

Complaint

IN THE MATTER OF
MONTEBELLO DISTILLERS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2412. Complaint, May 24, 1935—Decision, Nov. 13, 1936

Where a corporation engaged in purchasing, rectifying, blending, bottling, and selling at wholesale whiskies, gins, and other spirituous beverages, in competition with those engaged in the manufacture by distillation of whiskies and other spirituous beverages, and in sale and distribution thereof, and with other rectifiers and wholesalers, and owning no stills or other apparatus for the production of distilled spirits by original and continuous distillation from mash, wort, or wash, and not a "distiller" as long understood from word in trade—

Represented, through use of word "Distillers" 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 furnished its wholesale customers with the means of thus representing to retailers and to ultimate purchasers that said whiskies, brandies, and other spirituous beverages contained in such bottles were by it made through process of distillation, notwithstanding fact it was not a distiller and did not distill said whiskies or other liquors thus bottled, sold, and transported by it;

With tendency to mislead and deceive wholesalers, retailers, and ultimate purchasers into belief that in buying said liquors they were purchasing a product bottled at a distillery by the original distiller thereof, as substantially preferred by trade and public, and with effect of unfairly diverting trade to it from its competitors, including those who manufacture spirituous liquors by process of original and continuous distillation from mash, wort, or wash, and truthfully designate themselves as distilling companies, and those who, engaged solely as rectifiers, do not untruthfully designate themselves as "distilleries," "distillers," or "distilling companies":

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. F. Gad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

Nash & Donnelly, of Washington, D. C., 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 Montebello Dis-

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

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tillers, 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 violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act," and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Count 1

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under the laws of the State of Maryland, with its office and principal place of business in the city of Baltimore, in said State. It is now, and for more than one year last past has been, engaged in the business of a rectifier and wholesaler of liquors, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Maryland and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid respondent is now, and 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 distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is, and 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 beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distillers" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning in the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, those who manufacture such liquors by the process of original and continuous distillation from mash, wort, or

wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of its business as aforesaid by the use of the word "Distillers" in its corporate name, printed on its stationery and advertising, 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 whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, 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 and 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, and bottling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade

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to respondent from its competitors who do not by their corporate or trade name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

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

Count 2

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Maryland, with its office and principal place of business in the city of Baltimore, in said State. It is now, and for more than one year last past has been, engaged in the business of a rectifier and wholesaler of liquors, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Maryland and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid respondent is now, and 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 distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is, and 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 beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

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

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

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

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

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

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Title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive order, wherein he adopted and approved the report, recommendations and findings of the said Secretary of Agriculture, and ordered that the said Code of Fair Competition be, and the same thereby was approved, and by virtue of the National Industrial Recovery Act aforesaid, the following provision of Article V of said Code became and still is one of the standards of fair competition for the Distilled Spirits Rectifying Industry and is binding upon every member of said Industry and this respondent:

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

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

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

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Federal Trade Commission, on May 24, 1935, issued, and on May 28, 1935, served its complaint in this proceeding upon respondent Montebello Distillers, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and 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, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; 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 is a corporation organized December 18, 1933, existing and doing business under and by virtue of the laws of the State of Maryland, having its principal office and place of business at 108-110 West Lombard Street in the city of Baltimore in said State. It is now, and has been since its organization, engaged in business as a rectifier of distilled spirits, rectifying, blending, bottling, and selling at wholesale whiskies, gins, and other spirituous beverages.

Respondent purchases its distilled spirits requirements from various distilleries, rectifies some and bottles some straight whiskies. Its sales amount to about \$35,000 a month, about 30% of which volume is sold within the State of Maryland.

In the course and conduct of its said business, respondent sells its products in constant course of trade between and among the various States of the United States and in the District of Columbia. Approximately 70% of the aforesaid distilled products, blends, and mixtures thereof, respondent causes, when sold, to be transported from Baltimore, Md., into and through various other States of the United States including New Jersey, Delaware, Kentucky, and Florida.

In the course and conduct of its business, respondent is, and has been, in competition with other corporations, individuals, and partner-

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ships engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and the sale and distribution of the same in interstate commerce; and also in competition with other rectifiers and wholesalers of alcoholic beverages.

