

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

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liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and purchasing public into belief that the cordials, gins, and other alcoholic 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, acting in such beliefs, to buy its said cordials, gins and other alcoholic beverages, rectified and bottled by it, and of thereby diverting trade to it from its competitors who do not, by their corporate or trade name or in any other way, misrepresent the extent of their past experience or that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, or other such 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.

Before *Mr. John L. Hornor*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. R. E. Joyce, of Washington, D. C., and *Dann & Atlas*, of Detroit, Mich., 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 Arrow Distilleries, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and 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 September 15, 1933, existing and doing business under the laws of the State of Michigan, with its office and principal place of business in the city of Detroit, in said State. It is now, and for more than one year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic beverages in a rectifying plant under a rectifier's permit, and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and distributors, some located within the State of Michigan and some located

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in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other alcoholic beverages from mash, wort, or wash, and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is, and for more than one year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic 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 the process of rectification whereby alcohol, purchased but not produced by respondent, is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distillery or a distiller, as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. For a long period of time the word "distilleries" 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, places where alcoholic liquors are produced by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid by printed representations that it has had "100 years experience making quality liqueurs" and by the use of the word "Distilleries" in its corporate name, printed on its stationery, catalogs, 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

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the said whiskies, gins, and other alcoholic beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other alcoholic beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still operated by it as aforesaid in the rectification of alcoholic spirits by re-distillation over juniper berries and other aromatics, does not distill the whiskies, gins, and other alcoholic beverages by it so bottled, labeled, sold, and transported in the sense in which the word "distilleries" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where alcoholic beverages are manufactured by a process of original and continuous distillation from mash, wort, or wash. Respondent has not had 100 years experience making quality liqueurs.

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 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, catalogs, advertising, and on the labels of the bottles in which they sell and ship such products, and who do not misrepresent that they have had 100 years experience in making quality liqueurs. 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 alcoholic 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, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products, and who do not misrepresent that they have had 100 years experience making quality liqueurs.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof, are calculated to and have a capacity and tendency to and do mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other alcoholic beverages sold by the respondent or manufactured or distilled by it from mash, wort, or wash by one continuous process and are calculated to 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, thereby

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diverting trade to respondent from its competitors who do not by their corporate or trade name or in any other manner misrepresent the extent of their past experience or that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, or 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 7, 1935, issued, and on June 10, 1935, served its complaint in this proceeding upon the respondent, Arrow Distilleries, 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 L. Hornor, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by R. E. Joyce and Saul A. Dann, attorneys for respondent; and said testimony and other evidence 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 briefs in opposition thereto having been filed 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. Respondent is a corporation organized September 15, 1933, under the laws of the State of Michigan, with its principal

office and place of business at 3539 Concord Avenue, in the city of Detroit in said State. It was incorporated with an authorized capital stock of \$175,000, and ever since a date shortly after its incorporation has been and now is engaged in the distilled spirits rectifying industry under the necessary permits from the United States, in the business of purchasing, rectifying, blending, and bottling various kinds of gin, rock and rye, and a wide variety of cordials of liqueurs such as Kuemmel, Triple Sec, Creme de Menthe, Creme de Cacao, Cocktails, Tom Collins, Greek Liqueurs, Polish Liqueurs, Tom and Jerry, and other alcoholic beverages, in a rectifying plant, 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. While it has some retail accounts, it sells chiefly to wholesalers and State Liquor Commissions in States having liquor monopolies. As of October 1, 1936, it had sold approximately \$1,575,000 worth of spirituous beverages.

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 some thirty-one 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 true distillation of various kinds of alcoholic beverages from mash, wort, or wash, and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and for more than one year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling cordials, gins, and other alcoholic 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. Prior to August 15, 1936, when the regulations of the Federal Alcoholic Administration of the Treasury Department became effective under the Act of August 29, 1935, 49 Stat. 977, certain cordials (synonymous with liqueurs) could be and were labeled and referred to in the trade as "distilled" products. Thereafter, that Department would not permit such products to be labeled "distilled."

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The Commission takes notice of Regulation No. 5, Article 2, of the aforesaid regulations entitled "Standards of Identity for Distilled Spirits," Class Six, "Cordials and Liqueurs," which reads as follows:

(a) Cordials or Liqueurs are products obtained by mixing or redistilling neutral spirits, brandy, gin, or other distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolations, or maceration of such materials, and to which sugar or dextrose or both have been added in an amount not less than 2½% by weight of the finished product. Synthetic or imitation flavoring materials shall not be included.

(b) "Sloe gin" is a cordial or liqueur with the main characteristic flavoring derived from sloe berries.

(c) Cordials and liqueurs shall not be designated as "distilled" or "compound."

