

IN THE MATTER OF  
**SEAGRAM-DISTILLERS CORPORATION AND SEAGRAM-  
DISTILLERS CORPORATION OF MASSACHUSETTS**

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

*Docket 2988. Complaint, Nov. 23, 1936—Decision, June 10, 1938*

Where a corporation engaged in the sale and distribution of certain brands of whiskies, gins, and other alcoholic beverages, subsidiary of a holding company which carried on its extensive operations through it and many other subsidiaries, and one of the four largest distributors of alcoholic liquors in the United States, products of which were in large demand, employer of a large number of salesmen who travel throughout the United States and call upon and solicit the trade of wholesalers, retailers, hotels, bars, and restaurants, and substantial advertiser in periodicals and newspapers, and seller, direct, of its products through or to carefully chosen wholesale distributors for resale to package stores, retailers, and bars, and upon the definite agreement that they will observe minimum resale prices scheduled by it in price lists, published by it for different States, and setting forth prices to wholesalers, suggested minimum wholesale prices to retailers, and suggested minimum resale prices for sale of its products by latter to ultimate purchaser or consumer, and will sell only to retailers who similarly observe such suggested minimum resale prices;

In pursuance of a system or policy of merchandising, adopted to stabilize and make uniform resale prices of its said products in the District of Columbia, and whereby it fixed specified standard and uniform resale prices, discounts, and "mark-ups," at which its said products should be resold by wholesalers and retailers in said District, and under which it received and accepted active support and cooperation of such wholesale and retail dealers in the maintenance of such resale prices, etc., and in order to carry out and make effective said system or policy—

- (a) Entered into agreements or understandings with wholesale and retail dealers and others in said District purporting to bind them to maintain its said retail prices, discounts, and mark-ups, and obtained and accepted the cooperation of such wholesalers, etc., in the maintenance of such prices, etc., and prevented wholesalers and retailers in said District, by virtue of such agreements or understandings, from reselling said products in said District at prices lower than said minimum resale prices thus fixed by it; and
- (b) Entered into agreements with its wholesale distributors in said District whereby (1) Such distributors agreed to sell only to such retailers as would agree to resell its products at minimum prices suggested by it; to sell such products at a uniform fixed price to retailers and allow no discounts from lists of prices suggested by it; to cut off supplies of all retailers found cutting prices and to compile and maintain reports or lists of those retailers who did not maintain such suggested minimum resale prices; to dismiss salesmen found offering or giving a discount or part of their commission to retailers; to report to it names of wholesalers who offered or were suspected of offering discounts to retailers; and to cut off supplies from

price-cutting retailers, and not reinstate them until such reinstatement had been authorized by it; and (2) It agreed to cooperate, with aid of its missionary men and other representatives, in securing and furnishing all necessary information to enforce the suggested prices; to drop from its list of distributors those found offering or giving a discount from its suggested price lists; and to supply its distributors with a list of those retailers who did not maintain minimum resale prices suggested; and in furtherance of aforesaid agreements or understandings,

- (c) Instructed its employees to report to it those distributors in said District who violated such agreements and all retailers who failed to maintain therein suggested uniform minimum resale prices, and received and acted upon such reports;
- (d) Cut off the supplies of price-cutters, to the end that its supply of products on hand with retail liquor dealers and others cutting said prices might become exhausted; and
- (e) Generally, by various other methods and means, carried into effect in said District aforesaid agreements or understandings with its wholesale distributors and retail dealer vendees in said District, to the end and with the effect of maintaining a fixed, specified, standard, and uniform system of resale prices, discounts, and mark-ups at which its said products should be sold and resold as above set forth; and
- (f) Reinstated and caused to be reinstated offending price cutters of its products upon their agreement or understanding that in the future they would observe said system or scale of resale price maintenance suggested by it, by the aforesaid means and methods; and
- (g) With intent and effect of obtaining and maintaining a fixed, uniform, minimum resale price for liquors sold in and shipped into said District for resale, combined, cooperated, and agreed with certain of its wholesale distributors and retail dealer vendees to enforce, therein, its aforesaid suggested uniform minimum resale price maintenance system and policy, and agreed that (1) retail dealers' profit should be made uniform by fixing and maintaining a uniform minimum price for liquor, and that uniform prices should be maintained by certain retail dealers; (2) only such retail dealers as promised to maintain uniform minimum resale prices should be supplied with its products; and (3) wholesalers should be notified not to supply any price cutting retailers; and, pursuant to and in execution of such combinations, agreements, or understandings, and with intent and effect of making them effective in said District,
- (h) Fully performed, on its part, and carried out aforesaid understandings or agreements by adopting, establishing, and maintaining aforesaid policies of merchandising with relation to liquors sold in such District and liquors shipped for resale therein, whereby specified standard and uniform minimum resale prices, discounts, and mark-ups were fixed at which its said products should be and were resold by wholesalers, jobbers, retailers, and others in said District;