PAR. 2. Since the repeal of prohibition, there has been, and still is, a sharp distinction in the trade between the processes of distilling and rectifying. Distilling is confined to the manufacture of alcoholic spirits by an original and continuous process from grain, or other raw materials, in a mash to a cistern room, in the case of whiskey. Rectifying deals wholly with subsequent modifications of the product not involving the process of distillation. This distinction in trade significance has been recognized by the Government through its issuance of two separate kinds of basic permits to those engaging in the two respective operations.

Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they 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 rectifying plant or at any other 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) in each bottle is a symbol, consisting of a let-

ter 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-561" 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.

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 purchases its distilled spirits from distillers both within and outside of Maryland; does little rectifying and mostly bottles the purchased whiskies straight at 100 proof.

This respondent does not now have, and has never had, stills or other apparatus for the production of distilled spirits by an original and continuous distillation from mash, wort, or wash. For a long period of time, the word "distillers" in connection with the liquor industry has had, and still has, a definite significance to the minds of purchasers, both wholesale and retail, to wit: those who manufacture such liquors by the process of distillation from some kind of mash.

PAR. 3. Approximately thirty witnesses who had had no connection with the liquor industry were subpoenaed at the instance of the Commission to ascertain whether or not there existed a preference of a substantial portion of purchasers and potential purchasers to buy whiskies and other alcoholic beverages, bottled at or by a distillery or distilling company. These witnesses were fairly representative and included men from practically every walk of life, namely, a banker, stockroom clerk, sales manager, superintendent of fertilizer plant, salesman, government employee, pastry shop owner, electrical engineer, telephone man, real estate broker, postal clerk, department store manager, paper carrier, insurance man, a professor of anatomy, a syrup salesman, an assistant train yardmaster, coal merchant and a graduate law student. Their testimony showed that the word "distillers," or similar words in connection with the liquor industry, meant to them a person or concern which manufactured by distillation, and twenty-two of them testified that in a corporate name such as respondent's such a word as "distillers" would imply to them that respondent was such a manufacturer, and they indicated a distinct preference to buy distillery-bottled packages of liquor, usually for the reason that they felt more confidence in the goods, as the manufacturer, in their

judgment, was likely to be more trustworthy and had more at stake than any middleman. A liquor dealer with thirty-one years of experience in making contacts with the trade and the public was of the opinion, based upon such experience, that in the majority of cases, the ultimate consumer prefers to buy distillery bottled goods. The respondent produced approximately ten witnesses who were retail liquor dealers and who, from their experience with the public, stated it as their observation that customers paid no attention to the corporate or trade name of the seller as shown upon the labels, but made their purchases because of other considerations. Such testimony is not contradictory to that given by the thirty witnesses as aforesaid, from all of which the Commission concludes it to be true that there is a substantial portion of purchasers which prefers to buy beverages bottled by the original distiller or manufacturer thereof.

PAR. 4. In the course and conduct of its business as aforesaid, by the use of the word "distillers" in its corporate name, printed on its stationery, and on the labels attached to the bottles in which it sells and ships such products, respondent represents, and furnishes its wholesale customers in the District of Columbia with the means of representing to the retailer and ultimate purchaser that the said whiskies, gins, 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 and did not distill the said whiskies or other spirituous liquors by it so bottled, sold, and transported.

PAR. 5. The Commission finds that because the trade, as well as the public, has a substantial preference to buy liquors bottled by the actual distillers, the tendency to diversion of trade by respondent's use of the word "Distillers" in its name is plain, particularly with reference to any prospective purchaser who does not know from other sources the particular status of respondent, and the name readily lends itself as a tool to any salesman to be used by him for the purpose of gaining an unfair competitive advantage in competing with an actual distilling company for any particular order of whiskey.

