

Complaint

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IN THE MATTER OF

CHARLES B. TRULL, TRADING AS WEST COAST
DISTILLERIES COMPANY

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914, AND OF SEC. 3 OF TITLE I
OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2419. Complaint, May 27, 1935—Order, Feb. 2, 1937

Consent order requiring respondent individual, his agents, etc., in connection with sale or offer, in interstate commerce and in District of Columbia, of whiskies, gins, and other alcoholic beverages produced by him, but excepting gins produced by him, through process of rectification whereby alcohol purchased, but not produced, by him is redistilled as specified, to cease and desist from representing, through use of word "Distilleries" in his trade name and on his stationery, advertising, etc., or in any other way, that he is a distiller of whiskies, gins, or other alcoholic beverages or that said whiskies, etc., were by him made through process of distillation, or that he owns, operates, or controls a place where such products are thus made, unless and until he shall own, operate, or control a place or places where such products are by him 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.

Mr. Albert A. Axelrod, of San Francisco, Calif., 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 Charles B. Trull, trading as West Coast Distilleries Co., 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 an individual, doing business under the name and style West Coast Distilleries Co., with principal office

¹ Count 2 of the complaint, under the National Industrial Recovery Act, dismissed.

and place of business in the city of San Francisco, in the State of California. He is now, and since April 1934, has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages in a rectifying plant, under a rectifier's permit and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his said business he causes his said products when sold to be transported from his place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and distributors, some located within the State of California and some located in other States of the United States and the District of Columbia, and to some located in Waiakea-Hilo, Hawaii. In the course and conduct of his business as aforesaid, respondent is now, and since April 1934, has been in substantial competition with corporations and with other individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other spirituous beverages from mash, wort, or wash, and in the sale thereof in trade and commerce between and among the various States of the United States, in the District of Columbia and in Hawaii; and in the course and conduct of his business as aforesaid respondent is, and since April 1934, has been in substantial competition with corporations and with other individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages in rectifying plants under rectifiers' permits and in the sale thereof in commerce between and among the various States of the United States, in the District of Columbia, and in Hawaii.

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 "distilleries" 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 the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, places where such alcoholic liquors are manufactured by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete,

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and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of his business as aforesaid, by the use of the word "Distilleries" in his trade name, printed on his stationery and on the labels attached to the bottles in which he sells and ships his said products, and in various other ways, respondent represents to his customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies, gins, and other spirituous beverages therein contained were by him manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other spirituous beverages by him so bottled, labeled, sold, and transported, and merely by the use of a still operated by him as aforesaid in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics, does not distill the whiskies, gins, and other spirituous beverages by him so bottled, labeled, sold, and transported in the sense in which the word "distilled" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where such alcoholic beverages are manufactured by a process of original and continuous distillation from mash, wort, or wash.

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

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, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by him from mash, wort, or wash by one continuous process 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 rectified and bottled by the respondent, thereby diverting trade to respondent from his competitors who do not by their corporate or trade name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, or other spirituous beverages, 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 an individual, doing business under the name and style West Coast Distilleries Co., with principal office and place of business in the city of San Francisco, in the State of California. He is now, and since April 1934, has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages in a rectifying plant, under a rectifier's permit, and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his said business he causes his said products when sold to be transported from his place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and distributors, some located within the State of California and some located in other States of the United States and the District of Columbia, and to some located in Waiakea-Hilo, Hawaii. In the course and conduct of his business as aforesaid, respondent is now, and since April 1934, has been in substantial competition with corporations and with other individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other spirituous beverages from mash, wort, or wash, and in the sale thereof in trade and commerce between and among the various States

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of the United States, in the District of Columbia, and in Hawaii; and in the course and conduct of his business as aforesaid respondent is, and since April 1934, has been in substantial competition with corporations and with other individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages in rectifying plants under rectifiers' permits and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

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.

PAR. 7. The use by respondent of the word "Distilleries" in his trade name, printed on his stationery and on the labels attached to the bottles in which he 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 whiskies, gins, and other spirituous beverages from mash, wort or wash and that the whiskies, gins, and other spirituous beverages by him so sold and transported have been bottled by the original distillers thereof and have been produced by a true process of distillation from mash, wort, or wash, 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

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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 Charles B. Trull, trading as West Coast Distilleries Company, 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 him 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, Charles B. Trull, trading as West Coast Distilleries Company, his 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 him 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 "Distilleries," in his trade name, on his stationery, advertising, or on the labels attached to the bottles in which he sells and ships his said products, or in any other way by word or words of like import, that (a) he is a distiller of whiskies, gins, and other alcoholic beverages; or (b) the said whiskies, gins, and other alcoholic beverages were by him manufactured through the process of distillation, unless and until the said respondent shall own, operate, or control a place or places where such whiskies, gins, and other alcoholic beverages are by him 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.

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

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IN THE MATTER OF
MOUNT ROSE DISTILLING COMPANY

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

Docket 2489. Complaint, July 3, 1935—Order, Feb. 2, 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 "Distilling" 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.

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 Mount Rose Distilling Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to 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 New Jersey, with its office and principal place of business in the city of Trenton, in said State. It is now, and for more than one year last past has been, engaged in the business of producing and bottling gins 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 said business it causes its said products when sold to be transported from its place of business aforesaid into and through various other