

Complaint

IN THE MATTER OF

JACOB BUSCH

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

Docket 1066—July 7, 1926

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," "Sheffield Silver," "Sheffield Plate," and "Sheffield Silverplated Ware" 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 or nature which had become associated with that name and industry; and thereafter an American dealer in silver-plated ware made by the electroplating process sold said ware with the word "Sheffield" and other combinations including the word "Sheffield" impressed thereon, notwithstanding the fact that the same was not manufactured in Sheffield but was 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 ware thus misrepresented as to origin and quality, by a substantial portion of the trade and public in preference to the product of competitors dealing in silver-plated ware manufactured in Sheffield, England, and of competitors dealing in products not there manufactured and not thus misrepresented, including concerns which, in the absence of any fixed standards for the ware in question, fairly and truthfully represented and identified their products by a firm or house name or nondescriptive trade name, the standard for which they severally fixed and determined or in unison agreed upon and maintained, and to the prejudice and serious injury of the aforesaid competitors from whom trade was thereby diverted:

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

Mr. John R. Dowlan for the Commission.

Glenn & Ganter and *Mr. Leslie H. Buckler*, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged in the purchase of silver-plated ware and in the sale thereof to wholesale and retail dealers in various

States, and with principal office and place of business in New York City, with misbranding or misnaming in violation of the provisions of section 7 of such act prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, during a period of more than a year preceding the complaint, sold silver-plated ware neither manufactured in Sheffield, England, nor its vicinity, nor of the quality associated with the term "Sheffield Silver" and "Sheffield Plate" and the silver industry of Sheffield, England, and made by the electroplating process, with the words "Sheffield Plate" and other combinations of words denoting the word "Sheffield" stamped or impressed upon it.

The complaint charges that "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"; 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"; 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

¹ The complaint contains allegations relative to the early silver-plate made in Sheffield, England, which came to be known as "Sheffield" and the reputation achieved thereby, and by the silversmiths of that city and vicinity by the subsequently adopted electroplating process, similar to the findings in this case; the complaint alleging, in connection with the results above recited, that the name "Sheffield" as applied to "silverware at the present time implies a quality and value peculiar to the copper coated plate as well as the process itself, and that to use a misrepresentation thereof," and that the words "Sheffield Silver," "Sheffield Plate," etc., "when used in connection with silverware or silver-plated ware have acquired and assumed, 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."

standard for which they severally fix and determine or in unison agree upon, and maintain," without "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," and whose "competitive operations fairly and truthfully representing their products to the public are seriously injured by the methods and practices of the respondent"; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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, Jacob Busch, charging him with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

The respondent having entered his appearance, the chief counsel for the Federal Trade Commission and counsel for the respondent thereafter signed and filed a stipulation containing an agreed statement of facts and the further agreement that the said statement of facts might be taken in lieu of all testimony and other evidence in this proceeding, and that the Commission might proceed further upon the said agreed facts to make its report in the proceeding and its findings as to the facts and enter its order disposing of the proceeding.

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 Jacob Busch, 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 to 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 manufac-

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States, and with principal office and place of business in New York City, with misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, during a period of more than a year preceding the complaint, sold silver-plated ware neither manufactured in Sheffield, England, nor its vicinity, nor of the quality associated with the term "Sheffield Silver" and "Sheffield Plate," and the silver industry of Sheffield, England, and made by the electroplating process,¹ with the words "Sheffield Plate" and other combinations of words including the word "Sheffield" stamped or impressed upon it.

The complaint charges that "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"; "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"; 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

¹ The complaint contains allegations relative to the early copper rolled plate of Sheffield, England, which came to be known as "Sheffield" and the reputation achieved thereby, and by the silversmiths of that city and vicinity by the subsequently adopted electroplating process, similar to the findings in this case; the complaint alleging, in connection with the recitals above referred to, that the name "Sheffield" as applied to "silverware at the present time implies a quality and value peculiar to the copper rolled plate as well as the process itself, and that its use is a representation thereof," and that the words "Sheffield Silver," "Sheffield Plate," etc., "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."

standard for which they severally fix and determine or in unison agree upon, and maintain," without "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," and whose "competitive operations fairly and truthfully representing their products to the public are seriously injured by the methods and practices of the respondent"; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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The respondent having entered his appearance, the chief counsel for the Federal Trade Commission and counsel for the respondent thereafter signed and filed a stipulation containing an agreed statement of facts and the further agreement that the said statement of facts might be taken in lieu of all testimony and other evidence in this proceeding, and that the Commission might proceed further upon the said agreed facts to make its report in the proceeding and its findings as to the facts and enter its order disposing of the proceeding.

