

Complaint

19 F. T. C.

IN THE MATTER OF
NATIONAL SILVER COMPANY

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

Docket 2143. Complaint, Dec. 29, 1933—Order, June 12, 1934

Consent order requiring respondent corporation, its agents, etc., in connection with the advertisement, offer, or sale in commerce among the several States and in the District of Columbia, of silver-plated ware, including teaspoons or other flatware, to cease and desist from using the word, term, or symbol "A-1" as a trade name, stamp, brand, or label, or upon wrappers or containers or in advertising or otherwise, unless and until such silver-plated ware is "full" or "standard" plate, containing in the case of teaspoons not less than two ounces or better of silver to the gross, in the case of dessert spoons and forks not less than three ounces or better of silver to the gross, and in the case of tablespoons and table and medium forks not less than four ounces or better of silver to the gross.

Mr. Marshall Morgan for the Commission.

Brill, Bergenfeld & Brill, of New York City, for respondent.

COMPLAINT

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, having reason to believe that National Silver Company has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 61-65 West Twenty-third Street, in the City of New York, State of New York, and for several years last past has been engaged in the business of selling and distributing to jobbers, wholesale and retail dealers in cutlery, chain stores, hardware stores, department stores, and house furnishing stores, knives, other cutlery and tableware, including such flatware as silver-plated teaspoons. Said respondent causes said knives, cutlery and tableware, when sold by it, to be transported from its principal place of business in the State New York into and through the various other States of the United States to the purchasers thereof. In the course

and conduct of its aforesaid business the respondent is and for several years has been in competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of knives, cutlery, and tableware, including such flatware as silver-plated teaspoons, both like and similar to those sold by respondent.

PAR. 2. Through long usage the symbol A-1, when used in association with silver-plated flatware, became to be known and is now known in the trade and by the general public as designating full or standard plate, running two ounces or more of pure silver to the gross, in the case of teaspoons. This amount of silver to the gross, in teaspoons, is the starting point of quality silver-plated flatware, is the minimum amount of silver used by a reputable manufacturer on such flatware bearing their trade name, and is the dividing line between cheap and inferior flatware and quality flatware. Silver-plated flatware below A-1 quality, that is, which contains less than two ounces of pure silver to the gross, in the case of teaspoons, is regarded as being of cheap and inferior grade.

PAR. 3. In the course and conduct of its affairs respondent solicits business through the medium of traveling salesmen and by catalogs and price lists, which are widely distributed among customers and prospective customers. In the catalog and price list of respondent appears a teaspoon described as follows:

77—Line Windsor Half-Plate

18 percent Nickel silver base, Butler finish

Respondent herein brands this half-plated or half-standard Windsor teaspoon with the symbol A-1, indicating full or standard plate, stamped on each teaspoon. By thus stamping the handles thereof respondent describes and designates such Windsor teaspoons as A-1. Respondent by such misbranding has thereby falsely represented and does falsely represent to the respective purchaser a certain grade of his teaspoons to be such a product known to the trade and general public as full or standard plate, two ounces or better of pure silver plate to the gross; a product of prime, high, superior quality; first rate in grade and in character, when in truth and in fact such grade of teaspoons by respondent so stamped and branded is half-plate, so prepared and appearing as to imitate full-standard plate.

PAR. 4. Apart from and irrespective of the trade meaning and acceptance of the symbol A-1 as shown hereinbefore, the term or symbol A-1, used in a purely adjective, descriptive sense to designate a character or quality of goods, means, implies, and indicates, and is and has been taken by the trade and consuming public to

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mean, imply, and indicate goods of prime, superior quality, of first rate in grade and character; goods of the highest class.

The symbol A-1 has been used by the respondent herein because it has, by long usage, a definite meaning among the trade and general public in connection with the plating of teaspoons with silver and further because the said symbol in a purely descriptive sense denotes high grade and superior quality.

PAR. 5. Irrespective of whether said Windsor pattern of teaspoon is sold to the trade by catalog advertising half-plate or by traveling salesmen exhibiting teaspoons stamped and branded "A-1", or whether the meaning applying to the symbol A-1 be that of trade origin, usage and acceptance or that of purely descriptive sense, the respondent by selling dealers throughout the United States a half-plate teaspoon stamped and branded "A-1", has by such misbranding placed in the hands of its wholesalers and retailers in interstate commerce the means of deceiving the ultimate purchasers.

