

Complaint

IN THE MATTER OF

HEMILL SILVERWARE, INCORPORATED

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

Docket 1156—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 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 first manufactured and sold said ware with the words "Sheffield Plate," and other combinations of words including the word "Sheffield," impressed thereon and after the sale of its stock of ware so marked, replated and sold the same at reduced prices, when returned to it by customers with the word "Sheffield" still stamped thereon, notwithstanding the fact that the ware so stamped 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 the 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.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation, engaged in the manufacture of silver-plated ware, and in the sale thereof to wholesale and retail dealers in various States, and with principal office and place of busi-

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ness 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, stamped or impressed the words "Sheffield Plate" and other combinations of words including the word "Sheffield," upon silver-plated ware, not made in Sheffield, England, nor its vicinity, nor of the quality associated with the terms "Sheffield Silver" and "Sheffield Plate" and the silver industry of Sheffield, England, nor made by the process originally associated with the word "Sheffield," but made by the electroplating process, and sold the same so stamped or impressed, with the capacity and tendency to create the impression among a substantial portion of the trade and public that such ware was manufactured in Sheffield and is of the quality associated with the terms "Sheffield Silver" and "Sheffield Plate," and with the effect of creating an undue preference for such ware and inducing the purchase thereof by such trade and public in preference to that made and sold by respondent's competitors, some of whom deal in wares manufactured in Sheffield, and others of whom refrain from the use of such terms in connection with wares not there manufactured.¹

Respondent further, as charged, sold certain of its electroplated commodities upon which it had caused to be stamped or impressed the words "Triple Silver Plate," and other similar designations containing the word "Triple," with the tendency and capacity to mislead substantial portions of the public and those purchasing such commodities for resale to the public, into believing that said ware had been coated or plated with silver three times or contained a threefold thickness of silver-plating; or that it contained, or had been plated or coated with, three times as much silver as some established or definite standard of thickness or weight of silver-plating, or contained three times that much silver or was "thickly or heavily plated" or of a very durable and lasting quality or of a quality superior to similar plated commodities not so stamped or marked, the fact being that said products had not been coated or plated with silver three times, did not contain a threefold thickness of silver-plating or a plating or coating three times thicker or heavier than silver-plate of substantial thickness and weight only, and were not "of a quality superior in general to silver-plated articles not so stamped or marked"; with the effect of creating an undue preference for the aforesaid commodities and inducing the purchase thereof by a substantial portion of the public, and those purchasing for resale.

¹ The complaint is similar in the matter of the foregoing allegations to those in the Busch case, the synopsis of which is somewhat fuller. See p. 217.

thereto, "in preference to similar commodities manufactured and sold by respondent's competitors, practically all of whom refrain from marking or stamping their products with such words or other designations containing the word "Triple."

Such acts and things done by respondent were, as charged, 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, Hemill Silverware, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the charges stated in the complaint and in opposition thereto before an examiner of the Federal Trade Commission theretofore duly appointed.

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 a corporation organized and existing under the laws of the State of New York, with its principal office and place of business in the City of New York in said State. It is engaged in the manufacture of silver-plated ware as hereinafter described and the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes its products, when so sold, to be transported from its 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 its said business respondent competes 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 the various States of the United States.

PAR. 2. Respondent and its competitors 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 elec-

trolysis 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 of 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. For more than a year prior to May 1, 1924, in the course and conduct of its business, respondent manufactured as aforesaid and sold silver-plated ware upon which respondent caused to be stamped or impressed the words "Sheffield Plate" and other combinations of words including the word "Sheffield," which ware was subsequently sold and offered for sale to the purchasing public generally. Subsequent to May 1, 1924, respondent sold out its stock of ware so marked, and since that time its sales have been confined to goods so marked which had been returned to it by some of its customers, replated by respondent and sold at reduced prices, with the word "Sheffield" still stamped thereon.

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 maker's 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 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 historic and artistic 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 set out, 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 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 a 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 Plate" and other combinations of words containing the word "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," "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,

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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, 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 non-descriptive 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 goods to the public, are seriously injured by the methods and practices of the respondent misrepresenting the said process and quality of its products as 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, the answer of respondent Hemill Silverware, Inc., and the testimony and evidence, and the Commission having made its findings as to the facts and 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 now ordered, That respondent, Hemill Silverware, Inc., its 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, 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.

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IN THE MATTER OF
BENEDICT MANUFACTURING 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 1157-July 7, 1926

SYLLABUS.

Where a corporation engaged in the manufacture of silver-plated ware made by the electroplating process, sold said ware with the words "Quadruple Plate" impressed thereon, and used the same in circulars, catalogues, and other advertising matter in describing and referring to said ware, notwithstanding the fact that said ware had not been coated or plated with silver four times and did not contain a thickness or weight of silver-plating equivalent to that formerly applied by four coatings and was not of the quality and value associated in the minds of the trade and public with the word "Quadruple" or the words "Quadruple Plate," with the effect of misleading and deceiving the public and of diverting trade from and otherwise injuring competitors dealing in and truthfully and properly describing silver-plated ware coated with silver four times or given one coating equivalent in thickness to that formerly obtained by the four, and of the quality and value associated with the word "Quadruple" as above set forth, and competitors dealing in ware not of the aforesaid quality and value and not thus misdescribed or designated:

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

Mr. John R. Dowlan for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the manufacture 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 East Syracuse, N. Y., with misbranding or mislabeling, naming product misleadingly, and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that it stamped or impressed the words "Quadruple Plate" and other similar designations containing the word "Quadruple," upon large quantities of its said silver-plated ware, and used the words "Quadruple Silverplate" and other similar designations containing said word, in the marketing of its said ware and in describing and referring thereto in circulars, catalogues, and other