

Complaint.

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FEDERAL TRADE COMMISSION

v.

SAMUEL E. BERNSTEIN.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 701—November 9, 1921.

SYLLABUS.

Where certain foreign manufacturers, long famous for the high quality of their cutlery and cutlery steel, sold the same under the mark and brand "Sheffield," so that such brand had come to mean to dealers and to a substantial part of the consuming public, cutlery or steel made at Sheffield, England; and thereafter a domestic dealer sold, under the trade name "Royal Brand," a low-grade line of domestic cutlery, prominently branded with the word "Sheffield"; with a tendency thereby to mislead retailers into believing that the same was made in Sheffield and to encourage misrepresentations to that effect, and with the effect of similarly misleading a substantial part of the purchasing public, and of competing unfairly both with makers of, or dealers in, genuine Sheffield cutlery, and with makers of, or dealers in, domestic cutlery not so branded; to the injury of both, and to the injury of free competition in the sale of cutlery:

Held, That such misbranding, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Samuel E. Bernstein, hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of Section 5 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That respondent is engaged at New York, N. Y., in the business of selling cutlery and silverware at wholesale, and causes the commodities sold by him to be transported to the purchasers thereof from the State of New York through and into various other States of the United States, in direct active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That respondent in the course of his business, as described in Paragraph One hereof, sells an inferior grade of cutlery made in the United States upon which he places labels which contain the

word "Sheffield," without other marks to show the true place of origin of said cutlery. That cutlery of a high quality has been manufactured in large quantities in Sheffield, England, for a long period of time, and the word "Sheffield" when used in connection with cutlery, has come to be understood by the trade and purchasing public, as indicating that such cutlery was made in Sheffield, England, and is of good quality; that the use by respondent of labels containing the word "Sheffield" on an inferior grade of cutlery made in the United States and sold by him, was calculated to and did deceive the purchasing public, and was so used by respondent as to enable him to pass off an inferior grade of cutlery as and for cutlery made in Sheffield, England.

PAR. 3. That by reason of the facts recited, the respondent is using an unfair method 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 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 issued and served a complaint upon the respondent, Samuel E. Bernstein, charging him with the use of unfair methods of competition in violation of the provisions of said act.

The respondent, Samuel E. Bernstein, having entered his appearance by his attorney, Abraham Beck, and having filed his answer herein, hearings were had and evidence was thereupon introduced in support of his answer before Byron L. Shinn, an examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and counsel for the respondent not appearing and waiving oral argument and having filed a brief in behalf of the respondent, and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Samuel E. Bernstein, is an individual, and is now, and for the last twenty-five years, has been engaged in business, as a wholesaler and jobber in cutlery, having his

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principal office and place of business located at New York City, in the State of New York.

PAR. 2. That respondent, in the conduct of his business, has, for more than seven years prior to January 5, 1921, the date of the issuance of the complaint herein, bought and sold cutlery, including butcher knives, carving knives, cleavers, razors, pocket knives, shears, etc., and shipped such articles to purchasers thereof located in different States of the United States, and that during such period there has been a constant trade and commerce in such articles between and among the various States of the United States. That for the five years prior to January, 1921, the respondent's sales of cutlery approximated annually Two Hundred Thousand (\$200,000) Dollars. That respondent has conducted his said business and has sold cutlery, as above described, in active competition with numerous other persons, firms and corporations similarly engaged.

PAR. 3. That during the period of more than seven years prior to January 5, 1921, respondent has, in the course of his business (as set forth in Paragraph Two above) sold, in commerce, a certain line of cutlery labeled, "Royal Brand Cutlery." This label or brand is directly impressed, etched, stamped, or otherwise inscribed on the articles themselves, and is composed of two pictorial elements—an open razor, to the left of which is a crown—and the words "Razor Edge," "Sheffield," and "Royal Brand Cutlery Co.,"—the words "Razor Edge" appearing on the blade of the razor, the word "Sheffield" between the open blade and the handle, and "Royal Brand Cutlery Co." upon the handle.

PAR. 4. That the cutlery so sold by respondent under the label "Royal Brand Cutlery" as above described, was procured by him from the Cuba Knife Company of Cuba, N. Y., and other American manufacturers, who, at respondent's direction, placed the "Royal Brand" design on the goods prior to their delivery to respondent; that the cutlery purchased by respondent from such manufacturers and bearing said label, was of an inferior grade and comparatively low priced, and was made in the United States of domestic steel.

PAR. 5. That respondent sells his cutlery to retailers, who in turn resell to consumers, and, as the label "Royal Brand Cutlery" is indelibly affixed to respondent's cutlery and is observable upon the most casual inspection, the label or design is thus brought directly to the attention of the buying public.

PAR. 6. Sheffield, England, has been identified with the successful manufacture of cutlery, steel for cutlery purposes having been made there for several centuries, and it has continued to be one of its chief industries, including many important cutlery manufacturers;

the industry is presided over by the ancient "Cutlers Company" of England, whose function is to take care of the trademarks and protect the name of "Sheffield" in the cutlery industry and trade. The reputation of cutlery made at Sheffield, England, has long been high for quality and the standard for manufacturers in this country. Its prestige, based on its history, continues.

PAR. 7. That substantial amounts of cutlery are imported from Sheffield, England, to the United States annually (barring a temporary situation brought about by the war during the years 1914 to 1918, inclusive, when importations were curtailed) and are sold here in competition with cutlery of domestic manufacture; that such imported cutlery is uniformly of a high quality of steel and sells here for a comparatively high price; that generally cutlery imported from Sheffield, England, is indelibly stamped "Sheffield, England"; cutlery manufactured in this country, in which the blade is of steel manufactured in England, very largely has stamped on the blade "Forged from Sheffield Steel" and is so advertised.

PAR. 8. That very little cutlery manufactured in the United States of domestic steel is marked or branded "Sheffield."

PAR. 9. That retailers, buyers and sellers of cutlery understand the word "Sheffield" as applied to cutlery, to mean made in Sheffield, England.

PAR. 10. That a substantial part of the consuming public understands the word "Sheffield," as applied to cutlery, to indicate that the cutlery bearing such inscription was made in Sheffield, England.

PAR. 11. That the method employed by respondent in branding cutlery of domestic manufacture with the word "Sheffield," is effective to carry to both the retailer and ultimate consumer, the representation that such articles were manufactured in Sheffield, England, and in the absence of technical knowledge in either the retailer or consumer, tends to create the belief that such cutlery was in fact manufactured in Sheffield, England.

PAR. 12. That some retailers and their salesmen rely on the brands appearing on goods, and use same in describing articles to customers; that the use of the label "Sheffield" on cutlery of domestic manufacture, tends to encourage and aid misrepresentations by uninformed or unscrupulous retailers, or their salesmen, that the cutlery so branded was imported from Sheffield, England.

PAR. 13. That the label "Sheffield" as used by respondent on its cutlery, which is manufactured in the United States of domestic steel, is calculated to and does mislead a substantial part of the purchasing public to believe that cutlery bearing such label was imported from Sheffield, England.

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PAR. 14. That several domestic manufacturers, including the largest in the United States, have refused to mark cutlery, made of domestic steel, with the word "Sheffield" at the instance of customers, for the reason that they consider it improper to use the word "Sheffield" as a brand or name for cutlery made in the United States.

PAR. 15. That sales of cutlery manufactured in this country under the brand or stamp of "Sheffield" including those by respondent, tend to and do compete unfairly with cutlery made in Sheffield, England, and with cutlery made in this country not so branded or stamped, because of the high reputation of Sheffield, England, cutlery; and damage to such competitors results by the displacing of sales of American cutlery not so stamped and of genuine imported Sheffield cutlery; such competition is prejudicial to the interest of jobbers of both American and imported cutlery and is a hindrance to free and open competition in the sale of cutlery in the United States.

PAR. 16. That under date of June 20, 1919, respondent applied to the United States Patent Office, Washington, D. C., for the registration, as a trademark, of the brand and design described above under Paragraph Three; that opposition to the registration of such trademark was filed, July 31, 1919, by the Cutler's Company of Sheffield, England; and that, under date of November 8, 1920, such opposition was sustained by the Examiner of Interference, and respondent adjudged not entitled to the registration of the trademark for which he had made application.

CONCLUSION.

That the practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of the 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and the evidence, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of Section 5 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,"

Now, therefore, it is ordered, That the respondent, Samuel E. Bernstein, his agents, representatives, servants, and employees forthwith, cease and desist from directly or indirectly:

Applying or using the word "Sheffield" in any manner whatsoever as a brand, label, trademark or trade name, or as a part thereof, for or on any cutlery except and unless the blade or cutting part thereof be made of steel manufactured in Sheffield, England;

And it is further ordered, That said respondent shall within sixty days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which he has complied with the order of the Commission hereinbefore set forth.

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v.
UNITED ALLEGRETTI COMPANY.