

IN THE MATTER OF
AMERICAN GRAIN DISTILLERS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3
OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2420. Complaint, May 27, 1935—Decision, June 17, 1937

Where a corporation engaged, as rectifier of all kinds of whiskies at its rectifying plant, in purchasing, rectifying, and blending whiskies, gins, and other spirituous beverages, and in producing gin with a still used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products between and among the various States and in the District of Columbia, 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 selling same in trade and commerce among the various States and in said District, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and similarly selling same, and including among said competitors those who, as manufacturers and distillers 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 "distiller" as part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distillers" in its corporate name, 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 whiskies and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash as aforesaid, notwithstanding fact it did not thus distill said various beverages thus bottled, labeled, sold, and transported by it, as definitely understood from word "distillers," used in connection with liquor industry and products thereof in the trade and by the purchasing public, as meaning, when used in connection with liquor industry and products thereof, manufacture of such liquors by process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, 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;

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

Complaint

With effect of misleading and deceiving dealers and purchasing public into the belief that it was a distiller, and that the whiskies, gins, and other spirituous 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 its said whiskies and other spirituous beverages, bottled and sold by it, and with result of thereby diverting trade to it 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 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. Hornor*, trial examiner.

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 American Grain Distillers, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and in violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act," and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Count 1

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under the laws of the State of Michigan, with its office and principal place of business in the city of Detroit, in said State. It is now, and for more than one year last past 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 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 distributors, some located within the State of Michigan and some located in other States of the United States and the District of Columbia. In the course and conduct of its

business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by 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 is, and for more than one year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages 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. 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 "distillers" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, those who produce alcoholic 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 the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the words "Grain" and "Distillers" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies, gins, and other spirituous 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 spirituous beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still operated by it as aforesaid in the rectification of alcoholic spirits by re-distillation over juniper berries and other aromatics, 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 "distillers" 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 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," "distilling," or "grain" 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," "distillers," or "grain" 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 or distilled by it 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 its competitors who do not by their corporate or trade name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, or other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

Complaint

25 F. T. C.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Count 2

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Michigan, with its office and principal place of business in the city of Detroit, in said State. It is now, and for more than one year last past 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 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 distributors, some located within the State of Michigan and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by 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 is, and for more than one year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages 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 words "Distillers" and "Grain" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sells and ships such products and in various other ways, constitutes false advertising within the meaning of the aforesaid 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 it 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 commerce in the manner set forth in paragraph 5 of count 1 hereof, are in violation of Section 3 of Title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on May 27, 1935, issued, and on May 29, 1935, served its complaint in this proceeding upon respondent Amer-

ican Grain Distillers, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of 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 Maurice Nathanson, president of the American Grain Distillers, Inc., appearing for 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 Michigan corporation organized August 24, 1933, and was engaged in the distilled spirits rectifying business from the time of repeal of the Eighteenth Amendment to the Constitution of the United States up to some time in April of 1936, when it ceased to engage in the aforesaid business. During said period respondent operated, under a basic rectifier's permit from the Government known as "R-248," a rectifying establishment with a capacity of 5,000 cases a day, rectifying all kinds of whiskies, purchasing its distilled spirits from Publicker Commercial Alcohol Company and other distilleries. Upon its premises, aforesaid, there was a still for use in the production of gins by a process of rectification whereby alcohol purchased but not produced by respondent was re-distilled over juniper berries and other aromatics.

During the period between repeal of the Eighteenth Amendment and April 1936, respondent was engaged in the business of purchasing, rectifying, and blending whiskies, gins, and other spirituous beverages in its aforesaid plant under its said 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 its said business it caused its said products when sold to be transported from its place of business in

Michigan 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.

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 500 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, "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-248" 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.

The rectification of alcoholic spirits by this respondent as aforesaid in the production of its gin, does not make or constitute it a distiller or a distilling company as defined by Sec. 3247 of the Revised Statutes of the United States regulating Internal Revenue.

The testimony of those having long experience in both the distilled spirits rectifying industry and the distilling industry, established,

Findings

25 F. T. C.

and the Commission finds 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 or by the general public.

