

Syllabus

IN THE MATTER OF
SECURITY SILVERWARE DISTRIBUTORS, INC., ET AL.
COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF
AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2387. Complaint, May 14, 1935—Order, Oct. 4, 1935

Consent order requiring respondent corporation and respondent individuals, officers thereof, their agents, etc., in connection with the offer and sale in interstate commerce of certificates, coupons, cards, tickets or written or printed matter for redemption in china or chinaware, silver or silverware, through advertisements in periodicals and newspapers, prospectuses, or any form of written or printed matter, or by broadcasting, to cease and desist, directly and indirectly, from—

- (a) Using the words "Advertising Department" after or in connection with the names of two certain corporations, in their advertisements, or in connection with the name or names of any other individual or concern, or representing that they are connected with or are agents of said two corporations or of any other individuals or concerns, or that said two corporations, because of the expense of periodical and newspaper advertising, have developed the plan presented of advertising through the cooperation of retail dealers in such a way that such cooperation will increase the business of such dealers without any cost to them, or to their customers, for the redemption of such certificates, etc., unless and until they are in fact connected with or representatives of said two corporations or of such other individuals or concerns and unless and until such a plan has in fact been developed by such two corporations and been adopted and followed by them;
- (b) Representing that for each payment of \$4.50 for 1,000 of such certificates, etc., purchased of them, there will be returned to the purchasing retailer \$5 when such certificates, etc., are redeemed by the retailer's customers, or that such certificates, etc., will involve no cost either to the retailers on their customers, notwithstanding practice of notifying retailers, after sale of such certificates, etc., that payment of one cent will be necessary with each certificate, etc., for redemption, or that such certificates, etc., are sold only to one retailer in the various communities and localities in the United States, unless and until they adopt and follow said respective practices; or
- (c) Representing that the silverware in which such certificates, etc., are redeemable is Rogers "1847" silverware, or that they will supply retailers purchasing such certificates, etc., with samples or display sets of silverware, earthenware or chinaware, unless and until they do in fact thus redeem such certificates in such Rogers "1847" silverware and adopt and follow said last-claimed practice.

Before *Mr. Charles F. Diggs*, trial examiner.
Mr. James M. Brinson for the Commission.

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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 Security Silverware Distributors, Inc., and William C. Steffy and Lorena Steffy, as its officers, and individually; Security Silverware Distributors, Inc., and William C. Steffy and Lorena Steffy, trading as the Atlas Globe China Company, Advertising Department; and the Security Silverware Distributors, Inc., and William C. Steffy and Lorena Steffy, trading as Bordeaux China Company, hereinafter designated as respondents, have been and are 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, Security Silverware Distributors, Inc., has been for several years last past and now is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago in the said state. It is engaged in the sale of certificates, coupons or cards redeemable in silverware among and between the various States of the United States.

Respondents, William C. Steffy and Lorena Steffy, are individuals who caused respondent corporation to be organized, and who have been since its organization and now are the owners of substantially all of its capital stock, and have been and are its executive officers. They have dominated, controlled, directed, and managed, and now dominate, control, direct, and manage its affairs and all of its activities. Their place of business has been and is the same as that of respondent corporation, and they have employed and continue to employ said respondent, Security Silverware Distributors, Inc., as a corporate instrumentality through or by means of which they have been and are enabled to practice the policies and methods described in paragraph 2 hereof.

Respondent, Security Silverware Distributors, Inc., and respondents, William C. Steffy and Lorena Steffy, have been for more than a year last past and now are engaged in the sale by or under the trade name, Atlas Globe China Company, Advertising Department, of certificates, coupons or cards redeemable in earthenware or china-ware among and between the various States of the United States. They have also engaged in such business, and now are engaged in it, under and by the trade name, Bordeaux China Company.

In the course and conduct of such business, respondents have caused the certificates, coupons, or cards redeemable in silverware, earthenware or chinaware, so offered for sale and sold, and silverware, earthenware or chinaware for redemption of such certificates, coupons or cards, to be transported from the aforesaid place of business in the city of Chicago, State of Illinois, to purchasers thereof located in various other States of the United States, and they have been, and each of them has been, in substantial competition with individuals, partnerships and corporations offering for sale and selling in interstate commerce, certificates, coupons, cards, or other written or printed matter redeemable in silverware, earthenware or chinaware, and individuals, partnerships and corporations offering for sale, or selling silverware, earthenware or chinaware in such commerce.

PAR. 2. It has been and is the practice of respondents to offer for sale and sell certificates, coupons or cards, as described in paragraph 1 hereof, through the personal solicitation of local retail dealers in and through the various States of the United States, by agents thereunto duly authorized by respondents. They are offered for sale and sold by respondents to such local retail dealers to be distributed as a stimulation of their business, among their customers, according to the amount of merchandise sold them by such retail dealers. The agents of respondents are equipped with forms of contracts, circulars, advertising matter and specimen coupon cards for use in the solicitation of such retail dealers. It has been and is the practice of respondents, by and through such agents acting under their supervision and direction, and within the scope of their employment, to induce retail dealers to sign contracts for the purchase of such certificates, coupons or cards, so redeemable, by means of false and misleading statements and representations to the following effect:

That respondent, Security Silverware Distributors, Inc., has been or is the agent of or connected with the International Silverware Company, or some other manufacturer of silverware, and that such company or companies have adopted and are using for the purpose of introducing and advertising their products, the plan of selling certificates, coupons or cards redeemable in silverware, to retail dealers for distribution by them to or among their customers, and the redemption of such certificates, coupons or cards by said respondent when returned to it by the customers of such retail dealers; that such manufacturers of silverware and the said respondent have found sale of such certificates, coupons and cards, redeemable in silverware, a less expensive and more effective form of advertising than advertise-

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ment in magazines, newspapers and other periodicals; that said respondent and its principals have developed this plan of advertising through the cooperation of retail dealers in such way that such cooperation would increase the business of retail dealers without any cost to them except for the certificates, coupons or cards, and without any cost to their customers for the redemption of such certificates, coupons or cards; that a temporary payment of \$4.50 for each 1,000 cards would be required, but that for each payment of \$4.50 there would be returned to the retail dealer by said respondent, \$5, upon or after their redemption of such certificates, coupons or cards; that said respondent would promptly redeem the certificates, coupons or cards, when returned to them, with "genuine Rogers '1847' Silverware, or 'Rogers Silverware', or 'Genuine Rogers Silverware'".

Respondents, Security Silverware Distributors, Inc., and William C. Steffy and Lorena Steffy, acting through their agents, who at all times herein mentioned, were operating within the scope of their employment, have induced retail dealers to sign contracts for the purchase of certificates, coupons or cards redeemable in chinaware or earthenware by using the trade name of Atlas Globe China Company, Advertising Department, and by representing to local retail dealers that they have been or are connected with, or have been or are agents for the Atlas Globe China Company, and they have also induced retail dealers to sign contracts for the purchase of certificates, coupons or cards redeemable in earthenware or chinaware by using the name Bordeaux China Company, and by representing such company to be the manufacturer of earthenware or chinaware, for which they were acting as agents.

Respondents, in offering for sale and selling such certificates, coupons or cards redeemable in earthenware or chinaware, have, when using the name Bordeaux China Company, represented the earthenware or chinaware in which the certificates, coupons or cards would be redeemable, as having a value and a regular and customary price far in excess, sometimes several hundred per cent, of the true value and the regular and customary price of the earthenware or chinaware with which certificates, coupons or cards of the so-called Bordeaux China Company have been and are redeemed.

