

Syllabus

IN THE MATTER OF

SCHENLEY DISTILLERS CORPORATION 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 2990. Complaint, Nov. 23, 1936—Decision, June 10, 1938

Where a corporation, subsidiary of a holding company which, through its affiliates and other subsidiaries, constituted one of the largest units and agencies for the distilling and distribution of alcoholic liquors in the United States, with gross sales running into many millions, with sales offices for their products in 13 cities scattered over the country, and with a large number of salesmen who called on both retail and wholesale trade and hotels, bars, restaurants, and clubs, engaged in the business of selling and distributing the products of its said unit or group, and acting under the authority of said holding company in the policies, acts, and practices involved, and, with it, substantial periodical and newspaper advertiser, and seller, in substantial competition with others engaged in sale of such products, to carefully selected wholesale distributors who resell products in question to package stores, retailers, and bars, and to wholesale distributors in the District of Columbia, upon the definite understanding and agreement that they will (1) observe the suggested minimum resale price set forth in price lists prepared and published by it from time to time and scheduling prices of the various selling and distributing companies, making up aforesaid group or unit, to wholesaler, and suggested minimum wholesale prices to retailer, and also suggested resale prices at which latter is to sell such products to ultimate purchaser or consumer, and (2) will sell only to retailers who likewise observed suggested minimum resale prices;

In pursuance of a system or policy of merchandising adopted to stabilize and make uniform resale prices of their 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 said 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;

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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 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.

Chadbourne, Wallace, Park & Whiteside, 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 Schenley Distillers Corporation, Schenley Distributors, Inc., Schenley Products Co., a corporation, and Schenley Distributors of New England, Inc., 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, Schenley 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 20 West Fortieth Street, in the city of New York, State of New York. It is now and for more than 1 year last past has been engaged in distilling and selling, in the constant course of trade and commerce, between and among the various States of the United States and in the District of Columbia, whiskies, gins, and other alcoholic beverages manufactured by it, and sold and distributed by it to wholesalers and retailers direct and through the agency of various subsidiary corporations, including the other respondents named herein, in which other respondent corporations,

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the said respondent, Schenley Distillers Corporation, through stock ownership, exercises executive management and control.

Schenley Distributors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at 20 West Fortieth Street, in the city of New York, State of New York. It is now and for more than 1 year last past has been engaged in the business of selling and distributing in the constant course of trade and commerce, between and among the various States of the United States and in the District of Columbia, and particularly in the States of New York and Illinois, whiskies, gins, and other alcoholic beverages distilled by respondent, Schenley Distillers Corporation aforesaid, and by various other distilling corporations subsidiary thereto and affiliated therewith.

Schenley Distributors of New England, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business at 80 Federal Street, in the city of Boston, State of Massachusetts. It is now and for more than one year last past has been engaged in the business of selling, in the constant course of trade and commerce, between and among the various States of the United States and in the District of Columbia, and particularly in the States of Massachusetts, Connecticut, and Rhode Island, whiskies, gins, and other alcoholic beverages distilled by respondent, Schenley Distillers Corporation, and various distilling companies subsidiary thereto and affiliated therewith.

In the course and conduct of their aforesaid businesses, the aforesaid respondents cause the said alcoholic liquors, when sold, to be transported from the various States of the United States wherein are located the distilleries at which said products are produced and distilled, including the States of Pennsylvania, Kentucky, and Indiana, into and through various other States of the United States, to the purchasers thereof, consisting of wholesale distributors and retailers located in such other States and the District of Columbia, and in the conduct of their said businesses, these respondents have been and are 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.

PAR. 2. Respondent, Schenley Products Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place

of business also at 20 West 40th Street, city of New York, and having its principal sales office at No. 1, Bloomfield Avenue, in the city of Newark, in the State of New Jersey. It is now and for more than one year last past has been engaged in the business of selling and distributing Schenley products, produced and distilled by respondent, Schenley Distillers Corporation aforesaid, and the latter's various subsidiary and affiliated distilling companies, to wholesalers and retailers within the confines of the State of New Jersey. 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 New Jersey, into and through various States of the United States, into said State of New Jersey for sale through the various channels of distribution to the ultimate consumer within said State.

