

IN THE MATTER OF

LA PERLA VINEYARD COMPANY AND HARRY EX,
DOING BUSINESS AS S. GOLDENBURG & COMPANY,
RAMSHEAD PRODUCTS COMPANY AND RAMSHEAD
DISTILLING COMPANY, AND AS PRESIDENT OF LA
PERLA VINEYARD COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3433. Complaint, May 21, 1938—Decision, Jan. 10, 1939*

Where a corporation engaged in purchasing, processing, bottling, and distributing wines at wholesale to purchasers in other States, and in substantial competition with others engaged in purchasing, processing, and bottling wines, and also with those who own, operate, and control vineyards and manufacture wines from grapes grown therein and sell and distribute their said products in commerce among the States and in said District, and including among competitors aforesaid, thus owning, operating, and controlling vineyards and manufacturing wines from grapes therein, those who use term "vineyard" in their corporate or trade name and in their advertising literature, and those likewise engaged only as bottlers and wholesalers of wine who do not in any way misrepresent the character or nature of their business—

- (a) Represented to vendees and ultimate consuming public, through use of word "vineyard" in its corporate name, on letterheads, invoices, and labels attached to bottles in which its wines were offered and sold, and in various other ways, that it was the producer and manufacturer of such products, facts being it neither owned, operated, nor controlled any vineyard, nor made any wine, but purchased its said products in the open market and bottled same on its premises; and
- (b) Represented, through statements appearing upon its stationery and in various other ways, that it owned and operated the famous La Perla Vineyards at St. Helena, Calif., facts being it never at any time owned, operated, or controlled said long well-known vineyard with its 200 acres in grapes and winery thereon;

With effect of misleading and deceiving purchasers of its said wines into the erroneous and mistaken belief that in buying products from it they were dealing with a concern which owned and operated its own vineyards and made therefrom wines which it offered and sold, and were dealing with owners and operators of aforesaid La Perla Vineyards, and that in thus buying its said wine, as from supposed owners and operators, they were gaining saving in middleman's cost, and other benefits, as commonly believed among wholesalers, retailers, and purchasing public, which associate with such direct purchase superior grade of product, considerable saving in price, and other advantages; and

Where an individual engaged as wholesaler and retailer of wines and liquors, and president of aforesaid corporation, as of second company, and in direct control of the business policies and practices of both; and said second

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corporation, engaged as aforesaid in sale of their alcoholic beverages to purchasers in various States and in the aforesaid District, and in substantial competition with others engaged in alcoholic beverage industry as manufacturers or as rectifiers, blenders, and bottlers, and with wholesalers only, who sell and distribute their products in commerce among the various States and in said District, and including those who truthfully represent themselves as distillers, and rectifiers, blenders, bottlers, and wholesalers only, who in no way misrepresent the nature and character of their business—

- (c) Represented, through use of word "distilling" in the corporate name of said company last referred to, in written agreements, newspaper advertising, and on the labels attached to the bottles in which they offered their products for sale, and in various other ways, to their customers and furnished same with means of representing to said customers' vendees and to ultimate consuming public that the alcoholic beverages thus offered were made by said second company through process of distillation from mash, wort, or wash, facts being it was not a distilling company and did not own, operate or control any place or places where such beverages were made by process of distillation from mash, wort, or wash;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such representations were true, and into substantial purchase of their said alcoholic beverages by reason thereof, and with result that trade was thereby diverted unfairly to them from their competitors aforesaid:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Pam, Hurd & Reichmann, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that La Perla Vineyard Co., a corporation, and Harry Ex, an individual doing business as S. Goldenburg & Co., Ramshead Products Co., and Ramshead Distilling Co., and also as president of the La Perla Vineyard Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the 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. The respondent, La Perla Vineyard Co., is an Illinois corporation, organized in 1922. Its principal office and place of business are at 1404-1406 South Canal Street, Chicago, Ill. Said respondent maintains a branch office and distribution center at San Francisco, Calif. It is now, and for several years last past has been, engaged in purchasing, processing, bottling, and distributing wines at wholesale.

