

IN THE MATTER OF

C. O. TAYLOR DISTRIBUTING COMPANY

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

Docket 2803. Complaint, May 15, 1936—Decision, Nov. 17, 1936

Where a corporation engaged as wholesale distributor of alcoholic liquors, purchasing bottled whiskies and other distilled spirits and selling the same in substantial competition with those engaged in the manufacture by distillation of whiskies and other distilled spirits or in purchasing and bottling such products and selling the same, thus manufactured or purchased, among the various States and in the District of Columbia, and including among its said competitors those who (1) manufacture the whiskies and other distilled spirits sold by them by process of original distillation from mash, wort, or wash, and truthfully use words "Distillery," "Distilleries," "Distillers," "Distilling," or "Distilled Products," as a part of their corporate or trade names or on their stationery, cartons, and labels of the bottles in which they sell and ship such products; those who, (2) engaged in purchasing, rectifying, blending, and bottling such products, do not use aforesaid words as above set forth; and those who, (3) engaged in the sale of said products, do not misrepresent the kind, quality or proof of the whiskies sold by them or the manner or method by which their products are bottled; and not engaged in "distilling" said whiskies and other spirits sold and transported by it, as long definitely understood in trade and by ultimate purchasing public as meaning manufacture of whiskies and other distilled spirits by process of original distillation from mash, wort, or wash, and not a distiller of the aforesaid products, for purchase of which, direct from the actual distiller, there is a preference on the part of a substantial portion of the purchasing public, and neither owning, operating, nor controlling any place or places where such spirits are made by process of distillation as hereinabove explained—

- (a) Represented, through abbreviation of word "Distributing" to "DIST." in its corporate name and by the printing thereof on stationery, cartons, labels, contracts, and advertising matter used by it, and in various other ways, to its customers, and furnished the same with the means of thus representing to their vendees, both retailers and ultimate consuming public, that it was a distilling company and that the whiskies and other distilled spirits by it sold were by it manufactured through process of distillation from mash, wort, or wash as aforesaid, notwithstanding the fact it was not a distiller and did not thus distill its said products as hereinbefore set out;
- (b) Labeled its said whiskey as "A 100 Percent Straight Bourbon Whiskey 90 Proof," notwithstanding fact that said product was not, as implied to trade and purchasing public from term "100 percent straight whiskey," 100 proof, and was not 100 percent straight whiskey; and
- (c) Set forth on the labels attached to the bottles of whiskies sold and distributed by it that it carefully supervised the bottling thereof, notwithstanding fact it did not thus supervise same and had nothing to do with either its blending or bottling;

Complaint

With effect of misleading and deceiving dealers and purchasing public into belief that the whiskies and other distilled spirits sold by it were by it made and distilled from mash, wort, or wash, and with capacity and tendency to mislead them into erroneous belief that aforesaid whiskey was 100 percent straight whiskey and not less than 100 proof, and that its whiskey had been bottled under its direct supervision, and with effect of inducing dealers and purchasing public, acting in such beliefs, to buy its said whiskies and other distilled spirits and thereby divert trade to it from its competitors who do not make the same or similar misrepresentations; to the substantial injury of 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.

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 C. O. Taylor Distributing Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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, C. O. Taylor Distributing Company, is a corporation organized, created, and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 444 West Grand Avenue, in the city of Chicago, in said State. It is now, and has been for more than one year last past, engaged in the business of a wholesale distributor of alcoholic liquors, purchasing and bottling whiskies and other distilled spirits, and selling the same in a constant course of trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent being engaged in business, as aforesaid, causes its said products, when sold by it, to be transported from its place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State of Illinois and in 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 manu-

Complaint

23 F. T. C.

facture, by distillation, of whiskies and other distilled spirits, or in the business of purchasing and bottling whiskies and other distilled spirits, and in the sale of said products so manufactured or purchased in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. For a long period of time the word "distilling," when used in connection with the liquor industry, 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, the manufacturing of whiskey and other distilled spirits by a process of original distillation from mash, wort, or wash; and a substantial portion of the purchasing public prefers to buy whiskey and other distilled spirits prepared or bottled by the actual distillers thereof.

PAR. 4. In the course and conduct of its business, as aforesaid, by an abbreviation of the word "Distributing" to "DIST." in its corporate name and as printed on stationery, cartons, labels, contracts, and advertising matter used by it in soliciting and obtaining the sale of its products, as aforesaid, 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 distilling company and that the whiskies and other distilled spirits by it sold were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid. As a matter of fact, respondent is not a distiller, does not distill the said whiskies or other distilled spirits by it so sold and transported, and does not own, operate, or control any place or places where such spirits are manufactured by the process of distillation from mash, wort, or wash.