The use by respondent of the term "distillers" in its trade or corporate name upon its invoices, stationery, advertising, and upon the labels attached to the bottles in which it sells and ships its spirituous liquors has a tendency to mislead and deceive wholesalers, retailers and the ultimate purchasers into the belief that in purchasing the same they are purchasing a product bottled at a distillery by the original distiller thereof and this, in turn, tends to and does unfairly divert trade from respondent's competitors to the respondent. Among such

competitors, there are those who, manufacturing spirituous liquors by a process of original and continuous distillation from mash, wort or wash, do truthfully designate themselves as distilling companies and also among such competitors are those in the same class with this respondent, to wit: those who are engaged in that branch of the industry known as the distilled spirits rectifying industry and who, as rectifiers, do not untruthfully designate themselves as "distilleries," "distillers," or "distilling companies."

PAR. 6. The complaint herein was issued May 24, 1935 (which was prior to the decision of the United States Supreme Court, May 27, 1935, in the case of *A. L. A. Schechter Poultry Corporation, et al., vs. United States*, 295 U. S. 495) and contained two counts. Count 1 specifically charged a violation of the Federal Trade Commission Act and count 2 charged that the practices of respondent, as hereinbefore set out, were unfair methods within the meaning of the Federal Trade Commission Act because they were in violation of Section 3 of Title I of the National Industrial Recovery Act which was invalidated by the aforesaid decision.

For this reason the Commission is of the opinion that the complaint should be dismissed as to count 2 thereof.

CONCLUSION

The aforesaid acts and practices of the respondent Montebello Distillers, Inc., a corporation, 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, 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, briefs filed herein, and oral arguments by PGad B. Morehouse, counsel for the Commission, and by Horace J. Donnelly, Jr., counsel for respondent, 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."

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It is ordered, That the respondent Montebello Distillers, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of whiskies, gins and all 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 "Distillers" in its corporate name, on its stationery, advertising or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins, or 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 complaint be, and the same hereby is, dismissed as to count 2 thereof.

It is further ordered, That the said respondent, within 60 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.

Syllabus

IN THE MATTER OF
COSNER CANDY COMPANYCOMPLAINT, MODIFIED FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2619. Complaint, Nov. 9, 1935—Decision, Nov. 13, 1936*

Where a corporation, engaged in manufacture and sale of candy, including both "straight" goods and "break-and-take" and "draw" or "deal" assortments, in which (1) chance selection of one of penny pieces of chocolate covered candies, of uniform size and shape, enclosed pink colored center of small number of which entitled chance purchaser to one of larger pieces or candy bars included therewith, and chance selection of one of still fewer pieces with yellow center entitled purchaser to one of small boxes of candy similarly included, and purchase of last piece entitled buyer, without charge, to larger box of candy included; (2) chance selection of certain numbers entitled penny purchaser to various pieces from similarly made up assortment, in accordance with legend displayed on push card included, and last number punched out entitled purchaser to large box of chocolates; and (3) in which similar assortments involving same principle or sales plan varied in minor detail and adaptation to seasonal variations, such as Easter candy eggs—

Sold said assortments, in competition with many who are unwilling to adopt or use such or any method involving game or sale of chance as contrary to public policy or criminal statutes of certain States or United States, or as detrimental to public morals or those of purchasers of such candy; with explanatory display and push cards, to wholesalers, jobbers and retailers, knowingly packed, assembled, and designed for display, offer, and sale, without alteration, addition or rearrangement, to consuming, purchasing public by lot or chance by retailers, stores of which, in case of small establishments, are frequently near schools and attract trade of children, principal consumer-purchasers of lottery or prize candy assortments, and buyers thereof, given choice, in preference to "straight" goods because of lottery or gambling feature connected therewith and chance of winning, and sale of which "straight goods" candy showed a marked decrease whenever and wherever lottery or prize candy appeared in its markets by reason of such gambling feature;

With result that many competitors dealing in "straight goods" candies only, who regard sale and distribution of other as morally bad and as encouraging gambling, and especially among children, its largest class, by far, of consumer-purchasers, and as injurious to the industry in merchandising, instead of candy, a chance or lottery, and as providing retail merchants with means of violating the laws of the States, and some of whom refuse, for said reasons to sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage, and trade was diverted to it from aforesaid competitors dealing in "straight goods" and able to compete on even terms only by giving same or similar devices to retailers, some competitors began sale and distribution of candy to public by lot or chance to meet demand for candy thus sold, sale of such