

IN THE MATTER OF
AMBUR 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 2481. Complaint, June 29, 1935—Decision, Nov. 28, 1936

Where a corporation engaged in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in use of a still for producing gin through process of rectification, whereby alcohol purchased, but not produced, by it was redistilled over juniper berries and other aromatics, and in selling its aforesaid various products, in substantial competition with those engaged in manufacture by distillation of whiskies, gins, and other spirituous beverages, and in sale thereof, and with those engaged in purchasing, rectifying, blending, and bottling such products and selling the same among the various States and in the District of Columbia, and including among aforesaid competitors those who manufacture and distill from mash, wort, or wash, as commonly understood, their whiskies and other spirituous beverages and truthfully use words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade name, on their stationery and advertising, and on the labels of the bottles in which they sell and ship their products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not thus use aforesaid words as a part of their corporate or trade names, etc., as above set forth—

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 furnished the same with the means of representing to their vendees, both 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 distill said whiskies, etc., thus bottled, labeled, sold, and transported by it, nor own, operate, or control any place or places where such beverages were made by process of distillation from mash, wort, or wash, as long definitely understood from word "Distilleries" by trade and ultimate purchasing public as meaning places where such liquors are made by process of original and continuous distillation as above set forth, and through continuous closed pipes and vessels until manufacture is complete, and was not a distiller, for purchase of bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading dealers and purchasing public into 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 above set forth, and of inducing dealers and purchasing public, acting in such beliefs, to buy its said whiskies, etc., bottled and sold by it, and diverting thereby trade to it from its competitors who do not, by their corporate or trade names, misrepresent that they are manufacturers by distillation, as above set

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forth, of their products; 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 L. Hornor*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. Walter Drew, of Milwaukee, Wis., 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 Ambur 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 Wisconsin, with its principal office and place of business in the city of Milwaukee, in said State. It is now, and for more than one year last past has been, engaged in the business of 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

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in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent has upon its said premises a still which it uses in the production of gin 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 distiller as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public or the liquor industry. 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, 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 respondent 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, and 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 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 such products, 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 29, 1935, issued, and on July 2, 1935, served its complaint in this proceeding upon respondent, Ambur 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, the Commission by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other

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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 substitute 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 Wisconsin, with its principal office and place of business at 523 North Jackson Street, in the city of Milwaukee, in the said State. It is now, and for more than one year last past has been engaged under basic permit from the United States Government, designated as R-405, in the business of 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. In the course and conduct of its business as aforesaid, respondent has upon its said premises a still which it uses in the production of gin by a process of rectification, whereby alcohol pur-

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chased, 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 distiller as defined by Section 3347 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public or the liquor industry. 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: 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 respondent 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, and 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

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

PAR. 6. Because 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 may call such resulting product "distilled gin" and require that the labels state who distilled it, the Commission has excepted gins so produced by respondent from the application of its order.

CONCLUSION

The aforesaid acts and practices of the respondent, Ambur 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 23, 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

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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, Ambur Distilleries, Inc., its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of whiskies, gins, and other spirituous beverages in interstate commerce or in the District of Columbia (except gins by it produced through redistillation of tax-paid aromatics), do forthwith cease and desist from representing:

Through the use of the word "Distilleries" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships its said products, or in any other way by word or words of like import, (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 wherein 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 complete, 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.

IN THE MATTER OF
KROEKEL-OETINGER, INC.

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

Docket 2763. Complaint, Apr. 13, 1936—Decision, Nov. 28, 1936

Where a corporation engaged in the manufacture and sale of candy, including assortments, which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, and consisted of a number of penny pieces of uniform size and shape, together with a number of larger pieces to be given as prizes to those purchasers of said uniform pieces who secured, by chance, pieces, the enclosed colored centers of which differed in color from those of the majority—

Sold to wholesalers and retailers direct, for resale to the purchasing public in accordance with aforesaid sales plan, said assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its said products, in accordance with such plan, as a means of inducing purchasers thereof to buy its said product, thus sold, in preference to candy offered and sold by competitors; contrary to public policy, long recognized by the common law and criminal statutes, and to the established public policy of the United States Government, and in competition with many who, unwilling to offer or sell their candy so packed and assembled or otherwise arranged and packed for sale to the purchasing public as to involve a game of chance, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing said product and by element of chance involved in sale thereof as aforesaid, and were thereby induced to purchase such candy, thus packed and sold by it, in preference to that offered and sold by competitors who do not use same or equivalent methods, and with tendency and capacity to divert to it trade and custom from its said competitors who do not use such practices, exclude from said trade all competitors who are unwilling to and do not use such a practice because unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other candy distributors as do make use thereof, deprive purchasing public of benefit of free competition in trade involved, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or an equivalent practice:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. David H. Kinley, of Philadelphia, Pa., for respondent.