

IN THE MATTER OF
WEST PENN DISTILLING COMPANY, INC.

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

Docket 2620. Complaint, Nov. 9, 1935—Decision, May 9, 1938

Where a corporation engaged as wholesaler and rectifier in purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic beverages, and in the sale thereof in a course of trade and commerce between and among the various states and in the District of Columbia, in substantial competition with (a) others engaged in manufacture, by true distillation, of whiskies, gins, and other such beverages from mash, wort, or wash, and in sale thereof as aforesaid, and who truthfully use words "Distillery," "Distilleries," "Distillers," or "Distilling" as part of their corporate or trade names, and on their stationery and catalogs, and on labels of bottles in which they sell and ship their products and (b) with those engaged in business of purchasing, rectifying, blending, and bottling whiskies, etc., and in sale thereof as hereinbefore set forth, and who do not thus use said words; and engaged, in course of its said business, in redistillation of alcohol, purchased but not produced by it, over juniper berries and other aromatics, through use of still for production of gins by process of rectification as aforesaid, but neither operating nor controlling any place or places where spirituous beverages are made by process of original and continuous distillation from mash, wort, or wash and neither a distillery nor a distiller, as defined in section 3247 of the revised statutes regulating internal revenue, nor as commonly understood by trade and public—

Represented, through use of corporate name including word "Distilling," printed on stationery, catalogs, and labels attached to bottles in which it sold and shipped its said products, and in various other ways, to its customers, and furnished same with means of similarly representing thereby to their retailer-vendees and to ultimate vendees of consuming public, that it was a distiller and that such whiskies, gins, and other alcoholic beverages were by it made through process of distillation from mash, wort, or wash; notwithstanding fact it was not a distiller and was not engaged, as long definitely understood from word "Distilling" by wholesale and retail trade and ultimate purchasing public, as meaning manufacture of spirituous liquors by original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, in distilling the said whiskies, etc., thus bottled, labeled, sold, and transported by it;

With capacity and tendency to mislead and deceive dealers and purchasing public into the belief that it was a distiller and that said whiskies, gins, and other spirituous beverages sold by it were by it made or distilled from mash, etc., by one continuous process, as above set forth, and to induce dealers and purchasing public, in such belief, and in response to preference of a substantial portion of latter for purchase from distillers, to buy its said whiskies, gins, and other alcoholic beverages, rectified and bottled by it, and thereby unfairly divert trade to it from its competitors who do

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not, by their corporate or trade name or in any other manner, misrepresent that they are distillers:

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. John J. Keenan*, trial examiner.

Mr. PGad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Hall Johnston, of Washington, D. C., 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 West Penn Distilling Co., Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Pennsylvania, with its office and principal place of business in the city of New Kensington, in said State. It is now, and for more than 1 year last past has been, engaged in the business of a wholesaler and rectifier, purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business it causes its said products when sold to be transported from its place of business into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid respondent is now, and for more than 1 year last past has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other alcoholic beverages from mash, wort, or wash, and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is, and for more than 1 year last past has been, in substantial competition with other corporations and with

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individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic 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. Upon the premises of respondent's place of business aforesaid there is a still for use in the production of gins 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 does not make or constitute respondent a distillery or a distiller, as defined in Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. For a long period of time the word "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 manufacturing of spirituous liquors by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by distillers.

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, catalogs, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the said whiskies, gins, and other alcoholic beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other alcoholic beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still operated by it as aforesaid in the production of gin does not distill the whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported in the sense in which the word "distilled" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where spirituous beverages are manufactured by a process of original and continuous 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, catalogs, 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 alcoholic 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, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof, are calculated to and have a capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by respondent are manufactured or distilled by it from mash, wort, or wash by one continuous process and are calculated to and have the capacity and tendency to and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other alcoholic beverages rectified and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade name or in any other manner misrepresent that they are distillers, 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 the Federal Trade Commission Act, the Federal Trade Commission, on November 9, 1935, issued, and on November 12, 1935, served, its complaint in this proceeding upon respondent, West Penn Distilling Co., Inc., charging it with the use

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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, 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. Respondent is a corporation organized, existing, and doing business under the laws of the State of Pennsylvania, with its office and principal place of business in the city of New Kensington, in said State. For more than 1 year prior to May 22, 1936, and subsequent to the issuance of the complaint herein, the respondent was engaged in business as a wholesaler and rectifier, purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic beverages and in the sale thereof in a 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 caused its said products, when sold, to be transported from its place of business 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 was in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other alcoholic beverages from mash, wort, or wash, and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent was in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic

beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Upon the premises of respondent's place of business aforesaid, there was a still for use in the production of gins by a process of rectification whereby alcohol, purchased but not produced by respondent, was redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits did not make or constitute respondent a distillery or a distiller, as defined in Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. For a long period of time the word "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 manufacturing of spirituous liquors by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by distillers.

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, catalogs and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, respondent represented to its customers and furnished them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it was a distiller and that such whiskies, gins, and other alcoholic beverages were manufactured by it through the process of distillation from mash, wort, or wash. As a matter of fact, respondent was not a distiller, did not distill the said whiskies, gins, and other alcoholic beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still operated by it as aforesaid in the production of gin did not distill the whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported in the sense in which the word "distilled" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent did not own, operate, or control any place or places where spirituous beverages were manufactured by a process of original and continuous distillation from mash, wort, or wash.

PAR. 4. There were and are now among the competitors of respondent, engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and indi-

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viduals 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, catalogs, 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 alcoholic 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, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representations by respondent as set forth in paragraph 3 hereof, were then and are now calculated to have and do have a capacity and tendency to mislead and deceive dealers and the purchasing public into the belief that respondent was a distiller and that the whiskies, gins, and other spirituous beverages sold by respondent were manufactured or distilled by it from mash, wort, or wash by one continuous process and were then and are now calculated to have and do have the capacity and tendency to induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other alcoholic beverages rectified and bottled by the respondent, thereby unfairly 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 distillers.

PAR. 6. Because of existing regulations promulgated under the Federal Alcohol Administration Act, approved August 29, 1935 (49 Stat. 977), providing that rectifiers who redistill purchased alcohol over juniper berries and other aromatics may label such resulting product "distilled gin," and requiring that the labels state who distilled it, the Commission has excepted gins produced by respondent by redistillation of alcohol over juniper berries and other aromatics from the prohibitions of its order.

CONCLUSION

The aforesaid acts and practices of the respondent, West Penn Distilling Co., 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion 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 conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, West Penn Distilling Co., Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia, of whiskies, gins, or other spirituous beverages (except gins produced by it through a process of rectification whereby alcohol purchased but not produced, by respondent, is redistilled over juniper berries and other aromatics), do cease and desist 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 said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins, or other spirituous beverages; or (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place, or places.

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
CENTRAL PATTERN & FOUNDRY COMPANY

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

Docket 2954. Complaint, Oct. 21, 1936—Decision, May 14, 1938

Where a corporation engaged in the manufacture, sale, and distribution of aluminum, brass, and bronze castings and patterns, manufactured from ingot metals made to specifications, and from virgin ingots, gates, sprues, and mismachined or scrapped castings—

Described as "clean, smooth aluminum castings at a price as low as 23 cents per pound, using *only new ingot metals*," products, in fabrication of which it used virgin ingots and misrun or mismachined and scrapped castings;

With effect of misleading members of trade and substantial portion of purchasing public into erroneous belief that it used the ordinarily more costly and superior primary or virgin aluminum in fabrication of its products, represented as new ingot metals, and into purchase, by reason thereof, of substantial quantities of said products, and of unfairly diverting trade to it from competitor manufacturers and distributors of aluminum and other castings, who do not misrepresent type or classification of metal used in fabrication of their products, and who advertise, sell, and distribute aluminum and other castings in commerce among the various States and in the District of Columbia:

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. John L. Hornor*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Central Pattern & Foundry 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 of Congress, and it appearing to 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, Central Pattern & Foundry Company, is now and for several years last past, has been a corporation, organized, existing, and doing business under the laws of the State of Illinois, with its principal office and place of business in the city of Chicago and State aforesaid.