The use of the mark or brand signifying full plate on half-plate flatware makes it possible for respondent to undersell competitors and at the same time work deception on the public. The average retailer is governed entirely as to quality by brands and representations, and if he were misled by a false brand would innocently, or if informed might fraudulently, pass the misrepresentation on to the ultimate consumer. Information as to the real character and quality of this half-plate product cannot be imputed to the ultimate buyer, such buyer or consumer not having the knowledge of the original or the intermediary buyer.

By putting this misbranded product bearing a false stamp and brand into the channels of trade, respondent has furnished his customers and those dealing with them with the means to misrepresent the quality of the product, and the trade mark or symbol of "A-1" as employed by respondent tends to deceive the ordinary ultimate buyer of such product into the belief that their purchases were of full, standard plate and of superior quality, when in fact such was not the case, said products being neither full plate nor of high quality, but on the contrary half-plate and of cheap inferior quality.

PAR. 6. Under the foregoing facts and circumstances the stamping and branding by respondent of certain of its products as A-1, as set out in paragraph 2 above, are false and misleading and have the capacity to deceive, and do deceive wholesalers, jobbers, retailers and ultimate purchasers into buying a grade of spoons different from that which they intended to buy, and is placing in the

hands of its wholesaler and retailer in interstate commerce the means of deceiving the ultimate purchasers. The aforesaid practices have and have had the capacity and tendency to divert to respondent the trade of competitors engaged in selling, in interstate commerce, products of the same kind or nature as those of respondent, which products are truthfully stamped and branded, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress, approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, National Silver Company, a corporation, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. With the complaint was served upon respondent a copy of the Commission's Rules of Practice. Said Rules of Practice with respect to answers provide, among other things, as follows:

III. ANSWERS

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceedings, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that the respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint, to waive a hearing thereon, and to authorize the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, to make, enter, issue, and serve upon respondent:

(a) In cases arising under Section 5 of the Act of Congress approved September 26, 1914 * * * an order to cease and desist from the violation of law charged in the complaint.

Whereupon, on May 29, 1934, respondent filed its answer in which it consented that the Commission might make, enter and serve upon it an order to cease and desist from violations of law alleged in the complaint;

Whereupon, pursuant to its Rules of Practice, the Commission finds that said answer is an admission of all of the allegations of the complaint and a waiver of hearing thereon and authorizes the Com-

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mission without trial, without evidence, without findings as to the facts or other intervening procedure to make, enter, issue and serve upon respondent an order to cease and desist from the violations of law alleged in the complaint, the Commission being fully advised in the premises,

It is now ordered, That the respondent, National Silver Company, a corporation, and its agents, representatives, and employees in connection with the advertising, offering for sale or selling in commerce among the several States of the United States and in the District of Columbia, of silver-plated ware, including teaspoons or other flatware, do cease and desist: From using the word, term or symbol "A-1" as a trade name, stamp, brand, or label, or upon wrappers or containers or in advertising or otherwise, unless and until such silver-plated ware is "full" or "standard" plate, containing in the case of teaspoons not less than two ounces or better of silver to the gross, in the case of dessert spoons and forks not less than three ounces or better of silver to the gross, and in the case of tablespoons and table and medium forks not less than four ounces or better of silver to the gross.

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

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IN THE MATTER OF

A. G. ASHLEY, TRADING AS CHIC-AMERICAN
DISTRIBUTING COMPANY

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

Docket 2172. Complaint, Apr. 26, 1934—Order, June 12, 1934

Consent order requiring respondent individual, his agents, etc., to cease and desist from representing, directly or indirectly, in advertisements or otherwise in offering for sale and selling his said product, Chic Herb Tea, in interstate commerce and in the District of Columbia; that said product—

- (1) Relieves irritability, headache, loss of energy, skin trouble, coated tongue or bad breath;
- (2) Prevents poisons from forming and entering the blood;
- (3) Acts as a digestant, and aids in the process of digestion and proper eliminations to stop indigestion;
- (4) Is an effective treatment for Bright's Disease, kidney trouble, liver trouble or gall bladder trouble;
- (5) Will reduce the weight, control flesh, strengthen and renew the body or improve the figure; or
- (6) That it, or any product of similar composition, is a competent or adequate cure, remedy or treatment for constipation, indigestion, diseases or affections of the kidneys, liver or gall bladder, or is an adequate cure, remedy or treatment for auto-intoxication, or obesity, or that it has any therapeutic properties other than mild laxative, diuretic, carminative or stomachic properties.

Mr. Robt. N. McMillen for the Commission.

COMPLAINT

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, having reason to believe that A. G. Ashley, trading as "Chic-American Distributing Company", hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, A. G. Ashley, is an individual doing business under the name Chic-American Distributing Company,