

Syllabus

IN THE MATTER OF
PENNSYLVANIA WHISKEY DISTRIBUTING
CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2576. Complaint, Oct. 11, 1935—Decision, Dec. 23, 1937

Where a corporation engaged, as wholesale distributor and rectifier of alcoholic liquors, in purchasing and bottling whiskies and other distilled spirits and in selling its aforesaid various products to wholesaler and retailer purchasers in other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by distillation of whiskies and other distilled spirits and in selling same in trade and commerce among the various States and in said District, and with those engaged in purchasing, rectifying, blending, and bottling such various distilled spirits and similarly selling same, and including among said competitors those who, as manufacturers and distillers from mash, wort, or wash of the whiskies and other distilled spirits sold by them, truthfully use words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of their corporate or trade names and on their stationery, cartons and labels of the bottles in which they sell and ship their said products, those who, engaged in purchasing, rectifying, blending, and bottling such various products, do not use aforesaid words as above set forth, and those who, engaged in sale of whiskies and other distilled spirits, do not, as a means of furthering and promoting sale of their said products, misrepresent as official Internal Revenue Bonded Warehouse Receipts their own unofficial paper receipts or paper writings—

- (a) Represented, through use of abbreviation "Dist." in its corporate name, as printed on its stationery, cartons, labels, contracts, and advertising, and warehouse receipts, used by it in soliciting and obtaining sale of its products, to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that it was a distilling company and that the whiskies and other distilled spirits by it sold were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not thus distill said various spirits, as long definitely understood from word "distilling" used in connection with liquor industry and products thereof, in the trade and by the ultimate purchasing public, did not own, operate, or control any place or places where such spirits are made by such process, and was not a distiller, for the purchase of the bottled whiskey and other spirits of which there is a preference on the part of a substantial portion of the purchasing public; and
- (b) Falsely designated as "United States Internal Revenue Bonded Warehouse Receipts" certain paper writings or receipts delivered to its customers and covering distilled spirits stored in bonded warehouses in other States, as means of furthering and promoting sale of its said products, facts being said writings or receipts were contracts between it and customer whereby it was obligated to sell, and customer was obligated to buy, quantity of distilled spirits located in aforesaid warehouses under bond, and for which

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it had and retained the genuine United States Internal Revenue Bonded Warehouse Receipts, and pursuant to which contracts, and upon request of purchasers, it caused such spirits to be released and delivered to it for rectification or bottling and labeling, and then shipped to such various purchasers, and said receipts or writings were not, as thus falsely represented, the official United States Internal Revenue Bonded Warehouse Receipts sufficient to release bonded spirits covered thereby upon payment by purchasers of storage charges, insurance, State and Federal taxes;

With effect of misleading and deceiving dealers and purchasing public into the belief that said whiskies and other distilled spirits sold by it were by it made or distilled from mash, wort, or wash, and of misleading and deceiving dealers into belief that, upon presentation to bonded warehouse of aforesaid unofficial warehouse receipts by them obtained from it, the whiskies and distilled spirits thus purchased would be released from bond for delivery to a duly authorized rectifier for rectifying or rebottling, or both, as desired, upon payment by said dealers of storage charges, insurance and State and Federal taxes, and of inducing dealers and purchasing public, acting in such beliefs, to buy its said whiskies and other distilled spirits, and of thereby diverting trade to it from its competitors who do not make the same or similar representations; 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 W. Addison*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. Irving H. Goldin, of New York City, and *Mr. Harold N. Reinitz*, of Brooklyn, N. Y., 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 Pennsylvania Whiskey Distributing Corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the 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 New York, with its office and principal place of business in the city of Brooklyn in said State. It is now and for more than one year last past has been engaged in the business of a wholesale distributor and rectifier of alcoholic liquors, purchasing and bottling whiskies and other distilled spirits and selling the same 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 business, it causes its said products when sold to be transported from its place of business as 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 in 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 other individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies and other distilled spirits 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 has been for more than one year last past, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies and other distilled spirits and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "distilling," when used in connection with the liquor industry, has had and still has a definite significance and meaning in the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of whiskey and other distilled spirits by a process of original distillation from mash, wort, or wash; and a substantial portion of the purchasing public prefers to buy whiskey and other distilled spirits prepared or bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by an abbreviation of the word "Distributing" to "Dist." in its corporate name as printed on stationery, cartons, labels, contracts, advertising, and warehouse receipts used by it in soliciting and obtaining the sale of its products as aforesaid, 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 distilling company and that the whiskies and other distilled spirits by it sold 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 or other distilled spirits by it so sold and transported, and does not own, operate, or control any place