It has been and is the practice of respondents, whether trading as Security Silverware Distributors, Inc., or as Atlas Globe China Company, Advertising Department, or as Bordeaux China Company, to represent to retail dealers in the various States of the United States, as inducements for the purchase of certificates, coupons or cards, redeemable by respondents in silverware or earthenware or chinaware, that by distribution of such certificates, coupons or cards among their

customers, their business would be increased, particularly because respondents, to such end or for such purpose, would circularize the purchasing public on their behalf within a specified area tributary to the location of such retail dealers.

It has also been and is the practice of respondents, through their agents, as inducement for the purchase of their said redemption certificates, coupons or cards, to represent that such certificates, coupons or cards would be sold to one retail dealer only in the particular community of the solicited retail dealer, and that respondents would furnish each dealer purchasing from them such certificates, coupons or cards, a set of silverware or earthenware or chinaware, as the case might be, for display among their customers in order to encourage or stimulate the increased purchase of merchandise from such local retail dealer. The number of pieces of silverware or chinaware to be so furnished local dealers purchasing or using such redemption certificates, coupons or cards, has not been uniform, but has depended on the amount of certificates, coupons or cards furnished and the surrounding circumstances of each particular case. Respondents have entrusted their agents with wide discretion in such respect.

In truth and in fact, neither respondent, Security Silverware Distributors, Inc., nor respondent William C. Steffy or respondent Lorena Steffy has or has had any connection, as agent or otherwise, with the International Silver Company, and neither they nor any or either of them have or have had, or has or has had, any connection, as agent or otherwise, with the Atlas Globe China Company except as a purchaser of its products.

Neither respondent, Security Silverware Distributors, Inc., nor any or either of the individual respondents, engages or has engaged, either as Atlas Globe China Company, Advertising Department or as Bordeaux China Company, or otherwise, in the manufacture of silverware, earthenware or chinaware, nor are they nor is any or either of them connected, nor have they nor has any or either of them been connected with any manufacturer or manufacturers of such products or commodities or any of them except as purchasers thereof.

It has been and is the practice of respondents, after retail dealers have completed payments to them of the purchase price of the certificates, coupons or cards redeemable in silverware or earthenware or chinaware, to direct such retail dealers to notify customers among whom such certificates, coupons or cards had or have been distributed, or among whom they might thereafter be distributed, that in order to procure redemption of the certificates, coupons or cards held by them, it would be necessary to transmit to respondents with them one cent for each and every certificate, coupon or card. The amount of money

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so required has in many instances been more than the price at which the customers could procure from local stores, silverware or chinaware or earthenware of the same quality or kind. As a result, retail dealers, after completion as aforesaid of their payments to respondents, have been compelled either to bear the loss of such money, or to distribute the certificates, coupons or cards among their customers with the information that redemption of the certificates, coupons or cards would require payment to respondents of one cent with each of them transmitted to respondents for redemption in silverware, earthenware or chinaware.

Respondents have also failed and neglected to refund to retail dealers, who have signed contracts with them, the sum of \$5 for each 1,000 certificates, coupons or cards upon or after their redemption, or any part thereof. The silverware with which respondents have pretended to redeem certificates, coupons or cards, purporting to be redeemable in silverware, has not been and is not genuine Rogers "1847" silverware or Rogers Silverware or genuine Rogers Silverware, as such designations or descriptions are understood by the purchasing public. Respondents have followed the practice of failing and neglecting to redeem or to attempt or pretend to redeem certificates, coupons or cards purporting to be redeemable in silverware, earthenware or chinaware, although customers among whom they were distributed by retail dealers purchasing the same from respondents have transmitted them to respondents accompanied by the requisite amount of money. Respondents have failed and neglected to furnish or supply retail dealers, who have purchased certificates, coupons, or cards from them, with sample or display sets of silverware, earthenware or chinaware, consisting of or containing the number of pieces promised as inducement to such purchase, but have usually furnished or supplied sets substantially less in number and different in quality or kind than promised by respondents or their agents. They have sold their certificates, coupons or cards to more than one retail dealer in various communities and localities in the United States in which it had been understood and agreed, when selling retail dealers, that only one in each community or locality would be sold such certificates, coupons, or cards for distribution among customers.

