

Syllabus

IN THE MATTER OF
PARAMOUNT DISTILLING CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2446. Complaint, June 19, 1935—Decision, Aug. 12, 1937*

Where a corporation engaged in rectifying and bottling both rectified and straight distilled spirits, and in making gin, with a still which it used therefor, by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid products to wholesalers and distributors thereof in various States and in the District of Columbia, in substantial competition with those engaged in the manufacture by true distillation of whiskies, gins, and other spirituous beverages from mash, wort, or wash, and in selling such products 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 from mash, wort, or wash of whiskies, gins, and other spirituous beverages sold by them, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate and 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, printed on its stationery and advertising, 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 a means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller and that the whiskies, gins, and other alcoholic beverages contained in such bottles were by it made through process of distillation, notwithstanding fact it did not distill said various beverages, thus bottled, labeled, sold, and transported by it, through original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, as long definitely understood from word "distilling," used in connection with liquor industry and products thereof, in the trade and by the ultimate consuming 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, and plant, equipment, and requirements of which are more elaborate, extensive and burdensome than those of rectifier;

With effect of misleading and deceiving dealers and purchasing public into the beliefs that it was a distiller or distilling company in the ordinarily accepted sense of those terms, and that the whiskies, gins and other

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spirituous 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, in such beliefs, to buy its said whiskies and other alcoholic beverages, rectified and bottled by it, and with distinct tendency to give it an unfair 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 one, and thereby to divert trade to it from such competitors; to the substantial injury of competition in interstate commerce:

Held, That such acts and practices were to the prejudice and injury 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.

Mr. R. E. Joyce, 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 Paramount Distilling 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 Illinois, with its office and principal place of business in the city of Chicago, 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 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 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 alcoholic 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 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. 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 alcoholic 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 alcoholic 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 alcoholic 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 alcoholic beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other alcoholic 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

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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 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 alcoholic 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 alcoholic 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 alcoholic 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 19, 1935 issued, and on June 21, 1935 served its complaint in this proceeding upon the respondent, Paramount 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, attorney for the Commission, before John L. Hornor, an examiner of the Commission, theretofore duly designated by it. No testimony was introduced or offered in opposition to the allegations of the complaint by R. E. Joyce, attorney for respondent. The testimony and other evidence in support of the allegations of the complaint 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 and in opposition to the complaint, no oral arguments having been made; and the Commission having duly considered the same 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 originally incorporated October 16, 1934, existing and doing business under the laws of the State of Illinois, with its principal office and place of business at 512 South Peoria Street, Chicago, Ill.

It is now and has been since February 2, 1935, engaged in the business of rectifying and bottling both rectified and straight distilled spirits, 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 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 New York, 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 since February 1935, 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 since February 1935, 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.

A brief description of the equipment used by said respondent at its rectifying plant in Chicago is as follows: "66 processing receptacles with a total capacity of 2,393 gallons; 40 bottling tanks, total capacity 10,330 gallons; 1 only 40-gallon still for distilling gin; receiving tank, 115 gallons; 1 vacuum filling machine for bottling; 4 regular filling machines for bottling; 5 conveyor tables for bottling; also filter machine.

PAR. 3. 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 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 by a distiller, however, must be done in his rectifying plant under his rectifier's permit.

On some bottled liquors, whether bottled at the distiller's rectifying plant 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 either 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 "Blended and Bottled by-----Company."

With reference to the gin produced by respondent by the redistillation of purchased alcohol over juniper berries and other aromatics, existing regulations promulgated pursuant to Federal Alcohol Administration Act, approved August 29, 1935, (49 Stat. 977), provide that rectifiers who redistill purchased alcohol over juniper berries and other aromatics must call such resulting product "distilled gin," and require that the labels state who distilled it. This serves to distinguish between gin produced by such method and "cold" or compounded gin prepared by mixing neutral spirits with essential flavoring oils.

There is usually blown in the bottom of each bottle a symbol consisting of a letter followed by a number, identifying the bottler, viz, a "D" for a distillery and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit; thus, "R 233" 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.

A distiller has a maximum bond of \$100,000.00, and is permitted to have untaxed liquor; the average bond of the rectifier is about \$5,000.00; the distiller must own the fee title of the premises upon which the business is conducted, or have consent from the owner waiving the owner's interest so that the Government can have a first lien upon the property for taxes; a distillery is under constant general supervision by storekeeper gaugers, who are always there; absolute supervision is maintained over the bonded warehouse of a distillery and rectifying plant; they do not lock the premises and maintain general supervision over the bottling and rectification; the primary distinction is that one storekeeper gauger may take care of several rectifying plants, but at the distillery he is in constant supervision, primarily to supervise the tax payments; a rectifier is not permitted to store spirits in bond; a distiller produces spirits from grains, alcohol, molasses, and fruits; a rectifier produces no distilled spirits whatever, but must obtain them from the producer or from someone holding warehouse certificates; the requirements are considerably more detailed in the case of a distiller than in the case of a rectifier.