PAR. 5. In the course and conduct of its business, as aforesaid, and as a means or method of furthering and promoting the sale of its said products, respondent further labels its whiskey as follows:

C. O. TAYLOR
A 100 Percent
Straight Bourbon Whiskey
90 Proof

The above statement appearing on the labels of its bottles of whiskey purports to be descriptive of respondent's whiskey and in and by the use of said labels respondent represents that its whiskey so labeled and represented is 100 percent straight whiskey. The term "100 percent straight whiskey" means to the trade and to the purchasing public whiskey that is not less than 100 proof. In truth and in fact, the whiskey labeled, sold, and distributed, as aforesaid, is not 100 proof and is not 100 percent straight whiskey.

PAR. 6. In the course and conduct of its business, respondent represents by labels attached to the bottles of whiskey which it sells and distributes, as aforesaid, that it carefully supervises the bottling of its product; when, in truth and in fact, respondent has nothing to do with the blending or bottling of said product and does not in any manner supervise the bottling of said product.

PAR. 7. There are among the competitors of respondent engaged in the sale of whiskey and distilled spirits, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, the whiskies and other distilled spirits sold by them and who truthfully use the words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of their corporate or trade names and on their stationery, cartons, and 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 and other distilled spirits who do not use the words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of the corporate or trade names, nor on the stationery, cartons, and labels of the bottles in which they sell and ship their said products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the sale of similar whiskies and other distilled spirits who, as a means or method of furthering and promoting the sale of said products, do not misrepresent the kind, quality, or proof of the whiskies sold by them and who do not misrepresent the manner or method by which their products are bottled.

PAR. 8. The representations of respondent, as hereinabove set forth, have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the belief that the whiskies and other distilled spirits sold by respondent are manufactured and distilled by it from mash, wort, or wash; and have the capacity and tendency to mislead and deceive dealers and the purchasing public into the erroneous belief that the whiskey sold by it is 100 percent straight whiskey and not less than 100 proof and that the whiskey sold and distributed by it has been bottled under the direct supervision of respondent itself; and such representations have the capacity and tendency to and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies and other distilled spirits sold by respondent, thereby diverting trade to respondent from its competitors who do not make the same or similar misrepre-

sentations, and thereby respondent does substantial injury to competition in interstate commerce.

PAR. 9. The acts and practices of respondent are to the injury and prejudice of the public and to the competitors of respondent in interstate 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 May 15, 1936, issued, and on May 18, 1936, served its complaint in this proceeding upon respondent, C. O. Taylor Distributing Company, 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, the respondent filed answer thereto, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, briefs and oral arguments of counsel 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, C. O. Taylor Distributing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 444 West Grand Avenue, in the city of Chicago, in said State. It is now, and has been for more than one year last past, engaged in the business of a wholesale distributor of alcoholic liquors, purchasing bottled whiskies and other distilled spirits, and selling the same in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent being engaged in business, as aforesaid, causes its said products, when sold by it, to be transported from its place of business in the State of Illinois to purchasers thereof located in

the various States of the United States other than the State of Illinois and in 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 and other distilled spirits, or in the business of purchasing and bottling whiskies and other distilled spirits, and in the sale of said products so manufactured or purchased in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. For a long period of time the word "distilling," when used in connection with the liquor industry, 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: the manufacturing of whiskey and other distilled spirits by a process of original distillation from mash, wort, or wash; and a substantial portion of the purchasing public prefers to buy whiskey and other distilled spirits prepared or bottled by the actual distillers thereof.

PAR. 4. In the course and conduct of its business, as aforesaid, by an abbreviation of the word "Distributing" to "DIST." in its corporate name and as printed on stationery, cartons, labels, contracts, and advertising matter used by it in soliciting and obtaining the sale of its products, as aforesaid, 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 distilling company and that the whiskies and other distilled spirits by it sold were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid. As a matter of fact, respondent is not a distiller, does not distill the said whiskies or other distilled spirits by it so sold and transported, and does not own, operate or control any place or places where such spirits are manufactured by the process of distillation from mash, wort, or wash.

PAR. 5. In the course and conduct of its business, as aforesaid, and as a means or method of furthering and promoting the sale of its said products, respondent further labels its whiskey as follows:

C. O. TAYLOR
A 100 Percent
Straight Bourbon Whiskey
90 Proof

Findings

23 F. T. C.

The above statement appearing on the labels of its bottles of whiskey purports to be descriptive of respondent's whiskey, and in, and by, the use of said labels respondent represents that its whiskey so labeled and represented is 100 percent straight whiskey. The term "100 percent straight whiskey" means to the trade and to the purchasing public whiskey that is not less than 100 proof. In truth and in fact, the whiskey labeled, sold, and distributed, as aforesaid, is not 100 proof and is not 100 percent straight whiskey.

