

IN THE MATTER OF
E. O. JACKSON DISTILLING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 2940. Complaint, Oct. 6, 1936—Decision, Oct. 30, 1937

Where a corporation engaged in distilled spirits rectifying industry, in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in producing 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 sale of its aforesaid various products, and of whisky theretofore, and for a time, distilled by it as lessee of a Kentucky distillery prior to discontinuance of such distilling operations, to wholesale purchasers, principally, in most of the other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages, and in the sale thereof in trade and commerce among the various States and in said District, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and similarly selling same, and including among said competitors those who, as manufacturers and distillers by original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, of whiskies, gins, and other spirituous beverages, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth, and also those who, engaged in either distilled spirits or distilled spirits rectifying industry, or both, do not make grossly exaggerated and misleading statements regarding the quality of a whisky artificially aged in from 30 to 60 days so as to give it appearance of whisky which had been aged in the wood for approximately two years—

- (a) Represented, through use of word "distilling" in its corporate name, printed on its stationery and advertising and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that all its said whiskies and other alcoholic beverages bottled by it were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it was not, as to all its products excepting liquor actually produced by it under lease as aforesaid, a distiller, for the spirituous bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public, but a rectifier, within true intent and meaning of the law and as commonly understood by trade and consuming public, and with tendency to induce public to purchase products of concern using such words in its corporate name, in preference to those of other bottlers, as and for products bottled by actual distiller and as giving purchaser, in buying as directly as

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possible from distiller, better grade of merchandise, saving in money or more uniform product; and

- (b) Represented, through statement "Kentucky's Best" straight Bourbon whiskey, bottled by the distillers, direct from Kentucky, in advertising its "charred chip" whiskey, in which "charred chip" process is employed to give whiskey approximately same satisfactory color in from 30 to 60 days as obtained by approximately 2 years of aging in the wood, as claimed by it that its said whiskey was of same or equivalent quality as whiskey properly and normally aged in the wood, facts being that such representations, as applied to Bourbon whiskey distilled in Kentucky and aged by aforesaid process, were grossly exaggerated and misleading;

With effect of misleading and deceiving dealers and purchasing public into the beliefs that all said representations were true, and that the whiskies, gins and other spirituous beverages bottled and sold by it were by it made and distilled from mash, wort, or wash, as aforesaid, and of inducing dealers and purchasing public, acting in such beliefs, to buy its said whiskies and other spirituous beverages bottled and sold by it, and of thereby diverting trade to it from its competitors who do not, by their corporate or trade names or in any other manner, misrepresent that they are manufacturers, by distillation from mash, wort, or wash, of such products; 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 J. Keenan*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. Donald H. Mann, of D'Ancona, Pflaum & Kohlsaat, of Chicago, Ill., 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 E. O. Jackson Distilling Company, 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, existing, and doing business under the laws of the State of Illinois, having its principal office and place of business at 8440 South Chicago Avenue in the city of Chicago in said State. It is now and since January 1, 1936, has been engaged in the distilled spirits rectifying industry, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and engaging in the sale thereof in con-

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stant 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 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 now, and since its organization has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages 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 and liquors does not make or constitute respondent a distiller as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor a distilling company as commonly understood by the public or the liquor industry. For a long period of time the word "distilling" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacture of distilled spirits 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 substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by those actually engaged in the operation, ownership, or control of such a distillery.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the

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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 respondent 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, and other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

In the course and conduct of its business as aforesaid, respondent bottles at Chicago, Illinois, and ships and sells in interstate commerce and in the District of Columbia, among other brands, a brand of whisky labeled as follows:

From Old Kentucky
BOTTLED BY THE DISTILLERS
Your Assurance of Uniformly High Quality
Proof 90

C O T T O N
C L U B
KENTUCKY
STRAIGHT BOURBON
WHISKEY
SUPERBLY SMOOTH AND MELLOW
Distilled At
Distillery No. 17
5th Dist. of Kentucky

As a means of inducing and promoting the sale of said "Cotton Club" brand of whiskey in interstate commerce, respondent has widely distributed advertising matter in which it has made, among others, the following representations of fact, to wit:

KENTUCKY'S BEST NOW COSTS YOU LESS
BOTTLED BY THE DISTILLERS
DIRECT FROM KENTUCKY

Try COTTON CLUB and your taste will convince you that it's the greatest Kentucky Whiskey value on the market. You'll marvel that so fine a whiskey can be sold at so low a price * * * Handled from the grain to the finished bottle by one organization.

