repeated verbatim.

PAR. 4. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 4 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 4 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 4 of said count 1 were repeated verbatim.

PAR. 5. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 5 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 5 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 5 of said count 1 were 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

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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 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 "distilleries" 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

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in the business of distilling spirits, and that the spirituous beverages by it so sold and transported have been bottled at a distillery 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 April 22, 1935, issued and served its complaint in this proceeding upon respondent, Acme 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 other evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John W. Bennett, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Horace J. Donnelly, Jr., attorney for the respondent; and said testimony and other 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 other evidence, brief in support of the complaint (brief in opposition thereto and oral arguments of counsel aforesaid having been waived); and the Commission having duly considered the same, and being now 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 corporation was organized in 1934, and still exists under and by virtue of the laws of the State of Maryland,

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with its principal office and place of business at 723-725 West Pratt Street, in the city of Baltimore, in said State. From the time of its organization as aforesaid until about July 1, 1935, it was engaged under a basic permit, No. R-462, from the United States, in the business of rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business it caused its said products when sold by it to be transported from its place of business in the city of Baltimore aforesaid to the purchasers thereof consisting of wholesalers and retailers, some located in the State of Maryland and others located in various other States of the United States and in the District of Columbia. In the course and conduct of its business, respondent was, during said period of time, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof 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 likewise in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof between and among the various States of the United States and in the District of Columbia.

Later, respondent's business was placed in the hands of receivers by the Circuit Court of Baltimore City in involuntary receivership proceedings (*Central Wholesale Company, Inc. v. Acme Distilleries, Inc.*, Docket 1935-A, Folio 308), and late in November 1935, all of its assets were sold and disposed of by auction except that no sale was made of the name "Acme Distilleries, Inc." nor of the right to use the same, unless and insofar as such right may be incident to a sale made by said receivers to the Overbrook Company, another Baltimore rectifier of respondent's unused labels bearing its corporate name. At the time of the hearings it was not known by the receivers whether the respondent's corporate existence would or would not be dissolved.

PAR. 2. For a long period of time the word "distilleries" when used in connection with the liquor industry and with the products of such industry has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit: a place or places where such liquors are manufactured by the process of distillation. There is a

sharp distinction at present in the trade between the processes of distilling and of rectifying. Distilling is confined to the manufacture of alcoholic spirits by continuous process from grain mash to cistern room in the case of whiskies. Rectifying deals wholly with subsequent modification of the product, not involving the process of distillation, and a substantial portion of the purchasing public prefer to buy spirituous liquors bottled by actual distillers and manufacturers thereof, usually for the reason they feel that the goods put out directly by the manufacturer are likely to be more trustworthy and because they feel that the manufacturer has more at stake than any middleman.

PAR. 3. Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or types 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 come 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 distiller'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-462" 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 or his rectifier's permit.

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 possible to determine from the presence of the phrase "Blended and Bottled by" alone or the phrase "Bottled by" alone, on the label, whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

This respondent purchased its distilled spirits requirements from other distillers, rectified some and bottled some without rectification, and sold it in interstate commerce.

Like many other rectifiers, this respondent bottled certain brands of liquors for customers, placing the customer's label on the whiskies or liquors at the customer's request. These were known as "private brand labels," and did not contain its corporate name.

PAR. 4. 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 and on the 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 the said whiskies, brandies, rum, and gin, and other spirituous beverages therein contained were by it manufactured through the process of distillation, when, as a matter of fact, the respondent was not a distiller, did not distill the said whiskies or other spirituous liquors by it so bottled, labeled, sold, and transported, and did not own, operate, or control a place or places where such beverages are manufactured by the process of distillation.

