

IN THE MATTER OF
SELECTED KENTUCKY DISTILLERS, INC.

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

Docket 3047. Complaint, Feb. 3, 1937—Decision, Mar. 26, 1938

Where a corporation engaged as wholesaler only of whiskies, wines, liquors, gins, and champagnes purchased from distillers and rectifiers, and doing no distilling, rectifying, or bottling, and neither owning, operating nor controlling any place or places where alcoholic beverages are made by process of distillation from mash, wort, or wash, and in competition, as thus engaged, with individuals and concerns who manufacture and distill, from mash, wort, or wash, whiskies, gins, and other spirituous beverages sold by them and truthfully use words "Distillery," "Distilleries," "Distillers," or "Distilling" as part of their corporate or trade names on labels of bottles in which they sell and ship their said whiskies, etc., and with those engaged as purchasers, rectifiers, blenders, bottlers, and sellers of whiskies, etc., or as wholesalers thereof, who do not use said words as aforesaid—

Falsely represented, through use of term "Distillers" in its corporate name, printed on its stationery and invoices and on labels attached to bottles in which it sold and shipped its products, and in various other ways, to customers, whom it thereby furnished with means of similarly representing to their retailer-vendees and to ultimate consuming public, that it was a distiller of whiskies, wines, gins, and champagnes, i. e., as long understood by trade and ultimate purchasing public, engaged in manufacture of alcoholic beverages by process of original and continuous distillation from raw materials such as grain, mash, or wort;

With capacity and tendency to lead retail liquor dealers to purchase its said products under false impression that it was a distiller and owned and operated a distillery, and to induce purchasers and prospective purchasers unfairly to buy its said liquors in preference to those of competing wholesalers who do not thus falsely designate themselves, and with effect of misleading and deceiving dealers and purchasing public into aforesaid belief, and of inducing dealers and purchasing public, acting in such belief, to buy said whiskies, etc., labeled and sold by it, and of thereby unfairly diverting trade to it from competitors who do not, through their corporate or trade names or in any other manner, misrepresent that they are distillers of whiskies, gins, and other spirituous beverages, and with capacity and tendency so to do:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. R. L. Durning, of Louisville, Ky., 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 Selected Kentucky Distillers, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and 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 Kentucky, with its office and principal place of business at 305 West Broadway, in the city of Louisville, Ky. It is now and for more than 1 year last past has been engaged as a wholesaler of spirituous liquors, purchasing and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale 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 other States of the United States to the purchasers thereof, consisting of wholesalers, and retailers, some located within the State of Kentucky, and some 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 1 year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and for more than 1 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 spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is, and for more than 1 year last past has been, in sub-

stantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale 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 "distillers" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturers of such liquors by the process of distillation from mash, wort, or wash, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distillers" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, 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, and bottling whiskies, gins, and other spirituous beverages who do not use the words "distilling," "distillery," "distilleries," or "distillers" as a part of their corporate or trade names, or on their stationery, or on the labels attached to the bottles in which they sell and ship their said products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, bottling, and selling at wholesale, whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate names, or on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, 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 names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to 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 February 3, 1937, issued, and on February 5, 1937, served its complaint in this proceeding upon the respondent, Selected Kentucky Distillers, 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 the said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it. No testimony or other evidence was introduced by the respondent in opposition to the allegations of the complaint. The said testimony and other evidence in support of the allegations of the complaint were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, other evidence, and briefs in support of the complaint and in opposition thereto (no oral argument having been requested); and the Commis-

sion 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 finding as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky, with its principal office and place of business at 653 South Third Street in the city of Louisville in said State. It was incorporated in May 1934, and has been continuously engaged since that time as a wholesaler only of whiskies, wines, liquors, gins, and champagnes, which it purchases from distillers and rectifiers. Respondent does no distilling, rectifying, or bottling.

Respondent's said products are distributed through other wholesalers, retail stores, taverns, and bars. When orders are received for respondent's said products, it causes them to be shipped from its place of business in Louisville, Ky., and from the points where the concerns from which it purchases said products are located, to the purchasers thereof located at various points outside the State of Kentucky. During 1935 and the first half of 1936, the respondent had wholesale permits to sell its merchandise in Missouri and Kentucky. Its total volume of business for 1935 was \$480,000 and for the first half of 1936, it was \$200,000.

At all times since respondent entered into said business, it has been in substantial competition with other corporations and with partnerships and individuals engaged in the manufacture, sale, and distribution, or in the sale and distribution, of whiskies, wines, liquors, gins, champagnes, and other spirituous beverages in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. The corporate name, Selected Kentucky Distillers, Inc., appears on the letterheads, envelopes, and invoices used by respondent. The labels attached to its labeled products read "Bottled for Selected Kentucky Distillers," "Distilled and Bottled for Selected Kentucky Distillers," and "Bottled at the Distillery for Selected Kentucky Distillers." For a long period of time, the word "distillers," 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 distillers, rectifiers, and wholesalers in such industry, and to the ultimate purchasing public; to wit, persons engaged in the manufacture of alcoholic beverages by the process of original and continuous distillation from raw materials such as grain, mash, or wort.

