

## Complaint

## IN THE MATTER OF

## FEDERAL DISTILLERS CORPORATION

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

*Docket 2439. Complaint, June 18, 1935—Order, Jan. 27, 1937*

Consent order requiring respondent corporation, its officers, etc., in connection with sale or offer, in interstate commerce and in District of Columbia, of whiskies, gins, and other alcoholic beverages produced by it, but excepting gins produced by it through process of rectification whereby alcohol purchased, but not produced, by it is redistilled 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 process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete.

*Mr. PGad B. Morehouse* for the Commission.

*Devine, Kent & Devine*, 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 Federal Distillers Corporation, 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 Michigan, with its office and principal place of business in the city of Detroit, in said State. It is now, and for more than one year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic beverages in a rectifying plant, 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

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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 true distillation of whiskies, gins, and other alcoholic 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 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 alcoholic beverages in rectifying plants 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 "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: those who manufacture alcoholic liquors 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 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, catalogs, 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 said whiskies, gins, and other alcoholic 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 alcoholic 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 alcoholic beverages by it so bottled, labeled, sold, and transported in the sense in which the word "distillers" 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 alcoholic beverages are manufactured by a 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, whiskies, gins, and other alcoholic 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, catalogs, 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 alcoholic 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, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof, are calculated to and have a capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other alcoholic beverages sold by respondent are manufactured or distilled by it from mash, wort, or wash by one continuous process 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 alcoholic beverages rectified and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their cor-

porate or trade name or in any other manner misrepresent that they are distillers, 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.

#### 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 Federal Distillers 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 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, Federal Distillers Corporation, its officers, representatives, agents, and employees, in connection with the sale, offering for sale and distribution in interstate commerce and in the District of Columbia of whiskies, gins, and all other alcoholic beverages, except gins by it produced through a process of rectification whereby alcohol purchased but not produced by respondent is 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, that (a) it is a distiller of whiskies, gins, and other alcoholic beverages; or (b) the said whiskies, gins, and other alcoholic beverages were by it manufactured through the process of distillation; or (c) it owns, operates, or controls a place or places where such beverages are manufactured by the process of distillation, unless and until the said respondent shall own, operate, or control a place or places where such whiskies,

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gins, and other alcoholic beverages 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 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  
REO DISTILLERS, INC.

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 2410. Complaint, May 24, 1935—Decision, Jan. 28, 1937*

Where a corporation engaged as rectifier and wholesaler of spirituous liquors, in purchasing, rectifying, blending, and bottling whiskies, gins, and other such liquors, and in the making of 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 to wholesalers and retailers in other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in selling same in trade and commerce among the various States and in said District, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages, and similarly selling same, and including among said competitors those who, as manufacturers and distillers of whiskies, gins, and other such beverages sold by them by process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, 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 their said products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distillers" in its corporate name, printed on its stationery and advertising 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 same with the means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller and that the whiskies, gins, and other spirituous beverages contained in such bottles were by it made through process of distillation as aforesaid, notwithstanding fact it did not thus distill said various beverages, thus bottled, labeled, sold, and transported by it, through aforesaid process of original and continuous distillation as above set forth, as long definitely understood from word "distiller" used in connection with liquor industry and products thereof in the trade and by the ultimate purchasing public, and did not own, operate, or control any place or places where such beverages were made by process of distillation from mash, wort, or wash, 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 it was a distiller and that the whiskies, gins, and other spirituous

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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. 495.