The evidence of record shows that in the trade cordials are produced either by the method of percolation, distillation, maceration, or compounding. Percolation, as to cordials, is the distilling of various fruits and herbs to obtain the flavor from them, the berries or herbs being placed in a still and alcohol put into the still. This alcohol is then vaporized through the berries to extract all of the flavor from them, and then condensed on the other side of the still. All of the distillate that comes off is a cordial. All cordials are made by compounding, but the flavor therein is derived by percolation, distillation, or macerations. Maceration is a cold water method of extracting the flavor.

Approximately 75% of respondents' products are such "non-distilled" products, approximately 3% is gin, and the balance consists of brandies, rums, Slivowitz, and various other distilled products which respondent bottles but does not distill itself, and these are marked in compliance with the aforesaid regulations with the words "Bottled by."

Respondent has no distiller's permit from the Federal Government, and acquires such alcohol products as it requires in its business directly or indirectly from distillers. Its answer admits that it does not own, operate, or control any place or places where whiskies, gins, or other alcoholic beverages are manufactured from mash, wort, or wash.

PAR. 3. Upon the premises of respondent's place of business aforesaid there is a 250-gallon capacity gin still, wherein respondent manufactures gin from alcohol purchased but not produced by it, through the redistillation of said alcohol over juniper berries and other aromatics. This gin constitutes approximately 3% of its total output and approximately 2% of its total sales volume. In addition to the aforesaid gin still it has two small stills of a 2- and 5-gallon capacity respectively, which are used as a part of its laboratory equipment in

experimenting with the production of cordials. The aforesaid manufacture of gin by redistillation of purchased alcohol is well recognized in the trade as a process of rectification, and it is not necessary under the pertinent laws and regulations for one engaging in such a process to possess a permit to distill. Neither such rectification of alcoholic spirits nor the use of the two smaller stills above mentioned for experimental purposes, make or constitute this respondent a distiller nor its place of business a distillery, within the intent and meaning of Section 3247 of the revised statutes regulating Internal Revenue. (U. S. C. Tit. 26, Sec. 1158.) The Commission finds that this respondent is a rectifier, its place of business a rectifying plant, and that it is engaged in the business of rectifying, within the intent and meaning of Section 3244 of the revised statutes of the United States. (U. S. C. Tit. 26, Sec. 1397f.) Neither does such rectification and experimentation make or constitute this respondent a distiller as commonly understood by the public and by those engaged in any branch of the liquor industry. For a long period of time the word "distilleries" 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, places where alcoholic liquors are produced by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by the actual distillers thereof.

PAR. 4. In the course and conduct of its business as aforesaid, by printed representations that it has had "100 years experience making quality liqueurs" and by the use of the word "Distilleries" in its corporate name, printed on its stationery, catalogues, 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 a means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller of cordials, gins, and other alcoholic beverages and has been making quality liqueurs for 100 years, when as a matter of fact respondent is not a distiller and does not own, operate or control any distillery or place where any alcoholic beverages are manufactured by the process of distillation, from mash, wort, or wash. Respondent has not had 100 years experience making quality liqueurs.

The specimens of labels introduced in evidence in this case show that in several instances respondent has caused to be conspicuously printed thereon such phrases as "Made by Arrow Distilleries, Inc."

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"Distilled and Bottled by Arrow Distilleries, Inc.," "Prepared by Arrow Distilleries, Inc." and "Made and Bottled by Arrow Distilleries, Inc."

PAR. 5. In support of the allegations contained in paragraph 2 of the complaint, relating to public preference to buy alcoholic beverages bottled and prepared by the actual distillers thereof, witnesses were called who were members of the purchasing public and who were examined with respect to any such preference on their part for the purchase of liqueurs or cordials as well as other alcoholic beverages when bottled by a distiller. The greater number of these witnesses testified that the use of such words would induce them or did induce them to purchase the products of the concern using such words in their corporate name or on the label of the bottle containing the products, in the belief that a distiller's product would be more uniform and up to certain specifications and that a manufacturer's name should mean something. They testified that they preferred buying in as direct a manner as practical, and considered distillers as having more responsibility than a rectifier or bottler of spirituous liquors. It was testified that the use of the word "Distilleries" in the corporate name of the respondent would indicate to them that the respondent was the actual distiller of the product and that they would give preference in purchasing a product which bore a label containing such corporate name in competition with a product bearing a label which did not contain the word "Distilleries" or any word indicating a "Distilling" process in its corporate name or otherwise. This preference on the part of the public was confirmed by the testimony of several retailers, one of whom had found that due to the preference arising from the use of such term as "Distilleries" on the package, he could advance the price 15 percent over that of a similar package which did not contain such a representation.

