

IN THE MATTER OF
FORT CLARK 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 2949. Complaint, Oct. 16, 1936—Decision, Dec. 21, 1936

Where a corporation engaged, as rectifier and wholesaler of distilled spirits, in purchasing and bottling whiskies, gins, and other spirituous beverages, including product by it branded as "Prescription Whiskey," and in making gin with a still which it used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products in trade and commerce among the various States and in the District of Columbia, in substantial competition with those engaged in manufacture by true distillation of whiskies, gins, and other spirituous beverages from mash, wort, or wash, and in sale thereof as aforesaid, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and in similarly selling same, and including among said 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, advertising, and labels of the bottles in which they sell and ship such products, and those who, engaged in purchasing, rectifying, blending, and bottling such various products, do not use aforesaid words as above set forth, and also with those who do not misrepresent the strength, quality, or purity of their whiskies nor that such products are specially produced for medicinal use—

- (a) Represented, through use of word "Distilleries" in its corporate name, printed on its stationery 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 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 such various beverages thus bottled, labeled, sold, and transported by it, and did not own, operate, or control any place where alcoholic liquors are made by original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture thereof is complete, as long definitely understood in trade and by ultimate purchasing public from word "distillery," and was not a distiller, for the purchase of the bottled products of which there is a preference on the part of a substantial portion of the purchasing public; and
- (b) Represented and implied, by various references to its "Prescription" Brand whiskey and to physicians, hospitals, and nurses and the United States Pharmacopoeia, in advertising booklets attached to each bottle, that its aforesaid whiskey conformed to the requirements thereof or was of a kind, nature, and quality superior to the standard of whiskey speci-

fied therein for medicinal use, and that it had been endorsed by the medical profession generally and was a superior brand of such product, specially distilled and prepared for distribution for medicinal use, through such statements, among others, as that its said "Prescription" Brand was "prepared for nurses, hospitals, and physicians," and through statements stressing purity and requirements of the physician, compliance with the Food and Drug Act, specifications of the Pharmacopoeia, potability, uniformity, etc., "the purest money can buy," etc., notwithstanding fact that content of said product in esters did not meet specifications of the Pharmacopoeia, had not been aged for four years or more in the wood, as required thereby, but, on the contrary, was made from new beverage whiskey treated in charred wood containers under a certain process for about five days only, prior to bottling for sale, and in no wise conformed to the standards of strength, quality or purity of so-called medicinal whiskey, and in various other ways was not the kind or quality of said product represented by it, and was adulterated and inferior to the standards referred to;

With effect of misleading and deceiving dealers and purchasing public into the beliefs that the whiskies, gins, and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash by one continuous process, and that its aforesaid "Prescription" Brand whiskey was of the strength, quality, and purity specified by the Pharmacopoeia for medicinal whiskey, and of inducing dealers and purchasing public, acting in such beliefs, to buy its said whiskies, etc., rectified and bottled by it, and of thereby diverting trade to it from its 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 whiskies, gins, or other such beverages, or misrepresent the strength, quality, or purity of their whiskies; 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.

Mr. PGad B. Morehouse for the Commission.

Miller, Elliott & Westervelt, of Peoria, 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 Fort Clark Distilleries, Inc., a corporation, 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 at 915 Forsythe Street, in the city of Peoria, in said State. It is now, and since the 24th day of June 1935, has been, engaged in the business of manufacturing and bottling whiskies, gins, and other spirituous beverages, including a product by it branded as "Prescription" Whiskey, in a rectifying plant under a rectifier's permit, and in the sale thereof and constant course of trade in 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, respondent causes its said products, when sold, to be transported from its place of business aforesaid into and through the various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in States of the United States other than the State of Illinois, and in the District of Columbia.

In the course and conduct of its business, as aforesaid, respondent is now, and since the 24th day of June 1935, has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, 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 its business, as aforesaid, respondent is, and since the 24th day of June 1935, has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business purchasing, rectifying, blending, and bottling whiskies, 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. Upon the premises of respondent's place of business aforesaid, there is a still for use in the production of gins 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 distillery or a distiller, as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. For a long period of time the word "distillery" 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, a place where such alcoholic liquors are manufactured 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 its business as aforesaid, by the use of the word "Distilleries" 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, and other spirituous beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still operated by it, as aforesaid, in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics, does not distill the whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported in the sense in which the word "distilled" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where such alcoholic beverages are manufactured by a process of original and continuous distillation from mash, wort, or wash.

PAR. 4. In the course and conduct of its business, as aforesaid, in connection with the sale and distribution of its so-called "Prescription" Brand Whiskey, respondent caused to be attached to each bottle thereof an advertising booklet, in which respondent represents to its vendees, and thereby furnishes them with the means of so representing to the ultimate purchasers and consumers of said whiskey, in part as follows:

(BOTTLE LABEL): PRESCRIPTION BRAND STRAIGHT BOURBON WHISKEY "CHEMICALLY ASSAYED"

Prescription Brand Whiskey is * * * standardized straight bourbon whiskey, prepared for nurses, hospitals, and physicians.