A distiller must have a distillery, which must be a complete building and a warehouse, a separate building; he has to have necessary weighing equipment, a grain hopper, cooker, cooking equipment,

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mash tubs, fermenters, sufficient distilling equipment to take care of his continuous distillation until the spirits are run through the pipe lines into the receiving tanks; at the warehouse he has to have the weighing and testing instruments for checking and many other things; a rectifier is not required to have a separate building. A rectifying plant may consist of a room within a building. He needs no bonded warehouse. If one room, it would have to be divided into three separate rooms by wire mesh partitions. The regulations for the equipment of a rectifier are not so specific as those for a distiller.

Knowledge of these details is not widespread among the retail trade and is very limited to the general public. All whiskies, whether emanating from distilleries or rectifiers, are generally in the trade conceded to be "distilled products."

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.

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 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 alcoholic 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 alcoholic 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.

The testimony of those having long experience in both the distilled spirits rectifying industry and the distilling industry, established, 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. There were also called a large number of witnesses who were lay-members of the purchasing public, and with few exceptions, their testimony was to the effect, and the Commission also finds it to be a fact, 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. 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, advertising, and on the labels of the bottles in which they sell and ship such products.

There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages in rectifying plants under rectifiers permits who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 6. Subsequently to the issuance of complaint herein, and on the 3rd day of June 1936, pursuant to proper application approved by the requisite governmental authorities, there was issued to respondent by the Federal Alcohol Administration a basic distiller's permit, No. D-740, authorizing it to distill spirituous beverages from mash, wort, or wash, but up to the present time respondent has not commenced operations under said basic permit.

That permit authorized respondent to engage in the production and sale of distilled spirits at a registered distillery not yet in existence, at St. Charles, Ill. The construction of such distillery was begun at St. Charles, Ill., by the Mervyn Building Corporation, a

company owned outright by Mr. N. C. Meyer, Mr. M. C. Meyer, and Mr. Joseph N. Meyer, under an agreement by which the land and buildings may be purchased by the Paramount Distilling Corporation, upon completion, for the sum of \$200,000.00.

All of the moneys advanced by the Mervyn Building Corporation for the construction of this distillery have been furnished by N. C. Meyer, M. C. Meyer, and Joseph N. Meyer.

The distillery, when completed, will have a capacity of approximately 4,000 gallons of distilled spirits per eight-hour working day, and at the time of the hearings it was anticipated that actual operation of the distillery by the Paramount Distilling Corporation would commence the latter part of January 1937.

Respondent expressed the intention, that as soon as the construction was completed and the necessary arrangements could be made, to proceed to engage in the manufacture of distilled spirits by a process of original and continuous distillation from mash, wort, or wash at the aforesaid distillery.

Respondent has not yet engaged in actual distillery operations.

PAR. 7. 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 Paramount Distilling Corporation 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 respondents are manufactured or distilled by Paramount Distilling Corporation 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 consumers, 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. 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

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product "Distilled Gin," and requiring that the label 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 respondent, Paramount 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 briefs filed herein (no testimony or other evidence having been offered in opposition to the complaint and no oral arguments having been made either by PGad B. Morehouse, counsel for the Commission, or by R. E. Joyce, counsel for the respondent), 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, Paramount 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 all stationery, advertising, or labels attached to the bottles in which its said products are sold and shipped, or in any other way by word or words of like import, (a) that respondent is a distiller of the said whiskies, gins, or other spirituous beverages; or, (b) that the said whiskies, gins, or other spirituous beverages were

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by it manufactured through a process of distillation; or (c) that respondent 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 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.

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IN THE MATTER OF

ARPAUL COMPANY, INC.

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

Docket 2748. Complaint, Mar. 20, 1936—Decision, Aug. 12, 1937

Where a corporation engaged in sale and distribution of its "ORTOSAN" preparation for facial treatment, in substantial competition with others engaged in sale in interstate commerce of creams and other preparations used and useful for beautification of face and skin—

(a) Falsely represented, in radio broadcasts, advertisements of interstate circulation, letters, pamphlets, and other forms of advertising media, that said preparation nourished and rejuvenated skin or face, and that use thereof would restore youthful contours to face, chin, and neck, eliminate sagging lines, erase wrinkles and blemishes, and banish large pores and fine lines, and immediately produce a fresh, healthy skin, and that it would keep the face looking younger, and that it was five creams in one and combined everything needed to give one a beautiful skin; and

(b) Falsely represented, as aforesaid, that said product was the highest praised skin preparation in the world and had been endorsed by leading medical authorities and leading beauty specialists;

With effect of misleading and deceiving many prospective purchasers of preparations for use in beautification of face and skin, and of causing them to believe that representations made by it were true, and that said preparation possessed properties and efficacy claimed, and of causing substantial portion of such persons, by reason of such erroneous beliefs, to buy said "ORTOSAN," and with result thereby of unfairly and unlawfully diverting trade in commerce to it from its competitors who do not misrepresent in any manner the properties or efficacy of their products; to their substantial injury and to the injury of the public:

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

Mr. Astor Hogg for the Commission.

Mr. William Huck, Jr., 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 Arpaul Company, Inc., a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in