

IN THE MATTER OF
RARITAN DISTILLERS CORPORATION

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

Docket 2442. Complaint, June 18, 1935—Decision, Dec. 3, 1938

Where a corporation engaged in purchasing, rectifying, blending, and bottling whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages, and in selling its aforesaid various products to wholesaler and retailer purchasers in other States and in District of Columbia, in substantial competition with those engaged in manufacture by distillation of whiskies, gins and other alcoholic beverages from mash, wort, or wash, and in sale thereof in trade and commerce among the various States and in said District, and with those engaged in rectifying, blending, and bottling such various beverages and similarly selling same, and including among said competitors those who distill, from mash, wort or wash, whiskies, gins, and other alcoholic beverages and truthfully use words "distillery," "distilleries," "distillers," or "distilling" as 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 their said products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distillers" in its corporate name, printed on its stationery, invoices, billheads, order blanks, and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways to customers, that the said whiskies, gins, cordials, and other alcoholic beverages contained in said bottles were by it made through true process of distillation from mash, wort, or wash, and furnished said customers with means of so representing to their retailer-vendees and ultimate consuming public, notwithstanding fact it did not thus distill said various beverages thus bottled, labeled, sold and transported by it through process of distillation from mash, wort, or wash, as long definitely understood from word "distillers" used in connection with liquor industry and products thereof in the trade and by the ultimate purchasing public, and did not own, operate, or control any place or places where said beverages were made by such process of distillation as aforesaid, and said products were not produced and bottled by distillers or in a distillery, and it was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and purchasing public into belief that it was a distiller and that the whiskies, gins, and other alcoholic beverages sold by it were by it distilled from mash, wort, or wash, and of inducing dealers and such public, acting in such belief, to purchase its aforesaid products made and bottled by it, and of thereby diverting trade to it from its competitors who do not, by their corporate or trade names, or in any other manner, misrepresent that they are distillers; to the substantial injury of substantial competition in commerce:

Held, That such acts and practices were all 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. John W. Hilldrop, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Raritan Distillers 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 New Jersey, with its office and principal place of business in the city of Perth Amboy in said State. It is now, and for more than 1 year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business it causes its said products when sold to be transported from its place of business aforesaid into and through various other States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other alcoholic beverages from mash, wort, or wash and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is, and has been for more than 1 year last past, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of rectifying, blending, bottling, and selling whiskies, gins, cordials, liqueurs, vermouths, cocktails, 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.

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PAR. 2. For a long period of time the word "distillers" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturers of such liquors by the process of distillation from mash, wort, or wash, and a substantial portion of the purchasing public prefers to buy alcoholic beverages 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, advertising matter, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages therein contained were by it manufactured through a true process of distillation from mash, wort, or wash, when, as a matter of fact respondent is not a distiller, does not distill the said whiskies, gins, or other alcoholic beverages by it so bottled, labeled, sold, and transported, and does not own, operate or control any place or places where said beverages are manufactured by a process of distillation from mash, wort, or wash, and the said beverages are not produced and bottled in a distillery.

PAR. 4. There are among the competitors of respondent engaged in the sale of alcoholic beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who distill from mash, wort, or wash, whiskies, gins, and other alcoholic 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, 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, cordials, liqueurs, vermouths, cocktails, 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, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has a capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that respondent is a distiller and that the whiskies, gins, and other

alcoholic beverages sold by the respondent are distilled by it from mash, wort, or wash and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the aforesaid products manufactured and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade name or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 18, 1935, issued and served its complaint in this proceeding upon respondent, Raritan Distillers 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, and in opposition to the allegations of the complaint by John W. Hilldrop, attorney for the respondent, 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 proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel aforesaid; and the Commission, having duly considered the matter, 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 in December 1933, existing and doing business under and by virtue of the laws of

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the State of New Jersey, and has its principal place of business at 385-387 Rector Street, Perth Amboy, N. J. Its officers are David Silverman, president and treasurer; Max Silverman, vice president, and Rose Silverman, secretary.

Ever since March 27, 1934, it has been and still is engaged in business as a rectifier and wholesaler of distilled spirits. Since November 23, 1935, it so engaged pursuant to a rectifier's basic permit No. R-390, issued to it on that date by the Federal Alcohol Administration Division of the Treasury Department. Prior thereto it had operated under a permit issued by the former Federal Alcohol Control Administration. Its present permit authorizes it to engage at the above addresses in the business of rectifying and blending distilled spirits and wine, and while so engaged, to sell, offer, and deliver for sale in interstate and foreign commerce such spirits and wine so rectified or blended, conditionally, upon its compliance with Sections 5 and 6 of the Federal Alcohol Administration Act, and all other provisions thereof; the Twenty-first Amendment and laws relating to the enforcement thereof; all laws of the United States relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto; and all applicable regulations made pursuant to law which are now or may hereafter be in force; and the laws of all States in which the permittee engages in business.

