

IN THE MATTER OF
UNITED DISTILLERS (OF AMERICA) LTD.

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

Docket 2807. Complaint, May 15, 1936—Decision, June 23, 1938

Where a corporation (subsidiary of a parent holding company which also owned and operated a distilling corporation, along with other corporate interests), engaged, prior to erection and operation of its own distillery, as wholesaler and as rectifier in purchasing and selling or in purchasing, rectifying, bottling, and reselling whiskies, gins, and other alcoholic beverages, procured, directly or indirectly, through members of the corporate family group of which it was a part, as above indicated, from said distilling company and parent concern and also, and for a time and to a limited extent, elsewhere, in substantial competition with others engaged, as the case might be, in (1) manufacture by distillation, i. e., production by original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, of whiskies and other aforesaid beverages, and in sale thereof in trade and commerce, and who truthfully use word "Distillers" as part of their corporate or trade name and on their stationery and advertising and on the labels of the bottles in which they sell and ship their products, and (2) concerns engaged in purchasing, rectifying, blending, bottling, and selling whiskies, etc., and who do not use said word as above set forth—

Falsely represented, through use of word "Distillers" in its corporate name printed on its stationery and advertisements and on the labels attached to the bottles in which it sold and shipped its said products and in various other ways, to its customers, and supplied latter with means of thus representing to their vendees, whether retailers or ultimate consuming public, that the whiskies and other alcoholic beverages bottled by it were made through process of distillation from mash, wort, or wash;

With effect of misleading and deceiving dealers and purchasing public into the beliefs that all of the aforesaid representations were true and that all the whiskies, gins, and other spirituous beverages bottled and sold by it were by it made and distilled from mash, wort, or wash, as above set forth, and with effect of inducing dealers and purchasing public, acting in such beliefs, to purchase said whiskies, etc., bottled and sold by it, and of thereby diverting trade to it from competitors who did not, by their corporate or trade names or in any other manner, misrepresent that they were manufacturers by distillation from mash, wort, or wash of such products, purchase of which, thus labeled with name of distiller or distilling company, commands a preference and tends to induce public to buy products of concern thus using such word in preference to those of other bottlers, in the belief that, in so doing, they are buying from the actual distiller and that, in thus buying as directly as possible, they get a better grade of merchandise, save money, or secure a more uniform product; to the substantial injury of substantial competition in commerce:

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

Complaint

Before *Mr. John J. Keenan*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. Raphael I. Levin, of Baltimore, Md., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that United Distillers (of America), Ltd., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation, organized, existing, and doing business under the laws of the State of Maryland, with its principal office and place of business at 33 North La Salle Street, Chicago, Ill. It is now, and for more than 1 year last past has been, engaged in the business of a wholesaler of alcoholic beverages, purchasing whiskies, gins, and other alcoholic beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia.

Respondent corporation is a subsidiary of a corporate holding company known as the United Distillers of Canada (Ltd.), and the said two corporations have the same officers. Respondent corporation owns 100 percent of the stock and through the same officers operates and controls as a selling agency, upon a commission basis, a corporation known as "U. D. L." (of America) Inc. The aforesaid corporate holding company, United Distillers of Canada (Ltd.), owns, operates, and controls a distilling corporation known as United Distillers Limited, also a Canadian corporation, from which source, directly or indirectly, the distilled spirits requirements of respondent are obtained. The aforesaid corporate holding company, United Distillers of Canada (Ltd.), owns, operates, and controls a Canadian corporate selling and distributing agency known as Foreign Investments Ltd., which in turn owns 50 percent of the stock of Bonded Brands, Inc., a New York corporation, which latter corporation owns 90 percent of the stock in and controls the Potomac Distilling Corporation, a company organized, existing, and operating under the laws of the State of Maryland, as a rectifier of spirituous liquors, and which last-named corporation has the same officers as respondent.