With result that competition was suppressed among such wholesalers, jobbers, and retailers in distribution and sale of its said products, said jobbers, etc., were caused to sell the same at the prices suggested by it pursuant to understandings or agreements had with its wholesale distributors and others in such District, and they, and each of them, were prevented from selling said products at such lower prices as they might

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deem adequate and warranted by their respective selling costs and competitive trade conditions generally, and purchasers of said products were deprived of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce therein, and with tendency thereby unduly to hinder and suppress competition in the resale of such products in said District and in shipment thereof for resale therein to consuming public:

*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.

*Davies, Richberg, Beebe, Busick & Richardson*, of Washington, D. C., and *White & Case*, of New York City, 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 Seagram-Distillers Corporation and Seagram-Distillers Corporation of Massachusetts, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, 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, Seagram-Distillers Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business at 405 Lexington Avenue in the city of New York, in the State of New York. It is now and for more than 1 year last past has been engaged in the business of selling in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia, certain brands of whiskies, gins, and other alcoholic beverages, including those sold under the trade names "Seagram's" and "Kessler's," manufactured at distilleries in Canada, at Lawrenceburg, Ind., and elsewhere by affiliated corporations and subsidiaries of Distillers Corporation-Seagram's, Ltd., a Canadian corporation having its office and principal place of business at Montreal, Canada. The latter corporation is the holding company for this respondent and the following named concerns: Joseph E. Seagram & Sons, Inc., a distilling corporation organized, operating, and doing business under the laws of the State of Indiana, in the city of Lawrenceburg in said State; Maryland

Distillery, Inc., a distilling corporation organized, existing, and doing business under the laws of the State of Maryland at Relay, Md.; Calvert Distilling Co., a distilling corporation organized, existing, and doing business under the laws of the State of Maryland at Baltimore, Md.; Joseph E. Seagram & Sons, Inc., a corporation organized, existing, and doing business under the laws of the State of Maryland; Joseph S. Seagram & Sons, Inc., a distilling corporation organized, existing, and doing business under the laws of the State of Maryland and operating a distillery in the State of Kentucky, in the city of Louisville; Julius Kessler Distilling Co., Inc., a distilling corporation organized, existing, and doing business under the laws of the State of Indiana; and respondent, Seagram-Distillers Corporation of Massachusetts, a wholly owned subsidiary, as hereinafter described. In the course and conduct of its said business, respondent, Seagram-Distillers Corporation, causes the said liquors, when sold, to be transported from the various States where manufactured to warehouses maintained at strategic points throughout the country and by carload shipment direct from the place of manufacture into and through various other States of the United States to the purchasers thereof, consisting of wholesale distributors and retailers located in various other States of the United States and in the District of Columbia, and in the course and conduct of its said business this respondent has been and is in substantial competition with other corporations and with individuals, partnerships, and firms likewise engaged in the sale of whiskies, gins, and other alcoholic beverages in commerce between and among the various States of the United States and in the District of Columbia.

Respondent, Seagram-Distillers Corporation of Massachusetts, a wholly owned subsidiary of the aforesaid Distillers Corporation-Seagram's, Ltd., of Canada, is a corporation organized, existing, and doing business under the laws of the State of Massachusetts, having its principal office and place of business at 801 Park Square Building in the city of Boston in said State. It is now and for more than 1 year last past has been engaged in the business of selling within the confines of the said State of Massachusetts, whiskies, gins, and other alcoholic beverages manufactured by respondent, Seagram-Distillers Corporation, and the aforesaid affiliates and subsidiaries of the holding company, Distillers Corporation-Seagram's, Ltd. In the course and conduct of its business as aforesaid, it is in direct and substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale of whiskies, gins and other alcoholic beverages which, when sold, the said competitors cause to

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be shipped from various States of the United States other than the State of Massachusetts, into and through various States of the United States into the said State of Massachusetts, for sale through the various channels of distribution to the ultimate consumer within said State.

