

Complaint

IN THE MATTER OF
SUPERIOR SILVER COMPANY, 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 1234—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 "Superior Sheffield" 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 term "Manufacturers of Sheffield Plate Silverware," and used a registered trade-mark containing the words "Superior Sheffield," 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.

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, England, nor its vicinity, nor of the quality associated with the term

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"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, advertising falsely or misleadingly, and using misleading trade-mark 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 "Superior Sheffield" and other combinations including the word "Sheffield" upon its ware and sold the same so stamped, used on its letterheads, business cards, and other stationery and advertising literature, the legend "Manufacturers of Sheffield Plate Silver Ware," and registered and used a trade-mark containing the words "Superior Sheffield," 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, Superior Silver Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of the said act.

The respondent having entered its appearance, the chief counsel for the Federal Trade Commission and the 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 may be taken in lieu of all testimony and other evidence in this proceeding, and that the Commission might proceed further upon the agreed facts to make its report in the proceeding and its

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

findings as to the facts and enter its order disposing of the proceeding without brief 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 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 said 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 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. 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 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 representation 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 for more than a year past respondent has manufactured and sold silver-plated ware upon which it stamped or impressed the words "Superior Sheffield" and other combinations of words including the word "Sheffield."

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Such silver-plated ware so stamped or impressed with the word "Sheffield" was offered for sale and sold by respondent to its customers and resold by said customers to the consuming public throughout the various States of the United States, as set out in paragraph 1. Respondent uses on its letterheads, business cards, and other stationery and advertising literature the term "Manufacturers of Sheffield Plate Silver Ware" and has registered and uses a trade-mark containing the words "Superior Sheffield."

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 and predominant place in the silver industry in 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 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 the respondent of the term "Superior 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 and used in advertising thereof 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 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 the process of manufacture

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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 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 the 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, Superior Silver Co., Inc., 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, Superior Silver Co., 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 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.

Memorandum

ADVANCE PAINT Co., July 9, 1926. (Docket 125.) The Commission on July 9, 1926, modified its order in the foregoing case (see 1 F. T. C. 104), which originally required respondent, its officers, etc., to cease and desist from directly or indirectly—

Giving, or offering to give, employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, as an inducement to influence their employers to purchase, or to contract to purchase, from the respondent, paints and kindred products, or to influence such employers to refrain from dealing, or contracting to deal, with competitors of respondent, without other consideration therefor,

Gratuities, such as liquors, cigars, meals, theater tickets, valuable presents, and other personal property,

Entertainment, consisting of amusements or diversions of any kind whatsoever, or

Money.

So as to require respondent, its agents, etc., to cease and desist from directly or indirectly—

Secretly giving, or offering to give, employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, without the knowledge or consent of their employers, as an inducement to cause their employers to purchase or contract to purchase, from the respondent paints and kindred products, or to influence such employers to refrain from dealing, or contracting to deal, with competitors of respondent, without other consideration therefor, money or anything of value.

The modifications in that part of the order relating to the payment or giving money, as above set forth, being in conformance with the original complaint and findings.

IN THE MATTER OF
THOMAS E. POWE AND F. C. HARRINGTON, PARTNERS
DOING BUSINESS UNDER THE FIRM NAME AND STYLE
THOMAS E. POWE LUMBER 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 1281—July 15, 1926

SYLLABUS.

Where a firm engaged in the sale of lumber and other wood products to lumber dealers and manufacturers of furniture, cabinet work and allied products, sold and advertised as "Philippine Mahogany" and as "lauan mahogany," woods long known, sold and traded in in the Philippine Islands and in the United States as lauau and tanguile, and in its advertisements and correspondence with customers and prospective customers advocated the use of the woods in question for the manufacture of products to be sold and guaranteed as genuine mahogany, the fact being that the woods in question were the product of a different tree family than genuine mahogany, lacked many characteristics possessed by mahogany which prevented them from serving certain uses to which mahogany is put, were not mahogany, either botanically or otherwise, and were sold at from one-third to two-thirds the price of genuine mahogany, and that the sale of said woods as mahogany in the Philippine Islands was not permitted by the Philippine Government; with the effect of causing many dealers in furniture, cabinet work and related commodities to purchase said woods as and for mahogany, and sell to retail dealers commodities made therefrom as and for mahogany, and thereby cause said retail dealers and eventually the consuming public to purchase such commodities in the mistaken belief thereby induced, and with the effect of diverting business from and otherwise prejudicing competitors dealing in genuine mahogany rightfully and truthfully represented as such and of deceiving and injuring the purchasing public in substantial numbers and inducing the purchase of products made from the aforesaid woods and sold at prices prevailing for genuine mahogany products, as and for such products:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. M. Markham Flannery for the Commission.

Forbes & Daniels, of Washington, D. C., for respondents.

Major F. G. Munson, Judge Advocate, U. S. A., of Washington, D. C., for Philippine Government, intervenor.

Mr. Gilbert H. Montague, of New York City, for Mahogany Association, intervenor.