PAR. 5. There were and still are among the competitors of respondent engaged in the sale of spirituous liquors as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill whiskies, brandies, rum, gin, 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 were and still are among such competitors, corporations, firms, partnerships, and individuals engaged in the business of rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages who do not now and who did not during the period here involved, use the words

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"distilleries," "distillery," "distilling," or "distillers" as a part of their corporate names nor on their stationary nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 6. The representation by respondent as set forth in paragraph 3 hereof, was calculated to and had a capacity and tendency to and did mislead and deceive dealers and the purchasing public into the belief that the whiskies, brandies, rum, gin, and other spirituous beverages sold by the respondent were manufactured and distilled by it and had a tendency to induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, brandies, rum, gin, and other spirituous beverages rectified, blended, and bottled by the respondent thereby diverting trade to respondent from its competitors who did not by their trade or corporate names or in any other manner misrepresent that they were manufacturers by distillation of whiskies, brandies, gin, rum, and other spirituous beverages, and thereby respondent did substantial injury to substantial competition in interstate commerce.

Nothing appears to show that respondent's corporate existence will not be continued or that in the future it might not, unless prohibited therefrom, again engage in the distilled spirits rectifying business, and in connection therewith resume the acts and practices above described.

CONCLUSION

The aforesaid acts and practices of the respondent, Acme Distilleries, Inc., were 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, 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 other evidence taken before John W. Bennett, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein in support of said complaint (brief in opposition thereto and oral arguments by counsel for the Commission and for the respondent having been waived), and the Commission having made its findings as to 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

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Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Acme Distilleries, Inc., its officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution of whiskies, brandies, rum, gin, and other spirituous beverages in interstate commerce or in the District of Columbia, do forthwith 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 its said products or in any other way by word or words of like import from representing (a) that it is a distiller of whiskies, brandies, rum, gin, or other spirituous beverages; or (b) that the said whiskies, brandies, rum, gin, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where such products are manufactured by the process of distillation, unless and until the said respondent shall own, operate, or control a place or places where such products are by it manufactured through a process of original and continuous distillation through closed pipes and vessels until the manufacture thereof is complete.

It is further ordered, That the said complaint be and the same is hereby dismissed as to count 2 thereof.

It is further ordered, That the respondent shall, within 30 days after 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 this order.

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IN THE MATTER OF

W. A. GIBBS & SON, INC.

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

Docket 2534. Complaint, Aug. 30, 1935—Decision, Sept. 30, 1936.

Where a corporation engaged in the manufacture and sale of animal traps, including its so-called "Two-Trigger" trap, developed by its president for purpose of attempting to eliminate or reduce to a minimum escapes, misses, losses, and "wring-offs" in trapping kind of animals for which adapted, and most generally used for trapping muskrats, and which had been highly successful in meeting the great difficulty encountered with use of single-jaw products in trapping such animals, from the considerable proportion of such escapes, etc., and certain tests of which indicated 100% perfect efficiency so far as wring-offs were concerned—

Represented, in catalogs, circulars, newspaper advertisements, and in other ways, that use of its said "Two-Trigger" trap assured a 100% catch, held every muskrat and prevented it from twisting and turning, and was escape-proof and eliminated wring-offs, through such statements as "Every Catch Stays Caught," "No Wring-Offs—No Losses," "Inner Trap Grips foot. Outer trap grips body," etc., "Finally the trap with 100% catch was perfected. It held every muskrat. It stopped the wring-offs," etc., "The Only 100% Muskrat Trap";

Facts being that trap, while highly successful, had not been 100% successful in preventing escapes, misses, losses, and wring-offs, and certain percentage of latter had occurred in practical use by trappers, as well as failures in other particulars, due to various factors and differences in conditions of use as contrasted with conditions prevailing under tests or series thereof;

With tendency and capacity to confuse, mislead, and deceive members of public in said particular and induce them to buy said traps because of such erroneous belief, and to divert trade to it from competitors, among whom there are those who do not make the same or similar misleading representations in regard to their said products, and with effect of so diverting business to it from such competitors, to their substantial injury and prejudice:

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

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

Mr. Harry D. Michael for the Commission.

Mr. Kennard N. Ware, of Philadelphia, Pa., 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,