(BOOKLET): PRESCRIPTION WHISKEY (Chemically Assayed)

PRESCRIPTION WHISKEY for the MEDICAL PROFESSION Rx

* * * U. S. Food and Drug Acts have been complied with in the manufacture of this *Prescription Whiskey*.

PURITY: The Physician requires that his *Digitals* be physiologically tested and standardized. Why not the same *caution* for the *Doctor's Prescription Whiskey*?

* * *

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Spirits Frumenti, U. S. P. specifically state that whiskey shall be aged in charred oak barrels for a period of four years, but they forget to specify from what proofed distilled spirits distillate, reduced to proper proof, should be used. Should the requirements be that of 110° proof spirits distillate or any degree of proof spirits distillate up 159° reduced to proper proof? (Any distillate distilled above 159° proof is classified as alcohol and cannot be called whiskey.)

* * *

POTABILITY: The Nurse is desirous of all pharmaceuticals that are to be administered, to be highly potable, thus eliminating all possibility of nausea and stomach disturbance, so as not to cause any discomfort of her patient. Why not the same caution for the Doctor's Prescription Whiskey?

* * *

159° proof spirit distillate of the *proper kind* is the *starting point* in the making of *Prescription Whiskey*.

* * *

Prescription Whiskey, which is the result of this technique, is recognized by the *Medical Profession*.

Do not confuse *Prescription Whiskey* with whiskies of U. S. P. requirements in purity.

Controlled *purity* and *standardized constituents* make it a pharmaceutical for the physician's use.

UNIFORMITY: The Pharmacist is required to use discretion in dispensing U. S. P. and C. P. drugs and chemicals. Why not the same *caution* for the Doctor's *Prescription Whiskey*?

THE PUREST MONEY CAN BUY

PRESCRIPTION WHISKEY is prepared especially for the use of the physician who recognizes the need for combining purity of product with accessibility of price. Its standards of excellence, going beyond U. S. P. requirements for purity, make it the ideal stipulation for the physician who wishes to direct his patient to the best.

The physician knows how essential is purity in the use of whiskey as a specific. He knows the lack of scruple which has characterized the manufacture of many products intended to be taken into the body.

In Prescription Whiskey he finds the ideal answer to his problem. It is well flavored and palatable, it is not priced at the excessive figure established for other whiskies approaching it in purity. It is chemically assayed for your protection.

For Your Patients: Prescription Whiskey superior to U. S. P. requirements for **PURITY**

By means of the foregoing statements and representations, respondent in substance and effect represents that the said "Prescription" Brand Whiskey is of a kind, nature and quality superior to the standard of whiskey specified for medicinal use in the United States Pharmacopoeia, whereas, in truth and in fact, the whiskey is adulterated, is inferior to, and does not conform to, the standards of whiskey there specified, in that, to wit, the United States Pharmacopoeia specifies that whiskey contains in 50 cc. esters equivalent to not less than 1.7 cc. of tenth-normal sodium hydroxide, and respondent's said "Pre-

scription" brand contains esters in 50 cc. equivalent to 1 cc. of tenth-normal sodium hydroxide. Also, the standard of the whiskey specified for medicinal use in the United States Pharmacopoeia aforesaid requires such article to be aged in the wood for four years or more, and respondent's "Prescription" brand Whiskey has not been aged in the wood for four years or more.

By its aforesaid references to "Prescription" Brand and to physicians, hospitals, nurses, and the United States Pharmacopoeia (U. S. P.), respondent directly and impliedly represents that its whiskey conforms to the requirements of the Pharmacopoeia, has been endorsed by the medical profession generally, and is a superior brand of whiskey specially distilled and prepared for distribution for medicinal use, when, as a matter of fact, the article is made from new beverage whiskey, treated in charred wood containers at an elevated temperature for a period of approximately five days, after which it is bottled for sale and sold, and in no wise conforms to the standards of strength, quality or purity of so-called medicinal whiskey, and in various and divers other ways is not the kind or quality of whiskey as represented by respondent.

PAR. 5. 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, 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 whiskies, 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.

There are also among such competitors corporations, firms, partnerships, and individuals who do not misrepresent the strength, quality, or purity of whiskies by them sold in interstate commerce, nor that such whiskies are specially produced for medicinal use.