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In the course and conduct of its business, respondent purchases bulk whiskies, alcohol, and whiskies bottled in bond from the aforesaid Foreign Investments Ltd.; resells the said bulk whiskey and alcohol to the Potomac Distilling Corporation, the rectifier, which rectifies, bottles, and sells back the finished product to respondent. Respondent is exclusive agent in the United States for the products of the aforesaid United Distillers of Canada (Ltd.), the parent corporate holding company. Respondent then sells its entire output, consisting of the bottled-in-bond liquors purchased from Foreign Investments Limited, and the rectified, blended, and bottled packages purchased from Potomac Distilling Corporation, to the aforesaid corporation, U. D. L. (of America) Inc., its selling agent. In the course and conduct of its business as aforesaid, and through the agency of U. D. L. (of America) Inc., respondent causes its said products, when sold, to be transported from its places of business, both in Baltimore, Md., and in Chicago, Ill., to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States, and in the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now and has been for more than 1 year last past, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other alcoholic beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; in the course and conduct of its business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other alcoholic beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged as wholesalers and importers in the business of purchasing whiskies, gins, and other alcoholic beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distillers" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, those who manufacture such liquors by the

process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distillers" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that respondent is a distiller and that the whiskies, gins, and other alcoholic beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other alcoholic beverages by it so labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other alcoholic beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products; there are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of selling at wholesale such products, who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does

mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such beliefs to purchase the whiskies, gins, and other alcoholic beverages sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of such products, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 15, 1936, issued and served its complaint in this proceeding upon the respondent, United Distillers (of America), Ltd., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of 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 Raphael I. Levin, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, brief in support of complaint and in opposition thereto (no oral arguments having been requested or made); and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Maryland. It was organized May 22, 1934, and until April 1936 had its principal office and place of business at 33 North LaSalle Street, Chicago, Ill. During April 1936 it removed its principal office and place of business from said address to 2710 Wilmarco Avenue, Baltimore, Md., where it is still engaged in business. During all of said time it has in those places been engaged and now is engaged in the business of a wholesaler of alcoholic beverages, purchasing whiskies, gins, and other alcoholic beverages and selling the same at wholesale. Since April of 1937, respondent has also engaged in the distilled spirits rectifying industry, purchasing, rectifying, and bottling whiskies, gins, and other alcoholic beverages and reselling the same. Both as a wholesaler and as a rectifier it has engaged and now is engaged in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent corporation is a subsidiary of a corporate holding company known as the United Distillers of Canada (Ltd.). The officers of respondent are at present H. H. Klein, president, Raphael I. Levin, vice president, and Carl J. Wilson, secretary. The present secretary has served since about the latter part of 1936, having succeeded Miss Jeanette Herman. None of these officers are or ever were officers of the parent corporation, namely, United Distillers of Canada (Ltd.). Respondent corporation owns 100 percent of the stock, and through the same officers operates and controls as a selling agency, upon a commission basis, a corporation known as "U. D. L." (of America) Inc. The aforesaid corporate holding company, United Distillers of Canada (Ltd.), owns, operates, and controls a distilling corporation known as United Distillers Limited, also a Canadian corporation, from which source, directly or indirectly, all the distilled spirits requirements of respondent were obtained up until about May 1937, after which time approximately 10 percent of its distilled spirits requirements were obtained from a distillery in Massachusetts. Until about November 1936, the aforesaid corporate holding company, United Distillers of Canada (Ltd.) owned, operated, and controlled a Canadian corporate selling and distributing agency known as Foreign Investments, Ltd., which in turn owned 50 percent of the stock of Bonded Brands, Inc., a New York corporation, which latter corporation owned 90 percent of the stock in and controlled the Potomac Distilling Corporation, a company organized, existing, and operating under the laws of the State

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of Maryland, as a rectifier of spirituous liquors, and which last-named corporation had the same officers as respondent. Since November 1936, the aforesaid selling and distributing agency known as Foreign Investments, Ltd., and the corporation known as Bonded Brands, Inc., were voluntarily dissolved, and the Potomac Distilling Corporation in June 1937 became merged with respondent corporation.

PAR. 3. Prior to the aforesaid dissolutions and merger, the course and conduct of respondent's business was substantially as follows:

Respondent purchased bulk whiskey and whiskey bottled in bond from Foreign Investments, Ltd., and resold the same; the Potomac Distilling Corporation bought whiskey in bulk from United Distillers of Canada (Ltd.), rectified and bottled the same, and then sold it to respondent United Distillers (of America), Ltd., and respondent in turn sold same through its aforesaid selling agency, U. D. L. (of America) Inc. Respondent was the exclusive agent in the United States for the products of the aforesaid United Distillers of Canada (Ltd.), the parent holding company. Respondent then sold its entire output, consisting of the bottled-in-bond liquors purchased from Foreign Investments, Ltd., and the rectified, blended, and bottled packages purchased from Potomac Distilling Corporation, to the aforesaid U. D. L. (of America) Inc., its selling agent. In the course and conduct of its business as aforesaid, and through the agency of U. D. L. (of America) Inc., respondent caused its said products when sold to be transported from its places of business both in Baltimore, Md., and in Chicago, Ill., to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and in the District of Columbia.

