

Complaint

IN THE MATTER OF
SAMUEL E. BERNSTEIN, INC.COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1545. Complaint, Nov. 3, 1928—Decision, Jan. 28, 1929*

Where silverware made in England had for many years long since past acquired a very considerable reputation for excellence in quality and come to be favorably, extensively, and distinctively known throughout the United States as a silverware of superior quality and the words "English Plate" had come to imply and indicate to the purchasing public thereof that silverware so marked was made in England and was of superior quality; and thereafter a corporation engaged in the purchase of domestic silver-plated ware made by the electroplating process, and in the sale thereof to wholesale and retail dealers in competition with manufacturers of plated ware and of solid or sterling silverware accurately and truthfully branded and marked, sold its aforesaid ware with the words "English Plate" stamped or impressed thereon, and, in smaller letters, the words "Made in U. S. A."; with the capacity and tendency to mislead and deceive the purchasing public by inducing the purchase by them of the aforesaid silverware as and for silverware made in England and of superior quality:

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

Mr. William T. Kelley for the Commission.

Eyre, Scott & Keel, 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 sale of silver-plated ware made by the electroplating process, to the wholesale and retail dealers in the various 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, in that respondent sold said ware with the words "English Plate" stamped thereon, and in much smaller letters the words "Made in U. S. A.," with the effect of misleading and deceiving the purchasing public into believing that the ware so marked was made in England (from which ware marked "English Plate" has long been imported) and is of superior quality, and into

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purchasing the same in such belief;¹ all to the prejudice of the public and of respondent's competitors, many of whom manufacture and/or sell in interstate commerce plated silverware and/or solid or sterling silverware, accurately and truthfully branded and marked.

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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, Samuel E. Bernstein, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer herein, stating that it desired to waive hearing on the charges set forth in the complaint and not to contest the proceeding.

Thereupon this proceeding came on for decision, and the Federal Trade Commission having duly considered the record and having been fully advised in the premises, now makes this report in writing and states its findings as to the facts as follows:

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 buying silver-plated ware made in the United States and in the sale thereof to wholesale and retail dealers located at points in various

¹ The complaint contains the following allegations relative to the manufacture of silver-plated ware by the electroplating process, and to English Plate made in England and the meaning which has become attached to the words "English Plate" in connection with silverware:

PAR. 2. The manufacturers of respondent's silver-plated ware use in the manufacture of same the electroplating process, which is the covering of a form of base metal with an adherent coating of silver by the electrolysis of silver salts. The plated silverware 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. There is no fixed standard for the composition of the base metal or for the fineness or quantity 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. 4. English Plate made in England has for many years long since past acquired a very considerable reputation for excellence in quality, as a result of which English Plate silverware became favorably, extensively, and distinctly known throughout the United States as silverware of superior quality. The words "English Plate," in connection with silverware, imply and indicate to the purchasing public of this country that silverware so marked was made in England and is of superior quality.

States of the United States, and causes said ware when so sold to be transported from its said 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 corporations, partnerships, and individuals engaged in the manufacture and/or sale and transportation of silver-plated ware and sterling silverware in interstate commerce between and among various States of the United States.

PAR. 2. The manufacturers of respondent's silver-plated ware use in the manufacture of same the electroplating process, which is the covering of a form of base metal with an adherent coating of silver by the electrolysis of silver salts. The plated silverware 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. There is no fixed standard for the composition of the base metal nor for the fineness or quantity 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. Respondent in the course of its business, as set forth herein, has for more than one year last past and is now engaged in selling to wholesale and retail dealers located throughout the various States of the United States silver-plated ware stamped or impressed with the words "English Plate," "Made in U. S. A." The letters forming the words "Made in U. S. A." are smaller than the letters forming the words "English Plate." Such ware carrying the words "English Plate" upon it is ultimately offered for sale in that form to the consuming public.

PAR. 4. Silverware made in England has for many years long since past acquired a very considerable reputation for excellence in quality, as a result of which such silverware became favorably, extensively, and distinctly known throughout the United States as silverware of superior quality. The words "English Plate," in connection with silverware, imply and indicate to the purchasing public of this country that silverware so marked was made in England and is of superior quality.

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PAR. 5. Silverware made in England has been for many years last past and is now imported into the United States.

PAR. 6. The use by the respondent of the words "English Plate" in connection with the sale of silver-plated ware, as set out herein, has the capacity and tendency to mislead and deceive the purchasing public by causing them to believe that the plated silverware sold by respondent and stamped "English Plate" was made in England and is of superior quality, and to purchase such plated silverware in that belief.

PAR. 7. There are among the competitors of respondent many who manufacture and sell in interstate commerce plated silverware and solid or sterling silverware accurately and truthfully branded and marked.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors and are unfair methods of competition 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 and considered by the Federal Trade Commission upon the complaint of the Commission and the record, and the Commission having made its findings as to the facts and its conclusion that the 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 the respondent, Samuel E. Bernstein, Inc., its officers, agents, and employees do cease and desist from the use of the word "English" in the designation of, or in the advertising, branding or labeling of silverware sold and distributed by it in interstate commerce unless said silverware be manufactured in England.

It is further ordered, That the respondent shall within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF
OHIO LEATHER COMPANY

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

Docket 1378. Complaint, May 5, 1926—Decision, Feb. 11, 1929

Where the word "Kid" had for many years come to mean a leather made of goatskin; and thereafter a corporation engaged in the tanning of leather and in the sale thereof to shoe manufacturers, chiefly,

- (a) Applied the trade name "Kaffor Kid" to a calfskin leather closely resembling kid and so invoiced the same and labeled the bundles thereof in which shipped; and
- (b) Advertised its said leather under such name in trade periodicals of general circulation, and featured and employed the same in display signs and circular letters sent to retailers, together with the words, in smaller letters, "the distinctive calf leather" or the words "calf" or "calfskin" in much smaller letters;

With the result that shoes of said "Kaffor Kid" were purchased as and for kid shoes, preferred by certain classes to those of calfskin, manufacturers and retailers of shoes thereof adopted and employed said term in designating, advertising, and selling said shoes, and the former so billed the same, and, occasionally, as kid, trade was diverted from manufacturers of kid and calfskin leathers sold under their true names, there was a capacity and tendency to deceive the consuming public in respect of the composition of shoes made from said "Kaffor Kid", and there was placed in the hands of others the means of committing a fraud upon the consuming public by enabling dealers to offer and sell shoes and other products made of the aforesaid leather as and for articles made of kid:

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

Mr. E. J. Hornbrook for the Commission.

Harrington, DeFord, Huxley & Smith, of Youngstown, Ohio, 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 Ohio corporation engaged in the manufacture of leather and sale thereof to manufacturers of shoes and other leather products at points in various States, and with principal office and place of business in Girard, Ohio, with naming product misleadingly, advertising falsely or misleadingly and 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.