They have failed and neglected to comply with their agreement to circularize the purchasing public, on behalf of retail dealers to whom they have sold their certificates, coupons or cards, or otherwise to cooperate with such retail dealers in the advertisement and extension of their business.

PAR. 3. There have been for several years last past and now are individuals, partnerships and corporations offering for sale and sell-

ing in interstate commerce, silverware, china, earthenware, chinaware and glassware, directly, and other individuals, partnerships, and corporations offering for sale and selling such products indirectly through the sale of certificates, coupons or cards redeemable in silverware, china, earthenware, chinaware and glassware.

The acts and practices of respondents and of each and all of them, as described in paragraph 2 hereof, have had and have a capacity and tendency to mislead and deceive, and they have misled and deceived, and do mislead and deceive the public into the belief that Security Silverware Distributors, Inc., has been and is connected with or an agent of International Silver Company, or other manufacturer or manufacturers of silverware, or that the Security Silverware Distributors, Inc., and William C. Steffy and Lorena Steffy have been and are connected with the Atlas Globe China Company; or that the Bordeaux China Company has been and is a manufacturer of chinaware or earthenware, and that respondents have been and are its agents, and into the belief that each and all of the foregoing statements and representations made by agents of respondents relative to the aforesaid certificates, coupons or cards and their use or redemption have been and are true, and into the purchase of such certificates, coupons or cards, from the respondents, in reliance upon such erroneous belief.

The aforesaid acts and practices of respondents have had the capacity and tendency to divert, and they have diverted and do divert, to respondents trade from competitors offering for sale or selling in interstate commerce, silverware, china, earthenware, chinaware and glassware, directly, or offering for sale or selling in such commerce, certificates, coupons or cards redeemable or purporting to be redeemable in silverware, china, earthenware, chinaware or glassware, truthfully described and represented.

PAR. 4. The above and foregoing acts of respondents, and each and all of them, have been and are to the prejudice and injury of the public and of respondents' competitors, and have been and are unfair methods of competition in violation of the provisions 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

This proceeding having been heard by the Federal Trade Commission upon the complaint, and upon the answer of respondents wherein they admit the allegations and facts set forth in the complaint and express the wish to waive hearing on the charges of the complaint

and to refrain from contesting the proceeding, and in such answer consent that the Commission may make, enter and serve upon each respondent an order to cease and desist from violations of the law as alleged in the complaint, and the Commission having considered the record and being fully advised in the premises—

It is now ordered, That respondents and each of them, including their officers, agents, employees, and representatives, in connection with offering for sale or selling in interstate commerce certificates, coupons, cards, tickets, or any written or printed matter in which it is agreed that such certificates, coupons, cards, tickets, or other written or printed matter, are redeemable or purport to be redeemable in china or chinaware, silver or silverware, by means of advertisements in magazines, newspapers, prospectuses, pamphlets; or any form of written or printed matter, or by broadcasting, cease and desist directly and indirectly from:

1. Using the words "Advertising Department" following the words "Atlas Globe China Company", or in any connection therewith; or the words "Advertising Department" following the words "Bordeaux China Company", or in any connection therewith, in their advertisements or in the advertisements of any of them, or in connection with the name or names of any other individuals, partnerships or corporations, unless and until they are connected with or related to the aforesaid company or companies, or other individuals, partnerships, or corporations in connection with which appear the words "Advertising Department".

2. Representing that they or any or either of them are connected with or are agents of the Atlas Globe China Company or Bordeaux China Company, or any other individual, partnership or corporation, unless and until they are, in fact, connected with or representatives of such individuals, partnerships, or corporations for which they purport to act as agents.