Distilled and Bottled by
E. O. JACKSON DISTILLING CO.,
Louisville, Kentucky.
A uniformly high quality product—

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Said representations of fact are grossly exaggerated, false and misleading in that (a) the said whiskey is not of high quality; (b) respondent has no place of business in Louisville, Ky.; (c) has not since January 1, 1936, actually owned, operated or controlled any distillery whatever in the sense in which said term is commonly accepted and used in the distilled spirits industry.

"Distillery No. 17," 5th District of Kentucky became and was favorably known to many engaged in the liquor trade by reason of the production there between 1903 and 1935 of whiskey of a high quality by A. Ph. Stitzel, Inc., and in 1929 this particular distillery received one of the first licenses issued by the government for the manufacture of medicinal whiskey during the prohibition period. Between July 1, 1935, and January 1, 1936, this respondent, under lease from the vendee of A. Ph. Stitzel, Inc., produced 5,000 barrels of whiskey at said distillery at high proof by what is known as the "charred chip process," which said whiskey was of a quality inferior to a good grade of Kentucky Bourbon whiskey, and the respondent's aforesaid "Cotton Club" brand is, therefore, not of the grade and quality indicated by the representation "Distilled at Distillery No. 17, 5th District of Kentucky, and is not "Kentucky's Best."

The other brands of whiskies, cordials and liquors sold by respondent were not by it distilled "from the grain to the finished bottle."

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 advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships and individuals engaged in the business of purchasing, rectifying, blending, 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 the competitors of respondent corporations, firms, partnerships and individuals engaged in either the distilled spirits industry or the distilled spirits rectifying industry, or both, who neither misrepresent their location nor the place where their

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spirits are bottled nor the reputation, grade or quality of their product.

PAR. 5. Representations by respondent, as hereinabove set forth, are calculated to and have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that all of the aforesaid representations are true and that respondent is a distiller and that all 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 bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of such products; 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 October 6, 1936 issued, and on October 9, 1936 served its complaint in this proceeding against E. O. Jackson Distilling Company, a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John J. Keenan, an Examiner of the Commission theretofore duly designated by it. Messrs. D'Ancona, Pflaum & Kohlsaatt, by Mr. Donald H. Mann, attorneys for respondent, introduced no evidence in opposition thereto, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter,

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the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto (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 respondent, E. O. Jackson Distilling Company, is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its office and principal place of business at 8440 South Chicago Avenue, in the city of Chicago, in said State. It is also authorized to do business in the State of Kentucky, and its principal office in that State is 1407 West Jefferson Street, Louisville, Ky., where, since January 1936, it has maintained a bottling plant and office. It is now and since January 1, 1936 has been engaged in the distilled spirits rectifying industry, purchasing, rectifying, blending, and bottling whiskeys, gins, and other spirituous beverages, and engaging 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 the various States of the United States to the purchasers thereof, consisting principally of wholesalers located in most of the other States of the United States and the District of Columbia. Its dollar sales volume sometimes amounts to as much as \$100,000 a month.

