

Complaint

IN THE MATTER OF
IMPERIAL DISTILLERS COMPANY

COMPLAINT 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, 1933¹

Docket 2395.—Complaint, May 17, 1935—Order, Jan. 14, 1937

Consent order requiring respondent corporation, its agents, etc., in connection with sale or offer in interstate commerce of whiskies, gins, and all other alcoholic beverages, but excepting gins produced by it through process of rectification of alcohol purchased, but not produced, by it, as specified, to cease and desist from representing, through use of word "Distillers" in its corporate name and on its stationery, advertising, etc., or in any other way, that it is a distiller of whiskies, gins, or other alcoholic beverages, or that said whiskies, etc., were by it made through process of distillation, or that it owns, operates, or controls a place where such products are thus made, unless and until it shall own, operate, or control a place or places where such products are by it manufactured through a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture thereof is completed; and, Ordered further, That Count II of complaint as to violation of National Industrial Recovery Act be dismissed.

Mr. PGad B. Morehouse for the Commission.

Mr. Fred A. Caskey and *Mr. Briggs C. Simpich*, of Washington, D. C. and *Schmalzriedt, Frye, Granse & Frye*, of Detroit, Mich., 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 Imperial Distillers 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 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 a corporation organized, existing and doing business under the laws of the State of Michigan, with its office

¹ Count Two of the complaint, under the National Industrial Recovery Act, dismissed.

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and principal place of business in the city of Detroit in said State. It is now, and has been since its organization in 1934, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business in Detroit 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 Michigan, 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 at all times since its organization has been, in substantial competition with other corporations and 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 has been since its organization, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid respondent has, upon its said premises, a still which it uses in the production of gin by a process of rectification whereby alcohol, purchased but not produced by respondent, is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distiller, as defined by section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. 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 manufacture of such liquors by the process of 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 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, advertising and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies, gins, cordials, 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, cordials, or other spirituous beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still as aforesaid in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics, respondent does not distill the gins 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 beverages are manufactured by the process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until the manufacture thereof is complete.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash as aforesaid whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate 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 rectifying, blending, and bottling whiskies, cordials, 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 their stationery, 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 whiskies, cordials, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash as aforesaid and is calculated to and has the

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capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, cordials, gins, and other spirituous beverages rectified, blended and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash as aforesaid of whiskies, cordials, 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.

Count 2

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under the laws of the State of Michigan, with its office and principal place of business in the city of Detroit in said State. It is now, and has been since its organization in 1934, engaged in the business of purchasing rectifying, blending, and bottling whiskies, gins, cordials, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business in Detroit 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 Michigan, 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 at all times since its organization has been, in substantial competition with other corporations and 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 has been since its organization, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials,

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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.

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 allegations thereof were separately, by like numbered paragraphs, set out at length herein, and 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 of this count and are hereby charged as fully and as completely as though the several averments of each of the said paragraphs of count 1 were here 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 purposes 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 con-

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sumption 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 "Distillers" in its corporate name, printed upon its stationery and on the labels attached to the bottles in which it sells and ships such products and in various other ways, constitutes false advertising within the meaning of the aforesaid provision of said Article V and tends to and does create the misleading impression that respondent is engaged in the business of distilling spirits from mash, wort, or wash and that the spirituous beverages by it so sold and transported have been bottled by the original distillers thereof, 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.

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission upon the complaint hereinbefore issued and served upon Imperial Distillers Company, a corporation, respondent herein and

the said respondent's written answer made thereto, waiving the taking of testimony, findings as to the facts, filing of briefs, oral argument and all other intervening procedure, and consenting that an order shall issue herein for it to cease and desist from the methods of competition charged in the complaint, and the Commission being fully advised in the premises, having thereupon concluded that respondent has violated 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."

It is now ordered, That the respondent, Imperial Distillers Company, a corporation, its agents, salesmen, and employees, in connection with whiskies, gins, and all other alcoholic beverages by it in interstate commerce hereafter sold or offered for sale (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 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 its said products or in any other way by word or words of like import representing (a) that it is a distiller of whiskies, gins, or any other alcoholic beverages; or (b) that the said whiskies, gins, or other alcoholic beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where such products are manufactured by the process of distillation, unless and until the said respondent shall own, operate or control a place of places where such products are by it manufactured through a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed.

It is further ordered, That the said complaint be and the same 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 it of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
VONEIFF-DRAYER COMPANY¹

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

Docket 1724. Complaint, Nov. 21, 1929—Decision, Jan. 15, 1937

Where a corporation engaged in manufacture and sale of "straight" goods candy and of so-called "break and take" assortments, principal trade demand for which comes from the small retailers with stores, in many instances, near schools and patronized by school children, and sale and distribution of which, or of candy giving, with sale thereof to public, opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, largest class by far and principal consumers or purchasers of such type of candy, who buy same in preference to so-called "straight" candy when displayed side by side by reason of lottery or gambling feature connected with former, and selling of which in the market of the other, i. e., the "straight" goods, has been followed by marked decrease in sales of such "straight" candy, due to gambling or lottery feature connected with so-called "break and take" merchandise—
Sold to wholesalers assortments composed of a number of penny pieces of chocolate covered candy of uniform size and shape, of which the centers of a relatively few were chocolate instead of white, and which the centers of a still smaller number, relatively were pink, together with a number of larger pieces and also a number of still larger pieces, to be given free of charge to those selecting, by chance, chocolate centers or pink centers, as the case might be, and together with explanatory display cards for retailers' use in offering same to public; so assembled and packed that such assortments were and might be displayed and sold by numerous retail dealer purchasers thereof, in accordance with above described plan and display cards, in practically all types of stores where candy is sold, and with knowledge and intent that such assortments might thus be displayed and sold by lot or chance to public by retail dealers as above set forth, in violation of public policy, and in competition with many who regard such methods of sale and distribution as morally bad and as encouraging gambling, and especially among children, as injurious to the industry through resulting in the merchandising of a chance or lottery instead of candy, and as providing retailers with a means of violating laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed and assembled that it can be resold to public by lot or chance;
With result that retailers, finding such candy more salable, purchased its products and those of others employing similar methods, some competitors began sale and distribution of candy for resale to public by lot or chance, "straight" goods sales of such refusing competitors, who can compete on even terms only by giving same or similar devices to retail dealers, showed a continued decrease in their unwillingness to do so, public and

¹ Original findings and order in this matter on April 3, 1934 (18 F. T. C. 280), were vacated and set aside on October 16, 1935. See footnote in 21 F. T. C. 745.