

IN THE MATTER OF
KIENZLER DISTILLING CORPORATION

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

Docket 2634. Complaint, Nov. 18, 1935—Decision, May 28, 1937

Where a corporation engaged, as rectifier and wholesaler of spirituous liquors, in purchasing, rectifying, blending, and bottling whiskies, gins and other alcoholic beverages, and in producing gin with stills 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 hotels, bars, clubs, and restaurants through a corporate sales agency with preponderant identity in the matter of officers, personnel, and in other respects, and in the sale thereof also to wholesalers and retailers, in substantial competition with those engaged in the manufacture by true distillation of whiskies, gins and other alcoholic beverages from mash, wort, or wash, and in selling same in trade and commerce and in the various States and in the District of Columbia, 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 by original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, of whiskies, gins, and other spirituous beverages sold by them, truthfully used words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and catalogs and on the labels of the bottles in which they sell and ship their said products. and those who, engaging in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distilling" in its corporate name, printed on its stationery and catalogs 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 said whiskies, gins, cordials, brandies, and other alcoholic beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not thus distill said various beverages, thus bottled, labeled, sold, and transported by it, through process of original and continuous distillation as above set forth, and as long definitely understood from word "distilling" when used in connection with liquor industry and products thereof by trade and ultimate purchasing public, did not own, operate, or control any place or places where such beverages are made by aforesaid process of continuous distillation from mash, wort, or wash, and was not, notwithstanding its aforesaid production of gin, as commonly accepted and understood by trade and public, 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 or distilling company in the ordinary accepted sense of those terms, and that the whiskies, gins, and other spirituous

1358

Complaint

beverages sold by it were by it made or distilled from mash, wort, or wash by one continuous process, and of inducing dealers and purchasing public, acting in such beliefs, to buy the whiskies, gins, and other alcoholic beverages rectified and bottled by it, and with result of giving it an unfair competitive advantage over those of its competitors who do not, through use of such terms in their trade or corporate names, represent that package of alcoholic liquor offered to retailer, and in turn to consumer, is a distillery-bottled package, and with tendency thereby to divert trade to it from such competitors; to the substantial injury of competition in commerce:

Held, That such acts and practices 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 and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Mortimer S. Gordon and *Mr. Herman Keller*, of New York City, 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 Kienzler Distilling 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 New York, with its office and principal place of business in the city of New York, in said State. It is now, and for more than one year last past has been, engaged in the business of a wholesaler and rectifier, purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic 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 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 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 "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 spirituous 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 "Distilling" in its corporate name, printed on its stationery, catalogs 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 production of gin, does 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 the public. Respondent does not own, operate, or control any place or places where spirituous 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, catalogs 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 spirituous 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 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.

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 November 18, 1935, issued and on November 19 served its complaint in this proceeding upon respondent Kienzler Distilling 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 PGad B. Morehouse and DeWitt T. Puckett, attorneys for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Herman Keller and Mortimer S. Gordon, 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 and briefs in support of the complaint and in opposition thereto, counsel for respondent having failed to appear at the time and place set for oral argument herein, to wit: May 3, 1937, and no argument therefore having been made; and the Commission having duly considered the foregoing 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 under the laws of the State of New York on November 27, 1933, existing and doing business at 30-32 West 24th St., New York City, under a basic permit from the Federal Alcohol Administration known as "R-46" as a rectifier and wholesaler of spirituous liquors, and has engaged in the distilled spirits rectifying and wholesaling business since the date of its organization. Its average sales are approximately \$500,000.00 a year in volume. At the same address, but on a different floor of the same twelve-story building is located the business of the Kienzler Company, another corporation which was formed in 1883 to handle rectified liquors and foodstuffs. This latter company having the same offices and using the same employees as respondent, is respondent's only customer except for one or two local jobbers, and acts as respondent's

