

Complaint

10 F. T. C.

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

advertising matter, and in advertisements in jewelry and other trade papers having a national circulation; 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 four times or contained a fourfold thickness of silver-plating; or that it contained or had been plated or coated with, four times as much silver as some established or definite standard of thickness or weight of silver-plating, or was "thickly and heavily plated" or of a very durable or lasting quality or of a quality superior to similar plated commodities not so stamped and marked, the fact being that said commodities had not been coated or plated with silver four times, did not contain a fourfold thickness of silver-plating, did not contain and were not plated or coated with four times as much silver as any established or definite standard of thickness or weight, and were not "of a quality superior to similar plated commodities not so stamped or marked, or thickly or heavily plated or of a very durable or lasting quality"; 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 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 "Quadruple"; 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 a complaint upon the respondent, Benedict Manufacturing Co., 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, a stipulation as to the facts was entered into by the respondent and by counsel for the Federal Trade Commission, in which stipulation it was agreed that the Commission might take the facts so stipulated in lieu of testimony and might proceed thereon to make its report in said proceeding stating its findings as to the facts and conclusion and entering such order as would dispose of the proceeding, the respondent waiving any right to file brief or make oral argument before the Commission.

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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 a corporation, organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at East Syracuse, in said State, where it is now and has been for many years engaged in the manufacture of silver-plated ware, such as coffee, tea, and water sets and various kinds of bowls, dishes, and trays, by the electroplating process.

PAR. 2. Respondent is now and has been engaged in selling said silver-plated ware to jobbers, wholesalers, and retailers in the various States of the United States, and causing the same to be transported from its place of business in East Syracuse, N. Y., through and into various other States of the United States to said purchasers. In the course and conduct of its said business, respondent is now and has been for many years in direct, active competition with other corporations and with individuals and partnerships also engaged in the sale of silver-plated ware in interstate commerce.

PAR. 3. Respondent and its competitors use, in the manufacture of silver-plated ware, the electroplating process which consists in the covering of a form of 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 the 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 the 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. 4. In the course and conduct of its said business, respondent has sold in interstate commerce many thousands of pieces of said silver-plated ware upon which it has had stamped or impressed the words "Quadruple Plate," such silver-plated ware being sold by

respondent to jobbers, wholesalers, and retailers for resale to the consuming public; and all such silver-plated ware was and is sold or exposed for sale to the purchasing public with the words "Quadruple Plate" stamped or impressed thereon.

Respondent, in connection with the marketing of its said silver-plated ware, used the words "Quadruple Silver Plate" in describing and referring to such products, in circulars, catalogues, and other advertising matter which it distributed throughout the United States, and in advertisements which it caused to be inserted in jewelry and other trade papers having a national circulation.

PAR. 5. For many years during the development of the electroplating process, large quantities of high grade and excellent quality silver-plated ware, which had been coated or plated four times before the desired thickness or weight of silver-plate was obtained, were marketed throughout the United States under the brand and designation of "Quadruple," this word being in some instances accompanied by the name of the maker or seller, and the word "Quadruple" when used in connection with silver-plated ware became associated in the minds of the trade and the purchasing public with a high grade and excellent quality of silver-plated ware which had been coated or plated four times. For a number of years last past, the electroplating process has been perfected so that the desired thickness and weight of silver plating can now be obtained with one coating or plating, by which process a thickness of silver and a quality of plated ware similar to that formerly obtained by the use of four coatings can be and are produced. This fact has become generally known to the trade and the purchasing public, so that the word "Quadruple" has come to mean and now means a thickness of plating and a quality of ware similar to that formerly obtained by the use of four coatings of silver.

PAR. 6. The silver-plated ware sold by respondent as described in paragraph 1 hereof, and marked with the words "Quadruple Plate," as set out in paragraph 4 hereof, is not ware which has been coated or plated with silver four times, and does not contain a thickness or weight of silver plating equivalent to that which was formerly applied by four coatings, and is not the quality and value associated in the minds of the trade and the public with the word "Quadruple" or the words "Quadruple Plate" as applied to silver-plated ware.

PAR. 7. The use by respondent of the words "Quadruple Plate" as a brand or designation of silver-plated ware, all as set out in paragraphs 4 and 6 herein, is false and misleading and has a tendency and capacity to and does, mislead and deceive the public generally by causing them to believe that the silver-plated ware so designated and described has been coated or plated with silver four times, or has been

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given a single coating of silver equivalent in weight and value to that which was formerly applied by four coatings and is of the quality and value associated with the word "Quadruple" as aforesaid.

PAR. 8. There are competitors of respondent referred to in paragraph 1 hereof who sell silver-plated ware which has been coated with silver four times or has been given a single coating of silver equivalent in thickness to that which was formerly applied by four platings, and is of the quality and value commonly associated in the minds of the trade and the public with the word "Quadruple," and who truthfully and properly describe their products. There are others among said competitors who sell silver-plated ware which is not of the quality and value associated with the word "Quadruple" and who do not use the said word to designate and describe their said ware. The practices of respondent as set out in paragraph 4 herein tend to, and do, divert trade from and otherwise injure both classes of these competitors.

CONCLUSION

The practices of said respondent, after 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 the respondent, and the stipulation entered into by counsel for the Commission and the respondent, Benedict Manufacturing Co., 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, Benedict Manufacturing Co., its agents, servants, employees, and representatives do cease and desist from employing or using in connection with the sale of silver-plated ware which has not been coated or plated with silver four times, or has not been given a single coating of silver equivalent in amount and quality to the amount and quality formerly obtained by

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the application of four coatings, the word "Quadruple," 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 word "Quadruple" 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.

IN THE MATTER OF

I. WEISENFREIND AND B. LIEBERMAN, PARTNERS
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE CENTURY SILVER 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 1159—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 firm engaged in the manufacture of silver-plated ware made by the electroplating process,

- (a) Sold said ware with the words "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 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; and
- (b) Sold silver-plated ware with the words "Quadruple Plate" and other combinations including the word "Quadruple" impressed thereon, 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