

Complaint.

9 F. T. C.

IN THE MATTER OF
**ABRAHAM ASH, DOING BUSINESS UNDER THE TRADE
 NAME AND STYLE, ABRAHAM ASH COMPANY.**

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

Docket 1161—May 5, 1925.

SYLLABUS.

Where it had been long known that the City of Sheffield, England, and its vicinity constituted that country's largest producing area of silverware and silverplated ware, and the center of its silver industry, and such products there made had come to be highly regarded by the trade and public, and the words "Sheffield Silver," "Sheffield Plate," and "Sheffield Silverplated Ware," when applied to such products had come to denote to a substantial portion of the public that the products so designated had been manufactured in Sheffield, England, and were of the quality which had become associated with that name and industry; and thereafter an American dealer in silverplated ware made by the electroplating process sold the same with the words "Sheffield Plate made in U. S. A.," and other combinations including the word "Sheffield," impressed thereon, notwithstanding the fact that the same were of domestic origin and not of that quality associated with the term Sheffield as above set forth, with the effect of inducing the purchase of the aforesaid products thus misrepresented as to origin and quality, by a substantial portion of the trade and public in preference to the products of competitors dealing in silverplated ware manufactured in Sheffield, England, and of those dealing in products not there manufactured and not so designated:

Held, That the sale of products branded as above set forth constituted an unfair method of competition.

Mr. John R. Dowlan for the Commission.

COMPLAINT.¹

Acting in the public interest 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 power and duties, and for other purposes," the Federal Trade Commission charges that Abraham Ash, doing business under the trade name and style Abraham Ash Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

Count I.

PARAGRAPH 1. Respondent is an individual transacting business under the name of Abraham Ash Company with his principal office

¹ As amended.

and place of business in the City and State of New York. He is engaged in buying silver-plated ware and in the sale thereof to wholesale and retail dealers located at points in various States of the United States. He causes said ware when so sold to be transported from his said principal place of business in the City and State of New York into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of his said business respondent is in competition with other individuals, partnerships and corporations engaged in the manufacture and/or sale and transportation of silver-plated ware in interstate commerce between and among various States of the United States.

PAR. 2. Competitors of respondent, and the manufacturer of respondent's ware, use in the manufacture of their products, the electroplating process which is the covering of a form of base metal with an adherent coating of silver by the electrolysis of silver salts. The plated silverware thus produced varies in quality and value according to the composition of the base metal, the workmanship upon its form and the decoration, the amount and fineness of the silver deposited upon it and left upon it after the finishing process and the protection of the surfaces exposed to wear and abrasion. There is no fixed standard for the composition of the base metal nor for the fineness or quantity of silver to be applied generally or to wearing surfaces so that the purchasing public is obliged to depend upon the reputation of the maker of such plated silverware or the reputation of the trade name or brand attached thereto or the representations of the maker or seller thereof, in purchasing said silverware, since the quality of the ware can not be determined except by laboratory tests.

PAR. 3. About the year 1742 there was originated in Sheffield, England, a process for the production of silver-plated ware, which process involved the welding of a silver plate to one or both sides of a sheet or bar of copper so as to form one thoroughly coherent mass which was rolled to the desired gauge and subsequently worked into the desired form. The ware produced by this process was properly known as "copper rolled plate" though this name was not used as a trade name or designation. The copper rolled plate of Sheffield, England, acquired a very considerable reputation for excellence in quality, workmanship and design and though the name "Sheffield" was not generally impressed upon or affixed to the ware itself, which was identified by the maker's registered marks, the copper rolled plate came to be generally known and is still known as "Sheffield." While the cheaper electroplating process displaced copper rolled

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plate which practically went out of production, there have been and still are from time to time importations of the copper rolled plate into the United States and there is a considerable trade in copper rolled plate in this country at prices which reflect not only its value as plated ware but its artistic and historic value as well. The name "Sheffield" as applied to silverware at the present time implies a quality and a value peculiar to the copper rolled plate process as well as the process itself and its use is a representation thereof.

PAR. 4. In the conduct of his business during a period of more than a year past, respondent has sold and continues so to do, electroplated ware coated with silver upon which has been stamped or impressed the words "Sheffield Plate Made in U. S. A." and other combinations of words including the word "Sheffield" and such ware carrying the word "Sheffield" upon it, is ultimately offered for sale in that form to the consuming public.

PAR. 5. There are competitors of respondent in the manufacture and sale of electroplated ware who are not endeavoring to induce the preferment or purchase of their products by the public by representing them as "Sheffield" either with reference to process of manufacture or quality, but recognizing that there is no fixed standard by which the value and quality of electroplated ware can be represented to the purchasing public, have adopted and are following the practice of identifying their products by a firm or house name or by a nondescriptive trade name, the standard for which they severally fix and determine or in unison agree upon, and maintain. The competitive operations of such manufacturers and merchandisers fairly and truthfully representing their products to the public are seriously injured by the methods and practices of the respondent misrepresenting the process and quality of his products as aforesaid.

PAR. 6. The above-alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors, 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.

Count II.

PARAGRAPH 1. That paragraphs numbered 1, 2, and 4 of Count I are hereby made a part of this Count II and are as fully and completely charged as though set out herein verbatim.

PAR. 2. Many years prior to the use of the word "Sheffield" by the respondent as hereinbefore alleged, the silversmiths of the city of Sheffield, England, and vicinity adopted the comparatively new

electroplating process, in lieu of the older copper-rolled plate process which was practically abandoned, and maintained through the use of the electroplating process the high reputation for quality which they had acquired in the older process. The city of Sheffield, England, and its vicinity have been continuously since many years prior to the said use of the word "Sheffield" by respondent, and are still, and have been and are still quite generally known to be, the largest producing area of silver ware and silver-plated ware in England, and the center of and predominant place in the silver industry of that country. Silver ware and silver-plated ware made by the silver-smiths of Sheffield, England, have been since many years prior to the use of the word "Sheffield" by the respondent, and still are, highly regarded by the trade and public in the United States, England, and other countries, as of uniform, reliable, and dependable quality; and the words "Sheffield Silver," "Sheffield Plate," and "Sheffield Silver Plated Ware," when used in connection with silver ware or silver-plated ware have signified and denoted, and now signify and denote, to a substantial portion of the public that such silver ware and silver-plated ware were manufactured in Sheffield, England, and are of the quality which has become associated with that name and industry.

PAR. 3. The use by respondent of the terms "Sheffield," "Sheffield Plate," and other similar designations containing the name "Sheffield" as set out herein has the capacity and tendency to create the impression among a substantial portion of the trade and public that the silver-plated ware upon which such terms appear was manufactured in Sheffield, England, and is of the quality which has been and still is associated with the terms "Sheffield Silver" and "Sheffield Plate" and the silver industry of Sheffield, England; whereas in truth and in fact the silver-plated ware sold by respondent with said terms marked or stamped thereon is not manufactured in Sheffield, England, or in its vicinity, or in England, and is not of the quality which has been and still is associated with the terms "Sheffield Silver" and "Sheffield Plate" and the silver industry of Sheffield, England; and the use of these terms by respondent is a misrepresentation of the origin and quality of respondent's wares, and is confusing and misleading, and tends to create and does create an undue preference for such silver-plated ware among, and tends to induce and does induce the purchase of such silver-plated ware by, a substantial portion of the trade and public in preference to silver-plated ware manufactured and sold by respondent's competitors, some of whom deal in wares which are manufactured in Sheffield,

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England, and others of whom refrain from the use of such terms in connection with wares not manufactured in Sheffield, England.

PAR. 4. The above-alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors, 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 an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served an amended complaint upon the respondent, Abraham Ash, doing business under the trade name and style of Abraham Ash Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent, having entered his appearance, an agreed statement of the facts was signed by the respondent and by counsel for the Commission in which agreed statement of facts it was stipulated that the Commission might take the facts as stated in lieu of testimony before the Commission, and might proceed upon said statement of facts to make its report in said proceeding, stating its findings as to the facts and conclusions and entering such order as would dispose of the proceedings, the respondent waiving any right to file brief or make an oral argument before the Commission.

And thereupon this proceeding came on for decision and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Abraham Ash, is an individual transacting business under the name of Abraham Ash Company, with its principal office and place of business in the city and State of New York. He is engaged in buying silver-plated ware and selling same to wholesale and retail dealers located at points in various States of the the United States. He causes said ware when so sold to be transported from his said place of business in the city and State of New York into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of his said business respondent is in competition with other individuals, partnerships and corporations engaged

in the manufacture and/or sale and transportation of silver-plated ware in interstate commerce between and among various States of the United States.

PAR. 2. The manufacturer of respondent's wares, and competitors of respondent, used in the manufacture of their products the electroplating process, which is the covering of a form of base metal with an adherent coating of silver by the electrolysis of silver salts. The plated silver ware thus produced varies in quality and value according to the composition of the base metal, the workmanship upon its form and the decoration, the amount and fineness of the silver deposited upon it and left upon it after the finishing process, and the protection of the surfaces exposed to wear and abrasion. There is no fixed standard for the composition of the base metal nor for the fineness or quantity of silver to be applied generally or to wearing surfaces, so that the purchasing public is obliged to depend upon the reputation of the maker of such plated silver ware or the reputation of the trade name or brand attached thereto or the representations of the maker or seller thereof, in purchasing said silver ware, since the quality of the ware can not be determined except by laboratory tests.

PAR. 3. About the year 1742 there was originated in Sheffield, England, a process for the production of silver-plated ware, which process involved the welding of a silver plate to one or both sides of a sheet or bar of copper so as to form one thoroughly coherent mass which was rolled to the desired gauge and subsequently worked into the desired form. The ware produced by this process was properly known as "copper-rolled plate" though this name was not used as a trade name or designation. The copper-rolled plate of Sheffield, England, acquired a very considerable reputation for excellence in quality, workmanship and design, and though the name "Sheffield" was not generally impressed upon or affixed to the ware itself, which was identified by the maker's registered mark, the copper-rolled plate came to be generally known and is still known as "Sheffield." While the cheaper electroplating process displaced copper-rolled plate which practically went out of production, there have been and still are from time to time importations of the copper-rolled plate into the United States and there is a considerable trade in copper-rolled plate in this country at prices which reflect not only its value as plated ware, but its artistic and historic value as well. The name "Sheffield" as applied to silver ware at the present time, implies a quality and a value peculiar to the copper-rolled plate process as well as the process itself, and its use is a representation thereof.

PAR. 4. In the conduct of his business during a period of more than a year past, respondent has sold electroplated ware coated with

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silver upon which has been stamped or impressed the words "Sheffield Plate Made in U. S. A.," and other combinations of words including the word "Sheffield," and such ware carrying the word "Sheffield" upon it is ultimately offered for sale in that form to the consuming public.

PAR. 5. There are competitors of respondent in the manufacture and sale of electroplated ware who are not endeavoring to induce the preferment or purchase of their products by the public by representing them as "Sheffield" either with reference to process of manufacture or quality, but, recognizing that there is no fixed standard by which the value and quality of electroplated ware can be represented to the purchasing public, have adopted and are following the practice of identifying their products by a firm or house name or by a nondescriptive trade name, the standard for which they severally fix and determine or in unison agree upon and maintain. The competitive operation of such manufacturers and merchandisers fairly and truthfully representing their products to the public, are seriously injured by the methods and practices of the respondent misrepresenting the process and quality of his products as aforesaid.

PAR. 6. Many years prior to the use of the word "Sheffield" by respondent as hereinbefore stated, the silversmiths of the city of Sheffield, England, and vicinity, adopted the comparatively new electroplating process, in lieu of the older copper-rolled plate process which was practically abandoned, and maintained through the use of the electroplating process the high reputation for quality which they had acquired in the older process. The city of Sheffield, England, and its vicinity, have been continuously since many years prior to the said use of the word "Sheffield" by respondent, and are still and have been and are still quite generally known to be, the largest producing area of silver ware and silver-plated ware in England, and the center of and predominant place in the silver industry of that country. Silver ware and silver-plated ware made by the silversmiths of Sheffield, England, have been since many years prior to the use of the word "Sheffield" by respondent, and still are, highly regarded by the trade and public in the United States, England and other countries, as of uniform, reliable and dependable quality; and the words "Sheffield Silver," "Sheffield Plate" and "Sheffield Silver-Plated Ware," when used in connection with silver ware or silver-plated ware have signified and denoted, and now signify and denote, to a substantial portion of the public, that such silver ware and silver-plated ware were manufactured in Sheffield, England,

and are of the quality which has become associated with that name and industry.

PAR. 7. The use by respondent of the terms "Sheffield," "Sheffield Plate" and other similar designations containing the name "Sheffield" as set out herein, has the capacity and tendency to create the impression among a substantial portion of the trade and public that the silver-plated ware upon which such terms appear was manufactured in Sheffield, England, and is of a quality which has been and still is associated with the terms "Sheffield Silver" and "Sheffield Plate" and the silver industry of Sheffield, England; whereas in truth and in fact the silver-plated ware sold by respondent with said terms marked or stamped thereon is not manufactured in Sheffield, England, or its vicinity, and is not of the quality which has been and still is associated with the terms "Sheffield Silver" and "Sheffield Plate" and the silver industry of Sheffield, England; and the use of these terms by respondent is a misrepresentation of the origin and quality of respondent's wares, and is confusing and misleading, and tends to create and does create an undue preference for such silver-plated ware among, and tends to induce and does induce the purchase of such silver-plated ware by, a substantial portion of the trade and public in preference to silver-plated ware manufactured and sold by respondent's competitors some of whom deal in wares which are manufactured in Sheffield, England, and others of whom refrain from the use of such terms in connection with wares not manufactured in Sheffield, England.

CONCLUSION.

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 and the stipulation as to the facts entered into by counsel for the Commission and for the respondent and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26,

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1914, entitled "An Act to create a Federal Trade Commission to define its powers and duties and for other purposes,"

It is now ordered, That respondent, his agents, servants, employees, and representatives, do cease and desist—

From employing or using in connection with the sale of silverware which has not been made in Sheffield, England, the name "Sheffield" alone or in combination with any other name or with any word, sign, symbol, or device, to describe or designate such silverware either by stamping or impressing the name "Sheffield" thereon or in any other manner.

It is further ordered, That respondent within 30 days from notice hereof, file with the Commission a report in writing setting out in detail the manner and form in which he has complied with the order of the Commission herein set forth.

Complaint.

IN THE MATTER OF

LOUIS BATLIN.

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

Docket 1200—May 5, 1925.

SYLLABUS.

Where it had been long known that the city of Sheffield, England, and its vicinity constituted that country's largest producing area of silverware and silver-plated ware, and the center of its silver industry, and such products there made had come to be highly regarded by the trade and public, and the words "Sheffield Silver," "Sheffield Plate," and "Sheffield Silver-plated Ware," when applied to such products had come to denote to a substantial portion of the public that the products so designated had been manufactured in Sheffield, England, and were of the quality which had become associated with that name and industry; and thereafter an American dealer engaged in the purchase of silver-plated ware made by the electroplating process, from the manufacturers thereof, and in the sale thereof at substantially prevailing prices for comparable products, in competition with manufacturers of silverware selling their product direct to the public and to retailers, and in competition with jobbers and wholesalers, who did not represent themselves as manufacturers,

- (a) Sold the same with the words "Sheffield Plate made in U. S. A." and other combinations of words including the word "Sheffield" impressed thereon, notwithstanding the fact that the same were of domestic origin and not of that quality associated with the term Sheffield as above set forth, with the effect of inducing the purchase of the aforesaid products thus misrepresented as to origin and quality, by a substantial portion of the trade and public in preference to the products of competitors dealing in silver-plated ware manufactured in Sheffield, England and of those dealing in products not there manufactured and not so designated;
- (b) Represented himself on his letterheads and other stationery and advertising matter as a manufacturer, with a capacity and tendency to deceive and mislead the trade and consuming public and to induce many to purchase of him in the mistaken belief that they were buying direct from the manufacturer and thus saving the profits of the middleman:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. John R. Dowlan for the Commission.

COMPLAINT.¹

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To

¹ As amended.