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The respondent, Harry Ex, is an individual doing business as S. Goldenburg & Co., Ramshead Products Co., and Ramshead Distilling Co., at 1404-1406 South Canal Street, Chicago, Ill. He is a wholesaler and retailer of wines and liquors. S. Goldenburg & Co. was organized as a partnership in 1902. Respondent Ex is the surviving partner and sole owner of the business. Ramshead Products Co. and Ramshead Distilling Co. are trade names used by respondent Ex in the conduct of his aforesaid business. Respondent Ex is also president of the respondent corporation, La Perla Vineyard Co., and as such directs and controls its business policies and practices. Both respondents have acted and now act in cooperation in carrying out the acts and practices herein charged.

The respondents now cause, and for several years last past have caused, their intoxicating beverages, when sold by them, to be shipped from their place of business in Chicago, Ill., or from the distribution center at San Francisco, Calif., to the purchasers thereof located in the various States of the United States, other than the States of Illinois and California, and in the District of Columbia. There is now, and for several years last past has been, a course of trade in said alcoholic beverages so sold and distributed by the respondents in commerce between and among the various States of the United States and in the District of Columbia.

Respondent, La Perla Vineyard Co., is, and for several years last past has been, in substantial competition with corporations, partnerships, and individuals engaged in purchasing, processing, and bottling wines. Said respondent is also in substantial competition with corporations, partnerships, and individuals that own, operate, and control vineyards and manufacture wine from the grapes grown therein. Said competitors sell and distribute their said wines in commerce between and among the various States of the United States and in the District of Columbia.

Respondent Ex, doing business as S. Goldenburg & Co., Ramshead Products Co., and Ramshead Distilling Co., is, and for several years last past has been, in substantial competition with individuals, corporations, and partnerships engaged in the alcoholic beverage industry as manufacturers or as rectifiers, blenders, and bottlers, and with wholesalers only, that sell and distribute their products 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 "distilling" when used in connection with the liquor industry and with the products thereof, has had and still has a definite significance and meaning to the minds

of distillers, rectifiers, 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 a substantial portion of the purchasing public prefers to buy spirituous liquors bottled by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of his business as aforesaid, by the use of the word "distilling" in his trade name which appears in written agreements, in newspaper advertising, on the labels attached to bottles in which he offers his products for sale, and in various other ways, the respondent Ex represents to his customers and furnishes them with the means of representing to their vendees and to the ultimate consuming public that the alcoholic beverages thus offered for sale are manufactured by the said respondent through the process of distillation from mash, wort, or wash. In truth and in fact, the respondent Ex is not a distiller and does not own and operate or control any place or places where alcoholic beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. Among respondent Ex's aforesaid competitors, there are individuals, partnerships, and corporations engaged in the manufacture of alcoholic liquors who truthfully represent themselves as distillers. There are also among the aforesaid competitors of respondent Ex rectifiers, blenders, and bottlers, and wholesalers only, who in no way misrepresent the nature or character of the business they are engaged in.

PAR. 5. The use by respondent Ex of the representations set forth herein, has had, and now has the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondent's alcoholic beverages on account of such erroneous belief. As a result of the representations aforesaid, trade is being, and has been, diverted unfairly to respondent Ex from his aforesaid competitors and injury is being, and has been, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. In the course and conduct of its business as aforesaid, the respondent, La Perla Vineyard Co., has represented, and now represents to its vendees and to the ultimate consuming public, through the use of the word "vineyard" in its corporate name, which appears on its letterheads, invoices, and the labels attached to bottles in which its wines are offered for sale and sold, and in various other ways, that it is the producer and manufacturer of said wines. In truth and in

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fact, the respondent does not own and operate or control any vineyard or manufacture any wine, but its wines are purchased in the open market and bottled on its premises in Chicago, Ill.

PAR. 7. In the course and conduct of its business as aforesaid, respondent, La Perla Vineyard Co., through statements appearing upon its stationery and in various other ways represents that it owns and operates the famous La Perla Vineyard at St. Helena, Calif. The said La Perla Vineyard, which consists of about 200 acres planted in grapes and on which is located a winery, has been a very well known vineyard since about 1880. A California corporation organized in 1903 as the La Perla Vineyard Co. owned and operated the La Perla Vineyard until it was purchased by the Windsor Vineyard Co. about 1935. The respondent, La Perla Vineyard Co., has never at any time owned, operated, or controlled the said La Perla Vineyard.

PAR. 8. It is the common belief among wholesalers, retailers, and the purchasing public that a superior grade of wine can be purchased direct from the owners and operators of vineyards who manufacture wine from the grapes grown therein and that a considerable saving in price and other advantages can be secured by dealing direct with such manufacturers. The representations made by the respondent, as alleged in paragraphs 6 and 7 hereof, have the capacity and tendency to and do mislead and deceive purchasers of respondent's wines into the erroneous and mistaken belief that when they purchase said wines from the respondent they are dealing with a concern that owns and operates its own vineyards and manufactures therefrom the wines which it offers for sale and sells, and that they are dealing with the company which owns and operates the aforesaid La Perla Vineyards. Said purchasers are thus led to believe that when they purchase respondents' wine, they are gaining an advantage in price by saving the middleman's cost and are also gaining other advantages.

PAR. 9. There are among the competitors of respondent, La Perla Vineyard Co., as mentioned in paragraph 1 hereof, corporations, partnerships, and individuals that own, operate, and control vineyards and manufacture wine from the grapes grown therein who use the term "vineyard" in their corporate or trade names and in their advertising literature. There are also among respondent's said competitors, corporations, partnerships, and individuals likewise engaged in business only as bottlers and wholesalers of wine who do not in any way misrepresent the character or nature of their business.

PAR. 10. The use by respondent, La Perla Vineyard Co., of the representations set forth herein, has had, and now has the capacity and tendency to mislead and deceive, and has misled and deceived, a

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substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondent's said alcoholic beverages on account of such erroneous belief. As a result of the representations aforesaid, trade is diverted unfairly to respondent from its aforesaid competitors and injury is being, and has been, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 11. The aforesaid acts and practices of the respondents as herein alleged are all 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 21, 1938, issued, and served its complaint in this proceeding upon the respondents, La Perla Vineyard Co., a corporation, and Harry Ex, an individual doing business as S. Goldenburg & Co., Ramshead Products Co., and Ramshead Distilling Co., a corporation, and also as president of the La Perla Vineyard Co., charging 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 respondent's answer on June 11, 1938, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor answer dated October 17, 1938, admitting all the material allegations of facts set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the substitute answer and the record herein, 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. The respondent, La Perla Vineyard Co., is an Illinois corporation, organized in 1922. Its principal office and place of business are at 1404-1406 South Canal Street, Chicago, Ill. Said respondent maintains a branch office and distribution center at San

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Francisco, Calif. It is now, and for several years last past has been, engaged in purchasing, processing, bottling, and distributing wines at wholesale.

The respondent, Harry Ex, is an individual doing business as S. Goldenburg & Co. and Ramshead Products Co. at 1404-1406 South Canal Street, Chicago, Ill. He is a wholesaler and retailer of wines and liquors. S. Goldenburg & Co. was organized as a partnership in 1902 and respondent Ex is the surviving partner and sole owner of the business. Respondent Ramshead Distilling Co. is an Illinois corporation organized in 1932. Its principal office and place of business are also at 1404-1406 South Canal Street, Chicago, Ill. Respondent Ex is president of both respondent corporations and as such directs and controls their business policies and practices. All respondents have acted and now act in cooperation in carrying out the acts and practices herein charged.

The respondents now cause, and for several years last past have caused, their alcoholic beverages, when sold by them, to be shipped from their place of business in Chicago, Ill., or from the distribution center at San Francisco, Calif., to the purchasers thereof located in the various States of the United States, other than the States of Illinois and California, and in the District of Columbia. There is now, and for several years last past has been, a course of trade in said alcoholic beverages so sold and distributed by the respondents in commerce between and among the various States of the United States and in the District of Columbia.