PAR. 2. Respondent, Seagram-Distillers Corporation, is one of the four largest distributors of alcoholic liquors in the United States and there is a large demand for its products. It sells in all parts of the United States where the sale of liquor is legalized and its annual dollar volume of sales is between \$60,000,000 and \$70,000,000. It maintains sales offices in the cities of New York, N. Y.; Chicago, Ill.; Los Angeles and San Francisco, Calif.; New Orleans, La.; Detroit, Mich.; Philadelphia, Pa.; and Boston, Mass., the latter sales office being also the principal office of the other respondent herein, namely, Seagram-Distillers Corporation of Massachusetts. Respondent, in the sale and distribution of its products, employs a large number of salesmen who travel throughout the United States from the aforesaid sales offices, calling upon and soliciting the trade of wholesalers, retailers, hotels, bars, and restaurants. It does a substantial amount of periodical and newspaper advertising and makes direct sales of all of its products to carefully chosen wholesale distributors who, in turn, sell the respondent's products to package stores, retailers, and bars. Respondent prepares and publishes from time to time price lists, upon which are scheduled respondent's prices to the wholesaler, the suggested minimum wholesale price to the retailer, and the suggested minimum resale prices at which the retailer is to sell said products to the ultimate purchaser or consumer. The aforesaid prices vary for different States, individual lists being prepared for each locality; and, as hereinafter set out, the said alcoholic liquors are sold to said wholesale distributors by respondent upon the definite understanding and agreement that said wholesale distributors will observe the suggested minimum resale prices and will sell only to retailers who likewise observe the suggested minimum retail prices.

PAR. 3. Respondent Seagram-Distillers Corporation, in the course and conduct of its aforesaid business, in order to stabilize and make uniform the resale prices of its said products, adopted, established, and has maintained a system or policy of merchandising whereby it fixed specified, standard, and uniform resale prices, discounts, and "mark-ups" at which its said products should be resold by wholesalers and by retail dealers, and solicited and secured the active support and cooperation of said wholesalers, retail dealers, and the other respondent, Seagram-Distillers Corporation of Massachusetts,

in the maintenance of said resale prices, discounts, and "mark-ups"; and in order to carry out and make effective said system or policy, said respondent has entered into agreements and understandings with wholesalers and retail dealers, and with respondent Seagram-Distillers Corporation of Massachusetts, purporting to bind said wholesalers, retail dealers, and Seagram-Distillers Corporation of Massachusetts to the maintenance of said minimum resale prices, discounts, and "mark-ups," and has solicited and maintained their cooperation in the maintenance of such prices, discounts, and "mark-ups." Pursuant to such contracts, agreements, and understandings, this respondent and its wholesale distributors, acting in its behalf, have undertaken to prevent, and have prevented, other wholesalers and retail dealers and respondent Seagram-Distillers Corporation of Massachusetts from reselling said products at prices less than the said minimum resale prices fixed by respondent as aforesaid.

Pursuant to such policy, and in furtherance of the aforesaid agreements and understandings, and for the purpose of facilitating the control and detection of price-cutting merchants, franchises were granted, or oral agreements made, with said wholesale distributors, limiting their territory, and said respondent instructed its employees to report to it those distributors and retail dealers who violated such agreements, and to this end and object, the active aid of all distributors and their employees was utilized, and, generally, said wholesale distributors were directed and instructed by respondent Seagram-Distillers Corporation to, and pursuant to such instructions did, carry into effect the aforesaid minimum resale price maintenance agreements.

In carrying out and making effective such system or policy, respondent Seagram-Distillers Corporation employed, among others, the following means, devices, and methods, to wit:

1. It secured promises, assurances, and agreements from both wholesalers and retailers that they would maintain the suggested resale prices.

2. It secured the cooperation of wholesalers and retailers in reporting the names of price cutters, and acted upon the information so obtained.

3. It induced wholesalers and retailers to raise their prices to the suggested resale prices under threats that if they failed to do so they would be cut off.

4. It secured the cooperation of wholesalers and dealers to prevent others cut off by respondent for price cutting, from obtaining respondent's products.

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5. It exacted promises or assurances that prices would be maintained as a condition for reinstatement.

6. It used serial numbers to trace sources of supply of price cutters, and secured wholesalers' and retailers' cooperation in tracing sources of supply.