PAR. 6. The representations by respondent, as hereinbefore set forth, are calculated to and have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that the whiskies, gins, and other spirituous beverages sold

by the respondent are manufactured and distilled by it from mash, wort, or wash by one continuous process, and that its "Prescription" Brand Whiskey is of the strength, quality, and purity specified by the United States Pharmacopoeia for whiskey designed to be used medicinally, and are calculated to and have the capacity and tendency to and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskeys, gins, and other spirituous beverages rectified and bottled by the respondent, thereby diverting trade to respondent from its 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 whiskeys, gins, or other spirituous beverages, or misrepresent the strength, quality or purity of their whiskeys, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 7. 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 October 16, 1936, issued and served its complaint in this proceeding upon respondent, Fort Clark 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 respondent's answer, dated November 25, 1936, was duly filed in the office of the Commission by which said answer respondent admitted all the material allegations of the complaint to be true and waived the taking of further evidence and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent 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 915 Forsythe Street in the city of Peoria in said State. It is now, and since June 24, 1935, has been, engaged in business as a rectifier and wholesaler of distilled spirits, operating since November 23, 1935, under a basic permit, No. R-643, issued by the Federal Alcohol Administration. Its business consists of purchasing and bottling whiskies, gins, and other spirituous beverages, including a product by it branded as "Prescription Whiskey," 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 its said business, respondent causes its said products, when sold, to be transported from its place of business aforesaid into and through the various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in States of the United States other than the State of Illinois, and in the District of Columbia.

In the course and conduct of its business, as aforesaid, respondent is now, and since the 24th day of June 1935, has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, 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 its business, as aforesaid, respondent is, and since the 24th day of June 1935, 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 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. Upon the premises of respondent's place of business aforesaid, there is a still for use in the production of gins 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 distillery or a distiller, as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. For a long period of

Findings

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time the word "distillery" 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, a place where such alcoholic liquors are manufactured 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 its business as aforesaid, by the use of the word "Distilleries" 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, and other spirituous beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still operated by it, as aforesaid, in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics, does not distill the whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported in the sense in which the word "distilled," is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate or control any place or places where such alcoholic beverages are manufactured by a process of original and continuous distillation from mash, wort, or wash.

PAR. 4. In the course and conduct of its business, as aforesaid, in connection with the sale and distribution of its so-called "Prescription" Brand Whiskey, respondent caused to be attached to each bottle thereof an advertising booklet, in which respondent represents to its vendees, and thereby furnishes them with the means of so representing to the ultimate purchasers and consumers of said whiskey, in part as follows:

(BOTTLE LABEL): PRESCRIPTION BRAND STRAIGHT BOURBON WHISKEY "CHEMICALLY ASSAYED"

Prescription Brand Whiskey is * * * standardized straight bourbon whiskey, prepared for nurses, hospitals, and physicians.

(BOOKLET): PRESCRIPTION WHISKEY (Chemically Assayed)

PRESCRIPTION WHISKEY for the MEDICAL PROFESSION Rx

* * * U. S. Food and Drug Acts have been complied with in the manufacture of this *Prescription Whiskey*.

PURITY: The Physician requires that his *Digitalis* be physiologically tested and standardized. Why not the same *caution* for the *Doctor's Prescription Whiskey*?

* * *

Spirit Frumenti, U. S. P. specifically state that whiskey shall be aged in charred oak barrels for a period of four years, but they forget to specify from what proofed distilled spirits distillate, reduced to proper proof, should be used. Should the requirements be that of 110° proof spirits distillate or any degree of proof spirits distillate up to 159° reduced to proper proof? (Any distillate distilled above 159° proof is classified as alcohol and cannot be called whiskey.)

* * *

POTABILITY: The Nurse is desirous of all pharmaceuticals that are to be administered, to be highly potable, thus eliminating all possibility of nausea and stomach disturbance, so as not to cause any discomfort of her patient. Why not the same caution for the *Doctor's Prescription Whiskey*?

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159° proof spirit distillate of the *proper kind* is the starting point in the making of *Prescription Whiskey*.

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Prescription Whiskey, which is the result of this technique, is recognized by the *Medical Profession*.

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UNIFORMITY: The Pharmacist is required to use discretion in dispensing U. S. P. and C. P. drugs and chemicals. Why not the same *caution* for the *Doctor's Prescription Whiskey*?

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The physician knows how essential is purity in the use of whiskey as a specific. He knows the lack of scruple which has characterized the manufacture of many products intended to be taken into the body.

In *Prescription Whiskey* he finds the ideal answer to his problem. It is well flavored and palatable, it is not priced at the excessive figure established for other whiskies approaching it in purity. It is chemically assayed for your protection.

For your Patients: *Prescription Whiskey* superior to U. S. P. requirements for **PURITY**.