PAR. 4. This respondent, by the use of the word "distillers" 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 "distiller" 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," "distiller," 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 belief 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. At the time the hearings in this case were held, to wit, October 1936, respondent had no stock and no plant. On August 3, 1936, its basic permit had been amended by changing its address from 2431 Scotten Avenue, to 634 Lafayette Building, Detroit, Mich., which is a small temporary office where respondent gets its mail and is conducting certain correspondence in an endeavor to sell its rectifying equipment now located in Cincinnati, Ohio, with the Ansonia Copper Company. Respondent is attempting to sell its machinery and all its other assets in order to pay its creditors and close its books. It is now insolvent but there will be no bankruptcy proceedings as the chief creditors are financially interested in the respondent company, and the company expects to turn any proceeds over to its creditors and dissolve the company. Its labels, bearing the name "American Grain Distillers" were disposed of as junk. However, from the record before the Commission the company still maintains its corporate existence, and the Commission does not feel assured that upon a reorganization the name might not be resumed in interstate commerce in the absence of a prohibitive order.

PAR. 8. 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 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.

PAR. 9. The Commission's complaint in this case was issued on the same day as the decision of the United States Supreme Court in the case of *A. L. A. Schechter Poultry Corporation, et al, vs. United States* (295 U. S. 495), and contained two counts. Count 1 specifically charged a violation of the Federal Trade Commission Act, and count 2 charged that the practices of respondent, as hereinbefore set out, were unfair methods within the meaning of the Federal Trade Com-

Order

25 F. T. C.

mission Act because they were in violation of Section 3 of Title I of the National Industrial Recovery Act, which was invalidated by the aforesaid decision. For that reason the Commission is dismissing the complaint as to count 2 thereof.

CONCLUSION

The aforesaid acts and practices of the respondent American Grain Distillers, Inc., 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 the 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 the 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, American Grain Distillers, Inc., 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 "distillers" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word, or words of like import, (a) that it is a distiller of whiskies, gins, or 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

156

Order

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 complaint be, and the same hereby is dismissed as to count 2 thereof.

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

IN THE MATTER OF
SHUPE-WILLIAMS CANDY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2708. Complaint, Jan. 31, 1936—Decision, June 17, 1937

Where a corporation engaged in manufacture and sale of "straight" goods candy, and also of so-called "break and take," "draw," or "deal" assortments, sale and distribution of which type candy, in constant demand and affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, and providing an easy means of disposing of such products, teaches and encourages gambling among children, constituting substantial number of purchasers and consumers of such type, and sale and distribution of which in the markets of many manufacturers who sell their "straight" goods in interstate commerce in competition with the other, has been followed by a marked decrease in sales of such "straight" goods, due to gambling or lottery feature connected with said "break and take," "draw," or "deal" candy, preferred by consumers because of gambling feature connected therewith and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy—
Sold, to wholesalers, jobbers, and retailers, certain assortments of candy which were so packed and assembled as to involve, or were designed to or might involve, use of a lottery scheme when sold and distributed to consumers thereof, and several of which consisted of (a) a number of penny pieces of uniform size and shape, along with explanatory display cards for retailer's use, and number of larger pieces to be given to those purchasers procuring by chance one of aforesaid uniform pieces, concealed colored centers of which different from that of the majority, and small package of candy to be given as prize to purchaser of last piece in assortment, and (b) number of candy bars, together with push card for sale and distribution to purchasing public under a plan, and in accordance with said card's explanatory legend, by which person received, for five cents paid, one, two, three, four, or five bars of candy, dependent upon particular legend disclosed by chance by push, and purchaser of last push was entitled to six; so assembled and packed that they were designed to be, and were exposed and used by retailer dealer purchasers thereof for distribution and resale to purchasing public by lot or chance, without alteration or rearrangement and with knowledge and intent that such candy should thus be resold to public by lot or chance by said retail dealers, in competition with many who regard such sale and distribution as morally bad and as encouraging gambling, and especially among children, and as injurious to the candy industry through resulting in the merchandising of a chance or lottery instead of candy, and as providing retail merchants with a means of violating the laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed and assembled that it can be resold to public by lot or chance;