

IN THE MATTER OF  
NAT D. GOLDBERG, TRADING AS SUNSET DISTILLING  
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3  
OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933<sup>1</sup>

*Docket 2416. Complaint, May 27, 1935—Decision, Dec. 12, 1936*

Where an individual engaged as wholesaler and rectifier of distilled spirits in blending and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages, in a rectifying plant and under rectifier's permit, and in selling his aforesaid various products to wholesalers and distributors in substantial competition with those engaged in the manufacture, by true distillation, of gins, rums, and other spirituous beverages from mash, wort, or wash, and in selling same in trade and commerce among the various States and in the District of Columbia, and with those engaged in purchasing, rectifying, blending, and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in rectifying plants and under rectifiers' permits, and in similarly selling the same, and including among said competitors those who, as manufacturers and distillers from mash, wort, or wash of gins, rums, 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, and bottling cordials and other spirituous beverages as hereinbefore set forth, do not, as hereinbefore set forth, use said words—

Represented, through use of word "Distilling" in his trade name, printed on his stationery and on the labels attached to the bottles in which he sold and shipped his said products, and in various other ways, to his customers, and furnished them with the means of thus representing to their vendees, both retailers and ultimate consuming public, that the said cordials, brandies, liqueurs, rums, gins, and other spirituous beverages contained in such bottles were by him made through process of distillation from mash, wort, or wash, notwithstanding fact he did not thus distill said various beverages, thus bottled, labeled, sold, and transported by him, by original and continuous distillation, as above set forth, and through continuous closed pipes and vessels until manufacture is complete, as long definitely understood and implied to trade and ultimate purchasing public from word "Distilling," and did not own, operate, or control any place or places where alcoholic beverages are thus made, and was not a distiller, for the purchase of the 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 the belief that the cordials, brandies, liqueurs, gins, rums, and other spirituous beverages sold by him were by him made and distilled from mash, wort, or

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<sup>1</sup> Count Two of the complaint, under the National Industrial Recovery Act, dismissed by reason of decision in *A. L. A. Schechter Poultry Corp. v. U. S.*, 295 U. S. 493.

wash, as above set forth, and of inducing dealers and purchasing public, acting in such belief, to buy his said rectified and bottled spirituous beverages, and of thereby diverting trade to him from his 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 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.

### 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 Nat D. Goldberg, trading as Sunset Distilling Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and in violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act," and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

#### *Count 1*

PARAGRAPH 1. Respondent is an individual, Nat D. Goldberg, doing business under the trade name Sunset Distilling Company, with principal office and place of business at 125 North Racine Avenue, in the city of Chicago, in the State of Illinois. He is now, and for more than one year last past, has been engaged in the business of blending and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in a rectifying plant under a rectifier's permit, 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 his said business he causes his said products when sold to be transported from his place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and distributors, 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 his business as aforesaid, respondent is now, and for more than one year last past has been, in substantial

competition with corporations and with other individuals, partnerships, and firms engaged in the manufacture by true distillation of gins, rums, and other spirituous beverages from mash, wort, or wash, 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 his business as aforesaid respondent is, and for more than one year last past has been, in substantial competition with corporations and with other individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in rectifying plants under rectifiers' permits 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 "distilling" 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 manufacture of spirituous beverages by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of his business as aforesaid, by the use of the word "Distilling" in his trade name, printed on his stationery and on the labels attached to the bottles in which he sells and ships his said products, and in various other ways, respondent represents to his customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said cordials, brandies, liqueurs, rums, gins, and other spirituous beverages therein contained were by him 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 spirituous beverages by him so bottled, labeled, sold, and transported. Respondent does not own, operate, or control any place or places where alcoholic beverages are manufactured by process of original and continuous 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 gins, rums, 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, advertising and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships and individuals engaged in the business of purchasing, rectifying, blending, and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in rectifying plants under rectifiers' permits who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, advertising 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 a capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the cordials, brandies, liqueurs, gins, rums, and other spirituous beverages sold by the respondent are manufactured or distilled by him from mash, wort, or wash by one continuous process 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 spirituous beverages rectified and bottled by the respondent, thereby diverting trade to respondent from his competitors who do not by their corporate or trade name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

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

### *Count 2*

PARAGRAPHS 1. Respondent is an individual, Nat D. Goldberg, doing business under the trade name Sunset Distilling Company, with principal office and place of business at 125 North Racine Avenue, in the city of Chicago, in the State of Illinois. He is now, and for more than one year last past has been, engaged in the business of blending and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in a rectifying plant under a rectifier's permit, and in the sale thereof in constant course of trade and commerce between

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and among the various States of the United States and in the District of Columbia. In the course and conduct of his said business he causes his said products when sold to be transported from his place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and distributors, 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 his business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with corporations and with other individuals, partnerships, and firms engaged in the manufacture by true distillation of gins, rums, and other spirituous beverages from mash, wort, or wash, 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 his business as aforesaid respondent is, and for more than one year last past has been, in substantial competition with corporations and with other individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in rectifying plants under rectifiers' permits and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

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

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

Under and pursuant to the delegation of such powers, the said Secretary of Agriculture pursuant to Section 3 (d) of the Act and Executive Orders under the Act, upon his own motion presented a

Code of Fair Competition for the Distilled Spirits Rectifying Industry after due notice and opportunity for hearing in connection therewith had been afforded interested parties, including respondent, in accordance with Title I of the National Industrial Recovery Act and applicable regulations issued thereunder, to the President of the United States who approved the same on the 9th day of December 1933, thereby constituting the said code a Code of Fair Competition within the meaning of the said National Industrial Recovery Act, for the regulation of the aforesaid industry.

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

That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of said Act in that the terms and provisions of such Code tend: (a) to remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

By his approval of the said code on December 9, 1933, the President of the United States, pursuant to the authority vested in him by Title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive Order, wherein he adopted and approved the report, recommendations and findings of the said Secretary of Agriculture, and ordered that the said Code of Fair Competition be, and the same thereby was approved, and by virtue of the National Industrial Recovery Act aforesaid, the following provision of Article V of said Code became and still is one of the standards of fair competition for the Distilled Spirits Rectifying Industry and is binding upon every member of said Industry and this respondent:

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

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

PAR. 7. The use by respondent of the word "Distilling" in his trade name, printed on his stationery and on the labels attached to the bottles in which he sells and ships such products and in various other ways, constitutes false advertising within the meaning of the

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aforesaid provision of said Article V and tends to and does create the misleading impression that respondent is engaged in the business of distilling gins, rums, and other spirituous beverages from mash, wort, or wash, and that the cordials, brandies, liqueurs, gins, rums, and other spirituous beverages by him so sold and transported have been bottled by the original distillers thereof and that the gins and rums rectified, blended and sold by respondent have been produced by a true process of distillation, all contrary to the provisions of Section 1, Article V, of the Code aforesaid.

PAR. 8. The above alleged methods, acts and practices of the respondent are and have been in violation of the standard of fair competition for the Distilled Spirits Rectifying Industry of the United States. Such violation of such standard in the aforesaid transactions in interstate commerce and other transactions which affect interstate commerce in the manner set forth in paragraph 5 of count 1 hereof, are in violation of Section 3 of Title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on May 27, 1935, issued and served its complaint in this proceeding upon respondent Nat D. Goldberg, trading as Sunset Distilling Company, charging him 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 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 an individual trading under the name and style of Sunset Distilling Company, with principal office and place of business at 125 North Racine Avenue, in the city of Chicago, in the State of Illinois. He 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-526," as a wholesaler and rectifier of distilled spirits, blending and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in a rectifying plant under a rectifier's permit, 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 his said business he causes his said products, when sold, to be transported from his place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and distributors, 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 his business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with corporations and with other individuals, partnerships, and firms engaged in the manufacture by true distillation of gins, rums, and other spirituous beverages from mash, wort, or wash, 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 his business as aforesaid respondent is, and for more than one year last past has been, in substantial competition with corporations and with other individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in rectifying plants under rectifiers' permits 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 "distilling" 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 manufacture of spirituous beverages by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing

public prefers to buy spirituous liquors bottled and prepared by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of his business as aforesaid, by the use of the word "Distilling" in his trade name, printed on his stationery and on the labels attached to the bottles in which he sells and ships his said products, and in various other ways, respondent represents to his customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said cordials, brandies, liqueurs, rums, gins, and other spirituous beverages therein contained were by him 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 spirituous beverages by him so bottled, labeled, sold, and transported. Respondent does not own, operate, or control any place or places where alcoholic beverages are manufactured by process or original and continuous 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, gins, rums, 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, advertising and on the labels of the bottles in which they sell and ship such products. There are also among such competitors, corporations, firms, partnerships and individuals engaged in the business of purchasing, rectifying, blending, and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in rectifying plants under rectifiers' permits who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, or on their stationery, advertising 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 a capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the cordials, brandies, liqueurs, gins, rums, and other spirituous beverages sold by the respondent are manufactured or distilled by him from mash, wort, or wash by one continuous process 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 spirituous beverages rectified and bottled by the respondent, thereby diverting trade to respondent from his competitors who do not by their corporate or trade name or in any other manner misrep-