In the course and conduct of its business as aforesaid, respondent is now, and 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 now, and since its organization has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce be-

tween 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 above described premises in the city of Chicago, a 500-gallon gin still, properly registered, which it uses in the production of gin by a process of rectification, whereby tax-paid alcohol purchased by it is redistilled over juniper berries and other aromatics. This gin constitutes approximately 15 to 20% of respondent's total production. This manufacture of gin by redistillation is well recognized in the trade as a process of rectification. It is not necessary, under the pertinent laws and regulations, for one engaging therein to possess a permit to distill. Such rectification of alcoholic spirits does not make or constitute this respondent a distilling company within the intent and meaning of Section 3247 of the revised statutes regulating Internal Revenue (U. S. Code 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. Code Tit. 26, Sec. 1397-f). Neither does such rectification 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 "distilling" when used in connection with the liquor industry and with the products thereof, has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to-wit, the production of alcoholic liquors by an 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 bottled and prepared by the actual distillers thereof.

PAR. 3. Rectifying in the distilled spirits industry means the mixing of whiskey of different ages or types or the mixing of other ingredients with whiskeys, but reducing proof of the whiskey by adding water is not rectifying. Rectifiers also blend whiskeys with neutral spirits (grain alcohol).

Many distillers operate a separate establishment six hundred feet or more away from the distillery, known as a rectifying plant, wherein they operate in the same manner as an ordinary rectifier, sometimes exclusively with spirits of their own distillation and often 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 and after reduction of proof.

Any rectifying by a distiller must be done in his rectifying plant under his rectifier's permit.

On all bottled liquors, whether bottled at a distillery rectifying plant or at any rectifying plant, appear the word "bottled" or "blended," as the case may be, "By the ----- Company."

If the distilled spirits therein contained are bottled by a distiller in his distillery or are spirits of his distillation bottled in his rectifying plant, the distiller may and does put "Distilled and bottled by ----- Company."

If in the distillery's rectifying plant other spirits have been blended or rectified, they put "Blended and bottled by ----- Company."

Finally, usually blown in the bottom of each bottle, is a symbol consisting of a letter followed by a number, a "D" for a distillery and a "R" for a rectifier, the number following the letter corresponding with the distiller's or rectifier's permit.

Respondent's rectifier's permit is designated as R-259.

A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol, depending on whether the liquor contained in the bottle was produced and bottled under his distiller's or under his rectifier's permit.

Knowledge of these details is not widespread among the retail trade although it is more so now than it was during the first year after the repeal of the Prohibition Amendment, and knowledge of such details is quite limited to the general public.

All whiskeys, whether emanating from distillers or from rectifiers, are generally in the trade conceded to be distilled products.

It is not always possible to determine from the presence of the phrase "Blended and bottled by" or the phrase "Bottled by" on the label whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

The process used by this respondent in the production of its gin, insofar as the redistillation process is concerned, is the same identical process that is used in many distilleries in the United States for the production of gin, except that in the case of the respondent, it purchases its alcohol, and in the case of the distilleries, they distill the alcohol which they redistill over the juniper berries, and, in some cases, such alcohol is conveyed through closed pipes and vessels in one continuous process from the mash through the cistern tank to the gin still.

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PAR. 4. Prior to January 1, 1936, respondent, as lessee of the Frankfort Distilleries, Incorporated, at Louisville, Kentucky, operated a distillery, under a distillers' basic permit issued by the Federal Alcohol Administration Division of the Treasury Department. Respondent also filed warehousing bond, dated July 13, 1935, effective July 25, 1935, in the penal sum of \$100,000, with the Seaboard Surety Company as surety. Pursuant to the authority contained in such permit, this respondent, prior to January 17, 1936, produced by distillation from mash, wort or wash, approximately 5,000 barrels of whiskey, of which, at the time of the hearing, it had about 2,500 barrels remaining, which, in the ordinary progress of its business activities, would last for approximately two years. Respondent then suspended operations on January 17, 1936, and has not operated said distillery since. Its bonds stand cancelled, according to their own terms, as of May 1, 1936. Respondent's aforesaid basic distillers' permit is still outstanding, but is subject to revocation in the event that it does not again engage in the operations thereby authorized, for a period of more than two years, which two years will expire on January 17, 1938.

