

IN THE MATTER OF  
L. MUSIL DISTILLING COMPANY

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

*Docket 2476. Complaint, June 28, 1935—Decision, June 9, 1937*

Where a corporation engaged in the rectifying and bottling of whiskies, gins, and other spirituous beverages, in a rectifying plant and under a rectifier's permit, and in sale thereof to wholesalers and retailers in States other than State of origin of its shipments, and in District of Columbia, and in substantial competition with those engaged in manufacture by true distillation of whiskies, gins, and other spirituous beverages from mash, wort, or wash, and in sale thereof in trade and commerce among the various States and in the District of Columbia, and with those similarly engaged in purchasing, rectifying, blending, and bottling such various beverages, and in 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 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 "Distilling" in its corporate name, on its stationery, mailing cards, and invoices, and on the labels attached to the bottles in which it sold and shipped its said products, that it was a producer of distilled spirits from raw materials, and thus represented to its customers, and furnished same with a means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller and that the said whiskies and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, as above set forth, 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, and did not own, operate or control any place or places where such beverages are 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 and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash, and with capacity and tendency to induce dealers and purchasing public, acting in such beliefs, to buy the whiskies and other spirituous

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beverages bottled and sold by it, and with result 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 whiskies or other spirituous beverages; 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. Horner*, trial examiner.

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

*Mr. Max W. Petacque*, of Chicago, Ill., 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 L. Musil Distilling Company, 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 Wisconsin, with its office and principal place of business in the city of Racine, in said State. It is now, and for more than one year last past has been, engaged in the business of wholesaler and rectifier, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous 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 aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by 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

now, 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.

PAR. 2. For a long period of time the word "distilling" 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 manufacturing 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; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled 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 and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the 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 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 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 One 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 advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other 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 or advertising, 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 beliefs that respondent is a distiller and 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 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 do not by their corporate or trade names 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.

#### 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 June 28, 1935, issued and on July 1, 1935, served its complaint in this proceeding upon respondent L. Musil Distilling Company, 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 the 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 said testimony and other evidence were duly recorded and filed in the office of the Commission. No testimony or other evidence in opposition to the allegations of the complaint were introduced by

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Messrs. Sabath, Pearlman, Goodman, and Rein, attorneys for the respondent. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence and brief in support of the complaint (no brief in opposition thereto having been filed and no oral argument 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, existing, and doing business under the laws of the State of Wisconsin with its office and principal place of business at 1228 Buchanan Street, Racine, Wis. It was incorporated on June 14, 1934, with a capital stock of \$35,000.00 to engage in the distilled spirits rectifying industry with a charter containing sufficiently broad powers to enable it to operate as a distillery, but it never so operated. At one time it had a small experimental still for the purpose of analyzing products going into cordials by it compounded. It operated under basic permit No. R-541 from the Federal Alcohol Administration and prior to the organization of that Administration under basic permit No. R-56. It still maintains its corporate existence, though it has not engaged in business since July 1, 1936, and its future plans have not been determined.

At the time of the hearings held during October 1936, respondent had no stock of liquors on hand and its plant equipment had been sold. During the period in which it did business its sales amounted to approximately one million gallons of whiskey, all of which had been rectified.

Between the commencement of its business and July 1, 1936, it was engaged in the manufacturing and bottling of whiskies, gins, and other spirituous beverages in a rectifying plant under a rectifier's permit, and in the sale thereof in the 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 caused its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in States of the United States other than the States of origin of said shipments and in the District of Columbia. Its products were sold mostly to wholesalers in the ter-

ritory west of Racine, Wis., and from California southeast to Louisiana.

In the course and conduct of its business as aforesaid, respondent, during said period was in substantial competition with other corporations and with 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 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 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.

PAR. 2. "Rectifying" in the distilled spirits rectifying industry means the mixing of whiskies of different ages or types, or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

Many distillers operate a separate establishment 600 feet or more away from their distillery, 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 sometimes with spirits purchased from other distillers, or both. Some distillers 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 by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery or at any 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 in his distillery or are spirits of his own distillation bottled in his rectifying plant, the distiller may and does put "Distilled and bottled by \_\_\_\_\_ Company." If, in the distiller's rectifying plant, other spirits have been blended or rectified, he puts on the bottle "Blended 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, viz, a "D" for a distiller and "R" for a rectifier, the number following said

letter corresponding with the distiller's or rectifier's permit. Thus, "R-541" designates this respondent. A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or his rectifier's permit. This number is placed on the bottle to identify the bottler.

Knowledge of these details is not widespread among the retail trade and is very limited among the general public. All whiskies, whether coming from a distillery or rectifier, are generally conceded to be "distilled" products. Therefore, it is not possible to determine from the presence of the phrase, "Blended and Bottled by" alone, or the phrase "Bottled by" alone on the label whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

This respondent does not now and never has 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 authorizes 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.