PAR. 3. The respondent, Schenley Distillers Corporation, with its aforesaid owned and controlled affiliates and subsidiaries, including the other respondents herein named, constitute one of the largest units and agencies for the distilling and distribution of alcoholic liquors in the United States, the gross sales of Schenley products during the year 1935, being in excess of \$63,000,000. Respondents maintain sales offices in New York, N. Y.; San Francisco and Los Angeles, Calif.; Denver, Colo.; Jacksonville, Fla.; Louisville, Ky.; New Orleans, La.; Chicago, Ill.; Newark, N. J.; St. Louis, Mo.; Boston, Mass.; Hartford, Conn.; and Little Rock, Ark.; and in the sale and distribution of the Schenley products employ approximately two hundred and sixty salesmen, who call on both the retail and wholesale trade and hotels, bars, restaurants, and clubs. Respondents do a substantial amount of periodical and newspaper advertising and make direct sales of their products to carefully selected wholesale distributors who, in turn, sell the Schenley products to package stores, retailers, and bars. Respondents prepare and publish from time to time price lists upon which are scheduled respondents' prices to the wholesaler, the suggested minimum wholesale prices 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 localities and from time to time; and as hereinafter set out, the said products are sold to the said wholesale distributors by respondents, upon a definite understanding and agreement that the 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. 4. Respondent, Schenley Distillers Corporation, by itself and through the agency of its wholly owned and controlled affiliates and subsidiaries aforesaid, and the respondents, Schenley Distributors, Inc., and Schenley Distributors of New England, Inc., and each of them, in the course and conduct of the sale and distribution of Schenley products, in order to stabilize and make uniform the resale prices of said products, have adopted, established and maintained a system or policy of merchandising whereby they have fixed specified, standard, and uniform resale prices, discounts, and "mark-ups" at which said products should be resold by wholesalers and by retail dealers, and have solicited and secured the active support and cooperation of said wholesalers, retail dealers, each other and the other respondent herein, namely, Schenley Products Company, 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 respondents and each of them have entered into agreements and understandings with wholesalers and retail dealers, and with respondent, Schenley Products Company, purporting to bind said wholesalers, retailers and Schenley Products Company to the maintenance of said minimum resale prices, discounts, and "mark-ups," and have solicited and maintained their cooperation in the maintenance of such prices, discounts, and "mark-ups." Pursuant to such contracts, agreements, and understandings, these respondents and their wholesale distributors, acting in their behalf, have undertaken to prevent and have prevented other wholesale dealers and retail dealers from reselling Schenley products at prices less than the said minimum resale prices fixed by respondents 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 respondents instructed their employees to report to them 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 respondents 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, respondents Schenley Distillers Corporation, Schenley Distributors,

Inc., and Schenley Distributors of New England, Inc., employed, among others, the following means, devices, and methods, to wit:

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

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

3. They 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. They secured the cooperation of wholesalers and dealers to prevent others, cut off by respondents for price cutting, from obtaining respondents' products.

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

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

7. They 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 respondents' employees.

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

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

10. They, 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. They secured agreements from newspapers not to accept advertising offering respondents' products at cut prices.

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

13. They have employed various and divers other equivalent and cooperative means to maintain their said suggested minimum resale prices.

PAR. 5. Respondent, Schenley Products Company, in the course and conduct of its aforesaid business, in order to stabilize and make uniform the suggested minimum resale prices of Schenley products

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sold within the confines of the State of New Jersey, 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 other respondents herein named, as set out in paragraph 4 hereof, unlawfully conspired, combined, confederated, and agreed with the other respondents herein in substance and effect to employ, and did employ and use the same means, devices, and methods within the State of New Jersey, as the other respondents employed and used with their 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 Schenley Products Company operated to hinder, obstruct, and restrain the flow of commerce into the State of New Jersey; 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. 6. The direct effect of the above alleged acts and practices agreed upon and done by respondents, Schenley Distillers Corporation, Schenley Distributors, Inc., and Schenley Distributors of New England, Inc., has been to suppress competition among jobbers, wholesalers, and retail dealers in the distribution and sale of respondents' said products; to cause said jobbers, wholesalers, and retail dealers to sell said products at the prices fixed and established by said respondents pursuant to the understandings and agreements had with their wholesale distributors, and with Schenley Products Company, 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. 7. 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 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 19, 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 the acts and practices of respondents Schenley Distillers Corporation and Schenley Products Co. in the District of Columbia, or acts and practices of said respondents Schenley Distillers Corporation and Schenley Products Co. connected with liquor sold and shipped for resale into or in the District of Columbia. The respondents Schenley Distributors, Inc., Schenley Distributors of New England, Inc., and Schenley Distillers Corporation, affirmatively alleged that they do not now and never have engaged in business in the District of Columbia except that respondent Schenley Distillers Corporation admits that it now exercises and has exercised executive management and control over the other respondents hereto, and authorized all of the policies, acts, and practices executed and done by respondent Schenley Products Co. in the District of Columbia. Respondents Schenley Distillers Corporation and Schenley Products

Co. 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 them 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 Schenley Distillers Corporation is a Corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 350 Fifth Avenue, in the city of New York, State of New York. It now owns and for more than 1 year last past has owned all of the outstanding stock of various affiliates and subsidiary manufacturing corporations including Joseph S. Finch & Co. of Pennsylvania, The George T. Staggs Co. of Kentucky, The Old Quaker Co. of Maryland, The Clifton Springs Distilling Co. of Delaware, the Monticello Distillery Co. of Maryland, and many other distilling corporations, some of which do now, and all of which have at one time or another, subsequent to repeal of prohibition, engaged in the manufacture by distillation of spirituous liquors hereinafter referred to as Schenley products. Respondent Schenley Distillers Corporation also now owns, and for more than 1 year last past has owned, all of the outstanding stock of a corporation known as Schenley Products Co., hereinafter referred to, which later corporation is now and for more than 1 year last past has been engaged in selling in constant course of trade and commerce between and among various States of the United States and in the District of Columbia, whiskies, gins, and other alcoholic beverages manufactured, sold, and distributed by the aforesaid affiliates and subsidiaries of Schenley Distillers Corporation, to wholesalers and retailers. Through its said stock ownership in the aforesaid affiliates and subsidiaries, including the respondent Schenley Products Co., the Schenley Distillers Corporation exercises executive management and control over such corporations, and did authorize all of the policies, acts, and practices hereinafter set forth as having been executed and done by the Schenley Products Co.

Schenley Distributors, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at 350 Fifth

Avenue, in the city of New York, State of New York. It is now and for more than 1 year last past has been engaged in the business of selling and distributing in constant course of trade and commerce between and among various States of the United States, particularly the States of New York and Illinois, whiskies, gins, and other alcoholic beverages distilled by the manufacturing subsidiaries and affiliates of Schenley Distillers Corporation, but there is no evidence that it is now or for more than 1 year last past has been engaged in the business of selling or transporting for resale any alcoholic beverages into or in the District of Columbia.

Schenley Distributors of New England, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business at 80 Federal Street, in the city of Boston, State of Massachusetts. 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 particularly in the States of Massachusetts and Connecticut, whiskies, gins, and other alcoholic beverages distilled as aforesaid. There is no evidence that this corporation causes any alcoholic beverages to be transported to any purchasers located in the District of Columbia or sells or distributes, or has sold or has distributed, for more than 1 year last past, any alcoholic beverages within the District of Columbia.

PAR. 2. Respondent Schenley Products Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business also at 350 Fifth Avenue, in the city of New York, and having its principal sales office in Jersey City, in the State of New Jersey. It is now and for more than 1 year last past has been engaged in the business of selling and distributing Schenley products, produced and distilled as aforesaid. In the course and conduct of its aforesaid business, the respondent Schenley Products Co. causes the said Schenley products, when sold, to be transported from the various States of the United States, wherein are located the distilleries at which the said products are produced and distilled, including the States of Pennsylvania, Kentucky, and Indiana, into and through various other States of the United States, to the purchasers thereof, consisting of wholesale distributors and retailers located in such other States and in the District of Columbia. In the conduct of its said business, Schenley Products Co. 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. 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 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.

PAR. 3. The respondent, Schenley Distillers Corporation, with its aforesaid owned and controlled affiliates and subsidiaries, including the other respondents herein named, constitute one of the largest units and agencies for the distilling and distribution of alcoholic liquors in the United States, the gross sales of Schenley products during the year 1935, being in excess of \$63,000,000. Sales offices for Schenley products are maintained in New York, N. Y.; San Francisco and Los Angeles, Calif.; Denver, Colo.; Jacksonville, Fla.; Louisville, Ky.; New Orleans, La.; Chicago, Ill.; Newark, N. J.; St. Louis, Mo.; Boston, Mass.; Hartford, Conn.; and Little Rock, Ark.; and in the sale and distribution of the Schenley products there are employed approximately 260 salesmen, who call on both the retail and wholesale trade and hotels, bars, restaurants, and clubs. Respondents do a substantial amount of periodical and newspaper advertising and direct sales of Schenley products are made by the various Schenley companies to carefully selected wholesale distributors, who, in turn, sell the Schenley products to package stores, retailers, and bars. The various Schenley selling and distributing companies, including the respondent Schenley Products Co., prepare and publish from time to time price lists upon which are scheduled their prices to the wholesaler, the suggested minimum wholesale prices 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 suggested prices vary for different localities and from time to time; and as hereinafter set out, the said products are sold to the wholesale distributors in the District of Columbia by said Schenley Products Co. upon a definite understanding and agreement that the said wholesale distributors will observe the suggested minimum resale prices and will sell only to retailers who likewise observe the suggested minimum resale prices.

PAR. 4. Respondent, Schenley Products Co., in the course and conduct of the sale and distribution of Schenley products, in order to stabilize and make uniform the resale prices of 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

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 understandings respondent Schenley Products Co. 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 as aforesaid.