7. It cut off wholesalers and retailers who refused to give assurance that they would maintain prices, or who were reported as price cutters by competitors or respondent's employees.

8. It obtained agreements from wholesalers that they would not furnish respondent's merchandise to retailers whose names appeared on the blacklist maintained by respondent.

9. It secured the cooperation of wholesalers, retailers, and trade associations in inducing other dealers to maintain the suggested prices.

10. It, by subterfuge, bought out the entire stock of their products from retailers who were cutting prices, and secured the cooperation of wholesalers in the purchase of said stock.

11. It secured agreements from newspapers not to accept advertising offering respondent's products at cut prices.

12. It caused to be reinstated offending wholesalers and retail dealers on the list of its customers upon obtaining from said wholesalers and retail dealers promises, assurances, and pledges that in the future its suggested minimum resale prices would be maintained by said wholesale and retail dealers.

13. It has employed various and divers other equivalent and cooperative means to maintain its said suggested minimum resale prices.

PAR. 4. Respondent Seagram-Distillers Corporation of Massachusetts in the course and conduct of its aforesaid business, in order to stabilize and make uniform the suggested minimum resale prices of its said products sold within the confines of the State of Massachusetts, and with the purpose and effect of accepting, cooperating in, and enforcing within said State the uniform minimum resale price maintenance system and policy of the said respondent Seagram-Distillers Corporation, as set out in paragraph 3 hereof, unlawfully conspired, combined, confederated, and agreed with respondent Seagram-Distillers Corporation in substance and effect to employ, and did employ and use, the same means, devices, and methods within the State of Massachusetts, as the said Seagram-Distillers Corporation employed and used with its wholesale distributors and others throughout the United States in the maintenance and enforcement of said minimum resale price maintenance policy, and by the aforesaid unlawful conspiracy, combination, confederacy, and agreements, and the acts and practices undertaken and done pursuant thereto, said

respondent, Seagram-Distillers Corporation of Massachusetts operated to hinder, obstruct, and restrain the flow of commerce into the State of Massachusetts; and the direct effect thereof was to suppress competition among jobbers, wholesalers, and retail dealers in the distribution and sale of liquors, and to prevent them from selling said liquors at such lower prices as they might deem adequate and warranted by their respective selling costs and by trade conditions generally, and to deprive the purchasers of said products of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce in said products, thus tending unduly to hinder and suppress competition in the resale of said products in the channels of interstate trade.

PAR. 5. The direct effect of the above alleged acts and practices agreed upon and done by respondent Seagram-Distillers Corporation has been to suppress competition among jobbers, wholesalers, and retail dealers in the distribution and sale of respondent's said products; to cause said jobbers, wholesalers, and retail dealers to sell said products at the prices fixed and established by said respondent pursuant to the understandings and agreements had with its wholesale distributors, and with Seagram-Distillers Corporation of Massachusetts, and to prevent them, and each of them, from selling the said products at such lower prices as they might deem adequate and warranted by their respective selling costs and by trade conditions generally, and to deprive the purchasers of said products of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce in said products, thus tending to unduly hinder and suppress competition in the resale of said products in the channels of interstate trade.

PAR. 6. The above acts and practices of respondents, and each of them, are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the meaning of Section 5 of said Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 23, 1936, issued and served its complaint in this proceeding upon the above respondents, charging them and each of them 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 joint answer

by respondents, 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, and in opposition to the allegations of the complaint by Thomas Kiernan, attorney for respondents, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the Commission, by order entered herein, granted the motion of respondents for permission to withdraw their joint answer filed March 17, 1937, and to substitute therefor an answer, in which substitute answer said respondents admitted for the purposes only of this proceeding, and any proceedings which may be brought or instituted under the Federal Trade Commission Act as amended and approved March 21, 1938, for the recovery of penalties therein provided in case of violation of any order to cease and desist which may be issued hereunder, all of the material allegations of said complaint insofar as the same relate to acts and practices of the respondent Seagram-Distillers Corporation in the District of Columbia, or acts and practices of said respondent Seagram-Distillers Corporation connected with liquor sold and shipped for resale into or in the District of Columbia. The respondent Seagram-Distillers Corporation of Massachusetts denies that it has engaged in business in the District of Columbia. Said respondent, Seagram-Distillers Corporation, also stated in said answer that the Commission might, without trial, without the taking of further evidence, and without any intervening procedure, make and enter its findings as to the facts and serve upon it an order to cease and desist from the unfair methods of competition alleged in said complaint insofar as they relate to the District of Columbia. The said Commission having duly considered the above and being 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, Seagram-Distillers Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business at 405 Lexington Avenue in the city of New York, in the State of New York. It is now and for more than 1 year last past has been engaged in the business of selling in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia, certain brands of

