

IN THE MATTER OF
CONSOLIDATED DISTILLERS CORPORATION

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

Docket 2488. Complaint, July 3, 1935—Decision, Jan. 22, 1937

Where a corporation engaged as rectifier and wholesaler of distilled spirits in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in selling same in trade and commerce among the various States and in the District of Columbia, in competition with those engaged in manufacture by distillation of whiskies, gins, and other spirituous beverages and in sale and distribution thereof in interstate commerce, and with other rectifiers and wholesalers—

Represented, through use of word "Distillers" 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, together with words "Bottled by" or "Blended by," as case might be, to its customers and furnished some with means of representing to their vendees, both retailers and ultimate consuming public, that the said whiskies, gins, and other spirituous beverages contained in such bottles were by it made through process of distillation, notwithstanding fact it did not distill said whiskies or other spirituous liquors thus bottled, sold, and transported by it, and did not prepare its said distilled spirits from mash, wort, or wash through continuous closed pipes and vessels until manufacture was complete, and was not, in sense ordinarily understood by the industry, an actual distiller, for the purchase of the bottled liquors of which, as from original distiller or manufacturer thereof, there is a substantial preference by both trade and public;

With tendency to mislead and deceive wholesalers, retailers, and ultimate purchasers into the belief that in buying its said spirituous liquors, thus sold, they were purchasing product bottled out of distillery by original distillers thereof, and with effect thereby of unfairly diverting trade to it from its competitors, including those who, engaged in manufacturing spirituous liquors by process of original and continuous distillation from mash, wort, or wash, truthfully designate themselves as distilling company, and also those who, like itself, engaged in that branch of the industry known as the distilled spirits rectifying industry, and as rectifiers, do not untruthfully designate themselves as "distillers" or "distilling" company:

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

Before *Mr. John W. Bennett*, trial examiner.

Mr. DeWitt T. Puckett and *Mr. P. Gad B. Morehouse* for the Commission.

Mr. O. Bowie Duckett, Jr., of Hargest, Leviness, Duckett & McGlannan, of Baltimore, Md., 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 Consolidated Distillers 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 Maryland, with its office and principal place of business in the city of Baltimore, in said State. It is now, and for more than one year last past has been engaged in the business of wholesaler and rectifier, purchasing, rectifying, blending, and bottling whiskies, gins and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distillers" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of

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the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit: the manufacturers 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 completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distillers" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling" or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated

to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on July 3, 1935, issued and served its complaint in this proceeding, upon respondent Consolidated Distillers Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett and PGad B. Morehouse, attorneys for the Commission, before John W. Bennett, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by O. Bowie Duckett, Jr., of Hargest, Leviness, Duckett, and McGlannan, attorneys for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel aforesaid; 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 Maryland, with its principal office and place of business at 38 South Calvert Street, in the city of Baltimore in said State. It was incorporated in October 1933, with a capital stock of seventeen thousand shares of which two thousand are of the par value of \$1,000 per share designated as preferred stock and fifteen thousand shares are of the par value of \$20 each. Its charter authorizes it to engage among other things in the manufacture, purchase, sale, distribution, storage, and export of alcoholic beverages including whiskies and wines and in the distillation of whiskey.

It is now and has been since shortly after its organization engaged in business as a rectifier and wholesaler of distilled spirits under basic permits from the Federal Government, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. Its business is in excess of \$100,000 a year and during the six months period from November to April, 1935-36 it doubled its volume of business. Its distilled spirits are purchased in bulk from several distillers in several States of the United States, but principally from distillers in Maryland. This bulk whiskey is bottled by respondent straight or in blends, about 60% of its product being rectified and the remainder being bottled as straight whiskey. About 5% of its business is done outside the State of Maryland, it having customers in the District of Columbia, New York, and South Carolina. Most of its customers are retailers.

In the course and conduct of its business, respondent is, and has been, in competition with other corporations, individuals, and partnerships engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages, and in the sale and distribution thereof in interstate commerce; and also in competition with other rectifiers and wholesalers.

Respondent does not now and never did distill alcoholic beverages from raw materials at 38 South Calvert Street or elsewhere. It does not now and never has owned, operated, or controlled any stills or any plant equipped for the distilling of alcoholic beverages.

PAR. 2. Since the repeal of prohibition, there has been, and still is, a sharp distinction in the trade between the processes of distilling and rectifying. Distilling is confined to the manufacture

of alcoholic spirits by an original and continuous process from grain, or other raw materials, in a mash to a cistern room, in the case of whiskey. Rectifying deals wholly with subsequent modifications of the product not involving the process of distillation. This distinction in trade significance has been recognized by the Government through its issuance of two separate kinds of basic permits to those engaging in the two respective operations.

Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Many distillers operate a separate establishment 800 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery rectifying plant or at any other rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the _____ Company." If the distilled spirits therein contained are bottled by a distiller either in his distillery or are spirits of his own distillation bottled in his rectifying plant, the distiller may and does put "Distilled and bottled by _____ Company." If, in the distiller's rectifying plant, other spirits have been blended or rectified, he puts "Blended and bottled by _____ Company." Finally, blown (usually in the bottom) of each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler, viz., a "D" for a distillery and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-34" designates this respondent. A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or rectifier's permit.

Knowledge of these details is not widespread among the retail trade and is very limited to the general public.

It is not possible to determine from the presence of the phrase "Blended and Bottled by" alone, or the phrase "Bottled by" alone, on the label, whether the package was bottled by a rectifier who is a distiller, or by a rectifier who is not a distiller.

PAR. 3. Approximately twenty-two witnesses of whom twenty-one were purchasers of liquor and who had had no connection with the liquor industry were subpoenaed at the instance of the Commission to ascertain whether or not there existed a preference of a substantial portion of purchasers and potential purchasers to buy whiskeys and other alcoholic beverages, bottled at or by a distillery or distilling company. These witnesses were fairly representative and included men from practically every walk of life; namely, a banker, stockroom clerk, sales manager, superintendent of fertilizer plant, salesman, government employee, pastry-shop owner, electrical engineer, telephone man, real-estate broker, postal clerk, department-store manager, paper carrier, insurance man, a professor of anatomy, a syrup salesman, an assistant train yardmaster, coal merchant, and a graduate law student. Their testimony showed that the word "Distillers" or similar words in connection with the liquor industry, meant to them a person or concern which manufactured by distillation, and all of them testified that in a corporate name such as respondent's such a word as "distillers" would imply to them that respondent was such a manufacturer, and they indicated a distinct preference to buy distillery-bottled packages of liquor, usually for the reason that they felt more confidence in the goods, as the manufacturer, in their judgment, was likely to be more trustworthy and had more at stake than any middleman. A liquor dealer with thirty-one years of experience in making contacts with the trade and the public was of the opinion, based upon such experience that, in the majority of cases, the ultimate consumer prefers to buy distillery-bottled goods. The respondent produced approximately ten witnesses who were retail liquor dealers and who, from their experience with the public, stated it as their observation that customers paid no attention to the corporate or trade name of the seller as shown upon the labels, but made their purchases because of other considerations. Such testimony is not contradictory to that given by the twenty-two witnesses as aforesaid, from all of which the Commission concludes it to be true that there is a substantial portion of purchasers which prefers to buy beverages bottled by the original distiller or manufacturer thereof.

PAR. 4. Respondent's labels offered and received in evidence were brand labels. Besides the brand name and the nature of the product these words appeared generally upon the labels: "Bottled by Consolidated Distillers Corporation, Baltimore, Md." The words "bottled by" are in much smaller print than the corporate name as a rule but still are quite legible. Blended whiskey has on the brand label the following inscription: "Blended by Consolidated Distillers Corporation, Baltimore, Md." In this case, too, the words "blended by" are in much smaller type than the name of the respondent corporation, although the words are quite legible.

In the case of "Maryland Hunt Club" whiskey, a blend, there appears as Exhibit No. 9-A, the back or Government label placed on the package by respondent. This label reads as follows: "Maryland Hunt Club Blended Whiskey. The straight whiskey in this product is 20 years old, 20% straight whiskey, 18% neutral spirits. Blended by Consolidated Distillers Corporation, Baltimore, Maryland." There is a similar back label in the record as Commission's Exhibit No. 10-A relating to the brand "Carrollton Club" also a blended whiskey. A similar back label also appears for the "My Maryland" brand.

Respondent also advertised its name and business in the Baltimore Sun and in some trade papers and on billboards.

In the course and conduct of its business as aforesaid, by the use of the word "Distillers" in its corporate name, printed on its stationery, and on the labels attached to the bottles in which it sells and ships such products, respondent represents, and furnishes its customers with the means of representing to the retailer and ultimate purchaser that the said whiskies, gins, and other spirituous beverages therein contained, were *by it* manufactured through the process of distillation, when, as a matter of fact, the respondent is not a distiller and did not distill the said whiskies or other spirituous liquors by it so bottled, sold, and transported.