Subsequent to the dissolution of Foreign Investments, Ltd., and Bonded Brands, Inc., and the merger of Potomac Distilling Corporation with respondent, the course and conduct of respondent's business was the same as prior thereto, with the following exceptions:

It purchased its bulk whiskey and whiskey bottled in bond from United Distillers of Canada (Ltd.) and respondent did its own rectifying and bottling for resale.

PAR. 4. In the course and conduct of its business as aforesaid, respondent is now and has been for more than 1 year last past, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other alcoholic beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; in the course and conduct of its business as aforesaid, respondent is now, and for more

than 1 year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other alcoholic beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged as wholesalers and importers in the business of purchasing whiskies, gins, and other alcoholic beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The Commission finds from the evidence that this respondent, at all times prior to December 28, 1937, was a rectifier, its place of business a rectifying plant, and that it was engaged in the business of rectification within the intent and meaning of Section 3244 of the Revised Statutes of the United States. (U. S. Code, title 26, sec. 1397-f.)

PAR. 6. Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or types or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On some bottled liquors, whether bottled at the distiller's rectifying plant or at any rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the ----- Company." If the distilled spirits therein contained are bottled by a distiller either in his distillery or are spirits of his own distillation bottled in his rectifying plant, the distiller may and does put "Distilled and Bottled by ----- Company." If, in the distiller's rectifying plant, other spirits have been blended or rectified, he puts "Blended and Bottled by ----- Company."

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Finally, usually blown in the bottom of each bottle, is a symbol, consisting of a letter followed by a number, identifying the bottler, viz, a "D" for a distillery and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus R-700 designated this respondent's rectifying identity. This number was placed on the bottle to identify the bottler. The knowledge of the general public in regard to these details is very limited. All whiskies, whether emanating from distilleries or rectifiers, are generally in the trade conceded to be "distilled products."

It is not possible to determine from the presence of the phrase "Blended and bottled by" alone or the phrase "Bottled by" alone, on the label whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

PAR. 7. The company's business during the period, March 1935 to March 31, 1936, amounted to \$789,830.06; from April 1, 1936, to March 31, 1937, \$780,833.71; from April 1, 1937, to September 30, 1937, \$330,760.57.

The company maintains branch offices in Washington, D. C., Chicago, Ill., Seattle, Wash., Los Angeles, Calif., San Francisco, Calif., and through its subsidiary, the U. D. L. (of America) Inc., employs an average of 35 salesmen, who cover a territory comprising 29 States and possessions.

PAR. 8. The United Distillers (of America), Ltd., is owned in its entirety by United Distillers of Canada Limited, a corporation organized under the laws of the Dominion of Canada, in 1925, and which, through its wholly owned subsidiary, United Distillers Limited, another Canadian corporation, has been in the business of distilling whiskey since its organization. In 1930 it became a public Dominion company and placed its stock on the market in accordance with Dominion laws. The parent company now has a large number of stockholders holding its 770,000 shares of common stock, no preferred stock or bonds having been issued.

Until April 1937, the United Distillers (of America), Ltd., only bottled the distiller products of its parent company, either as straight whiskey or as a blend of Canadian whiskey and American neutral spirits. In April 1937, and intermittently since, the American company has also bottled the products of a Massachusetts distiller.

PAR. 9. Subsequently to the issuance of the complaint and the taking of testimony herein, respondent completed the erection of a distillery on its premises at 2710 Wilmarco Avenue, Baltimore, Md. Such distillery has an 8-hour daily capacity of 100 barrels of alcoholic spirits. Warehousing bond in the penal sum of \$200,000, and

the usual distillers' bond in the penal sum of \$100,000 has been approved and operations commenced under Federal Alcohol Administration Distillers' Basic Permit D-782 on December 28, 1937, and such operations have been carried on continuously since that date. Respondent requires no other source for its distilled spirits requirements.

With respect to all of the whiskies and other alcoholic beverages not produced by this respondent, in the period between the commencement of its operations as a wholesale or rectifier and December 28, 1937, at which time it commenced operations as a distiller, this respondent, in the regular course and conduct of its business, by the use of the word "distillers" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, represented to its customers and furnished them with the means of representing to its vendees, both retailers and the ultimate consuming public, that the said whiskies and other alcoholic beverages bottled by it were manufactured through the process of distillation from mash, wort, or wash.