1358

Findings

ent's distributor and sales agent. Prior to April 1936, Mr. Albert Guggenheim was president of Kienzler Distilling Corporation, Mr. Michael Neuberger was its secretary, and Miss Jessie E. Simonson, assistant secretary, but Mr. Guggenheim and the witness Morris Keller, respondent's general manager, controlled the business. On or about April 1, 1936, there was a reorganization in the affairs of the two companies. Mr. Keller was elected president in the place of Mr. Guggenheim, and the other officers remained the same, Mr. Guggenheim, however, becoming president of the Kienzler Company, the selling agent, Mr. Guggenheim and Mr. Keller, the present president of respondent company, consult in the operation of both companies and their respective office forces occupy the same space and are 75% identical. The respondent, Kienzler Distilling Corporation, purchases its distilled spirits requirements in bulk from distillers and bottles them straight or blended. It then sells the bottled products already labeled to the Kienzler Company and the liquor is shipped by respondent to the customers of the Kienzler Company upon the Kienzler Company's order and direct from the premises of respondent, except that sometimes when the Kienzler Distilling Corporation is heavily stocked the surplus merchandise is moved from the Kienzler Distilling Corporation's warehouse to the Kienzler Company's premises.

Of the bottled liquors, about 75% consists of respondent's own brands bearing its name, Kienzler Distilling Corporation thereon, and about 25% consists of what is known as "private brand" business, whereon the name of Kienzler Distilling Corporation does not always, but does sometimes appear. The Kienzler Company, the selling agent, also imports or buys from other sources than respondent, approximately \$100,000 worth of alcoholic beverages.

Approximately 85 to 90% of respondent's total products are sold through the sales agency of the Kienzler Company to hotels, bars, clubs and restaurants both in New York and elsewhere, including Pittsburgh, Pa., Cincinnati, Ohio, and Chicago, Ill., the Kienzler Company as respondent's distributor and agent selling the liquors principally at wholesale.

The Commission finds that respondent is now and for more than one year last past has been engaged in purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic 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 busi-

ness 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 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 are four 500-gallon gin stills, of which two are in regular operation. These stills are used by respondent 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. This gin constitutes approximately 56½% of respondent's total business.

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

Many distillers operate a separate establishment 600 feet or more away from their distilleries, 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 often 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 done by a distillery, 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 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 as straight whiskey, the distiller may and does on said bottles, put "distilled and bottled by ----- Company." Finally, blown in the bottom of each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler. For instance, there is a "D" for a distiller and an "R" for a rectifier. The number following the said letter corresponds with the distiller's or rectifier's basic permit. Thus, "R-46" designated the Kienzler Distilling Corporation, a rectifier. A distiller who also operates a rectifying plant and who has both kinds of permits may use either symbol, depending upon whether the liquor contained in the bottle was produced and bottled under a distiller's or a rectifier's permit.

This respondent does not now and never had produced or manufactured distilled spirits of any kind from mash or raw materials, although its charter would authorize it so to do. Its rectifier's permit authorized it to engage in the business of rectifying and blending, and is conditioned upon compliance by respondent with all applicable regulations made pursuant to law, which are or may hereafter be in force.

Section 3247 of the Revised Statutes (U. S. C. A. Tit. 26, Sec. 1158 (a)) regulating Internal Revenue defines a "distiller" as follows:

Every person who produces distilled spirits or who brews or makes a mash, wort, or wash fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirits from any substance, or who, making or keeping, mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller.

Section 3244 of the Revised Statutes (U. S. C. A. Tit. 26, Sec. 1398 (f)) defines a "rectifier" as follows:

Every person who rectifies, purifies, or refines distilled spirits or wine by any process other than by original and continuous distillation from mash, wort, or wash, through continuous enclosed vessels or pipes, until the manufacture thereof is complete, and every wholesaler and liquor dealer who has in his possession any still or leach tub, or who keeps any other apparatus for the purpose of refining in any manner distilled spirits, and every person who without rectifying, purifying, or refining distilled spirits, shall, by mixing such spirits, wine, or other liquor with any materials, manufacture any spurious imitation, or compound liquors for sale under the name of whiskey, brandy, gin, rum, wine spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and that being engaged in the business of rectifying, etc.

The rectification of alcoholic spirits by this respondent as aforesaid in the production of its gin, does not make or constitute respond-

ent a distiller or a distilling company as defined by Sec. 3247 of the Revised Statutes of the United States regulating Internal Revenue.

PAR. 3. The testimony of those having long experience in both the distilled spirits rectifying industry and the distilling industry, established that the foregoing rectification of alcoholic spirits by redistillation over juniper berries and other aromatics in the production of gin does not make or constitute this respondent a distilling company in the sense commonly understood by the liquor industry. There were also called a large number of witnesses who were lay-members of the purchasing public, 22 in number, and with few exceptions their testimony was to the effect that by such terms as "distilling" or "distillery" or "distiller" when used in the trade or corporate name of a concern handling alcoholic beverages, the public understands that that concern is engaged in the initial distilling process of producing spirituous or alcoholic beverages from fermented grain or mash, and that they have a preference for a distillery-bottled package over one bottled by a rectifier.

The Commission finds that 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 spirituous 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. 4. 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, catalogs 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, cordials, brandies, 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 production of gin does 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 the public. Respondent does not own, operate, or control any place or places where spirituous beverages are manufactured by a process of original and continuous distillation from mash, wort, or wash.

PAR. 5. 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, catalogs 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. 6. The representations by respondent, as set forth in paragraph 4 hereof, have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller or distilling company in the ordinarily accepted sense of those terms, and that the whiskies, gins, and other spirituous beverages sold by respondent are manufactured or distilled by it from mash, wort or wash by one continuous process, 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. The Commission finds that the whole situation in this industry is such that the foregoing representations have a distinct tendency to give respondent what amounts to unfair competitive advantage over those of its competitors who do not, by the use of such terms in their trade or corporate names, represent that the package of alcoholic liquor offered to the retailer and in turn to the consumer, is a distillery bottled package and this in turn tends to divert trade to respondent from such competitors and thereby respondent does substantial injury to competition in interstate commerce.

PAR. 7. Because of existing regulations promulgated under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. 977), providing that rectifiers who redistill purchased alcohol

Order

24 F. T. C.

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 respondent Kienzler Distilling 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 L. Hornor, 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 by PGad B. Morehouse and DeWitt T. Puckett, counsel for the Commission, and by Mortimer S. Gordon and Herman Keller, counsel for the respondent (no oral arguments having been made), 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, Kienzler Distilling Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale or sale and distribution by it in interstate commerce or in the District of Columbia of whiskies, gins, or 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 "distilling" 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 other spirituous beverages; or (b) that the said

1358

Order

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 vessels 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 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.

Complaint

24 F. T. C.

IN THE MATTER OF

H. N. HEUSNER & SON

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

Docket 2355. Complaint, Apr. 6, 1935—Decision May 29, 1937

Where a corporation engaged in the manufacture, sale, and distribution of cigars to wholesalers, cigar stores and drug stores in various parts of the United States, including two brands respectively and usually sold at retail at a price of two for five cents and five cents apiece, and wholly composed of domestic tobacco grown in the United States—

Respectively designated, branded and sold said cigars as "Heusner's Original Havana Smokers" and "Martinez Havana Smokers," notwithstanding fact said cigars were not made of Cuban or Havana tobacco, as (1) long understood from term "Havana" by the cigar purchasing and consuming public of the United States and by cigar manufacturers and dealers throughout the United States as meaning and designating tobacco grown on the Island of Cuba and finest quality of tobacco for cigar purposes, and (2) as designating cigars made from such tobacco, preferably purchased as more desirable by many cigar dealers and many of the consuming public;

With capacity and tendency to mislead and deceive substantial portion of the purchasing public into the erroneous belief that said cigars were composed of tobacco grown on aforesaid island, and with result that many members of the public, acting in such erroneous belief induced by such misrepresentations, bought said cigars, and with capacity and tendency thereby to divert unfairly to it trade of competitors engaged in sale in commerce of cigars composed of Havana tobacco, and also of cigars composed of tobacco grown in the United States, and who truthfully advertise and represent their said products; to the substantial injury of competition in commerce:

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

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

Mr. DeWitt T. Puckett for the Commission.

Mr. John Walsh, of Washington, D. C., 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 H. N. Heusner & Son, a corporation, hereinafter called respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to 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: