

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, 1933.¹

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

¹ 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.

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beverages sold by it were by it made and distilled from mash, wort, or wash, as aforesaid, and of inducing dealers and such public, in such belief, to buy its said whiskies, etc., bottled and sold by it, and of thereby diverting trade to it from its competitors who did not, by their corporate or trade names or in any other manner, misrepresent that they were manufacturers by distillation from mash, wort, or wash of such products; to the substantial injury of substantial competition in commerce:

Held, That such acts and practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. John L. Hornor*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Kessler & Kessler, of Newark, N. J., 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 Reo Distillers, 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 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 New Jersey, with its office and principal place of business in the city of Newark, in said State. It is now, and for more than one year last past has been, engaged in the business of a rectifier and wholesaler of liquors, purchasing, retifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale 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, some located within the State of New Jersey and some located in other States of the United States and the District of Columbia. In the course and conduct of its busi-

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ness 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, 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 spiritous 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 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 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 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 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 whiskies, gins, and other spirituous beverages therein contained were by its manufactured through the process of distillation from mash, wort, or mash, 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

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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 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 who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, 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 belief 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 belief, 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 name 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.

Count 2

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under the laws of the State of New Jersey, with its

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office and principal place of business in the city of Newark, in said State. It is now, and for more than one year last past has been, engaged in the business of a rectifier and wholesaler of liquors, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale 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, some located within the State of New Jersey 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 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, 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.

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

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

to H. A. Wallace as Secretary of Agriculture certain of the powers vested in the President of the United States by the aforesaid act.

Under and pursuant to the delegation of such powers, the said Secretary of Agriculture pursuant to Section 3 (d) of the act and Executive orders under the act, upon his own motion presented a Code of Fair Competition for the Distilled Spirits Rectifying Industry after due notice and opportunity for hearing in connection therewith had been afforded interested parties, including respondent, in accordance with Title I of the National Industrial Recovery Act and applicable regulations issued thereunder, to the President of the United States who approved the same on the 9th day of December 1933, thereby constituting the said code a Code of Fair Competition within the meaning of the said National Industrial Recovery Act, for the regulation of the aforesaid industry.

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

That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of said Act in that the terms and provisions of such Code tend: (a) to remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the 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 consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

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

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

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

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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 provisions 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, that the spirituous beverages by it so sold and transported have been prepared and bottled by the original distillers thereof, and that the whiskies, gins, and other spirituous beverages sold by respondent have been manufactured and distilled by it from mash, wort, or wash as aforesaid, all contrary to the provisions of Section 1, Article V, of the Code aforesaid.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on May 24, 1935, issued and served its complaint in this proceeding upon respondent, Reo Distillers, 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 and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, and no testimony was offered by respondent in opposition to the allegations of the complaint; 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 com-

plaint the answer thereto, testimony and other evidence, briefs in support of the complaint (brief in opposition thereto 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 and existing under the laws of the State of New Jersey, with its office and principal place of business at 277 Jellif Avenue in the city of Newark in said State, where it engaged in the business of a rectifier and wholesaler of spirituous liquors from early in the year 1934 until about August 14, 1935. Originally incorporated, prior to the repeal of prohibition, under the name "Reo Chemical Company," it changed to its present corporate name by amendment of its charter, in December 1933.

Its business consisted of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous liquors 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, doing a business amounting to approximately \$800,000 in sales annually. It had the kind of plant and equipment ordinarily incident to that type of business, located in a three-story brick building. The first floor consisted of offices, shipping room, and receiving room; the second floor was the bottling department; and on the third floor was located the mixing room, compounding room, receiving room, laboratory, and a gin still, which still will be hereinafter more fully described.

In the course and conduct of its said business, it caused its said products, when sold, to be transported from its place of business as 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 was 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

was 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. In the course and conduct of its business as aforesaid, respondent had upon its said premises a still which it used in the production of gin by a process of rectification, whereby alcohol purchased but not produced by respondent was 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 or the liquor industry. For a long period of time the word "distiller," 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 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.

PAR. 3. The attorney for the Commission called a large number of witnesses, ten being members of the trade and twenty-two being members of the purchasing public, and with few exceptions the Commission's witnesses testified that the word "distillers," or similar words such as "distilling," "distilleries," etc., indicate the initial distilling process of producing spirituous and alcoholic liquors from fermented grain mash, etc., the manufacturer thereof or the place of distillation of spirituous and alcoholic liquors. The greater number of these witnesses testified that the use of such words would induce them or did induce them to purchase the products of the concern using such words in their corporate name or on the label of the bottle containing the product, in the belief that a distiller's product would be more uniform and up to certain specifications, and a manufacturer's name should mean something. They testified that they preferred buying in as direct a manner as is practical and considered distillers as having more responsibility than a rectifier or bottler of spirituous liquors. It was testified that the use of the word "Distillers" in the corporate name of the respondent would indicate to them that the respondent was the actual distiller of the product and they would give preference in purchasing a product which bore a label containing such

corporate name in competition with a product bearing a label which did not contain the word "distiller" or any word indicating a distilling process in its corporate name or otherwise.

The Commission finds that there is a substantial portion of the purchasing public which prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 4. 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 sold and shipped its said products, and in various other ways, respondent represented to its customers and furnished them with the means of representing to their vendees, both retailers and the ultimate consuming public, that respondent was 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 was not a distiller, does not now and never did 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 did 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 by the public. Respondent does not now and never did own, operate or control any place or places where such beverages were manufactured by the process of distillation from mash, wort, or wash.

PAR. 5. There were among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships and individuals who manufactured and distilled from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully used 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 sold and shipped such products. There were 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 did not use the words "distillery," "distilleries," "distilling," or "distillers," as a part of their corporate or trade names, nor on their sta-

tionery or advertising, nor on the labels attached to the bottles in which they sold and shipped their said products.

PAR. 6. Representation by respondent, as set forth in paragraph 3 hereof, was calculated to and had the capacity and tendency to and did mislead and deceive dealers and the purchasing public into the beliefs that respondent was a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent were manufactured and distilled by it from mash, wort, or wash, as aforesaid, and was calculated to and had the capacity and tendency to and did induce dealers and the purchasing public 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 did not by their corporate or trade names or in any other manner misrepresent that they were manufacturers by distillation from mash, wort, or wash, of such products, and thereby respondent did substantial injury to substantial competition in interstate commerce.

On August 14, 1935, respondent's complete equipment was seized and confiscated by the United States on an income tax levy, and sold at auction in October 1935. On May 5, 1936, two of the respondent's corporate officers were sentenced by a Federal Court to terms in the United States Northeastern Penitentiary at Lewisburg, Pa., and respondent has not engaged in this business since the aforesaid seizure. Respondent's corporate charter, however, is still existent, and the Commission can have no assurance that in the absence of a prohibitive order this respondent may not at some future time renew the violations of law herein charged.

PAR. 7. The complaint herein was issued May 24, 1935 (just prior to the decision of the United States Supreme Court in the case of *A. L. A. Schechter Poultry Corporation, et al., v. U. S.*, 295 U. S. 495), and was in two counts. Count 2 charged violation of Section 3 of Title I of the National Industrial Recovery Act, which was invalidated by the aforesaid decision. For that reason the Commission is dismissing this complaint as to count 2 thereof.

PAR. 8. Because of regulations issued under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. 977), which regulations became effective as of August 15, 1936, providing that rectifiers who redistill purchased alcohol over juniper berries and other aromatics may label such resulting product "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 said respondent, under the conditions and circumstances hereinbefore described, were to the prejudice of the public and respondent's competitors, and were unfair methods of competition in interstate commerce, constituting a violation 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 L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint—no testimony having been offered in opposition thereto—brief filed herein by PGad B. Morehouse, counsel for the Commission (counsel for respondent having failed to file brief or request oral argument); 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, Reo Distillers, Inc., its officers, representatives, agents, and employees, in connection with the sale, offering for sale, and distribution in interstate commerce or in the District of Columbia, of whiskies, gins, and all other spirituous beverages, except gins produced by it 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 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 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 ves-

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sels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

It is further ordered, That the said complaint be, and the same hereby is, 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.

Syllabus

IN THE MATTER OF
OSTRUCON DISTILLED PRODUCTS COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2444. Complaint, June 19, 1935—Decision, Jan. 28, 1937*

Where a corporation engaged in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous 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 true distillation of whiskies, gins, and other spirituous liquors from mash, wort, or wash, 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 liquors and in similarly selling same, and including among said competitors those who, as manufacturers and distillers of whiskies, gins, and other spirituous liquors sold by them from mash, wort, or wash, truthfully use words "distillery," "distilleries," "distillers," "distilling" or "distilled products" as a part of their corporate or trade names, on their stationery, catalogs, advertising, and 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, nor misrepresent themselves as distillers on their letterheads or invoices used to solicit, obtain and retain customers for sale of said products—

Represented, through use of words "Distilled Products" in its corporate name, printed on its stationery, catalogs, advertising, and labels attached to the bottles in which it sold and shipped its said products, and through express representation upon its letterheads and invoices used to solicit, obtain, and retain customers, and in various other ways, to its customers and furnished same with 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 from mash, wort, or wash, notwithstanding fact it did not distill the said whiskies, gins, and other spirituous liquors, thus bottled, labeled, sold, and transported by it, by process of original distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, as long definitely understood from word "distilled" 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 liquors are made by aforesaid process, 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 liquors sold by it were by it made and distilled from mash, wort, or wash