3. Representing that the Atlas Globe China Company and the Bordeaux China Company, because of the expense of advertising in magazines, newspapers and periodicals, have developed the plan presented by respondents of advertising through the cooperation of retail dealers in such a way that the cooperation would increase the business of retail dealers without any cost to them and without any cost to their customers for the redemption of such certificates, coupons, cards or tickets, unless and until such is the fact and respondents have adopted and follow such practice.

4. Representing that for each payment of \$4.50 for one thousand certificates, coupons, cards or tickets, there will be returned to the retail dealer who purchased them from respondents, or any of

them, the sum of \$5 as and when such certificates, coupons, cards or tickets are redeemed by customers among whom such retail dealers have distributed them, unless and until such is the fact and respondents adopt and follow such practice.

5. Representing that the silverware in which certificates, coupons, cards or tickets sold by respondents, or any or either of them are redeemable is Rogers "1847" silverware, unless or until such certificates, coupons, cards or tickets are, in fact, redeemed by respondents in Rogers "1847" silverware.

6. Representing to retail dealers and others that certificates, coupons, cards, or tickets redeemable or purporting to be redeemable in silverware, earthenware or chinaware, would involve no cost either to the retail dealers or the customers, and after effecting sales of such certificates, coupons, cards or tickets, notifying such retail dealers that payment of one cent for each and every certificate, coupon, card, or ticket would be necessary for their redemption.

7. Representing that they will supply retail dealers who have purchased their certificates, coupons, cards, or tickets, with samples or display sets of silverware, earthenware or chinaware, unless or until such practice is actually adopted and followed by respondent.

8. Representing that the certificates, coupons, cards, or tickets are sold only to one retail dealer in the various communities and localities in the United States, unless and until such is the fact and respondents have adopted and are following such practice.

It is further ordered, That the respondents shall within 60 days after the service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF
QUALITY SHINGLE COMPANY, INC., AND C. V. GRAY, AN
INDIVIDUAL, TRADING AS GRAY LUMBER & SHINGLE
COMPANY

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

Docket 2241. Complaint, Oct. 26, 1934—Decision, Oct. 8, 1935

Where a corporation engaged in the manufacture of red cedar shingles and in the sale thereof to wholesale and retail dealers and other persons and concerns in the several States; and wholesale lumber dealer who purchased large quantities thereof from said corporation—

Sold certain shingles made by said corporation and dealt in by said wholesaler as above set forth, under the brand or trade term "extra clear", notwithstanding fact that said product did not warrant such a designation according to accepted trade usage or understanding and was not 100 percent clear or a first-class or superlative grade of clear shingle, as understood by consuming public, but was so graded as to permit presence of sapwood in any part thereof, and was not their best grade of shingle and corresponded in quality to a "No. 2" product, and was substantially inferior in quality to, and far less durable under exposure than the more expensive "No. 1" shingle, which must be clear of defects for entire length and without sapwood;

With the result that the public and a substantial portion of retailers were misled and deceived, and others, not misled or deceived, were aided in the sale of an inferior and cheaper product as and for the genuine clear article, or in sale thereof without notifying their customers of the true quality of the product and in thus taking advantage of their more scrupulous dealer competitors, some dealers and many consumers purchased said "extra clear" shingle as and for a genuine "clear" product bought, often, at a lower price, to the prejudice and injury of competitors dealing in the genuine clear "No. 1" article, and of those dealing in the supposedly greatly inferior, but actually comparable, "No. 2" product at the same approximate price, from whom trade was diverted to their respective injury, and with the effect of contributing substantially, through such deceptive descriptions of partially clear and comparatively short-lived shingles, to the demoralization of the industry, and bringing about a loss in public good will to and esteem of the red cedar shingle and a loss of a greater volume of business by the producers and marketers thereof to the makers of and dealers in composite roofing than they would otherwise have sustained:

Held, That such acts and practices were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Henry M. White*, trial examiner.

Mr. Eugene W. Burr for the Commission.

Wettrick, Wettrick & Flood, of Seattle, Wash., for respondents.