

IN THE MATTER OF
DISTILLERS BRANDS, 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 2390. Complaint, May 16, 1935—Decision, Aug. 17, 1937

Where a corporation engaged in purchasing, rectifying, blending, and bottling whiskies, brandies, gins, and other spirituous beverages, 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, in various States and in the District of Columbia, its aforesaid various products to wholesalers and jobbers in various States, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages, 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 from mash, wort, or wash of whiskies, gins, and other spirituous beverages, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate names and on their stationery and advertising and on the labels of the bottles in which they sell and ship such products, and those who, engaged in rectifying, blending, and bottling such various products, do not use aforesaid words as above set forth—

Furnished, through use of word "Distillers" in its corporate name, printed on its stationery and in its advertising, and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, its customers, both wholesalers and retailers, with the means of representing to the ultimate consuming public that the said whiskies, gins, brandies, and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not distill said beverages, so bottled, labeled, sold, and transported by it, 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;

With effect of misleading and deceiving purchasing public into the belief that the whiskies, brandies, gins, and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash, and of inducing said public, acting in such belief, to buy its said whiskies and other spirituous beverages, rectified, blended, and bottled by it, and of thereby diverting trade to it from its competitors who do not, by their corporate name or in any other manner, misrepresent that they are manufacturers, by distillation from mash, wort, or wash, of such various beverages; to the substantial injury of substantial competition in commerce;

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

¹ Count 2 of the complaint, under National Industrial Recovery Act, dismissed.

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Before *Mr. John J. Keenan*, 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 Distillers Brands, Inc., 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 and existing under the laws of the State of Delaware, with its principal office in the city of Wilmington, in the said State, and doing business in and under the laws of the State of Ohio, with its principal place of business in the city of Cincinnati, Ohio. It is now and since its organization in 1933 has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, 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 in Cincinnati aforesaid into and through various other States of the United States to the purchasers thereof, consisting of wholesalers and jobbers, some located within the State of Ohio and some located in other States of the United States and the District of Columbia. In the course and conduct of its business aforesaid respondent is now, and at all times since its organization 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, and has been since its organization, in substantial

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competition with other corporations and with individuals, partnerships, and firms engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, 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. In the course and conduct of its business as aforesaid respondent has, upon its said premises, a still which it uses in the production of gin by a process of rectification whereby alcohol, purchased but not produced by respondent, is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distiller, as defined by section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. For a long period of time the word "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, the manufacture of such liquors by the process of distillation from mash, wort, or wash, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "distillers" in its corporate name, printed on its stationery, in its 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 the said whiskies, gins, brandies, 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, brandies, or other spirituous beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still as aforesaid in the rectification of alcoholic spirits by re-distillation over juniper berries and other aromatics, does not distill the gins by it so bottled, labeled, sold, and transported in the sense in which the word "distilled" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where such beverages are manufactured by 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 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 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 rectifying, blending and bottling whiskies, brandies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate names, nor on their stationery and 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, brandies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, brandies, gins, and other spirituous beverages rectified, blended, and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, brandies, 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.

Count 2

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Delaware, with its principal office in the city of Wilmington, in the said State, and doing business in

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and under the laws of the State of Ohio, with its principal place of business in the city of Cincinnati, Ohio. It is now, and since its organization in 1933 has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, 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 in Cincinnati aforesaid into and through various other States of the United States to the purchasers thereof, consisting of wholesalers and jobbers, some located within the State of Ohio and some located in other States of the United States and the District of Columbia. In the course and conduct of its business aforesaid respondent is now, and at all times since its organization 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, and has been since its organization, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of purchasing, rectifying, blending and bottling whiskies, brandies, 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. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 2 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 2 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 2 of said count 1 were repeated verbatim.

PAR. 3. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 3 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 3 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the

several averments of said paragraph 3 of said count 1 were repeated verbatim.

PAR. 4. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 4 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 4 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 4 of said count 1 were repeated verbatim.