While its charter is sufficiently broad to permit it to engage in almost any phase of the liquor business, actually it has engaged only in the business of rectifying spirits and selling them at wholesale. It purchases these spirits from various distillers and bottles them under its Warehousing and Bottling Basic Permit BR-390, issued at the same time and by the same authority as was its rectifier's basic permit.

Of the whiskies purchased by it in bulk from distillers it bottles about 90 percent without alteration as straight whiskies, and bottles the residue after rectifying or blending the same. The bottling and sale of the gin purchased by it from others constitutes about 25 percent of its sales.

The Commission finds that this respondent is now and since March 27, 1934, has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages, and in the sale thereof in constant course of trade and commerce between and among the various States of the United States, and in the District of Columbia. The bulk of its sales and distribution has been in the territories comprised by the States of New Jersey, New York, Connecticut, Pennsylvania, and in the District of Columbia.

In the course and conduct of its said business it causes its products, when sold, to be transported from Perth Amboy, N. J., into and through various other States of the United States to the purchasers thereof, who are wholesalers and retailers located in these 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 since March 27, 1934, has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other alcoholic beverages from mash, wort, or wash and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is, and has been during said period, in substantial competition with other corporations, individuals, firms, and partnerships engaged in the business of rectifying, blending, and bottling whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Upon the premises of respondents are various tanks for storage and blending, bottle fillers, labeling machines, and the equipment usually found in a rectifying plant.

Rectifying, in the distilled spirits rectifying industry, means the mixing, or blending of whiskies of different grades or types. A blend of whiskies is a combination of various straight whiskies of different types or ages, and blended whiskey is a product with something other than whiskey in it, such as neutral spirits (grain alcohol) and sometimes caramel or prune juice, or whatever the rectifier sees fit to put in it, as stated by Mr. David Silverman "A finished whiskey in his own mind—in his taste, whatever you want to call it."

During such times as a rectifier is either bottling or labeling his products a gauger from the Alcohol Tax Unit of the Bureau of Internal Revenue is present, solely for the purpose of protecting the Government's revenue. A great many distilling companies in addition to their distilleries operate a rectifying plant at some little distance from their distilling plant where they perform substantially the same operations as a rectifier. Blown somewhere in the glass of the bottles used there is a symbol consisting of a letter followed by a number, identifying the bottler. For instance, there is a "D" for a distiller and an "R" for a rectifier, the number following the said letter corresponds with the distiller's or rectifier's basic permit, thus "R-390" designates Raritan Distillers Corporation to those who happen to know. Distillers also bottle liquor from their rectifying plants and

label it as "Blended and bottled by" or "Bottled by," as the case may be, so that by the use of such phrases alone appearing on a label followed by the name of the bottler one cannot tell whether the bottler was a distiller or a rectifier.

This respondent does not now and never has produced or manufactured distilled spirits of any kind from mash, wort, or wash, or other raw materials.

Section 3247 of the Revised Statutes (U. S. C. A. title 26, sec. 1183 (a)) regulating Internal Revenue, defines a "distiller" as follows:

Every person who produces distilled spirits or who brews or makes a mash, wort, or wash fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirits from any substance, or who, making or keeping mash, wort or wash, has also in his possession or use a still, shall be regarded as a distiller.

Section 3244 of the Revised Statutes (U. S. C. A. title 26, sec. 1398 (f)) defines a "rectifier" as follows:

Every person who rectifies, purifies, or refines distilled spirits or wine by any process other than by original and continuous distillation from mash, wort, or wash, through continuous enclosed vessels or pipes, until the manufacture thereof is complete, and every wholesaler and liquor dealer who has in his possession any still or leach tub, or who keeps any other apparatus for the purpose of refining in any manner distilled spirits, and every person who without rectifying, purifying, or refining distilled spirits, shall, by mixing such spirits, wine, or other liquor with any materials, manufacture any spurious imitation, or compound liquors for sale under the name of whiskey, brandy, gin, rum, wine spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and that being engaged in the business of rectifying, etc.

PAR. 3. The testimony of those having long experience in both the distilled spirits rectifying industry and the distilling industry established that this respondent's plant and operations do not make or constitute this respondent a distiller in the sense commonly understood by the liquor industry. There were also called a large number of witnesses who were lay-members of the purchasing public, 28 in number, and with few exceptions their testimony was to the effect that by such terms as "distilling," "distillery," "distiller," when used in the trade or corporate name of a concern handling alcoholic beverages, they understood that concern to be engaged in an initial distilling process of producing spirituous or alcoholic beverages from fermented grain or mash, and that they have a distinct preference for a distillery bottled package over one bottled by a rectifier for the reason that they would expect to get a better product that had been distilled under proper supervision and without tampering; and that everything else being equal, as between two unknown brands, they

would choose the bottle bearing the label or name of a distiller, or a distilling company.

The Commission finds that for a long period of time, the word "distillers" when used in connection with the liquor industry and with the products thereof, has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacture of such liquors by the process of distillation from mash, wort, or wash, and that a substantial portion of the purchasing public prefers to buy alcoholic beverages prepared and bottled by distillers.