whiskies, gins, and other alcoholic beverages, including those sold under the trade names "Seagram's" and "Kessler's," manufactured at distilleries in Canada, at Lawrenceburg, Ind., and elsewhere by affiliated corporations and subsidiaries of Distillers Corporation-Seagram's, Ltd., a Canadian corporation having its office and principal place of business at Montreal, Canada. The latter corporation is the holding company for this respondent and the following named concerns: Joseph E. Seagram & Sons, Inc., a distilling corporation organized, operating and doing business under the laws of the State of Indiana, in the city of Lawrenceburg in said State; Maryland Distillery, Inc., a distilling corporation organized, existing, and doing business under the laws of the State of Maryland at Relay, Md.; Calvert Distilling Co., a distilling corporation organized, existing, and doing business under the laws of the State of Maryland at Baltimore, Md.; Joseph E. Seagram & Sons, Inc., a corporation organized, existing, and doing business under the laws of the State of Maryland; Joseph S. Seagram & Sons, Inc., a distilling corporation organized, existing, and doing business under the laws of the State of Maryland and operating a distillery in the State of Kentucky, in the city of Louisville; Julius Kessler Distilling Co., Inc., a distilling corporation organized, existing and doing business under the laws of the State of Indiana; and respondent, Seagram-Distillers Corporation of Massachusetts, a wholly owned subsidiary, as hereinafter described. In the course and conduct of its said business, respondent, Seagram-Distillers Corporation, causes the said liquors when sold, to be transported from the various states where manufactured to warehouses maintained at strategic points throughout the country and by carload shipment direct from the place of manufacture into and through various other States of the United States to the purchasers thereof, consisting of wholesale distributors and retailers located in various other States of the United States and in the District of Columbia, and in the course and conduct of its said business this respondent has been and is in substantial competition with other corporations and with individuals, partnerships, and firms likewise engaged in the sale of whiskies, gins, and other alcoholic beverages in commerce between and among the various States of the United States and in the District of Columbia.

Respondent, Seagram-Distillers Corporations of Massachusetts, a wholly owned subsidiary of the aforesaid Distillers Corporation-Seagram's, Ltd., of Canada, is a corporation organized, existing, and doing business under the laws of the State of Massachusetts, having its principal office and place of business at 801 Park Square Building

in the city of Boston in said State. It is now and for more than 1 year last past has been engaged in the business of selling within the confines of the said State of Massachusetts, whiskies, gins, and other alcoholic beverages manufactured by respondent, Seagram-Distillers Corporation, and the aforesaid affiliates and subsidiaries of the holding company, Distillers Corporation-Seagram's, Ltd. In the course and conduct of its business as aforesaid, it is in direct and substantial competition with other corporations and with individuals, partnerships and firms engaged in the sale of whiskies, gins, and other alcoholic beverages which, when sold, the said competitors cause to be shipped from various States of the United States other than the State of Massachusetts, into and through various States of the United States into the said State of Massachusetts, for sale through the various channels of distribution to the ultimate consumer within said State.

PAR. 2. Respondent, Seagram-Distillers Corporation, is one of the four largest distributors of alcoholic liquors in the United States and there is a large demand for its products. It sells in all parts of the United States where the sale of liquor is legalized and its annual dollar volume of sales is between \$60,000,000 and \$70,000,000. It maintains sales offices in the cities of New York, N. Y.; Chicago, Ill.; Los Angeles and San Francisco, Calif.; New Orleans, La.; Detroit, Mich.; Philadelphia, Pa.; the principal office of the other respondent herein, namely, Seagram-Distillers Corporation of Massachusetts is at Boston, Mass. Respondent, in the sale and distribution of its products, employs a large number of salesmen who travel throughout the United States from the aforesaid sales offices, calling upon and soliciting the trade of wholesalers, retailers, hotels, bars, and restaurants. It does a substantial amount of periodical and newspaper advertising and makes direct sales of all of its products to carefully chosen wholesale distributors who, in turn, sell the respondent's products to package stores, retailers, and bars. Respondent prepares and publishes from time to time price lists, upon which are scheduled respondent's prices to the wholesaler, the suggested minimum wholesale price to the retailer, and the suggested minimum resale prices at which the retailer is to sell said products to the ultimate purchaser or consumer. The aforesaid prices vary for different States, individual lists being prepared for each locality; and, as hereinafter set out, the said alcoholic liquors are sold to wholesale distributors by respondent upon the definite understanding and agreement that said wholesale distributors will observe the suggested minimum resale prices and will sell only to retailers who likewise observe the suggested minimum retail prices.

