

Complaint

24 F. T. C.

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

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 gins 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 has been for more than one year last past, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of producing and bottling gins 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 are stills which respondent uses 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 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 "distilling" 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 manufacturing of such liquors by the process of distillation from mash, wort, or wash, and a substantial portion of the purchasing public prefers to buy gins produced by a process of original and continuous distillation from mash, wort, or wash prepared and bottled by the distillers.

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

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aforesaid in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics, does not distill the gins by it so bottled, labeled, sold, and transported in the sense in which the word "distilled" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where such beverages are manufactured by a true process of distillation from mash, wort, or wash, and said gins are not produced and bottled in a distillery.

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 distill from mash, wort, or wash gins 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 who manufacture and produce gins by a process of rectification similar to that used by this respondent and 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 respondent is a distiller and that the gins sold by the respondent are produced by a true process of distillation by it from mash, wort, or wash, 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 gins manufactured and bottled 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 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

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 Mount Rose Distilling 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 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 respondent, Mount Rose Distilling Company, 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 "Distilling" 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 its 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, 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.

Syllabus

IN THE MATTER OF
DANIEL R. HODGDON AND NATIONAL FOOD BUREAU,
INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2539. Complaint, Aug. 30, 1935—Decision, Feb. 2, 1937

Where an individual, who represented himself as a food expert, and a corporation, which he headed, directed and controlled, engaged in advertising food products through newspaper articles and through radio addresses which were broadcast from a New York station and which were heard and understood by purchasers or prospective purchasers located in various other States and in the District of Columbia, and in thus advertising a certain brand of peanut oil, made in Virginia and distributed and sold by the manufacturer to dealers and the general public among the various States and in the aforesaid District, and constituting, in the conduct of their said advertising campaign, instrumentalities of interstate commerce, by causing, aiding, or assisting in the shipment of the product in question from the aforesaid State to purchasers or prospective purchasers elsewhere located, and, as such, engaged in such commerce, and engaged in the conduct of their said activities in active and open competition with other advertising agencies and advertisers and instrumentalities for advertising in interstate commerce, who do not misrepresent the articles of trade and commerce which they promote and advertise and the professional status of the person or persons delivering radio addresses to the public,—

- (a) Represented, in said radio addresses and other advertising, that corn oil or cottonseed oil or food products made therefrom were cheap commodities which were unwholesome, impure, deleterious to health, and unfit for human consumption, and that peanut oil, or food products made therefrom, were superior, in the matter of digestibility or dietetics, to the others, and delivered such radio lectures in such a manner as would lead a listener to the erroneous belief that the aforesaid individual, referred to frequently by the announcer as "Doctor," was such, and a physician, through such statements, among others, as "It means that the market is flooded today with food concoctions, dietetical monstrosities, and cheap glucose filled candies; cottonseed oil; with stearic acid salad oils; and a lot of other junk * * *, preparing the way to death and destruction * * *," "If food is cooked in cooking oil, it may be that the cooking oil contains a large amount of stearic acid, or is composed chiefly of cottonseed oil * * *," all of which "things tend to destroy the child's appetite * * *"; and
- (b) Referred to competitors who sell articles made from cottonseed oil, corn oil and other vegetable oils as "racketeers," and to persons who sell two oils first mentioned as "cheap food swindlers," and to the products of competitors, including cottonseed oil and corn oil, as containing a substance comparable to a tallow candle, through such statements as that such competitors are "Racketeers * * * who make money * * * out of * * * salad oils which are compounds of sunflower seed oil, cottonseed