The whiskey which respondent distilled prior to January 17, 1936, and the gin produced by it as aforesaid, constitute roughly approximately 65% of its business, the other 35% being taken up by cordials which it compounds, and blended whiskies which it prepares from distilled spirits and whiskies purchased from others. This respondent has not operated under lease or otherwise produced from raw materials by distillation alcoholic spirits of any kind since January 17, 1936, but has since been engaged solely as a rectifier in the bottling and sale of the spirits which it did produce (under various brand names such as "Cotton Club," "Barrel Tap Bourbon," "Kentucky Trotter," "Kentucky State," and "Kentucky Classic"), spirits obtained by purchase from other sources, and its gin, as aforesaid. Its cordials, gin, and blends are bottled in the city of Chicago, and all of the whiskeys which it produced under lease as aforesaid, together with some purchased whiskeys, are bottled in its plant in Kentucky. While a lessee-operator of a distillery, who has ceased distilling, but who warehouses and sells liquors previously so distilled, remains a distiller within the provisions of law imposing forfeiture for wrongful acts of a distiller, insofar as the liquor so distilled is concerned, the Commission finds that this respondent, as to all of its products, except the liquor actually produced by it under such lease, is not a distiller, but a rectifier, within the true intent and meaning of the law, and as commonly understood by the trade and the consuming public.

PAR. 5. With respect to all of the whiskeys and other alcoholic beverages not produced by this respondent during its lessee operation of the distillery, as aforesaid, in the regular course and conduct of its business, by the use of the word "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers, and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies and other alcoholic beverages bottled by it were by it manufactured through the process of distillation from mash, wort, or wash.

PAR. 6. Based upon the testimony of a large number of witnesses from both the trade and the purchasing public, the Commission finds that the word "distilling," or similar words such as "distillers" and "distilleries," when used in the corporate name of the bottler of spirits or other alcoholic beverages, on the bottles in which such spirits are contained, indicates the distillation by such bottler of such spirits from fermented grain, mash, or wort, and that the use of such words tends to induce the public to purchase the products of the concern using such words in its corporate name, in preference to the products of other bottlers, in the belief that they are buying the product bottled by the actual distiller of its contents; and that in buying as directly, as possible from the distiller, they would get a better grade of merchandise, save money, or secure a more uniform product. For these reasons they would be inclined to give preference to a product bearing the name of a distiller or distilling company.

PAR. 7. In its production by distillation of the 5,000 barrels of whiskey in the Kentucky distillery, which it leased as aforesaid, this respondent used a method known as the "charred chip" process. This is a process of running the whiskey over charred wood chips between the still and the cistern room, to give the whiskey color at an earlier age than normally. In such manner, approximately the same satisfactory color is obtained in from 30 to 60 days, as would be obtained by approximately 2 years of aging in the wood, according to the claim made by an officer of the respondent corporation. This alleged aging process was represented by respondent's salesmen as an exclusive process of aging which it and no one else had, and that it was used by it in a famous old Kentucky distillery, owned by respondent. In one instance a sale of ten cases of such whiskey was made to a retailer who, from such representations, was under the impression at the time he made the purchase, that he was purchasing the liquor from a distillery. Respondent advertised such "charred chip" whiskey, part of which on the occasion of the sale aforesaid was returned by the

purchaser as unsatisfactory, as "Kentucky's Best" straight Bourbon whiskey, bottled by the distillers, direct from Kentucky. The Commission finds that such representations, when applied to a Bourbon whiskey distilled in Kentucky and aged by the charred chip process, aforesaid, are grossly exaggerated and misleading.

PAR. 8. 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 advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals, engaged in the business of purchasing, rectifying, blending, 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 the competitors of respondent corporations, firms, partnerships and individuals engaged in either the distilled spirits industry or the distilled spirits rectifying industry, or both, who do not make grossly exaggerated and misleading statements concerning the quality of a whiskey artificially aged in from 30 to 60 days, so as to give it the appearance of a whiskey which has been aged in the wood for approximately 2 years.