PAR. 3. The evidence adduced in this case from approximately eight competitive trade witnesses (both rectifiers and distillers) and sixteen members of the purchasing public shows, and the Commission finds, that for a long period of time the word "distilling," 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 manufacturing 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; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 4. This respondent by the use of the word "distilling" in its corporate name, on its stationery, mailing cards, invoices, and on the labels attached to the bottles in which it sold and shipped its products in interstate commerce, represented itself as a producer of distilled spirits from raw materials, and was so regarded, by virtue of said representations, by the trade and purchasing public. It thus represented to its customers and furnished them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it was a distiller and that the whiskies and

other spirituous beverages in said bottles contained were by it manufactured by the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not now and never was a distiller, does not now and never did distill the said whiskies or other spirituous beverages, by it so bottled, labeled, sold, and transported and does not now and never did own, operate, or control any place or places where such beverages are or 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, on their stationery or advertising, or on the labels attached to the bottles in which they sold and shipped their said products.

PAR. 6. Representations by the respondent as hereinabove set forth 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 and other spirituous beverages by it sold were manufactured and distilled by it from mash, wort, or wash, and had the capacity and tendency also to induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies 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 whiskies or other spirituous beverages. Thereby respondent did substantial injury to competition in interstate commerce.

PAR. 7. Respondent stated of record through its attorney that after discussing this matter with the officers of the company and the principal stockholders, should the company desire to resume operations, the word "distilling" in its corporate name would be abandoned, but wished it understood that it did not by this expression of

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its intention waive its right to use the word "distilling" in its corporate name, or admit that the Commission's position was correct. Under these circumstances this Commission can have no assurance that the aforesaid unfair acts and practices on the part of respondent will not at some future date be resumed.

## CONCLUSION

The aforesaid acts and practices of the respondent, L. Musil Distilling Company, were to the prejudice of the public and of respondent's competitors, and constituted 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, brief filed herein by PGad B. Morehouse, counsel for the Commission (no testimony or other evidence having been offered on behalf of respondent, and no brief having been filed on behalf of respondent and no oral argument 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, L. Musil Distilling Company, a 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, 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 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.

IN THE MATTER OF  
CAP ASSOCIATION OF THE UNITED STATES, INC., ET AL.

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

*Docket 2530. Complaint, Aug. 29, 1935—Decision, June 10, 1937*

Where two trade associations, composed, respectively, of some 100 cap manufacturers of all types, and of 27 uniform cap manufacturers; the officers of said associations; the aforesaid uniform cap manufacturer-members engaged in manufacture and sale of all types of headwear used or worn in conjunction with a uniform, and including products used by the military, naval, postal, and coast guard service of the United States, military service of the States, police and fire departments, railway employees, etc., and, prior to the hereinafter set forth acts and practices, engaged in offer and sale of their aforesaid products at competitive and frequently varying prices; and four manufacturers of visors and trimmings used in manufacture of uniform caps, makers and sellers in interstate commerce of about 60 percent of the total volume of such items used in the uniform cap manufacturing industry in the United States, and, up to not long theretofore, sole source of supply for aforesaid indispensable items necessary to manufacture of uniform caps, and making of which items himself is not practicable for the average uniform cap manufacturer; following a series of meetings, called by and presided over by officers of said association first named, and discussions and comparison of prices at which they were offering competitive uniform caps—

- (a) Entered into an agreement to fix, and did fix and abide by, prices which were uniform as among themselves for the offer and sale of aforesaid products;
- (b) Printed, in pursuance of their aforesaid agreement, price lists indicating jobber price, retail price, and contract price to uniform tailors of such products made and sold by the members, and circulated, through use of correspondence facilities of aforesaid association, such price lists, and, in pursuance of their said understanding, uniformly changed said prices and adhered to schedule thereof as revised;
- (c) Exacted and procured agreements of cooperation from said visor and trimming manufacturers, to the effect that they would support, adhere to and enforce the program hereinabove indicated, and procured from them agreements to cooperate with the aforesaid second association or trade organization of cap manufacturers;
- (d) Supplied to aforesaid visor manufacturers, in cooperation and confederation with one another and through use of the offices, stationery and secretarial facilities of said first association, lists containing names of uniform cap manufacturers who refused to sell their products at the prices suggested, as hereinabove noted, and names of such non-member manufacturers who thus refused to sell their said products, and induced said visor manufacturers to cease dealing with and to refuse to sell visors and trimmings to uniform cap manufacturers thus reported, and made use of coercive and concerted action and threats of boycott against such visor