

Syllabus

IN THE MATTER OF
GOLD SEAL DISTILLERS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2425. Complaint, June 5, 1935—Decision, Dec. 3, 1936*

Where a corporation engaged in purchasing and bottling whiskies, gins, and other spirituous beverages and in the sale thereof to wholesalers and retailers, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in sale thereof, and with those engaged in purchasing, rectifying, blending, and bottling, or in purchasing and bottling, such products, and respectively 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," "distillers," or "distilling" as part of their corporate or trade names and on their stationery 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, or in purchasing, bottling, and selling at wholesale, such various products, do not use aforesaid words as a part of their corporate or trade names, etc., as above set forth—

Represented, through use of word "Distillers" in its corporate name, printed on its stationery and on the labels attached to bottles in which it sold and shipped its said products, and in various other ways, to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that the said whiskies, gins, and other spirituous beverages contained in said bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact they did not distill said whiskies, etc., thus bottled, labeled, sold, and distributing 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 "Distillers" by trade and ultimate purchasing public as meaning places where such liquors are made by aforesaid process, and it was not a distiller, for the 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 and deceiving dealers and purchasing public into belief 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 belief, to buy its said whiskies, etc., bottled and sold by it, and of diverting thereby 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 above set forth, of their products; to the substantial injury of competition and commerce:

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

Complaint

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

Mr. PGad B. Morehouse for the Commission.

Mr. Philip B. Heller, of Chicago, Ill., 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 Gold Seal Distillers, 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 Illinois with its office and principal place of business in Chicago, in said State. It is now, and for more than one year last past has been, engaged in the business of purchasing 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 other States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Illinois 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 individual 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; 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 and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale 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 with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturers of such liquors by the process of distillation from mash, wort, or wash, and a substantial portion of the purchasing public prefers to buy spirituous liquors 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 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 said whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and respondent 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, 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 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 "distilling," "distillery," "distilleries," or "distillers" as a part of their corporate or trade names, nor on their stationery, nor on the labels attached to 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 business of purchasing, bottling, and selling at wholesale whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate names, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The 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, 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 to respondent from its competitors who do not by their corporate 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 5, 1935, issued and served its complaint in this proceeding upon respondent, Gold Seal Distillers, 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 therefor 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 Illinois, with its office and principal place of business at 78 West Van Buren Street, in the city of Chicago, in said State. It is now, and for more than one year last past has been, engaged in the business of purchasing 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 other States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Illinois 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; 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 and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale 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 with the products thereof, has had, and still has, a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit: the manufacturers of such liquors by the process of distillation from mash, wort, or wash, and a substantial portion of the purchasing public prefers to buy spirituous liquors 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 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 said whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and respondent 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 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 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 "distilling," "distillery," "distilleries," or "distillers" as a part of their corporate or trade names, or on their stationery, or on the labels attached to 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 business of purchasing, bottling, and selling at wholesale whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate names, or on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The 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, 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 to respondent from its competitors who do not by their corporate 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, Gold Seal Distillers, 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 22, 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, Gold Seal Distillers, 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 "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

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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.

Syllabus

IN THE MATTER OF

VALLEY SPRINGS DISTILLERY, INC.

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

Docket 2478. Complaint, June 28, 1935—Decision, Dec. 3, 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 producing gin by process of rectification whereby alcohol, purchased but not produced by it, was by it redistilled over juniper berries and other aromatics, and in selling aforesaid various products to wholesalers and retailers in other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by true distillation of whiskies, gins, and other spirituous liquors from mash, wort, or wash, and in the sale thereof among the various States and in the District of Columbia, and with those engaged in purchasing, rectifying, blending, and bottling whiskies and other spirituous liquors and in selling the same as aforesaid, and including among its said competitors those who, as manufacturers and distillers from mash, wort, or wash of whiskies, etc., sold by them, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as part of their corporate or trade names and on their stationery, catalogues, 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 various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distillery" in its corporate name, printed on its stationery, catalogues, advertising, and labels attached to bottles in which it sold and shipped its said products, and by express representation on its letterheads 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 liquors contained in its bottled products, labeled as above set forth, were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not distill said whiskies, gins, and other spirituous liquors thus bottled, labeled, sold, and transported by it, nor own, operate, or control any place or places where such spirituous liquors are made by process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels, until manufacture is complete, as long definitely understood from word "Distilleries" in the trade and by the ultimate purchasing public, as meaning the place where spirituous liquors are thus made, and it was not a distiller, for the 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 and deceiving dealers and purchasing public into belief that it was a distiller and that the whiskies, gins, and other spirituous liquors sold by it were by it made or distilled from mash, wort, or wash, as above set forth, and of inducing dealers and purchasing public, acting in such belief, to buy its said whiskies, etc., rectified and bottled