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 Jacob Busch, 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 to 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 manufac-

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

PAR. 2. Competitors of respondent, and the manufacturer of respondent's wares, use, in the manufacture of their products, the electroplating process, which is a method of covering a base metal with an adherent coating of silver by the electrolysis of silver salts. The silver-plated 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 are no fixed standards for the composition of the base metal or for the fineness or quality 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 silver-plated ware, or upon the reputation of the trade name or brand attached thereto, or upon the representations of the maker or seller thereof, in purchasing said silver-plated ware, since the quality of the ware can not be determined except by laboratory tests.

PAR. 3. In the course and conduct of his business respondent has manufactured and sold silver-plated ware upon which he stamped or impressed the word "Sheffield" and other words or combinations of words including the word "Sheffield." Such silver-plated ware so stamped or impressed with the word "Sheffield" was offered for sale and sold by respondent to his customers and resold by said customers to the consuming public throughout the various States of the United States as set out in paragraph 1.

PAR. 4. 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 makers' registered marks, the copper rolled plate came to be generally known and is now known as "Sheffield." While the cheaper electroplating process displaced copper rolled plate which practically went out of production, there have been and now 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-plated 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. 5. 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 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 now 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," "Sheffield Silver," "Sheffield Plate," and "Sheffield Silver-plated Ware," when used in connection with silver ware and 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. 6. The use by respondent of the term "Sheffield" and other similar designations containing the name "Sheffield" as set out in paragraph 3 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 now is associated with the terms "Sheffield," "Sheffield Silver," "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 stamped or impressed thereon is not manufactured in Sheffield, England, or in its vicinity, but is made in the United States of America and is not of the quality which has been and now is associated with the terms "Sheffield," "Sheffield Silver" and "Sheffield

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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 ware, 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, the respondent thereby diverting trade from its competitors truthfully marking the wares sold by them.

PAR. 7. There are competitors of respondent in the manufacture and sale of silver-plated ware who are not endeavoring to induce the 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 silver-plated 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 fairly and truthfully representing their products to the public, are seriously injured by the methods and practices of the respondent misrepresenting the said process and quality of its products aforesaid, as they divert trade from said competitors.

CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondent's competitors and are unfair methods of competition in 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 amended complaint of the Commission and the stipulation as to the facts entered into by counsel for the Commission and by respondent, Jacob Busch, and the Commission having

Memorandum

made its findings as to the facts with its conclusion that respondent has violated 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,"

It is ordered, That respondent, Jacob Busch, his agents, servants, employees and representatives do cease and desist from employing or using in connection with the sale of silver-plated ware which was not made in Sheffield, England, the word "Sheffield" alone or in combination with any other word or words, sign, symbol, or device to describe or designate such silver-plated ware either by stamping or impressing the name "Sheffield" thereon or in any other manner.

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

SAMUEL E. BERNSTEIN, INC., July 7, 1926. (Docket 1068.) The Commission made similar findings and order in the foregoing case, in which respondent dealer in domestic silver-plated ware, as set forth in the foregoing findings, impressed thereon the words "Sheffield Plate" and other combinations including the word "Sheffield."

IN THE MATTER OF
THE ONTARIO SILVER COMPANY

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

Docket 1067—July 7, 1926

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," "Sheffield Silver," "Sheffield Plate," and "Sheffield Silver-plated Ware," 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 or nature which had become associated with that name and industry; and thereafter an American manufacturer of silver-plated ware made by the electroplating process sold said ware with the word or words "Sheffield," "Sheffield Plate," and other combinations including the word "Sheffield," impressed thereon, notwithstanding the fact that the same was not manufactured in Sheffield, but was 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 ware thus misrepresented as to origin and quality, by a substantial portion of the trade and public in preference to the product of competitors dealing in silver-plated ware manufactured in Sheffield, England, and of competitors dealing in products not there manufactured and not thus misrepresented, including concerns which, in the absence of any fixed standards for the ware in question, fairly and truthfully represented and identified their products by a firm or house name or nondescriptive trade name, the standard for which they severally fixed and determined or in unison agreed upon and maintained, and to the prejudice and serious injury of the aforesaid competitors from whom trade was thereby diverted:

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

Mr. John R. Dowlan for the Commission.

Glenn & Ganter and *Mr. Leslie H. Buckler*, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Indiana corporation engaged in the manufacture and sale of silver-plated ware, not made in Sheffield, England, nor its vicinity, nor of the quality associated with the terms "Sheffield