At a hearing in Louisville, Ky., 6 persons engaged in various aspects of the liquor industry and 13 members of the lay public testified as to the meaning of the trade name "Selected Kentucky Distillers" and the meaning and effect of the term "distillers" when used by a concern engaged in the distilled-spirits industry. From the testimony of the trade witnesses, the Commission finds that the term "distillers," when used on the labels or in other advertising matter by a concern engaged in the liquor industry, indicates that that concern is a distiller of alcoholic spirits; that use of the term has a commercial value; that wholesalers, retailers, and the purchasing public are influenced by use of the term and they prefer to buy from a concern that distills and bottles its own products. The Commission also finds from the testimony of the lay public witnesses that a substantial portion of the purchasing public prefers to buy alcoholic spirits from retailers who purchase their alcoholic beverages direct from the manufacturers thereof, as against the products of a wholesaler or rectifier; that that preference is based upon a belief that a better quality and more uniform product can thus be obtained; that ultimate purchasers are influenced in making purchases of alcoholic beverages by the labels borne thereby; that if such labels contain the word "distillers," it implies that the contents so labeled have been manufactured by the concern whose name appears thereon.

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

PAR. 3. In the course and conduct of its business as aforesaid, by use of the term "distillers" in its corporate name, printed on its stationery and invoices, and on the labels attached to the bottles in which it sells and ships its products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller of whiskies, wines, gins, and champagnes, when, as a matter of fact, respondent is not a distiller, and does not own, operate, or control any place or places where any alcoholic beverages are manufactured by the process of

Conclusion

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distillation from mash, wort, or wash. The Commission finds that such advertising and labeling has been and is misleading and deceptive in fact and has had and now has the capacity and tendency to lead retail liquor dealers to purchase respondent's products under the false impression that respondent is a distiller and owns and operates a distillery.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names on the labels of the bottles in which they sell and ship such products as whiskies, wines, liquors, gins, champagnes, and other alcoholic beverages. There are also among such competitors corporations, firms, partnerships, and individuals engaged in business as purchasers, rectifiers, blenders, bottlers, and sellers of whiskies, gins, and other spirituous beverages, or as wholesalers thereof, who do not use the words "distillery," "distilleries," "distilling," or "distillers," as a part of their corporate or trade names on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent as set forth herein has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that respondent is a distiller, and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, wines, gins, champagnes, and other spirituous beverages labeled and sold by the respondent, thereby unfairly diverting trade to respondent from those of its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are distillers of whiskies, gins, and other spirituous beverages.

CONCLUSION

The aforesaid acts and practices of respondent, Selected Kentucky Distillers, Inc., are to the prejudice and injury 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 the 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 Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and briefs filed herein in support of the complaint and in opposition thereto (no oral argument 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, Selected Kentucky Distillers, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale or sale and distribution by it in interstate commerce or in the District of Columbia, of whiskies, gins, or other spirituous beverages, do cease and desist from:

Representing, through the use of the word "Distillers" 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 way by a word, or words of like import (a) that respondent is a distiller of the said whiskies, wines, liquors, gins, champagnes, or other spirituous beverages; or, (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through a process of distillation; or (c) that respondent owns, operates, or controls a place or places where such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

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

IN THE MATTER OF
CALIFORNIA RICE INDUSTRY, ET AL.

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

Docket 3090, Complaint, Mar. 26, 1937—Decision, Mar. 26, 1938

- Where an unincorporated trade association, which included individuals and concerns and corporate cooperative organization of some 300 rice growers of northern California, engaged in said State in purchasing, processing, milling, and selling and distributing, in aforesaid and other States and as below set forth, the "California-Japan type," produced, substantially, only in said State and shipped, largely, to Hawaii and Puerto Rico; association officers, including individual who, as chairman of its marketing board and member of its crop board, was dominant factor in its organization and directing executive of its practices and those of (1) its said marketing board, membership of which, excepting said chairman (neither miller nor grower), constituted all the rice millers in said State, and of (2) its said crop board, which had come to be dominated, likewise, by millers, rather than, in accordance with original plan and fact, the independent growers; and association members; acting under and in pursuance of the "Intrastate Marketing Agreement" to which they became signatories shortly preceding termination by Secretary of Agriculture of the theretofore effective "Interstate Marketing Agreement," and under which intrastate agreement said association, and its said marketing and crop boards, were set up—
- (a) Fixed prices, terms of sales, quantity discounts, and brokerage fees for sale of processed rice in interstate commerce through actions of its marketing board from time to time in (1) fixing at weekly meetings, with concurrence of crop board, industry price for extra-fancy clean rice, through which, by formula adopted by former, base price, producer's price and trade prices for all grades of processed rice were computed, and in (2) fixing, through former alone, prices for screenings and brewers;
 - (b) Listed, published, and distributed, through said association and marketing board members, said prices, and uniformly observed and maintained same, both in purchase of paddy from growers, and on all sales of processed rice, whether sold in aforesaid State or sold and shipped to customers in Hawaii or other points, and charged trade, with rare exception, prices which, for given time and grade, were uniform;
 - (c) Acting in agreement with Hawaiian Rice Importers Association, organized by aforesaid interstate agreement's marketing board, and composed of islands' largest rice importers, to monopolize rice markets thereof for benefit of its own miller members, and membership of which importers' association board determined and classified, fixed discount to purchasers on so large a minimum, that no single buyer was able to take advantage thereof, made available to and enjoyed by said importers' association through pooling member requirements and placing pooled orders with miller members, and submitted to audit, in behalf of said importers' association, to guarantee such discounts, and deducted from sales to importer members, as dues to and for benefit of said importers' association, charge