PAR. 6. In the course and conduct of its business, respondent represents by labels attached to the bottles of whiskey which it sells and distributes, as aforesaid, that it carefully supervises the bottling of its product; when, in truth and in fact, respondent has nothing to do with the blending or bottling of said product and does not in any manner supervise the bottling of said product.

PAR. 7. There are among the competitors of respondent engaged in the sale of whiskey and distilled spirits, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, the whiskies and other distilled spirits sold by them and who truthfully use the words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of their corporate or trade name and on their stationery, cartons, and 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 and other distilled spirits who do not use the words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of the corporate or trade names, nor on the stationery, cartons, and labels of the bottles in which they sell and ship their said products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the sale of similar whiskies and other distilled spirits, who, as a means or method of furthering and promoting the sale of said products, do not misrepresent the kind, quality or proof of the whiskies sold by them, and who do not misrepresent the manner or method by which their products are bottled.

PAR. 8. The representations of respondent, as hereinabove set forth, have the capacity and tendency to, and do, mislead and deceive dealers and the purchasing public into the belief that the whiskies and other distilled spirits sold by respondent are manufactured and distilled by it from mash, wort, or wash; and have the capacity and tendency to mislead and deceive dealers and the purchasing public into the erroneous belief that the whiskey sold by it is 100 percent straight whiskey and not less than 100 proof, and that the whiskey sold and

900

Order

distributed by it has been bottled under the direct supervision of respondent itself; and such representations have the capacity and tendency to, and do, induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies and other distilled spirits sold by respondent, thereby diverting trade to respondent from its competitors who do not make the same or similar misrepresentations, and thereby respondent does substantial injury to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, C. O. Taylor Distributing Company, 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 and the answer of respondent, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, 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, C. O. Taylor Distributing Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of alcoholic liquors in interstate commerce, or in the District of Columbia, forthwith cease and desist from:

(1) Representing, by use of the letters "DIST." 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 words or abbreviations of like import, (a) that it is a distiller of whiskies, gins, or any other alcoholic beverages; (b) that the said whiskies, gins, or other alcoholic 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 manu-

Order

23 F. T. C.

facture thereof is completed, unless and until respondent shall actually own, operate, or control such a place, or places:

(2) Representing, by the term or phrase "100 percent straight whiskey," or word, or words, of like import, on the labels attached to the bottles in which it sells and ships such whiskey, that such whiskey is 100 proof, when such is not the fact.

(3) Representing that it supervises the bottling of its said products, when such is not the fact.

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

A. F. OF L. TRADE UNION COMMITTEE FOR UNEMPLOYMENT INSURANCE AND RELIEF, ET AL.

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

Docket 2531. Complaint, Aug. 30, 1935—Decision, Nov. 18, 1936

Where the initials "A. F. of L.", through their use by the American Federation of Labor and by its local, national, and international labor unions, its affiliated federations, central boards, and local unions, had come to be known and understood by said American Federation of Labor, and its local and other unions and affiliated organizations, etc., as above set forth, and by the general public, as the initials for and designation of said American Federation of Labor, and the word "Federationist," through long use by said American Federation for its magazine "American Federationist," had become known to said American Federation of Labor and its various unions, etc., and to the purchasing public as an abbreviated designation for its aforesaid periodical; and thereafter an unincorporated association of persons and a number of individuals who composed a "national committee" to supervise and direct the activities of said association, including publication and distribution of its magazine—

Made use of the name "A. F. of L. Trade Union Committee for Unemployment Insurance and Relief" and "A. F. of L. Rank and File Federationist" for their said organization and magazine, respectively, notwithstanding fact said organization or association was not a committee of the aforesaid American Federation of Labor and said association or organization's aforesaid magazine, i. e., "A. F. of L. Rank and File Federationist," was not a publication of said American Federation, and use of the aforesaid names was without latter's authority or permission;

With capacity and tendency to mislead and deceive members of such American Federation and the purchasing public into the belief that the aforesaid association or organization was a committee of said American Federation of Labor, and that said "A. F. of L. Rank and File Federationist" was its publication, and to purchase the latter in such erroneous belief, and with result that trade was thereby diverted by said association or organization and individuals from competitors who do not mislead and deceive the purchasing public by the use of names for their publications or associations; 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. Norwood*, trial examiner.

Mr. Edward L. Smith for the Commission.

Mr. Harry Sacher, of New York City, for respondents in general, and *Mr. M. Herbert Syme*, of Philadelphia, Pa., for respondent *A. Fleming*.