PAR. 9. Representations by respondent, as hereinabove set forth, have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that all of the aforesaid representations are true and that all the whiskies, gins, and other spirituous beverages bottled and sold by respondent are manufactured and distilled by it from mash, wort or wash, as aforesaid, 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 spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of such products; and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 10. Existing regulations promulgated under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. L. 977),

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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, as well as such of respondent's whiskies as it actually produced as lessee-operator of a distillery, by distillation from mash, wort, or wash, prior to January 17, 1936.

CONCLUSION

The aforesaid acts and practices of the respondent E. O. Jackson Distilling Company, 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 J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (no testimony or other evidence having been offered in opposition thereto) briefs filed herein by PGad B. Morehouse, counsel for the Commission, and by Donald H. Mann, attorney for respondent (no oral argument having been requested or made), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered, That the respondent E. O. Jackson Distilling Company, its officers, agents, representatives, and employees, in connection with the offering for sale, sale and distribution of whiskies, gins, or other spirituous beverages, in interstate commerce or 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 "distilling" in its corporate name, on its stationery, advertising, or on the labels attached

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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 the distiller of the said whiskies, gins or other spirituous beverages when such is not the fact; or (b) 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;

2. Representing by means of the statement "Kentucky's Best" in connection with whiskey manufactured or distilled by it, and run over charred chips for the purpose of simulating the true color of older whiskies, or by the use of words and phrases of similar import, that the said whiskey is of the same or equivalent quality as whiskey that has been properly and normally aged in the wood.

It is further provided, That nothing herein contained shall prevent respondent from representing through the use of the word "distilling" in its corporate name, on its stationery, advertising or on the labels attached to the bottles in which it sells and ships any of its products, which it did in fact produce by distillation, that it is the distiller thereof.

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

IN THE MATTER OF
PITTSBURGH PLATE GLASS COMPANY, ET AL.

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. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3154. Complaint, June 16, 1937—Decision, Oct. 30, 1937

Where (1) eight manufacturers of window glass, owning and controlling practically all the factories producing such product in the United States and producing most of such product sold and distributed therein, and able to influence prices and terms at which, and conditions under which, such product was sold throughout the United States, and in competition among themselves, except to the extent that their said competition had been lessened, restricted or restrained, or their potential competition forestalled, by practices and methods below described and set forth, and in competition with other competitor manufacturers, except as such competition or potential competition had been hindered, etc., as above described; (2) the association of which such eight manufacturers, along with a ninth company, owner of the stock of one of said manufacturing concerns and affiliated with five of their number and engaged as exclusive selling agent for said manufacturing concerns and four of the other manufacturers above set forth were members; and (3) association of distributors of such products including window glass particularly, of which one of said manufacturers, with eight manufacturing plants at various points in the United States and with approximately seventy warehouses in many different States, was member, and of which the other seven manufacturers were associate members, and the members of which distributors' association were in competition with one another and with other competitor distributors in resale and distribution of products in question to dealers and consumers in the various localities and trade areas of the United States, except insofar as such competition or potential competition had been hindered, etc., as hereinbefore set forth, by the acts and practices hereinafter described, directly and substantially, affecting such competition and that among manufacturers of such products, and the members of which distributors' association, with five divisions covering the United States, constituted group of distributors so large and influential in the trade as to be able, by themselves and in cooperation with aforesaid manufacturers first referred to, to influence flow of trade in channels of commerce in window glass throughout the country and terms and conditions under which distributors thereof buy such products; and (4) the officers, directors, and members of said two associations, and the executive committeemen of said latter association; associated and allied together to carry into effect certain policies, practices and methods relating to sale and distribution of window glass as below described—

Agreed and conspired, and combined and confederated together and with others, and united in and pursued a common and concerted course of action and undertaking among themselves and with others, to adopt, follow, carry