PAR. 5. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 5 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 5 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 5 of said count 1 were 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:

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"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 word "Distillers" in its corporate name, printed upon its stationery and advertising, 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 spirits from mash, wort, or wash and that the spirituous beverages by it so sold and transported have been bottled at a distillery by the original distillers thereof, 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 16, 1935, issued, and on May 17, 1935 served its complaint in this proceeding upon the respondent, Distillers Brands, 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 said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John J. Keenan, 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 brief in support of the complaint—no oral arguments having been made and no brief having been filed in opposition to the complaint; 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. The respondent, Distillers Brands, Inc., was originally incorporated November 2, 1933, and has since existed and done business under the laws of the State of Delaware, with its principal office in the city of Wilmington, in the said State, and its

principal place of business, up until about February 1937, located at 457 East Sixth Street, Cincinnati, Ohio. Some time prior to February 1937, it removed its place of business from Cincinnati, Ohio, to Jacksonville, Fla., and submitted an amended certificate of its incorporation to the Secretary of State for the State of Delaware, providing for a change in its name from "Distillers Brands" to "Distributors Brands." No evidence that this change has been finally effected has been presented to the Commission.

Respondent now is, and since its organization shortly after the date of its incorporation has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, 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, prior to February 1937, it caused its said products when sold to be transported from its place of business in Cincinnati, Ohio, and subsequently to February 1937, from its place of business in Jacksonville, Fla., into and through various other States of the United States to the purchasers thereof, consisting of wholesalers and jobbers, some located within the State of Ohio and some located in other States of the United States and the District of Columbia. In the course and conduct of its business aforesaid respondent is now, and at all times since its organization 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, and has been since its organization, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of purchasing, rectifying, blending and bottling whiskies, brandies, 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. In the course and conduct of its business as aforesaid respondent has, upon its said premises, a still which it uses in the production of gin by a process of rectification whereby alcohol, purchased but not produced by respondent, is re-distilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distiller, as defined by section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. For

a long period of time the word "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, the manufacture of such liquors by the process of distillation from mash, wort, or wash.

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 a 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.

Finally, (blown usually in the bottom of each bottle), there is 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-164" 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 purchased 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 the knowledge of the general public in regard thereto is very limited. 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. The business carried on by Distillers Brands, Inc., from shortly after its organization until its removal to Florida about February 1937, was that of rectifiers of gin and blenders or bottlers of distilled spirits. It produced no distilled spirits from mash, wort, or wash. The aforesaid gin still located on its premises at Cincinnati, Ohio, was a 735-gallon still. It also operated a 627-gallon condenser. In addition to being a rectifier, bottler and blender, it wholesaled and bottled its products to jobbers. It sold none of its products to the State of Ohio Liquor Control, and purchased its distilled spirits and whiskies from such distillers as Century Distilling Company, Peoria, Ill.; American Distilling Company, Pekin, Ill.; and Watham Distilling Company, Lebanon, Ky.

Respondent operates under a permit from the Federal Alcohol Control Administration known as No. R-164, and also had permit from the Department of Liquor Control of the State of Ohio, which authorized Distillers Brands, Inc., "as a manufacturer to manufacture spirituous liquor and sell such product to the Department only, to import into this State spirituous liquor for blending or other manufacturing process, and to export from this State spirituous liquor in bulk or otherwise, for sale outside this State * * *." Respondent later operated under a similar permit from the Federal Alcohol Administration.

The Distillers Brands, Inc., have five salesmen and employed from fifty to sixty employees and appeared, when an inspection of the gin still was made, to be busily engaged in the bottling of its various products. One of its main items was the "Old Gold Applejack Brandy." It had not done any newspaper advertising and very

little trade paper advertising. Its capacity was 150,000 gallons, of which about fifteen percent (15%) was gin. The plant was a large one, occupying four floors of a building 50' x 150', with the greater part given up to the plant, although one-half of a floor was occupied by the offices.

The sales were made principally to wholesalers in Kentucky, Florida, Missouri, Illinois, Wisconsin, West Virginia, although scattered sales were made elsewhere.

In the course and conduct of its business as aforesaid, respondent uses the word "Distillers" in its corporate name, printed on its stationery, invoices and on the labels attached to the bottles in which it sells and ships its said products. Respondent does not now own and never did own, operate or control any place or places where whiskies, gins, brandies, or other spirituous beverages were manufactured by distillation from mash, wort, or wash. The various brands shown on said labels were respondent's brands.

There was no proof that the word "Distillers" as used in respondent's corporate name in connection with the words "Brands" (in other words that the whole name "Distillers Brands") would deceive any retailer or wholesaler into the belief that this respondent was a distiller. However, out of twenty-nine members of the purchasing public called to the stand, nine of them testified that this respondent's name would lead them to believe that respondent was a distiller in the sense generally understood by the trade and the public, and practically all of the twenty-nine witnesses testified that they had a preference for a distillery bottled package over a rectifier bottled package. The said witnesses were selected and subpoenaed from the classified section of the telephone directories in five different large cities and testified as lay members of the purchasing public.