PAR. 5. The Commission finds that because the trade, as well as the public, has a substantial preference to buy liquors bottled by the actual distillers, the tendency to diversion of trade by respondent's use of the word "Distillers" in its name is plain, particularly with reference to any prospective purchaser who does not know from other sources the particular status of respondent, and the name readily lends itself as a tool to any salesman to be used by him for the purpose of gaining an unfair competitive advantage in competing with an actual distilling company for any particular order of whiskey.

The use by respondent of the term "Distillers" in its trade or corporate name upon its invoices, stationery, advertising, and upon the

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labels attached to the bottles in which it sells and ships its spirituous liquors, has a tendency to mislead and deceive wholesalers, retailers, and the ultimate purchasers into the belief that in purchasing the same they are purchasing a product bottled at a distillery by the original distillers thereof, and this, in turn, tends to, and does, unfairly divert trade from respondent's competitors to the respondent. Among such competitors, there are those who, manufacturing spirituous liquors by process of original and continuous distillation from mash, wort, or wash, do truthfully designate themselves as distilling companies, and also among such competitors are those in the same class with this respondent, to wit: those who are engaged in that branch of the industry known as the distilled spirits rectifying industry, and who, as rectifiers, do not untruthfully designate themselves as "distilleries," "distillers," or "distilling companies."

CONCLUSION

The aforesaid acts and practices of the respondent, Consolidated Distillers Corporation, 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, the answer of respondent, testimony and other evidence taken before John W. Bennett, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by DeWitt T. Puckett and PGad B. Morehouse, counsel for the Commission, and by O. Bowie Duckett, Jr., of Hargest, Leviness, Duckett and McGlannan, counsel for respondent, 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 Consolidated Distillers Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of whiskies, gins, and all other spirituous beverages in interstate commerce and in the District of Columbia do forthwith cease and desist from:

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Representing through the use of the word "Distillers" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships said products or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins, or any other spirituous beverages; (b) that the said whiskies, gins, or other spirituous beverages are 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 complete, unless and until respondent shall actually own, operate, or control such a place or places.

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

IN THE MATTER OF
**THE I. T. S. COMPANY, THE NATIONAL FEDERATION OF
MASTER SHOE REBUILDERS, ITS OFFICERS AND
MEMBERS**

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

Docket 2802. Complaint, May 15, 1936—Decision, Jan. 22, 1937

Where a corporation engaged in sale at wholesale of rubber heels and soles to shoe findings jobbers and shoe repairers, but not to 5-and-10 cent stores, in competition with those who sell their products to such stores as well as to or through shoe manufacturers, shoe findings jobbers, and shoe repairers; and a voluntary nonprofit trade association of shoe repairers, and individual shoe-repairer members and officers of said association, acting officially and individually—

- (a) United in a common course of action and entered into an agreement, combination, and conspiracy to close the natural channels of distribution of the products of competitors who sell to aforesaid stores, and cause shoe manufacturers, shoe findings jobbers, shoe repairers, and hardware stores to boycott and refuse to deal with such manufacturers of and wholesale dealers in aforesaid products, who sell same to stores aforesaid, and thereby suppress competition among such manufacturers and wholesalers; and in the accomplishment of said end, severally and jointly, as the case might be—
- (b) Circularized channels of trade involved with literature which was falsely derogatory or defamatory as respects those manufacturers and wholesalers of rubber heels and soles who sell to aforesaid stores, and which designated sources of information as to the identity of such manufacturers and wholesalers who sold and who did not sell to stores in question, and circularized such channels with so-called "white lists" and "black lists" of such non-selling and selling manufacturers and wholesalers, and disseminated similar information to channels involved through and by their missionary men and sales force; and
- (c) Made use of other cooperative and individual means to carry out and make effective their aforesaid undertaking;

With result that trade in rubber heels and soles was unduly restrained among the States, competition among manufacturers and wholesalers, retailers and consumers, and manufacturers and wholesalers in their sales to retailers and among retailers in their sales to consumers was substantially suppressed, and consuming public was deprived of benefits that would naturally flow from normal competition among and between aforesaid wholesalers and other manufacturers, wholesalers, and retailers in aforesaid products:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. John Darsey for the Commission.

Mr. G. A. Resek, of Lorain, Ohio, for respondents.