PAR. 10. For a long period of time, the word "distiller," when used in connection with the liquor industry and with the products thereof, has had and still has a definite significance and meaning to the minds of retailers and wholesalers in such industry and to the ultimate purchasing public; to wit, the production of alcoholic liquors by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels, until the manufacture thereof is completed, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by the actual distillers thereof.

PAR. 11. Prior to the time when this respondent began its distilling operations there were, and still are, among the competitors of respondent engaged in the sale of spirituous beverages, as hereinbefore mentioned, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the word "distillers" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. Also there were, and still are, among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who do not use the word "distillers" as a part

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of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 12. Based upon the testimony of a large number of witnesses from both the trade and the purchasing public, the Commission finds that the word "distillers," when used in the corporate name of the bottler of spirits or other alcoholic beverages, on the bottles in which such spirits are contained, indicates the distillation by such bottler of such spirits from fermented grain, mash, or wort, and that the use of such word tends to induce the public to purchase the products of the concern using such word in its corporate name, in preference to the products of other bottlers, in the belief that they are buying the product bottled by the actual distiller of its contents; and that in buying as directly as possible from the distiller, they get a better grade of merchandise, save money, or secure a more uniform product. For these reasons they are inclined to give preference to a product bearing the name of a distiller or distilling company.

PAR. 13. Representations by respondent, as hereinabove set forth, prior to December 28, 1937, had the capacity and tendency to and did mislead and deceive dealers and the purchasing public into the beliefs that all of the aforesaid representations were true and that all the whiskies, gins, and other spirituous beverages bottled and sold by respondent were manufactured and distilled by it from mash, wort, or wash, as aforesaid, and had the capacity and tendency to and did induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who did not by their corporate or trade names or in any other manner misrepresent that they were manufacturers by distillation from mash, wort, or wash, of such products; and thereby respondent did substantial injury to substantial competition in interstate commerce.

Notwithstanding the fact that this respondent since the institution of these proceedings has qualified as a distiller, the Commission has no assurance that the practices complained of might not, at some future date, be resumed.

CONCLUSION

The aforesaid acts and practices of the respondent, United Distillers (of America), Ltd., were to the prejudice of the public and of respondent's competitors, and constituted 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, the answer of respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and briefs filed herein in support of the complaint and in opposition thereto (no oral argument having been requested or made) and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, United Distillers (of America), Ltd., its officers, representatives, agents, and employees, in connection with the offering for sale, or sale and distribution by it in interstate commerce or in the District of Columbia, of whiskies, gins, or other spirituous beverages, do cease and desist from:

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

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

IN THE MATTER OF
TEOLINDA MAHLER, TRADING AS D. J. MAHLER
COMPANY

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

Docket 3390. Complaint, Apr. 26, 1938—Decision, June 28, 1938

Where an individual engaged in the sale and distribution of electrolysis machines for use in removal of superfluous hair and other facial and body blemishes, such as freckles, warts, moles, and birthmarks, and in sale and distribution of a certain dental cream—

- (a) Represented and implied that said electrolysis apparatus could be used with safety in the home by any inexperienced purchaser for the permanent removal of superfluous hair, dark freckles, and other blemishes of the skin, through such statements as “* * * you can remove and destroy permanently coarse and deep-seated hair * * * also dark freckles, by following simple instructions,” “Remove the hair permanently, safely, privately, at home, following simple instructions,” “No experience is required,” “* * * I am satisfied that I have succeeded in perfecting an electrical appliance that will be safe in the hands of inexperienced people, for permanently destroying superfluous hair”; facts being use of said apparatus by an inexperienced operator in the removal of such hair, dark freckles, and other blemishes was dangerous and might result in permanent injury to or disfigurement of the user;
- (b) Represented that by use of aforesaid dental cream purchaser could prevent or cure pyorrhea and receding gums and prevent loss of teeth, through describing it as “a new type toothpaste created and based on modern research that has taken years to perfect,” and that “By using Phyllis Maybelle Dental Cream and seeing your dentist every six months, you will never be troubled with Pyorrhea, receding gums or losing your teeth”; facts being use thereof would not prevent nor cure pyorrhea, receding gums, or prevent loss of teeth through decay arising from systemic causes;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true and that said apparatus could be used with safety in the home by any inexperienced operator in the removal of superfluous hair, etc., and that use of said cream would prevent or cure pyorrhea, etc., and of causing many members of the purchasing public, because of such erroneous belief, to buy its said products, and of diverting unfairly thereby substantial trade to it from its competitors, to their injury and that of the public:

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

Mr. Wm. T. Chantland for the Commission.