Respondent, La Perla Vineyard Co., is, and for several years last past has been, in substantial competition with corporations, partnerships, and individuals engaged in purchasing, processing, and bottling wines. Said respondent is also in substantial competition with corporations, partnerships, and individuals that own, operate, and control vineyards and manufacture wine from the grapes grown therein. Said competitors sell and distribute their said wines in commerce between and among the various States of the United States and in the District of Columbia.

Respondent Ex, doing business as S. Goldenburg & Co. and as Ramshead Products Co., and the respondent Ramshead Distilling Co., are, and for several years last past have been, in substantial competition with individuals, corporations, and partnerships engaged in the alcoholic beverage industry as manufacturers or as rectifiers, blenders, and bottlers, and with wholesalers only, that sell and distribute their products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, the respondent, La Perla Vineyard Co., has represented, and now represents to its vendees and to the ultimate consuming public, through the use of the word "vineyard" in its corporate name, which appears on its letterheads, invoices, and the labels attached to bottles in which its wines are offered for sale and sold, and in various other ways, that it is the producer and manufacturer of said wines. In truth and in fact, the respondent does not own and operate or control any vineyard or manufacture any wine, but its wines are purchased in the open market and bottled on its premises in Chicago, Ill.

PAR. 3. In the course and conduct of its business as aforesaid, respondent, La Perla Vineyard Co. through statements appearing upon its stationery and in various other ways represents that it owns and operates the famous La Perla Vineyard at St. Helena, Calif. The said La Perla Vineyard, which consists of about 200 acres planted in grapes and on which is located a winery, has been a very well known vineyard since about 1880. A California corporation organized in 1903 as the La Perla Vineyard Co. owned and operated the La Perla Vineyard until it was purchased by the Windsor Vineyard Co. about 1935. The respondent, La Perla Vineyard Co., has never at any time owned, operated, or controlled the said La Perla Vineyard.

PAR. 4. It is the common belief among wholesalers, retailers, and the purchasing public that a superior grade of wine can be purchased direct from the owners and operators of vineyards who manufacture wine from the grapes grown therein and that a considerable saving in price and other advantages can be secured by dealing direct with such manufacturers. The representations made by the respondent, as alleged in paragraphs 2 and 3 hereof, have the capacity and tendency to and do mislead and deceive purchasers of respondent's wines into the erroneous and mistaken belief that when they purchase said wines from the respondent they are dealing with a concern that owns and operates its own vineyards and manufactures therefrom the wines which it offers for sale and sells, and that they are dealing with the company which owns and operates the aforesaid La Perla Vineyards. Said purchasers are thus led to believe that when they purchase respondent's wine, they are gaining an advantage in price by saving the middleman's cost and are also gaining other advantages.

PAR. 5. There are among the competitors of respondent, La Perla Vineyard Co., as mentioned in paragraph 1 hereof, corporations, partnerships, and individuals that own, operate, and control vineyards and manufacture wine from the grapes grown therein who use the term "vineyard" in their corporate or trade names and in

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their advertising literature. There are also among respondent's said competitors, corporations, partnerships, and individuals likewise engaged in business only as bottlers and wholesalers of wine who do not in any way misrepresent the character or nature of their business.

PAR. 6. For a long period of time, the word "distilling" when used in connection with the liquor industry and with the products thereof, has had and still has a definite significance and meaning to the minds of distillers, rectifiers, 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 a substantial portion of the purchasing public prefers to buy spiritous liquors bottled by the actual distillers and manufacturers thereof.

PAR. 7. In the course and conduct of their business as aforesaid, by the use of the word "distilling" in the corporate name which appears in written agreements, in newspaper advertising, on the labels attached to bottles in which they offer their products for sale, and in various other ways, the respondents, Ramshead Distilling Co. and Harry Ex, represent to their customers and furnish them with the means of representing to their vendees and to the ultimate consuming public that the alcoholic beverages thus offered for sale are manufactured by the said Ramshead Distilling Co. through the process of distillation from mash, wort, or wash. In truth and in fact, the respondent Ramshead Distilling Co. is not a distilling company and does not own and operate or control any place or places where alcoholic beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 8. Among the competitors of respondents Ramshead Distilling Co. and Harry Ex, as set out in paragraph 1 hereof, there are individuals, partnerships, and corporations engaged in the manufacture of alcoholic liquors who truthfully represent themselves as distillers. There are also among the aforesaid competitors rectifiers, blenders, and bottlers, and wholesalers only, who in no way misrepresent the nature or character of the business they are engaged in.