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resent that they are manufacturers by distillation from mash, wort, or wash of spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The complaint herein was issued May 27, 1935, on the same day that the decision of the United States Supreme Court in the case of A. L. A. Schechter Poultry Corporation vs. U. S., 295 U. S. 495, was handed down, but before notice of it had been received by the Commission. Count 2 of the complaint charged violation of Section 3 of Title I of the National Industrial Recovery Act which was invalidated by the aforesaid decision. For that reason the Commission has ordered the complaint dismissed as to count 2 thereof.

#### CONCLUSION

The aforesaid acts and practices of the respondent Nat. D. Goldberg, trading as Sunset Distilling Company, 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 27, 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, Nat D. Goldberg, trading as Sunset Distilling Company, his officers, representatives, and employees, and his agents, corporate or individual, 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 "Distilling" in his trade name, on his stationery, advertising or on the labels attached to the bottles in which he sells and ships said products, or in any other way by word or words of like import, (a) that he is a distiller of

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whiskies, gins, or other spirituous beverages; or (b) that the said whiskies, gins, or other spirituous beverages were by him manufactured through the process of distillation; or (c) that he owns, operates, or controls a place or places where such products are by him manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

*It is further ordered*, That the said complaint be and it is hereby dismissed as to count 2 thereof.

*It is further ordered*, That the said respondent within 60 days from and after the date of the service upon him of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which he is complying and has complied with the order to cease and desist hereinabove set forth.

## Syllabus

## IN THE MATTER OF

H. E. MARTINDALE, TRADING AS FEDERAL INSTITUTE  
OF MEATS & MARKETING

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 2734. Complaint, Feb. 29, 1936—Decision, Dec. 14, 1936*

Where an individual engaged in distributing and selling, from his place of business in a Michigan city, correspondence courses in butchering and meat packing, and in selling books, booklets, and pamphlets to those subscribing to and purchasing his said courses, in substantial competition with those similarly engaged and with those engaged in the business of teaching butchering and meat packing, etc., in ways other than through correspondence courses, in commerce among and between the various States and in the District of Columbia, and including among such competitors many who distribute and sell their courses without in any way misrepresenting the character, quality, size, scope, or connection with the United States Government, of their respective businesses, demand for pupils who have successfully completed their courses, or degree of proficiency that will be acquired by their pupils upon successful completion of the course—

- (a) Featured in his various advertising literature, including advertisements printed and circulated throughout the various States to pupils and prospective pupils, and extensively used questionnaires, circular letters, enrollment blanks, etc., his trade name, including words "Federal Institute," and made use of such words as "Chief of Examiners," "Board of Examiners," "Examiners," "Assistant Examiners," and "Divisional Director," notwithstanding fact neither said individual nor the business conducted by him under aforesaid name was in any way connected with, licensed, or approved by any branch or bureau of the United States Government;
- (b) Included along with his aforesaid trade name, words "Washington, D. C.," and followed his own name with term "Divisional Director," and made use of words "Central States Office," and made such statements therein as "This survey \* \* \* now being conducted in Wisconsin, is part of a nation-wide project, Wisconsin being the first state in the middle-west section (Central States Division) to be contacted," and "Due to the limited time allotted for the completion of this survey, we are resorting to the mails," etc., and depicted in certain portions of his advertising a large building, together with his aforesaid trade name, facts being the business thus conducted by him was not operated on a nation-wide or wide-spread basis covering many States, or conducted on a large and substantial basis, pupils and prospective pupils had been contacted only in a very few States, so-called "Central States Office" in said Michigan city was in reality the home and sole office of the business, which rented only a comparatively small office space in building depicted as aforesaid, and said individual or business did not, as represented, have Washington office; and
- (c) Represented, in his aforesaid advertising literature, that "The field of operation in this industry is nation-wide," and that "among many opportunities indicated are those of: buyer-shipper-inspection," etc., and that,