In addition to this likelihood and tendency toward deception of the purchasing public, respondent contended in its answer that it was a distiller and the facts disclosed are that the brands of liquors sold by this respondent were almost exclusively its own brands.

It is not difficult to choose statements, designs, and devices, or names, which will not deceive. Deception may result from the use of statements not technically false, or which may be literally true. The aim of the statute is to prevent resulting deception from indirection and ambiguity, as well as from statements which are false. Those statements which are ambiguous and liable to mislead should be read favorably to the accomplishment of the obvious purpose.

The Commission finds that in the course and conduct of its business as aforesaid, by the use of the word "Distillers" in its

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corporate name, printed on its stationery, in its advertising and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent furnishes its customers, both wholesalers and retailers, with the means of representing to the ultimate consuming public that the said whiskies, gins, brandies, 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, brandies, or other spirituous beverages by it so bottled, labeled, sold and transported, and merely by the use of a still as aforesaid in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics, does not distill the gins by it so bottled, labeled, sold and transported in the sense in which the word "distilled" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 5. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in Paragraph One 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 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 rectifying, blending and bottling whiskies, brandies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate names, nor on their stationery and advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 6. The representation by respondent, as set forth in paragraph 4 hereof, has a capacity and tendency to and does mislead and deceive the purchasing public into the belief that the whiskies, brandies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, and has the capacity and tendency to and does induce the purchasing public, acting in such belief, to purchase the whiskies, brandies, gins and other spirituous beverages rectified, blended and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate name or in any other manner misrepre-

sent that they are manufacturers by distillation from mash, wort, or wash of whiskies, brandies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 7. Notwithstanding the contemplated change by respondent in its name as aforesaid from "Distillers Brands, Inc." to "Distributors Brands" respondent has at all times asserted that it had the legal right to use its former misleading designation and the Commission can under the circumstances have no assurance either that it has discontinued such practice or that, if so, such discontinuance will endure.

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 prior to 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 Commission 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 respondent, Distillers Brands, Inc., 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 re-

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spondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and brief filed herein in support thereof, 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, Distillers Brands, 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 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 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 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 service upon it of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

THE SOLVOTONE COMPANY, AND JESSIE ROGERS,
INDIVIDUALLY AND AS PRESIDENT THEREOF

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

Docket 3082. Complaint, Mar. 18, 1937—Decision, Aug. 17, 1937

Where a corporation engaged in sale and distribution of its "Solvotone" medicines or preparations, in commerce among the various States, direct to members of the consuming public and also to wholesale and retail druggists for resale, in substantial competition with others engaged in sale and distribution, among the various States and in the District of Columbia, of medicines of the same general kind and adapted to and used for same general purposes; and its president and principal owner, in active charge of its business and responsible for its policies and conduct in relation to acts and practices as herein set forth; in promoting sale of said medicines—

- (a) Represented, in newspaper advertisements and in publications of general circulation, and in various other advertising matter circulated and distributed direct to members of the purchasing public, both directly and through reproduction of testimonials or purported testimonial statements, that its said preparations constituted a cure, remedy, or competent and adequate treatment for gall-stones and ailments of the gall-bladder and diseases of the stomach or liver, and that said preparations were effective in treatment of stomach ulcers or cancer of the stomach, and that use thereof would remove gall-stones and prevent operations in such various conditions above indicated, including appendicitis; and

- (b) Represented, as aforesaid, that use of such preparations would relieve tightness around the waist or pain in the right side, regardless of cause thereof, including serious pathological conditions, and would end suffering;
- Facts being medicines in question were not a cure, remedy or competent and adequate treatment for gall-stones, ailments of the gall-bladder, or stomach and liver diseases, would not remove or relieve such stones or prevent an operation where they had developed, were of no material use in treatment thereof or ailments of gall-bladder, or of value in treatment of stomach ulcers or cancers, and would not relieve tightness around waist, etc., when due to any serious pathological condition, were of no value, and might do great harm, where such pain was symptom of appendicitis, and would not end suffering nor prevent operation in aforesaid various cases, ordinarily evidenced by one or more of such symptoms as set forth by it;

With tendency to confuse, mislead, and deceive members of the public into the erroneous belief that said medicines were a cure, remedy, or competent and adequate treatment for gall-stones and such various ailments and conditions as above stated, and that they would accomplish results above set forth, regardless of cause thereof, and that they were useful and effective in treatment of such various conditions and would end suffering and prevent operations as above noted, and of inducing members of the public to purchase its said medicines because of erroneous belief thus