PAR. 3. Respondent Seagram-Distillers Corporation, in the course and conduct of its business as aforesaid, in order to stabilize and make uniform the resale prices of its said products in the District of Columbia, adopted, established, and has maintained a system or policy of merchandising whereby it fixed specified, standard, and uniform resale prices, discounts and "mark-ups," at which its said products should be resold by wholesalers and retail dealers in the District of Columbia, and received and accepted the active support and cooperation of said wholesalers and retail dealers in the maintenance of said resale prices, discounts and "mark-ups" in the District of Columbia; and in order to carry out and make effective said system or policy, said respondent has entered into agreements or understandings with wholesalers and retail dealers and others in the District of Columbia, purporting to bind said wholesalers, retailers and others to the maintenance of said resale prices, discounts, and "mark-ups," and has obtained and accepted their cooperation in the maintenance of such prices, discounts and "mark-ups." Pursuant to such agreements or understanding this respondent has prevented wholesalers and retail dealers in the District of Columbia from reselling said products at prices less than the said minimum resale prices fixed by respondent as aforesaid.

Pursuant to such policy in the District of Columbia, respondent Seagram-Distillers Corporation has entered into agreements or understandings with its aforesaid wholesale distributors in the District of Columbia, whereby:

1. Distributors have agreed to sell only to such retailers as would agree to resell its products at minimum prices suggested by Seagram-Distillers Corporation.

2. Distributors have agreed to sell Seagram-Distillers' products at a uniform fixed price to retailers, and to allow no discounts from the lists of prices suggested by Seagram-Distillers Corporation.

3. Seagram-Distillers Corporation agreed to cooperate with the aid of its missionary men and other representatives in securing and furnishing all necessary information, for the purpose of enforcing the suggested prices.

4. Seagram-Distillers Corporation agreed to drop from its list of distributors those found offering or giving a discount from its suggested price lists.

5. Distributors agreed to cut off the supplies of all retailers found cutting prices and to compile and maintain reports or lists of those retailers who did not maintain the minimum resale prices suggested.

6. Distributors agreed to dismiss salesmen found offering or giving a discount or part of their (salesmen's) commission to retailers.

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7. Distributors agreed to report to respondent Seagram-Distillers Corporation the names of wholesalers who offered, or who were suspected of offering, a discount to retailers.

8. Seagram-Distillers Corporation agreed to supply its distributors with a list of those retailers who did not maintain the minimum resale prices suggested.

9. Distributors agreed to cut off supplies from price-cutting retailers and not to reinstate them until such reinstatement had been authorized by Seagram-Distillers Corporation.

In furtherance of the aforesaid agreements or understandings in the District of Columbia, respondent Seagram-Distillers Corporation instructed its employees to report to it those distributors in the District of Columbia who violated such agreements and all retailers who failed to maintain in said District the suggested uniform minimum resale prices; and received and acted upon such reports; to the end that its supply of products on hand with retail liquor dealers and others cutting said prices might become exhausted; cut off the supplies of all "price-cutting" retail dealers; and, generally, by various other methods and means, respondent Seagram-Distillers Corporation did carry into effect in the District of Columbia the aforesaid agreements or understandings with its wholesale distributors and retail dealer vendees in the District of Columbia to the end and effect of maintaining a fixed, specified, standard, and uniform system of resale prices, discounts, and "mark-ups" at which its said products should be sold and resold as aforesaid, and did reinstate and cause to be reinstated offending price-cutting retail dealers of its products upon their agreement or understanding that in the future they would observe the system or scale of resale price maintenance suggested by respondent Seagram-Distillers Corporation by the means and methods hereinbefore set out.

PAR. 4. Respondent Seagram-Distillers Corporation, with the purpose and effect of obtaining and maintaining a fixed, uniform, minimum resale price for liquors sold in the District of Columbia and shipped into the District of Columbia for resale therein, did combine, cooperate, and agree with certain of its wholesale distributors and retail dealer vendees to enforce in the District of Columbia the suggested uniform, minimum resale price maintenance system and policy aforesaid of Seagram-Distillers Corporation and agreed in substance and effect as follows:

1. That the retail dealer's profit should be made uniform by fixing and maintaining a uniform minimum price for liquor.

2. That uniform prices should be maintained by certain retail dealers.

3. That only such retail dealers who promised to maintain uniform minimum resale prices should be supplied with the products of Seagram-Distillers Corporation.

4. That wholesalers should be notified not to supply any price-cutting retailers.

Pursuant to and in execution of the aforesaid combinations and agreements or understandings, and with the purpose and effect of making them effective in the District of Columbia, Seagram-Distillers Corporation, on its part fully performed and carried out the aforesaid understandings or agreements by adopting, establishing, and maintaining the aforesaid policies of merchandising with relation to liquors sold in the District of Columbia, and liquors shipped for resale in the District of Columbia, whereby specified, standard and uniform minimum resale prices, discounts, and "mark-ups" were fixed at which the products of the said Seagram-Distillers Corporation should be and were resold by wholesalers, jobbers, retail dealers, and others in the District of Columbia.

PAR. 5. The direct effect of the above alleged acts and practices agreed upon and done by respondent Seagram-Distillers Corporation has been to suppress competition among jobbers, wholesalers, and retail dealers in the District of Columbia in the distribution and sale of respondent's said products; to cause said jobbers, wholesalers, and retail dealers to sell said products at the prices suggested by said respondent pursuant to the understandings or agreements had with its wholesale distributors and others in the District of Columbia and to prevent them and each of them from selling respondent's said products at such lower prices as they might deem adequate and warranted by their respective selling costs and by competitive trade conditions generally, and to deprive the purchasers of said products of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce in said products, thus tending unduly to hinder and suppress competition in the resale of said products in the District of Columbia and in the shipment of said products for resale in the District of Columbia to the consuming public.

PAR. 6. It appearing to the Commission that (except for the acts and practices of respondent Seagram-Distillers Corporation in connection with liquors sold in the District of Columbia and shipped for resale therein as hereinabove set forth), the acts and practices of respondent Seagram-Distillers Corporation and the acts and practices of respondent Seagram-Distillers Corporation of Massachusetts as charged in the complaint, transpired and occurred either in or with respect to alcoholic liquors shipped for resale into States or

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territories having "Fair Trade" laws or public policies in effect therein within the intent and meaning of the Miller-Tydings Act (title VIII of An Act to Provide Additional Revenue for the District of Columbia, and for other purposes, approved August 17, 1937, H. R. 7472, Public Act 314, 75th Cong. 1st Sess.) the Commission has limited its order entered pursuant hereto to the acts and practices of respondent Seagram-Distillers Corporation in connection with liquor by it sold and shipped for resale into the District of Columbia, and as to the respondent Seagram-Distillers Corporation of Massachusetts, the Commission has therefore directed by its said order that as to this said respondent the case be closed without prejudice to the right of the Commission to reopen the same in the course of its regular procedure should future facts and circumstances so warrant.

## CONCLUSION

The aforesaid acts and practices of the respondent Seagram-Distillers 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 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 substituted answer filed herein on May 31, 1938, by respondents Seagram-Distillers Corporation and Seagram-Distillers Corporation of Massachusetts, in which said answer the respondent Seagram-Distillers Corporation admitted all the material allegations against it in said complaint insofar as the same relate to the sale or offering for sale of liquors in the District of Columbia, or the shipping of liquors for resale in the District of Columbia, said admission having been made for the purposes only of this proceeding and any proceedings which may be brought or instituted under the Federal Trade Commission Act as amended and approved March 21, 1938, for the recovery of penalties therein provided in case of violation hereof; and said respondent Seagram-Distillers Corporation having waived the taking of further evidence and all other intervening procedure; and the respondent Seagram-Distillers Corporation of Massachusetts having neither admitted nor denied the allegations of said complaint as to it, and having affirmatively alleged that it never has and does not now engage in business in the District of Columbia; and the Commission having made its findings as to the facts and its

conclusion that said respondent Seagram-Distillers Corporation has violated the provisions of the Federal Trade Commission Act;

*It is ordered*, That the respondent Seagram-Distillers Corporation, in connection with the offering for sale of whiskies and other alcoholic beverages in the District of Columbia, and in connection with the shipment of whiskies and other alcoholic beverages into the District of Columbia and their resale therein, do forthwith cease and desist from:

