

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.

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create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Louis Batlin, 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 Louis Batlin, with his principal office 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 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

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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 silverware and silver-plated ware in England, and the center of and predominant place in the silver industry of that country. Silverware 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 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 silverware or silver-plated ware have signified and denoted, and now signify and denote, to a substantial portion of the public that such silverware 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, 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.

Count III.

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

PAR. 2. In the conduct of his business, during a period of more than one year last past, respondent, on letterheads and other forms of stationery and advertising matter used by him in offering for sale and selling his aforesaid silver-plated ware, represented that he was a manufacturer of silverware; whereas, in truth and in fact, respondent was not and is not such manufacturer, but purchases the silverware dealt in by him from manufacturers thereof and resells it at a profit and at prices substantially as high as prices prevalent in the trade for silverware of a like kind and quality when sold in similar quantities. The representation so made by respondent is false and misleading and deceives and misleads, and has the capacity and tendency to deceive and mislead the trade and the consuming public into the belief that said respondent owns, controls and operates an establishment in which he manufactures the silverware sold by him and that purchasers of such silverware from respondent are buying direct from the manufacturer, thus saving the profits of the middleman, and to induce many to purchase the respondent's silverware in that belief. There are a number of manufacturers of

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silverware in competition with respondent in the sale of silverware in interstate commerce who sell their silverware direct to the public and to retailers, as well as to wholesalers; there are also a number of jobbers and wholesalers of silverware in competition with respondent in the sale of silverware in interstate commerce who do not advertise or otherwise indicate or represent that they are manufacturers of the silverware which they sell.

PAR. 3. The above-alleged acts and practices of 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 upon the respondent, Louis Batlin, doing business under the name Louis Batlin, 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 counsel for the Commission and by the respondent 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 proceedings, stating its findings as to the facts and conclusions and entering such order as would dispose of the proceeding, 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 is an individual transacting business under the name of Louis Batlin, with his principal office 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. The manufacturer of respondent's ware and competitors of respondent, 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 representation 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 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

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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 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. Many years prior to the use of the word "Sheffield" by the 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 silverware and silver-plated ware in England, and the center of and predominant place in the silver industry of that country. Silverware 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 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 silverware or silver-plated ware have signified and denoted, and now signify and denote, to a substantial portion of the public that such silverware 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 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, 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 ware not manufactured in Sheffield, England.

PAR. 8. In the conduct of his business, during a period of more than one year last past, respondent, on letterheads and other forms of stationery and advertising matter used by him in offering for sale and selling his aforesaid silver-plated ware, represented that he was a manufacturer of silverware; whereas, in truth and in fact, respondent was not and is not such manufacturer, but purchases the silverware dealt in by him from manufacturers thereof and resells it at a profit and at prices substantially as high as prices prevalent in the trade for silverware of a like kind and quality when sold in similar quantities. The representation so made by respondent is false and misleading and deceives and misleads, and has the capacity and tendency to deceive and mislead the trade and the consuming public into the belief that said respondent owns, controls and operates an establishment in which he manufactures the silverware sold by him and that purchasers of such silverware from respondent are buying direct from the manufacturer, thus saving the profits of the middleman, and to induce many to purchase the respondent's silverware in that belief. There are a number of manufacturers of silverware in competition with respondent in the sale

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of silverware in interstate commerce who sell their silverware direct to the public and to retailers, as well as to wholesalers; there are also a number of jobbers and wholesalers of silverware in competition with respondent in the sale of silverware in interstate commerce who do not advertise or otherwise indicate or represent that they are manufacturers of the silverware which they sell.

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 by the respondent, and the Commission having made its findings as to the facts with the conclusion that the respondent has violated the provisions 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."

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; and

From making representations through advertisements, letterheads, or other stationery, or in any manner whatsoever, that he is the owner of or controls an establishment in which he manufactures the silverware which he sells, unless and until he actually owns and operates, or directly and absolutely controls a manufacturing establishment wherein is made any and all silverware by him sold or offered for sale by or through any advertisement or other representations of ownership of such an establishment.

It is further ordered, That respondent within thirty 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.

Syllabus.

IN THE MATTER OF
MISSOURI-KANSAS WHOLESALE GROCERS'
ASSOCIATION ET AL.

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

Docket 990—May 9, 1925.

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- Where an association, which included in its membership a large majority of the wholesale grocers located within its territory, and its officers and members; in pursuance of a conspiracy and undertaking to (1) confine the business of manufacturers to what they regarded as the proper channels of distribution, (2) hamper and obstruct the business of a manufacturer, who had become objectionable to them through the inauguration of a policy of selling both to retailers and wholesalers at the same price for equal quantities purchased, (3) increase the business of manufacturers who confined the sale and distribution of their products to the jobber, and (4) hamper and obstruct the business of competing jobbers who were disposed to or did handle the products of the aforesaid manufacturer.
- (a) Urged and incited the members to stand as a unit and refuse longer to handle the products of said manufacturer, and to take on and push the sale of goods made by competing manufacturers who sold exclusively through the jobber, and to make special efforts in behalf of the goods of said last-named manufacturers;
 - (b) Concertedly withdrew and withheld patronage from the aforesaid objectionable manufacturer and entered upon a vigorous campaign to replace said manufacturer's products on the retailers' shelves with those of competing manufacturers who announced their continued loyalty to the jobber as their channel of distribution;
 - (c) Circulated bulletins among the membership containing communications from members and other jobbers, and bulletins from secretaries of other associations, respectively urging the foregoing course, and stating that the same was being pursued by the jobbers in their territories;
 - (d) Called for reports from the members as to whether jobbers in their localities were handling the goods of said objectionable manufacturer;
 - (e) Urged cooperation among the members to defeat the sales policy of such manufacturer, as a warning to other manufacturers disposed to adopt a similar policy;
 - (f) Abused and ridiculed such manufacturer and jobbers dealing or disposed to deal with it,
 - (g) Circulated information among the members to the effect that they were acting and had acted unitedly in refusing to handle the goods of the aforesaid objectionable manufacturer, with the result that thousands of retailers