

## Syllabus

IN THE MATTER OF  
DOMINION DISTILLERIES, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 2452. Complaint, June 21, 1935—Decision, Oct. 19, 1936*

Where a corporation, engaged as wholesaler and rectifier in purchasing, rectifying, blending, and bottling whiskies, gins, cordials, liqueurs, and other alcoholic beverages, and in the production of gins by process of rectification whereby alcohol, purchased but not produced by it, was redistilled over juniper berries and other aromatics through a still used by it for said purpose, and in the sale of its aforesaid products to wholesalers and retailers, in substantial competition with others engaged in the manufacture by true distillation of whiskies, gins, and other alcoholic beverages from mash, wort, or wash, and in the sale thereof; and also with those engaged in purchasing, rectifying, blending, and bottling whiskies, etc., in rectifying plants, and in selling same; and including, among its said competitors, those who, as manufacturers and distillers from mash, wort, or wash of whiskies, etc., sold by them, truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate name and on their stationery, catalogs, and labels, and also those engaged in purchasing, rectifying, etc. whiskies, etc. who do not thus use said words in their corporate, or trade names, nor on their stationery, catalogs, advertising, or on their labels—

Represented, through the use of word "Distilleries" in its corporate name, printed on its stationery, catalogs, and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, to its customers, and furnished said customers with the means of similarly representing to said customers' retail dealer vendees and to the ultimate consuming public, that it was a distiller and that the said whiskies, gins, cordials, liqueurs, and other alcoholic beverages contained in said bottles were by it made through the process of distillation from mash, wort, or wash;

The facts being it did not distill said whiskies, etc. thus bottled, labeled, and sold by it, and did not own, operate, or control any place or places where spirituous beverages are made by a process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until the manufacture is complete, as long definitely understood from word "distilleries" by liquor wholesalers and retailers and by the ultimate purchasing public; and did not "distill" in the sense commonly accepted and understood by those engaged in the liquor trade and the public, by virtue of its rectification of alcoholic spirits by redistillation over juniper berries and other aromatics through the use of a still operated by it, as aforesaid;

With effect of misleading and deceiving dealers and the purchasing public into the beliefs that it was a distiller, and that the whiskies, gins, and other spirituous beverages sold by it were made or distilled by it from mash,

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wort, or wash, by one continuous process, and of inducing dealers and the purchasing public, acting in such beliefs, to buy its said whiskies, etc. rectified and bottled by it, and of thereby diverting trade to it from its competitors who do not, by their corporate or trade name, or in any other manner, misrepresent that they are distillers of bottled spirituous liquors, purchase of which from distillers is preferred by a substantial portion of the purchasing public; 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 in commerce.

Before *Mr. John L. Hornor*, trial examiner.

*Mr. PGad B. Morehouse* for the Commission.

*Hollander, Leichter & Klotz*, of Union City, N. J., 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 Dominion 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 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 Jersey City, in said State. It is now, and for more than one year last past has been, engaged in the business of a wholesaler and rectifier, purchasing, rectifying, blending, and bottling whiskies, gins, cordials, liqueurs, and other alcoholic 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 alcoholic beverages 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, cordials, liqueurs, and other alcoholic beverages in rectifying plants 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. Upon the premises of respondent's place of business aforesaid there is a still for use in the production of gins by a process of rectification whereby alcohol, purchased but not produced by respondent, is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distillery or a distiller, as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. 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 an original and continuous 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, 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 it is a distiller and that the said whiskies, gins, cordials, liqueurs, and other alcoholic beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other alcoholic beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still operated by it as aforesaid in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics, does not distill the whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold.

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and transported in the sense in which the word "distilleries" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where spirituous beverages 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 beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, catalogs, 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, cordials, liqueurs, and other alcoholic beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, 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 beverages 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 alcoholic beverages rectified and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade name 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 21, 1935, issued, and on June 24, 1935, served its complaint in this proceeding upon respondent, Dominion 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, respondent applied for permission to withdraw its said answer and file in lieu thereof a substituted answer waiving 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 intervening 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 Jersey City, in said State. It is now, and for more than one year last past has been, engaged in the business of a wholesaler and rectifier, purchasing, rectifying, blending, and bottling whiskies, gins, cordials, liqueurs, and other alcoholic 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 alcoholic beverages from mash, wort, or wash, and in the