1. Entering into or enforcing the provisions of any contract, agreement, or understanding, verbal or written, with any retailer, jobber, wholesaler or other distributor, the purpose and effect of which is to maintain a specified standard or uniform minimum resale price, discount, or "mark-up" at which respondent's said products are to be resold by such retailers, jobbers, wholesalers, or other distributors;

2. Enforcing or attempting to enforce the resale of respondent's said products at specified standard or uniform minimum resale prices, discounts, or "mark-ups" by any of the following methods or means:

(a) By reinstating or causing to be reinstated retailers, jobbers, wholesalers, or other distributors who have been cut off, upon any agreement or understanding with such retailers, jobbers, wholesalers, or other distributors, that respondent's suggested minimum resale prices, discounts, or "mark-ups" will thereafter be maintained.

(b) By circulating, or threatening to circulate, among retailers, jobbers, wholesalers, or other distributors, reports or lists of those retailers, jobbers, wholesalers, or other distributors who have cut prices on respondent's said products.

(c) By combining or agreeing directly or indirectly with any individuals, corporations, firms, or partnerships to do or cause to be done any of the aforesaid acts or things.

(d) By combining with retailers, jobbers, wholesalers, or other distributors with the purpose and effect of exhausting the supply of its products on hand with any other retailers, jobbers, wholesalers, or other distributors through the purchase of said supply of its products.

(e) By securing or endeavoring to secure, through contract, agreement, or understanding, the active support or cooperation of any wholesaler, retail dealer, association, or individual, individually or collectively, in the doing of any of the acts or things hereinabove prohibited.

*It is further ordered,* That as to the respondent Seagram-Distillers Corporation of Massachusetts, this case be and the same is hereby closed without prejudice to the right of the Commission to reopen the same in the course of its regular procedure should future facts and circumstances so warrant.

*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.

## Syllabus

## IN THE MATTER OF

## GOODERHAM &amp; WORTS, LTD., 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 2989. Complaint, Nov. 23, 1936—Decision, June 10, 1938*

Where a corporation engaged in the sale, between and among the various States and in the District of Columbia, of certain brands of whiskies and other alcoholic beverages, in part made and sold to it by a Canadian corporate affiliate and in part thus made and sold to it by a similar Michigan affiliate, and with sales distribution offices in New York, Chicago, Denver, and San Francisco, and in substantial competition, in sale of such products, with others thus engaged, and selling, excepting such sales as made to vendees owned or controlled by State monopolies, to carefully chosen wholesale distributors, for resale to package-store retailers, bars, and other retailers, and to wholesale distributors in the District of Columbia, upon the definite understanding and agreement that they would observe the distiller's suggested wholesale prices, set forth in price lists supplied by it to such various distributors and scheduling its prices to the wholesaler and its suggested wholesale prices to the retailer, and latter's suggested retail prices to ultimate purchaser or consumer, and would sell only to retailers who observed the suggested retail prices at which they were to sell said liquors;

In pursuance of a system or policy of merchandising, adopted to stabilize and make uniform retail prices of its said products in the District of Columbia, and whereby it fixed specified standard and uniform resale prices, discounts, and mark-ups at which its said products should be resold by wholesalers and retailers in said District, and under which it received and accepted the active support and cooperation of such wholesale and retail dealers in the maintenance of such retail prices, etc., and in order to carry out and make effective said system or policy—

- (a) Entered into agreements or understandings with wholesale and retail dealers and others in said District purporting to bind them to maintain its said retail prices, discounts, and mark-ups, and obtained and accepted the cooperation of such wholesalers, etc., in the maintenance of such prices, etc., and prevented wholesalers and retailers in said District, by virtue of such agreements or understandings, from reselling said products in said District at prices lower than said minimum resale prices thus fixed by it; and
- (b) Entered into agreements with its wholesale distributors in said District whereby (1) such distributor agreed to sell only to such retailers as would agree to resell its products at minimum prices suggested by it; to sell such products at a uniform fixed price to retailers and allow no discounts from lists of prices suggested by it; to cut off supplies of all retailers found cutting prices and to compile and maintain reports or lists of those retailers who did not maintain such suggested minimum resale prices; to dismiss salesmen found offering or giving a discount or part of their commission to retailers; to report to it names of wholesalers who offered or were suspected of offering discounts to retailers; and to cut off supplies from price-cutting