Pursuant to such policy in the District of Columbia, Schenley Products Co. 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 Schenley Products Co.

2. Distributors have agreed to sell respondents' products at a uniform fixed price to retailers, and to allow no discounts from the lists of prices suggested by Schenley Products Co.

3. Schenley Products Co. 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. Schenley Products Co. agreed to drop from its list of distributors those found offering or giving a discount from their 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.

7. Distributors agreed to report to respondent Schenley Products Co. the names of wholesalers who offered, or who were suspected of offering, a discount to retailers.

8. Schenley Products Co. agreed to supply its distributors with a list of those retailers who did not maintain the minimum resale prices suggested.

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

In furtherance of the aforesaid agreements or understandings in the District of Columbia, respondent Schenley Products Co. 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 the 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 Schenley Products Co. 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 the said products of respondents should be sold and resold as aforesaid, and did reinstate and cause to be reinstated offending price-cutting retail dealers of these products upon their agreement or understanding that in the future they would observe the system or scale of resale price maintenance suggested by the means and methods hereinbefore set out.

PAR. 5. Respondent Schenley Products Co., 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 Schenley Products Co., 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 Schenley products.
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, Schenley Products

Co., 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 said Schenley products should be and were resold by wholesalers, jobbers, retail dealers, and others in the District of Columbia.

PAR. 6. The direct effect of the above alleged acts and practices agreed upon and done by respondent Schenley Products Co. has been to suppress competition among jobbers, wholesalers, and retail dealers in the District of Columbia in the distribution and sale of respondents' said products; to cause said jobbers, wholesalers, and retail dealers to sell said products at the prices suggested pursuant to the understandings or agreements had with the wholesale distributors and others in the District of Columbia and to prevent them and each of them from selling Schenley 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. 7. It appearing to the Commission that (except for the acts and practices of respondents Schenley Distillers Corporation and Schenley Products Co., in connection with liquors sold in the District of Columbia and shipped for resale therein, as hereinabove set forth), the acts and practices of said respondents as charged in the complaint transpired and occurred in or with respect to alcoholic liquors shipped for resale into States or 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 respondents Schenley Distillers Corporation and Schenley Products Co. in the District of Columbia, and their acts and practices in connection with liquor sold or shipped for resale into the District of Columbia, and as to the respondents Schenley Distributors, Inc. and Schenley Distributors of New England, Inc., the Commission has directed by its said order that as to them the case be closed without pre-

judice to the right of the Commission to reopen the same in the course of its regular procedure should future facts and circumstances warrant.

CONCLUSION

The aforesaid acts and practices of the respondents Schenley Distillers Corporation and Schenley Products Co. are to the prejudice of the public and of respondents' 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 all of the respondents hereto, in which said answer the respondents Schenley Distillers Corporation and Schenley Products Co. admitted all the material allegations against them 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 respondents Schenley Distillers Corporation and Schenley Products Co. having waived the taking of further evidence and all other intervening procedure, and the respondents Schenley Distributors, Inc. and Schenley Distributors of New England, Inc. having neither admitted nor denied the allegations of said complaint as to them, and having affirmatively alleged that they do not now and never have engaged in business in the District of Columbia; and the Commission having made its findings as to the facts and its conclusion that said respondents Schenley Distillers Corporation and Schenley Products Co. have violated the provisions of the Federal Trade Commission Act.

It is ordered. That the respondents Schenley Distillers Corporation and Schenley Products Co., a 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 for 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, a 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 respondents Schenley Distributors, Inc., and Schenley Distributors of New England, Inc., 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 respondents within 60 days from and after the date of service upon them of this order, shall file with the Commission a report or reports in writing, setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
HIRAM WALKER, INC., 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 2991. Complaint, Nov. 23, 1936—Decision, June 10, 1938

Where a corporation engaged in sale, between and among the various States and in the District of Columbia, of certain brands of whiskies and alcoholic beverages, made and sold to it by 2 other similarly named corporations, of Peoria, Ill., and Walkersville, Canada, respectively, and 1 of the 4 largest distributors of liquors in the United States, doing a substantial amount of periodical and newspaper advertising, employer of a large number of salesmen, and selling such whiskies, etc., in large demand, in substantial competition with others engaged in sale of similar products, through approximately 49 carefully chosen distributors, for resale to package-store retailers, bars, and other retailers, and making a substantial proportion of its sales to corporations or other agencies owned or controlled by certain States or subdivisions thereof possessed of a monopoly on the sale and distribution of liquor within their respective States, and selling also in bulk to rectifiers and bottlers, and preparing for each of its sales divisions price lists, upon which were scheduled its prices to the wholesaler and suggested wholesale prices to the retailer and suggested retail prices to the ultimate purchaser or consumer;

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 understanding, 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-