PAR. 4. About 50 percent of respondent's products are sold under its corporate name "Raritan Distillers Corporation," and 50 percent under the private labels of customers. In the sale and shipment of its products, the respondent on its labels gives the brand name and in some instances the age of the whiskey with the statement "Bottled by Raritan Distillers Corp., Perth Amboy, N. J." In other instances "Blended and Bottled by Raritan Distillers Corp." As to straight whiskies, since about August 1936, under a requirement of the Federal Alcohol Administration, respondent has placed a label on the bottle naming the State in which the liquor was distilled and its age. In the matter of blended whiskey, the back label on the bottle states the amount of whiskey and amount of neutral spirits. The respondent must get the approval of the Federal Alcohol Administration on all labels before using them and it has complied with all the rules and regulations of the Federal Alcohol Administration. The respondent's corporate name as it appears on the label is required to correspond with the name as it appears on the basic permit issued by the Federal Alcohol Administration. These basic permits may be amended and on June 12, 1936, respondent's basic permit was amended as to the address at which it conducted its rectifying operations. In connection with the approval by the Federal Alcohol Administration of this respondent's labels, the question of the propriety or impropriety of the name used by the corporation was never discussed or passed upon. Except on its labels, at the present time all respondent's advertising literature bears the words "Rectifiers of Spirits" in smaller type after its corporate name, that is, upon its statements, business letterheads, invoices, and order blanks.

The Commission finds that 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, invoices, billheads, order blanks, and on the labels attached to the bottles in which it sells and ships its said products and in various other ways, respondent represents

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to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages therein contained were by it manufactured through a true process of distillation from mash, wort, or wash, when as a matter of fact and law, respondent is not a distiller, does not distill the said whiskies, gins, or other alcoholic beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where said beverages are manufactured by a process of distillation from mash, wort, or wash, and the said beverages are not produced and bottled by distillers, nor in a distillery.

PAR. 5. There are among the competitors of respondent engaged in the sale of alcoholic beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who distill from mash, wort, or wash whiskies, gins, and other alcoholic 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, 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, cordials, liqueurs, vermouths, cocktails, 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, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 6. The representation by respondent, as set forth in paragraph 4 hereof, is calculated to and has a capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that respondent is a distiller and that the whiskies, gins, and other alcoholic beverages sold by the respondent are distilled by it from mash, wort, or wash and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the aforesaid products manufactured and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade name or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

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CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all 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, 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 the said complaint and in opposition thereto, briefs filed herein, and oral arguments by PGad B. Morehouse, counsel for the Commission, and by John W. Hildrop, counsel for the respondent, 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, Raritan Distillers Corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing through the use of the word "distillers" in its corporate name on its stationery, invoices, bill heads, order blanks, and on the labels attached to the bottles in which it sells and ships its said products, or in any other way by word or words of like import;

(a) That it is a distiller of whiskeys, gins, or other spirituous beverages; or

(b) That the said whiskies, gins, and other spirituous beverages are by it manufactured through the process of distillation; or

(c) That it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, unless and until respondent shall actually own, operate, or control such a place or places.

It is further ordered. That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
FIRESIDE INDUSTRIES, INC.

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

Docket 3362. Complaint, Mar. 19, 1938—Decision, Dec. 6, 1938

Where a corporation engaged in sale and distribution of home study courses for decoration of novelties and, in connection therewith, in sale and distribution of unpainted and undecorated furniture, toys, lamp shades, and other novelties, along with its own exclusive designs, instructions, and color schemes, to members of purchasing public in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar products and home study courses; in advertising its said courses and products and business and sales policies in publications, bulletins and other matter circulated among the various States—

- (a) Represented that its customers had all of its resources at their command, and that such resources were available for such customers' use and benefit, and that it was a guild or association of persons formed for mutual protection or aid and had counselors or agents in Europe, through such statements, among others, as that "Every member has at his command all of Fireside's tremendous resources for his or her benefit," "The Fireside Guild is, in reality, a close association of some 50,000—men and women, scattered throughout America," and "The Advisory Service includes timely information collected by our counselors and agents located in the art centers of Europe and America," facts being it was not a guild and such various misrepresentations were otherwise exaggerated, misleading and untrue; and
- (b) Represented that financial failure was impossible for those engaged in the business advocated by it, and that it purchased articles from customers and acted as their sales agent, and that its offer to refund purchase price to customers was backed by a gold bond, facts being bond backing its refund offer was not a gold bond, it did not purchase articles from customers or act for them as aforesaid, though performing function of advisor and counselor on sales problems, and it did not guarantee success to customers, for whom financial failure was possible, but merely provided for refund to customer, in event of his dissatisfaction with courses purchased from it;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and of causing substantial portion thereof, by reason of such belief, to buy substantial quantities of its said courses and products, and of thereby diverting unfairly trade to it from competitors, as aforesaid, who truthfully advertise their business, products, and sales policies:

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