

Syllabus

IN THE MATTER OF

NACIONAL DESTILERIAS CORPORATION

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

Docket 2477. Complaint, June 28, 1935—Decision, Oct. 9, 1937

Where a corporation engaged as a wholesaler, in the purchase and importation from the Philippine Islands of rum, brandy, gins, and cordials, such as Creme de Menthe, Anisette, Creme de Cacao, and Vermouth, and in the storing of its goods, on importation, in various warehouses in certain cities in the United States, and in resale and reshipment thereof from such points to wholesale and retail purchasers thereof in other States, in substantial competition with (1) those engaged in manufacture by distillation of rums, brandies, gins, cordials, and other spirituous beverages, and in sale thereof in trade and commerce among the various States and in the District of Columbia, (2) those engaged in purchasing, rectifying, blending, and bottling such various beverages and similarly selling same, and (3) those engaged in purchasing, and reselling such various beverages as aforesaid, and including among said competitors those who (1) manufacture and distill from mash, wort, or wash, through process of original and continuous distillation from raw materials, such as grain, mash, or wort, and truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names on the labels of the bottles in which they sell and ship such products as rums, brandies, cordials, gins, and other alcoholic beverages, (2) those who, engaged in purchasing, rectifying, blending, bottling, and selling such various beverages, do not use aforesaid word as above set forth, and (3) those who, engaged as wholesalers of rums, brandies, etc., and other such beverages, also do not use aforesaid words as above set forth—

Represented, through use of word "Destilerias" in its corporate name printed on its stationery and on the labels attached to the bottles in which it sold and shipped its said products, along with names "Destilerias Ayala" and "Destilerias La Tondena," Manila distilleries for which it was exclusive distributing agent in the United States, and in various other ways to its customers and furnished them with means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller of cordials, gins, and other spirituous beverages, notwithstanding fact it did not own, operate, or control any place or places where any alcoholic beverages were by it made by process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, and was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and said public into belief that it was a distiller and of inducing such dealers and public, acting in such belief, to buy rums, brandies, cordials, gins, and other spirituous beverages labeled and sold by it, and of thereby diverting trade to it from those of its competitors who do not, by their corporate or trade names or in any

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other manner, misrepresent that they are distillers of whiskies, gins, and 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 J. Keenan*, 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 Nacional Destilerias 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 Indiana, with its office and principal place of business in the city of Indianapolis, in said State. It is now, and for more than one year last past has been, engaged as a wholesaler, purchasing and importing from the Philippine Islands and elsewhere and reselling whiskies, gins, and other spirituous beverages in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms, engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blend-

ing, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia; 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 and reselling whiskies, gins, and other spirituous beverages 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 "distilleries" 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 places where such liquors are manufactured 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 words "Nacional Destilerias" are the Spanish for "National Distillers" and are so similar in spelling and sound to their English equivalent as to be readily understood by a substantial portion of the purchasing public.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Destilerias" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, or other spirituous beverages by it so labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and ad-

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

PAR. 5. Representation by respondent as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins and other spirituous beverages labeled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on June 28, 1935, issued, and on July

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1, 1935, served its complaint in this proceeding upon the respondent, Nacional Destilerias 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 the 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 or other evidence was introduced by the respondent in opposition to the allegations of the complaint. The said 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, other evidence, and brief in support of the complaint, no brief in opposition thereto and 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. The repondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business at 130 East Washington Building, Room 609, in the city of Indianapolis, in said State. It was incorporated on November 28, 1933, and since a time shortly after its organization has been engaged as a wholesaler, purchasing and importing from the Philippine Islands and re-selling rum, brandy, and gins, and cordials such as Creme de Menthe, Anisette, Creme de Cacao, and Vermouth. Upon importation, respondent stores its goods in various warehouses in Chicago, New York, New Orleans, and Los Angeles, and such goods are re-shipped from those points upon the order of the respondent to the purchasers thereof consisting of wholesalers, and retailers located in States of the United States other than the point of origin of such shipments, including the States of Massachusetts, New York, Rhode Island, Kentucky, Illinois, and Missouri. In the course and conduct of its business, respondent is engaged in selling its said products in constant course of trade and commerce between and among the various States of the United States.

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 rums, brandies, gins, cordials, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling rums, brandies, gins, cordials, 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; 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 and reselling rums, brandies, gins, cordials, and other spirituous beverages in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The words "Nacional Destilerias" in the corporate name of this respondent are the Spanish equivalent for "National Distillers" and are so similar in spelling and sound to the English equivalent thereof as to be readily misunderstood by a substantial portion of the purchasing public to mean "National Distilleries." For a long period of time, the word "Distilleries" 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 wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the places where whiskies, gins, and other alcoholic beverages are manufactured by the process of original and continuous distillation from raw materials such as grain, mash, or wort.

Within the cities of Indianapolis, Ind.; St. Louis, Mo.; Kansas City, Mo.; and Chicago, Ill., more than thirty-five witnesses testified, as disinterested members of the public, what "Nacional Destilerias Corporation" meant to them in association with the liquor industry. With the exception of some four or five who did not understand the words, they all testified substantially to the effect that the corporate name "Nacional Destilerias Corporation" meant to them "National Distillery Company"; that such trade name printed on the labels of bottles as used by the respondent would influence them to purchase the merchandise of respondent under the belief that they were purchasing the merchandise of a distillery. The gist of the testimony of practically all these public witnesses was to the effect that

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in purchasing a product with a distiller's name upon the same, preference would be given to such product in the belief that it would be more uniform, up to certain specifications, etc., because it was made under Government supervision; that they preferred buying in as direct manner as possible; that distillers have more responsibility than a rectifier or wholesaler in the field of spirituous liquors; that the use of the word "Destilerias" as used in the corporate name by respondent would indicate to them that respondent was a distiller; that they would give preference to respondent's package over a bottle which did not contain any words indicating a distillery.

The Commission finds that a substantial portion of the purchasing public prefers to buy from the retailer spirituous liquors prepared and bottled by, and purchased by the retailer from, real distillers; and that the inclusion of respondent's present corporate name upon the labels of the bottles in which it sells and ships its aforesaid liquors therefore has a tendency unfairly to induce purchasers and prospective purchasers to purchase respondent's said liquors in preference to liquors sold by competing wholesalers who do not falsely designate themselves as distillers or distilling companies, and to induce retailers to purchase the respondent's cordials, gins, and liquors in preference to like products sold by wholesalers who do not use trade or corporate names having a capacity and tendency to confuse the purchasing public as to their status in the trade.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Destilerias" 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 it is a distiller of cordials, gins, and other spirituous beverages, when, as a matter of fact, respondent is not a distiller, and does not own, operate, or control any place or places where any alcoholic beverages are manufactured by the process of distillation from mash, wort, or wash.

The specimens of labels introduced in this case, show that in some instances the names of the Manila distilleries; viz, Destilerias Ayala and Destilerias La Tondena, for which respondent is the exclusive distributing agent in the United States, appear thereon in addition to the words "Imported by Nacional Destilerias Corporation, Indianapolis, Indiana." The Commission finds that such labeling, under the circumstances hereinabove set forth; namely, the existing preference of a substantial portion of the public to deal in as direct a manner as possible with the actual distillers and bottlers of the

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package of liquors which it buys, is misleading and deceptive in fact, and has led retail liquor dealer purchasers to purchase respondent's products under the false impression induced by such labeling and by the use of respondent's name upon its stationery and invoices, that respondent was a distiller and owned and operated distilleries of those names in the Philippine Islands.

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, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names on the labels of the bottles in which they sell and ship such products as rums, brandies, cordials, gins, and other alcoholic beverages. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers," as a part of their corporate or trade names on the labels attached to the bottles in which they sell and ship their said products. There are also among such competitors corporations, firms, partnerships and individuals engaged in business as wholesalers of rums, brandies, cordials, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers," as a part of their corporate or trade names, 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 has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that respondent is a distiller, and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the rums, brandies, cordials, gins, and other spirituous beverages labeled and sold by the respondent, thereby diverting trade to respondent from those of its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are distillers of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of respondent, Nacional Destilerias Corporation, are to the prejudice of the public and of respondent's

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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 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, Nacional Destilerias Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale or sale and distribution by it in interstate commerce or in the District of Columbia, of whiskies, gins, or other spirituous beverages, do cease and desist from:

Representing, through the use of the word "Destilerias", or any form of the words distiller, distilleries, distilling, or distilled, or equivalents thereof, in its corporate name on its stationery, invoices, or labels attached to the bottles in which its said products are sold and shipped (a) that respondent is a distiller of the said rums, brandies, cordials, 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 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.

IN THE MATTER OF
ARROW DISTILLERIES, INC.

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

Docket 2431. Complaint, June 7, 1935—Decision, Oct. 20, 1937

Where a corporation engaged in the distilled spirits rectifying industry, in purchasing, rectifying, blending, and bottling various kinds of gin, rock and rye, and a wide variety of cordials or liqueurs, 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 use for experimental purposes, in connection with production of cordials, of two small stills of five-gallon capacity or less, and in sale of its aforesaid various products chiefly to wholesalers and State Liquor Commissions, in other States and in District of Columbia, in substantial competition with those engaged in manufacture by true distillation of various kinds of alcoholic 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 cordials, gins, and other alcoholic beverages in rectifying plants and under rectifier's permits, and in sale thereof as aforesaid, and including among said competitors those who, as manufacturers and distillers from mash, wort, or wash of whiskies, gins, and other alcoholic beverages sold by them, truthfully used words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names and on their stationery, catalogs, and advertising and on the labels of the bottles in which they sell and ship such products and do not misrepresent that they have had one hundred years' experience in making quality liquors, and those who, engaged in purchasing, rectifying, blending, and bottling cordials, gins, and other alcoholic beverages in rectifying plants as above set forth, do not use such words as aforesaid, nor misrepresent, as above stated, their years of experience in the making of quality liquors—

Represented, through use of word "Distilleries" in its corporate name, printed on its stationery, catalogs and advertising, and on the labels attached to the bottles in which it sold and shipped its said products, and through printed representations, that it had had "100 years experience making quality liqueurs," to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller of cordials, gins, and other alcoholic beverages and had been making quality liqueurs for one hundred years, notwithstanding fact it did not own, operate or control any distillery or place where any alcoholic beverages are made by process of distillation from mash, wort, or wash by original and continuous distillation therefrom, through continuous closed pipes and vessels until manufacture is complete, as long understood from word "distilleries" when used in connection with industry in question and products thereof by trade and ultimate purchasing public, had not had one hundred years' experience, and was not, either under the Internal Revenue laws or as commonly understood, a distiller, for the spirituous bottled