or places where such spirits are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. In the course and conduct of its business as aforesaid, and as a means or method of furthering and promoting the sale of its said products, respondent delivers to its customers certain paper writings or receipts by it falsely designated as "United States Internal Revenue Bonded Warehouse Receipts," covering distilled spirits stored in bonded warehouses located in States other than the State of New York, which said paper writings or receipts are contracts between respondent and the customer whereby the respondent is obligated to sell and the customer to buy a quantity of distilled spirits located in the aforesaid warehouses under bond, and for which distilled spirits respondent has and retains the genuine United States Internal Revenue Bonded Warehouse Receipts. Pursuant to such contracts, and upon the requests of the purchasers, respondent causes such bonded spirits to be released and delivered to it for rectification or bottling and labelling as aforesaid and then causes the said distilled spirits so released, delivered, bottled, and labelled to be shipped from its place of business as aforesaid to the purchasers thereof located in the State of New York and in various other States of the United States and in the District of Columbia. In the aforesaid manner, respondent falsely represents that its own warehouse receipts and contracts for the bonded liquor as aforesaid are official United States Internal Revenue Bonded Warehouse Receipts, sufficient to release the bonded spirits covered thereby, upon payment by the purchaser of the storage charges, insurance, State, and Federal taxes.

PAR. 5. There are, among the competitors of respondent engaged in the sale of whiskies and distilled spirits as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort or wash as aforesaid the whiskies and other distilled spirits sold by them, and who truthfully use the words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of their corporate or trade names and on their stationery, cartons, and labels of the bottles in which they sell and ship such products. There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies and other distilled spirits who do not use the words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of their corporate or trade names nor on the stationery, cartons, and labels of the bottles in which they sell and ship their said products.

There are also, among such competitors, corporations, firms, partnerships, and individuals engaged in the sale of whiskies and other distilled spirits who, as a means or method of furthering and promoting the sale of said products do not misrepresent as official United States Internal Revenue Bonded Warehouse Receipts their own unofficial receipts or paper writings as an inducement to the sale of their said products.

PAR. 6. The representations by respondent as set forth in paragraphs 3 and 4 hereof are calculated to and have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the belief that the whiskies and other distilled spirits sold by respondent are manufactured and distilled by it from mash, wort, or wash; and do mislead and deceive dealers into the belief that upon presentation to the bonded warehouse of the aforesaid unofficial warehouse receipt by them obtained from respondent, the whiskies or distilled spirits so purchased will be released from bond for delivery to a duly authorized rectifier and bottler of their selection for rectification or rebottling or both, as desired, upon payment by the said dealers of the storage charges, insurance, and State and Federal taxes; and such representations are calculated to, have the capacity and tendency to, and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies and other distilled spirits sold by the respondent, thereby diverting trade to the respondent from its competitors who do not make the same or similar misrepresentations, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 7. 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 meaning and intent 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 11, 1935 issued, and later served its complaint in this proceeding upon the respondent, Pennsylvania Whiskey Distributing Corporation, charging it with the use of unfair methods of competition in commerce in violation of the

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provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived, 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. This respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 135 Johnson Street in the Borough of Brooklyn, in the city of New York, in said State. For more than one year last past, it has been engaged in the business of a wholesale distributor and rectifier of alcoholic liquors, purchasing and bottling whiskies and other distilled spirits and selling the same 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 business, it causes its said products when sold to be transported from its place of business as 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 in 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 other individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies and other distilled spirits 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 has been for more than one year last past, in substantial competition with other corporations and with individual firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies and other distilled spirits and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "distilling," when used in connection with the liquor industry, has had and still has a definite significance and meaning in the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of whiskey and other distilled spirits by a process of original distillation from mash, wort, or wash; and a substantial portion of the purchasing public prefers to buy whiskey and other distilled spirits prepared or bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has abbreviated the word "Distributing" to "Dist." in its corporate name, as printed on its stationery, cartons, labels, contracts, advertising, and warehouse receipts used by it in soliciting and obtaining the sale of its products as aforesaid. In this way and in various other ways respondent has represented to its customers and furnished them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distilling company and that the whiskies and other distilled spirits by it sold 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 or other distilled spirits by it so sold and transported, and does not own, operate, or control any place or places where such spirits are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. Also in the course and conduct of its business as aforesaid, and as a means or method of furthering and promoting the sale of its said products, respondent delivers to its customers certain paper writings or receipts by it falsely designated as "United States Internal Revenue Bonded Warehouse Receipts," covering distilled spirits stored in bonded warehouses located in States other than the State of New York, which said paper writings or receipts are contracts between respondent and the customer whereby the respondent is obligated to sell and the customer to buy a quantity of distilled spirits located in the aforesaid warehouses under bond, and for which distilled spirits respondent has and retains the genuine United States Internal Revenue Bonded Warehouse Receipts. Pursuant to such contracts, and upon the requests of the purchasers, respondent causes such bonded spirits to be released and delivered to it for rectification or bottling and labelling as aforesaid and then causes the said distilled spirits so released, delivered, bottled, and labelled to be shipped from its place of business as aforesaid to the purchasers thereof located in the State of New York and in various other States of the United States and in the District of Columbia. In the

aforesaid manner, respondent falsely represents that its own warehouse receipts and contracts for the bonded liquor as aforesaid are official United States Internal Revenue Bonded Warehouse Receipts, sufficient to release the bonded spirits covered thereby, upon payment by the purchaser of the storage charges, insurance, State and Federal taxes.