PAR. 9. The use by respondents of the representations set forth herein, has had, and now has the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondents' alcoholic beverages on account of such erroneous belief. As a result of the representations aforesaid, trade is being, and has been, diverted unfairly to respondents from their aforesaid competitors.

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CONCLUSION

The aforesaid acts and practices of the respondents, La Perla Vineyard Co., a corporation, Harry Ex, doing business as S. Goldenburg & Co. and as Ramshead Products Co., and Ramshead Distilling Co., a corporation, as herein found, are all to the injury and 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 answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the record herein, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, La Perla Vineyard Co., a corporation, and Ramshead Distilling Co., a corporation, and their respective officers, and respondent Harry Ex, an individual doing business as S. Goldenburg & Co. and as Ramshead Products Co. or under any other names, and all of their respective agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of wines, liquors, and other alcoholic beverages in interstate commerce or in the District of Columbia, do forthwith cease and desist from, directly or through any corporate or other device or in any manner:

Representing through the use of the word "distilling," or the word "vineyard," or any other word or words of like import, in a corporate or trade name, on stationery, labels, or other advertising matter, or in any other manner (a) that they, or any of them, are distillers; or (b) that they, or any of them, manufacture the said wines or alcoholic beverages; or (c) that they, or any of them, own, operate, or control a vineyard, or place where wines or other alcoholic beverages are manufactured.

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

IN THE MATTER OF
FLOYD IRL SORRELLS TRADING AS TEXAS TASTY
COMPANY

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

Docket 3487. Complaint, July 12, 1938—Decision, Jan. 10, 1939

Where an individual engaged in manufacture and sale of so-called "Penny Nips" confection to dealers in the various States and in the District of Columbia; in advertising his said product in periodicals and newspapers of interstate circulation and other circulars distributed to prospective purchasers in commerce among the various States, or to agents—

- (a) Represented that said product was a noncompetitive item, and that such or similar product had never been sold in the territories awarded the particular dealers prior to the signing of their contracts, and that no State license would be required of them to sell his said confection in the various States in which he was attempting to operate, facts being it was not non-competitive, but many other confections of similar and better quality had been and were being sold in all parts of the United States at lower prices than those charged for said "Penny Nips," many similar products had been sold in territories awarded his said dealers, and similar products had been sold therein prior to the signing of their contracts, and State licenses were required of them as a condition to their being permitted to sell merchandise in question in their respective territories;
- (b) Represented that said product would withstand 132° F. heat, and that it contained pure fruit juices, and that he would furnish purchaser with a copy of letter from the city of Fort Worth as to the purity of his said confection, facts being it would not withstand heat as above claimed, but would run and become of no value at a much lower temperature, such product did not contain pure fruit juices, but was composed of artificial coloring, acid, sugar, and water, and he had no letter from city officials of said city certifying as to purity and wholesomeness of his said confection;
- (c) Represented that his agents would remain in the respective territories with the dealers involved to aid them in the sale of such confection, until the deposits of whatever amount paid by them had been returned to them through sales of such product, facts being such agents did not thus remain in the various territories involved with the dealers concerned to aid them as aforesaid, but, on the contrary, left such territories as soon as they secured the dealers' payments and did not thus help them; and
- (d) Represented that merchandise in question would be shipped to a bonded warehouse, to which dealers might go and take out merchandise in such quantities as they might need by paying balance of \$9 per case due thereon, and that a certain amount of free merchandise would be shipped to dealers to repay them for any expense incurred by shipping charges, and that a certain amount would be shipped to them direct, prepaid, facts being goods in question were shipped c. o. d., and he did not, as above represented, ship merchandise to warehouses prepaid, as aforesaid, so that such dealers