By means of the foregoing statements and representations, respondent in substance and effect represents that the said "Prescription" Brand Whiskey is of a kind, nature and quality superior to the standard of whiskey specified for medicinal use in the United States

Pharmacopoeia, whereas, in truth and in fact, the whiskey is adulterated, is inferior to, and does not conform to, the standards of whiskey there specified, in that, to wit, the United States Pharmacopoeia specifies that whiskey contains in 50 cc. esters equivalent to not less than 1.7 cc. of tenth-normal sodium hydroxide, and respondent's said "Prescription" brand contains esters in 50 cc. equivalent to 1 cc. of tenth-normal sodium hydroxide. Also the standard of the whiskey specified for medicinal use in the United States Pharmacopoeia aforesaid requires such article to be aged in the wood for four years or more, and respondent's "Prescription" Brand Whiskey has not been aged in the wood for four years or more.

By its aforesaid references to "Prescription" Brand and to physicians, hospitals, nurses, and the United States Pharmacopoeia (U. S. P.), respondent directly and impliedly represents that its whiskey conforms to the requirements of the Pharmacopoeia, has been endorsed by the medical profession generally and is a superior brand of whiskey specially distilled and prepared for distribution for medicinal use, when, as a matter of fact, the article is made from new beverage whiskey, treated in charred wood containers at an elevated temperature for a period of approximately five days, after which it is bottled for sale and sold, and in no wise conforms to the standards of strength, quality or purity of so-called medicinal whiskey, and in various and divers other ways is not the kind or quality of whiskey as represented by respondent.

PAR. 5. 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, 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 whiskies, 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.

There are also among such competitors corporations, firms, partnerships, and individuals who do not misrepresent the strength, quality,

or purity of whiskies by them sold in interstate commerce, nor that such whiskies are specially produced for medicinal use.

PAR. 6. The representations by respondent, as hereinbefore set forth, are calculated to and have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that the whiskies, gins and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort or wash by one continuous process, and that its "Prescription" Brand Whiskey is of the strength, quality, and purity specified by the United States Pharmacopoeia for whiskey designed to be used medicinally, and are calculated to and have the capacity and tendency to and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other spirituous beverages rectified and bottled by the respondent, thereby diverting trade to respondent from its 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 whiskies, gins, or other spirituous beverages, or misrepresent the strength, quality, or purity of their whiskies, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 7. Because of existing regulations, under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. 977), which regulations became effective August 15, 1936, providing that rectifiers who redistill purchased alcohol over juniper berries and other aromatics may sell such resulting product as "distilled gin," and requiring that the labels state who distilled it, the Commission has excepted gins produced by respondent by redistillation of alcohol over juniper berries and other aromatics from the prohibitions of its order.

CONCLUSION

The aforesaid acts and practices of the respondent Fort Clark 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 of respondent, in which answer respondent admits all the material allegations of the complaint to be true and states that it waives

hearing on the charges set forth in said complaint and agrees that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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 purpose."

It is ordered, That the respondent, Fort Clark 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 and in the District of Columbia (except gins produced by it through a process of rectification whereby alcohols purchased, but not produced, by respondent are redistilled over juniper berries and other aromatics), do forthwith cease and desist from:

1. 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 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;

2. Representing that any of its whiskey is of the kind, nature, or quality usually or ordinarily prescribed by physicians for medicinal treatment; or is of the kind, nature, and quality especially prepared for nurses, hospitals, or physicians; or that any of said whiskey is the kind, nature, and quality of whiskey of the standard specified for medicinal use in the United States Pharmacopoeia; or that any of said whiskey is aged in the wood for four years or more, when such are not the facts.

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

IN THE MATTER OF
PRATT FOOD COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2964. Complaint, Nov. 2, 1936—Decision, Dec. 23, 1936*

Where a corporation engaged in the manufacture, sale and distribution of "Pratt's 'Split-Action' N-K Capsules" for poultry—

Falsely represented, in pamphlets, labels attached to containers of product, and in advertisements in newspapers and periodicals and otherwise, that said product, fed to fowls, would destroy all worms or parts thereof and tapeworm heads with which the fowls were infested, through such statements as " * * * worms your bird as thoroughly as though you gave each fowl two treatments," "Stop wasting money on treatments that get only a few * * *," and " * * * the best tapeworm destroyer";

With capacity and tendency to mislead and deceive purchasers of its product into the belief that the same, bought by them, would accomplish aforesaid results, and with effect of causing a substantial number of the purchasing public to buy its said product on account of the mistaken and erroneous belief thus induced, and of unfairly diverting thereby trade to it from many competitors who make and distribute products designed for similar uses without misrepresenting the capacities or effects thereof:

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

Mr. T. H. Kennedy 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 Pratt Food Company, a corporation, 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 said Commission that a proceeding by it in respect thereof will be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania with its principal place of business at 126 Walnut Street in the city of Philadelphia in said State. Respondent is now and for more than three years last past has been engaged in the compounding and manufacture for sale of the product designated by it