PAR. 5. There are, among the competitors of respondent engaged in the sale of whiskies and distilled spirits as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash as aforesaid the whiskies and other distilled spirits sold by them, and who truthfully use the words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of their corporate or trade names and on their stationery, cartons, and labels of the bottles in which they sell and ship such products. There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies and other distilled spirits, who do not use the words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of their corporate or trade names nor on the stationery, cartons, and labels of the bottles in which they sell and ship their said products. There are also, among such competitors, corporations, firms, partnerships, and individuals engaged in the sale of whiskies and other distilled spirits who, as a means or method of furthering and promoting the sale of said products do not misrepresent as official United States Internal Revenue Bonded Warehouse Receipts their own unofficial receipts or paper writings as an inducement to the sale of their said products.

PAR. 6. The representations by respondent as set forth in paragraphs 3 and 4 hereof are calculated to and have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the belief that the whiskies and other distilled spirits sold by respondent are manufactured and distilled by it from mash, wort or wash; and do mislead and deceive dealers into the belief that upon presentation to the bonded warehouse of the aforesaid unofficial warehouse receipt by them obtained from respondent, the whiskies or distilled spirits so purchased will be released from bond for delivery to a duly authorized rectifier and bottler of their selection for rectification or rebottling or both, as desired, upon payment by the said dealers of the storage charges, insurance and State and Federal taxes, and such representations are calculated to, have the capacity and tendency to, and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies and other distilled spirits sold by the respondent, thereby diverting trade to the

respondent from its competitors who do not make the same or similar misrepresentations, and thereby respondent does substantial injury to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, Pennsylvania Whiskey Distributing Corporation, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on the 21st day of December 1937, by respondent, admitting all the material allegations of the complaint to be true, waiving hearing on the charges set forth in the said complaint, and consenting that without further evidence or other intervening procedure the Commission may issue and serve upon it findings as to the facts and conclusion drawn therefrom and an order to cease and desist from the violations of law charged in the complaint, 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, Pennsylvania Whiskey Distributing Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of whiskies and other distilled spirits in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing by the use of the abbreviation "Dist." in its corporate name, as printed on stationery, cartons, labels, contracts, advertising, and all other paper writings used by it in soliciting and obtaining the sale of its products, or in any other way by word or words of like import representing (a) that it is a distiller of whiskies, gins, and other alcoholic beverages; or (b) that the said whiskies, gins, and other alcoholic beverages were by it manufactured through the process of distillation; or (c) that it owns, operates or controls a place or places where such beverages are manufactured by the process of distillation unless and until the said

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respondent shall own, operate, or control a place or places where such whiskies, gins, and other alcoholic beverages are by it manufactured through a process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until the manufacture thereof is completed.

2. Representing that its own warehouse receipts or contracts for the sale of liquors by it to its customers are United States Internal Revenue bonded warehouse receipts sufficient to release the bonded spirits covered thereby upon payment by the purchaser of the storage charges, insurance, State and Federal taxes, or in any other manner representing that the purchaser is buying an official warehouse receipt for liquors stored in bonded warehouses when such is not 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.

Complaint

IN THE MATTER OF

LAWTON V. CROCKER AND HENRY F. CROCKER, TRADING AS THE NATIONAL SURVEY COMPANY, THE NATIONAL SURVEY, AND NATIONAL SURVEY

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

Docket 3103. Complaint, Apr. 10, 1937—Decision, Dec. 23, 1937

Where a firm engaged, as "The National Survey Company" and "The National Survey," in publication of maps and sale and shipment thereof in interstate commerce, in competition with others similarly engaged—

Made use of such designations, in advertising and conspicuously labeling their various maps, as "The National Survey Map of," etc., "The Official National Survey Map of," etc., together with imprint facsimile, in certain cases, of coat of arms of States involved, and together with legend in small type "Compiled from U. S. Government Surveys, Official State Surveys, and original sources," and "Published by The National Survey Co.," etc., notwithstanding fact that while some of said maps were purchased and used by certain State departments and organizations, none of them had been published by, or upon the order of, or with the sanction of, any authority of any Federal, State, or other political entity;

With tendency to deceive and mislead public into erroneous belief that said maps were official, national survey maps and Federal or State Government publications, and unfairly to divert trade to them from competitors similarly engaged in business of distributing and selling maps, and who do not use such false and deceptive labels and designations; to their substantial injury:

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

Mr. Wm. T. Chantland for the Commission.

Mr. Joseph Fairbanks, of Washington, D. C., for respondents.

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 Lawton V. Crocker and Henry F. Crocker, copartners doing business under the firm names of The National Survey Co., The National Survey, and National Survey, hereinafter referred to as "respondents," have been, and are now, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commis-