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sale there of 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, cordials, liqueurs, and other alcoholic beverages in rectifying plants 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. Upon the premises of respondent's place of business aforesaid there is a still for use in the production of gins by a process of rectification whereby alcohol, purchased but not produced by respondent, is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distillery or a distiller, as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. 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 an original and continuous 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, 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 it is a distiller and that the said whiskies, gins, cordials, liqueurs, and other alcoholic beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other alcoholic beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still operated by it as aforesaid in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics, does not distill the whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported in the sense

in which the word "distill" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where spirituous beverages 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 beverages sold by them, and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, catalogs, 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, cordials, liqueurs, and other alcoholic beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, 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 beverages 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 alcoholic beverages rectified and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade name, or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. Existing regulations, promulgated under the Federal Alcohol Administration Act, approved August 29, 1935 (49 Stat. L. 977), provide that rectifiers who redistill purchased alcohol over juniper berries and other aromatics, in the manner in which this respondent produces its gin, may call such resulting product "distilled gin", and require that the labels state thereon who distilled it. This is to enable the rectifier to have the benefit of any distinction between gin produced by such method and "cold" or compound gin pre-

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pared by mixing alcohol with essential oils. The Commission has, therefore, excepted gins produced in the aforesaid manner from the application of its order to cease and desist as hereinafter set forth.

## CONCLUSION

The aforesaid acts and practices of the respondent, Dominion Distilleries, Inc., are 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 and the substituted answer of respondent, filed herein, admitting all the material allegations of the Commission's complaint to be true, stating that it does not contest the said proceeding and waiving all intervening procedure; briefs and oral argument of both counsel having been waived, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

*It is ordered*, That the respondent, Dominion Distilleries, Incorporated, its officers, representatives, agents, and employees, in connection with the sale, offering for sale and distribution in interstate commerce or in the District of Columbia, of whiskies, gins, and all other spirituous beverages, except gins produced by it through a process of rectification whereby alcohol purchased but not produced by respondent is redistilled over juniper berries and other aromatics, do cease and desist from:

Representing, through the use of the word "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

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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.

IN THE MATTER OF  
WORLD LIBRARY GUILD, INC.

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

*Docket 2511. Complaint, Nov. 25 1935<sup>1</sup>—Decision, Oct. 19, 1936*

Where a corporation, engaged in the sale and distribution of a set of books under the title "Twentieth Century Encyclopedia," together with a revision service therefor and memberships in a research bureau to be used in connection therewith—

- (a) Represented through soliciting traveling agents and salesmen, and advertising matter, prospectuses, stretchers, order blanks or contracts, and other literature and paraphernalia supplied said individuals, that as a special introductory offer a limited number of persons in each place visited by a salesman would be given a set of said Encyclopedia free, if they subscribed for the ten-year loose-leaf semi-annual extension service and binders to be furnished by it at a stated price, and that the total cost to the purchaser for said service was the amount stated, and that the regular and usual price of said Encyclopedia and service or supplements was, or would be, some other sum greatly in excess of the amount for which it was then being offered; the facts being said encyclopedia was not free but the price asked and charged included the regular price therefor and of any additional services furnished, offer was not limited but available to any person having the requested purchase price, and figure named and asked for such extension service was not, as represented, the total cost, and did not include an undisclosed additional charge of fifty cents per year for such revision service or supplements;
- (b) Falsely represented, as aforesaid, that it was the publisher of said encyclopedia, and that said work or set of books was new, accurate, and up to date, and constituted a complete and concise encyclopedia and reference work, and a concise and accurate review of all branches of the world's knowledge and human thought worthy of preservation, and that it conducted a research bureau for the service of its customers, and made other representations of like import; the facts being that it was out of date and inaccurate in its various editions as published, and no edition thereof ever was a complete, concise, and comprehensive encyclopedia, and said various statements and representations made by it were false;
- (c) Falsely represented, as aforesaid, that its general editorial advisory board was composed of certain named individuals, officials, scholars, and personages connected with various American universities and public institutions;
- (d) Falsely represented, as aforesaid, that a certain individual named and identified by it as former reference librarian of the Library of Congress, editor-in-chief of Collier's New Encyclopedia and Reynolds' Atlas and Gazetteer, was editor-in-chief of its said encyclopedia and each edition thereof, and

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<sup>1</sup>Amended and supplemental.