

Syllabus

IN THE MATTER OF
IRISH HILLS DISTILLERIES, INC.

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

Docket 2462. Complaint, June 27, 1935—Decision, Nov. 20, 1936

Where a corporation engaged as wholesaler and rectifier of distilled spirits, in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in selling the same to wholesale and retail purchasers in other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by distillation of such beverages and in selling the same as aforesaid, and with those engaged in purchasing, rectifying, blending, bottling, and selling such beverages, and including among its aforesaid competitors those who, as manufacturers and distillers from mash, wort, or wash of whiskies, gins, and other spirituous beverages sold by them, truthfully use 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, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such beverages, do not use such words as aforesaid—

Represented, through use of word "Distilleries" in its corporate name, printed on its stationery and advertising 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 supplied the same with means of representing to their vendee-retailers and ultimate consuming public that it was a distiller and that the whiskies, gins, and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not thus distill such beverages through continuous closed pipes and vessels until manufacture thereof is complete, as definitely understood and implied to the trade and ultimate purchasing public from word "Distilleries," did not own, operate, or control any place or places where such beverages are made by process of distillation as above set forth, and was not a distiller, the products of which are preferentially bought by a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and such public into the belief that it was a distiller and that the whiskies, gins, and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash as aforesaid, and of inducing dealers and purchasing public, acting in such belief, to buy its said whiskies and other said beverages, bottled and sold by it, and thereby divert trade to it from its competitors who do not, by their corporate or trade names or in any other manner, misrepresent that they are manufacturers by distillation as aforesaid of whiskies, gins, and other spirituous beverages; to the substantial injury of competition in commerce:

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

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

Mr. PGad B. Morehouse for the Commission.

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

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Michigan, with its office and principal place of business in the city of Detroit, in said State. It is now, and for more than one year last past has been, engaged in the business of wholesaler and rectifier, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by 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 now, 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 "Distilleries" when used in connection with the liquor industry and the products thereof 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, the places where such liquors are manufactured 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 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 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 it is a distiller and 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, bottling, and selling 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

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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 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 beliefs, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are 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.

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 27, 1935, issued and on June 29, 1935, served its complaint in this proceeding upon respondent, Irish Hills 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 the respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefore an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substituted 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 is a corporation organized, existing, and doing business under the laws of the State of Michigan, with its office and principal place of business at 439 East Congress Street, in the city of Detroit, in said State. It is now, and for more than one year last past has been, engaged in business under a basic permit from the United States Government, which permit is designated "R-426," as a wholesaler and rectifier of distilled spirits, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by 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 now, 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 "Distilleries" when used in connection with the liquor industry and the products thereof 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: the places where such liquors are manufactured 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 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 and advertising, and on the labels attached to the

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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 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, bottling, and selling 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, or on their stationery or advertising, or 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 beliefs that respondent is a distiller and 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 beliefs, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors, who do not by their corporate or trade names, or in any other manner, misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, Irish Hills 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 answer filed herein, dated October 19, 1936, by 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, Irish Hills Distilleries, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of whiskies, gins, or 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 said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins, or other spirituous beverages; or (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

It is further ordered, That the said respondent within 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.

Complaint

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IN THE MATTER OF
AFTA SOLVENTS CORPORATION

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

Docket 2594. Complaint, Oct. 23, 1935—Decision, Nov. 20, 1936

Where a corporation engaged in the manufacture and sale of a liquid cleaning fluid under the designation "Afta" or "Afta Spot Remover," for use in cleaning fabrics, automobile upholstery, rugs, etc.—

Represented, on labels and orally, as the case might be, that said preparation was a spot remover and would remove foreign matter and leave no spot or ring, and would not injure the color or the material of the fabric; facts being that, applied to cottons dyed with either of three dyes in commercial use, it caused some of the color to be dissolved and to run, and, applied to silk, caused a spot or ring to appear where thus applied;

With effect of deceiving and misleading purchasers, wholesale and retail dealers, and members of the public who use such fluids for aforesaid purposes, into believing that such representations were true, and into purchasing its said cleaning fluid instead of the preparations of competitors, in reliance upon said belief, and of thereby diverting unfairly to it trade in such fluids from its competitors; 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.

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Edward E. Reardon 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 Afta Solvents Corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to 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, Afta Solvents Corporation, is a corporation organized under the name Afta Chemical Corporation, on or about April 22, 1930, under the laws of the State of New York. On February 11, 1932, the name of the respondent was changed from Afta Chemical Corporation to Afta Solvents Corporation, and at all