PAR. 6. 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 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, catalogues, advertising, and on the labels of the bottles in which they sell and ship such products, and who do not misrepresent that they have had 100 years experience making quality liqueurs. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling cordials, gins and other alcoholic beverages in rectifying plants under recti-

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fier's 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, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products, and who do not misrepresent that they have had 100 years experience making quality liqueurs.

PAR. 7. The representations by respondents, as set forth in paragraph 4 hereof, are calculated to and have a capacity and tendency to and do mislead and deceive dealers and the purchasing public into the belief that the cordials, gins, and other alcoholic beverages sold by the respondent are manufactured or distilled by it from mash, wort, or wash by one continuous process, and are calculated to and have the capacity and tendency to and do induce dealers and the purchasing public, acting in such beliefs, to purchase the cordials, gins and other alcoholic beverages rectified and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade name or in any other manner misrepresent the extent of their past experience or that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, or other alcoholic beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 8. Existing regulations promulgated under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. L. 977), which regulations became effective August 15, 1936, provide that rectifiers who redistill tax-paid purchased alcohol over juniper berries and other aromatics may call such resulting product "distilled gin," and require that the labels shall state thereon who distilled it. For this reason the Commission has excepted from the application of its order herein gins so produced by this respondent.

CONCLUSION

The aforesaid acts and practices of the respondent Arrow Distilleries, 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 respondent, testimony and other evidence taken before John L. Hornor, an

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examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by PGad B. Morehouse, counsel for the Commission (no brief having been filed in opposition thereto by R. E. Joyce and Saul Dann, attorneys for respondent, and no oral arguments having been requested), 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, Arrow Distilleries, Inc., its officers, representatives, agents, and employees, in connection with the sale and distribution of cordials, gins, and all other alcoholic beverages in interstate commerce and in the District of Columbia (except gins produced by it through a process of rectification whereby alcohols purchased, but not produced, by respondent are redistilled over juniper berries and other aromatics), do forthwith cease and desist from:

1. Representing, through the use of the word "Distilleries" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a distiller of cordials, gins or other spirituous beverages; or (b) that the said cordials, gins or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places; and from

2. Representing that it has had 100 years experience making quality liqueurs, or in any other way by words or phrases of like import, representing that it has been making liqueurs for a longer period of time than is actually the fact.

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

Syllabus

IN THE MATTER OF
AMERICAN MUSHROOM INDUSTRIES, LTD.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3057. Complaint, Feb. 12, 1937—Decision, Oct. 26, 1937*

Where a corporation engaged in promoting sale of mushroom spawn, purchased by it from producer thereof, and by it sold primarily through mail order, in response to prolific advertising, for price, ordinarily, about ten-fold that paid by professional planters for same quantity of same identical spawn produced by same producer, and, as thus engaged, in competition with those who sell mushroom spawn in interstate and foreign commerce without falsely representing that there is a shortage of fresh mushrooms on the market, no experience is necessary in growing of said product, there is a big profit in such growing at home, or making use of any false and misleading representations below set forth; in soliciting sale of and selling its said spawn, in correspondence, advertisements and trade literature—

- (a) Represented that same would produce extraordinary financial returns to purchasers and users thereof, and that mushroom growing was so simple inexperienced amateurs possessing no previous knowledge or technical skill might earn substantial weekly income raising such product in any idle space about the house, there was shortage on the market, spawn sold by it was a new and superior type which would produce white mushrooms at rate of from two and one-half to three pounds per square foot per planting, and mushrooms grown therefrom were superior to, or commanded higher prices than, white mushrooms grown from other spawn, and it gave book free to its customers, through such statements, among others, as "Shortage of fresh mushrooms on the market. New growers needed immediately. Earn up to \$25.00 or more * * *," " * * * even a boy or girl can really grow mushrooms the AMI way," " * * * BIG PROFIT business at your own Home Make BIG MONEY full or part time * * *," "Prices are advancing rapidly * * *," facts being there was no such shortage, prices had been on a downward trend with many professional growers forced into bankruptcy, product could not be successfully raised in any idle space about the home, but growing thereof involved unpleasant elements, required experience, and was not simple or easy occupation, spawn sold by it was of same type as that sold by producer in large quantities to many others, no book was given free to customers, but cost thereof was included in purchase price of spawn sold, and representations aforesaid were otherwise false; and
- (b) Represented that it was the largest concern in the world of its kind, and that it had a world-wide service and gave "Expert Advice—Laboratory Analysis—Research," and maintained "a staff of experts to advise you on every phase of the industry" and it had an office in London, England, facts being it maintained no offices in said city, nor any such world-wide service, had no personnel in the United States competent to give expert advice on raising of such products, nor any laboratories, or research facilities of