

Complaint

IN THE MATTER OF
A. L. WAGNER 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 1160—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 words "Sheffield Plated", and other combinations including the word "Sheffield" impressed thereon, and on its letterheads, business cards and other stationery and in its advertising literature used the words "Manufacturers of Sheffield Silver-plated Ware," notwithstanding the fact that said ware 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 such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. John R. Dowlan for the Commission.

Kaye, McDavitt & Scholer, 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, a New York corporation engaged in the manufacture and sale of silver-plated ware, not made in Sheffield, Eng-

land, 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 with principal office and place of business in New York City, with misbranding or mislabeling 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 impressed the words "Sheffield Plate" and other combinations including the word "Sheffield" upon such ware and sold the same so stamped, and used on its letterheads, business cards and other stationery and advertising literature, the legend "Manufacturers of Sheffield Silver Plated Ware", 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; all to the prejudice of the public and respondent's competitors.¹

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, A. L. Wagner Manufacturing Co., charging it 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 its 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

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

its findings as to the facts and enter its order disposing of the proceeding without briefs or oral argument.

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 under the laws of the State of New York, with its principal office and place of business in the City of New York, State of New York. 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 said products when sold to be transported from its said principal place of business in New York, N. Y., 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 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 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. In the course and conduct of its business respondent has manufactured and sold silver-plated ware upon which it stamped or impressed the words "Sheffield Plated" and other words or com-

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binations 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 its customers and re-sold by said customers to the consuming public throughout the various States of the United States as set out in paragraph 1. Respondent, in the course of its aforesaid business, used on its letterheads, business cards and other stationery and advertising literature the words "Manufacturers of Sheffield Silver-plated Ware".

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 silverware and silver-plated ware in England, and the center of a 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 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 silverware and 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. 6. The use by respondent of the terms "Sheffield Plated" 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", "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 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

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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 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, A. L. Wagner Manufacturing Co., and the Commission having 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, A. L. Wagner 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 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.

Complaint

IN THE MATTER OF

KEYSTONE SILVER, INC., FORMERLY KEYSTONE
METAL SPINNING & STAMPING 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 1163—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 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,

- (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 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;
- (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 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: