

Complaint

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IN THE MATTER OF  
NATIONAL SILVER CO.

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

*Docket 2512. Complaint, Aug. 13, 1935—Decision, June 25, 1936*

Where a corporation, engaged in the sale and distribution of silverware to jobbers, wholesale and retail dealers, and to chain, hardware, department, and house-furnishing stores—

Sold and delivered sets of a certain pattern of silverware, upon each and every piece of which there was stamped the quality mark or words "Sectional Overlay", notwithstanding fact that ornamental pieces thereof did not have an extra deposit of silver at points of wear, so as to be properly represented, designated, or referred to by said quality mark;

With effect of deceiving ultimate purchasers into buying that which they did not intend to buy, and of placing thereby in the hands of its wholesale and retail purchasers means of deceiving ultimate purchasers, and with capacity and tendency so to do, and to divert to it trade of competitors engaged in selling similar products, truthfully advertised, represented, and described, and of competitors engaged in selling products which (1) do have extra deposits of silver at the points of wear, as denoted by said term as long known and understood by trade and purchasing public, and by former as quality mark denoting additional value in silverware, and which (2) are truthfully advertised and described by them; to the substantial injury of substantial competition in commerce:

*Held*, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. John Darsey* 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 the National Silver Co., a corporation, 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. The respondent National Silver Co. is a corporation organized and existing under and by virtue of the laws of the State

of New York and at its office and principal place of business at 61-65 West Twenty-third Street, in the city of New York, State of New York, for several years last past has been engaged in the business of selling and distributing silverware to jobbers, wholesale and retail dealers, chain stores, hardware stores, department stores, and house furnishing stores. Said respondent causes said silverware when sold by it to be transported from its principal place of business in the State of New York into and through various other States of the United States to the purchasers thereof.

In the course and conduct of their said business respondent is now and for more than two years last past has been in substantial competition in commerce between and among various States of the United States with various other corporations, individuals, partnerships, and firms engaged in the sale of similar products.

PAR. 2. Through long usage the term "Sectional Overlay," when used in association with silverware, has become known, and is understood by the trade and purchasing public to mean an extra deposit of silver at the points of wear.

In the course and conduct of its aforesaid business respondent has caused to be stamped on each and every piece of a certain pattern of its silverware, said pattern being known as "Martha Washington," the quality mark or words "Sectional Overlay," and which products bearing such stamp the respondent has sold in interstate commerce, when in truth and in fact said products were not such products having an extra deposit of silver at the point of wear so as to be properly represented, designated, or referred to by the quality mark "Sectional Overlay," but were products which did not have such extra deposit of silver at such points of wear. Respondent thereby has falsely represented and does falsely represent to purchasers and prospective purchasers this certain pattern of its products to be such a product as "Sectional Overlay," when in truth and in fact said pattern of silverware so described and branded by respondent is not "Sectional Overlay" and does not have extra deposits of silver at the points of wear as by said quality mark so declared to have.

PAR. 3. Under the foregoing facts and circumstances the stamping and branding by respondent of certain of its products as "Sectional Overlay" as set out in paragraph 2, supra, is false and misleading and has the capacity and tendency to deceive, and does deceive, the ultimate purchasers into buying that which they did not intend to buy; and through and by virtue of such stamping and branding as aforesaid the respondent has placed and is placing in the hands of its wholesaler and retailer purchasers the means of deceiving the ultimate purchasers. The aforesaid practice has the capacity and tendency to divert to respondent the trade of competitors engaged

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in selling in interstate commerce products of the same kind and nature as those of respondent, which products are truthfully advertised and described, and to divert to respondent the trade of competitors engaged in selling in interstate commerce products which do have extra deposits of silver at points of wear and truthfully advertised and described. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 4. The acts and things above alleged to have been done by the respondent are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 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."

## 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, on the 13th day of August 1935, issued and served its complaint in this proceeding upon respondent, National Silver Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, testimony and evidence in support of the allegations of said complaint were introduced by John Darsey, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Abraham Brill, attorney for the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and evidence, and brief in support of the complaint, and brief filed by respondent; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:



## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, National Silver Co., is a corporation existing by virtue of the laws of the State of New York, with its principal place of business at 61-65 West 23rd St., in the city of New York. The respondent for twenty years or more last past has been engaged in the business of selling and distributing silverware

to jobbers, wholesale and retail dealers, chain stores, hardware stores, department stores, and house furnishing stores. The respondent causes said silverware when sold by it to be transported from its principal place of business in the State of New York to purchasers thereof located in the various States of the United States. There are among the competitors of respondent various other corporations, individuals, partnerships, and firms likewise engaged in the sale and distribution of silverware.

PAR. 2. Over a long period of time and through long usage the term "sectional overlay" when used in association with silverware has become known and is understood by the trade and the purchasing public to mean an extra deposit of silver at the points of wear. The said term "sectional overlay" is considered in the trade as a quality mark denoting additional value in silverware.

In promoting the sale of its "Martha Washington" pattern of silverware the respondent caused the quality mark or words "sectional overlay" to be stamped on each and every piece of said pattern, when in truth and in fact the ornamental pieces of said sets of silverware did not have an extra deposit of silver at the points of wear so as to be properly represented, designated or referred to by the quality mark "sectional overlay." Respondent sold and delivered said sets of silverware so misbranded and so marked to purchasers thereof located in States of the United States other than the State of New York. Respondent thereby falsely represented and does falsely represent to purchasers and prospective purchasers of its silverware so branded and marked that it did and does contain extra deposits of silver at the points of wear when in truth and in fact such was not and is not the case.

PAR. 3. The stamping and branding by respondent of its certain brands of silverware as "sectional overlay" when such is not the fact is false and misleading and has the capacity and tendency to deceive and has deceived and does deceive the ultimate purchasers into buying that which they did not intend to buy; and through and by virtue of such stamping and branding, as aforesaid, the respondent places in the hands of its wholesaler and retailer purchasers the means of deceiving the ultimate purchasers. The aforesaid practice has the capacity and tendency to divert to respondent the trade of competitors engaged in selling, in interstate commerce, products of the same kind and nature as those of respondent, which products are truthfully advertised, represented, and described, and to divert to respondent the trade of competitors engaged in selling, in interstate commerce, products which do have extra deposits of silver at the points of wear and which are truthfully advertised and described.

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Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

## CONCLUSION

The practices of respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of Section 5 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 complaint of the Commission, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein by counsel for the Commission and counsel for respondent, and the Commission having made its findings as to the facts and its conclusion that said 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, National Silver Co., a corporation, its officers, agents, representatives, and employees, in connection with the offering for sale, and sale of their silverware in interstate commerce, forthwith cease and desist from:

Representing through the use of the term "sectional overlay" or any term, word, or phrase of like import or meaning, in advertisements or printed matter, or in stamping or branding of its said silverware, or in any other manner whatsoever, that said silverware has extra deposits of silver at the points of wear, when such is not the case.

*It is further ordered*, That within 60 days from the date of service of this order upon said respondent, it shall file with the Commission a report in writing, setting forth in detail the manner and form in which this order has been complied with.

## Syllabus

IN THE MATTER OF  
DISPENSARY SUPPLY COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2559. Complaint, Sept. 24, 1935—Decision, June 25, 1936*

Where a corporation engaged in the sale of "Dr. McCaskey's Prescription Tablets" to wholesale and retail dealers for ultimate resale to the members of the public, and also to members of the purchasing public in the various States—

- (a) Represented that said proprietary preparation constituted a cure or remedy or competent and adequate treatment for obesity and that it would reduce excess fat, through such statements as "Do not let overweight rob you of popularity. You can so easily have a slim, attractive figure \* \* \* you will reduce if you faithfully follow my treatment," "REDUCE EXCESS FAT with the prescription of a specialist on weight control. Seeking health with drastic baths and exhausting exercises is no longer necessary," etc., facts being that said preparation did not constitute an adequate or competent remedy for the treatment of obesity and would not reduce fat at all;
- (b) Represented that said preparation was harmless or safe to take, through such statements as "Reduce quickly, safely," etc., "\* \* \* Reduce as your doctor would advise you \* \* \*," "Reduce safely, surely, \* \* \*," "There is no thyroid, no harsh drugs—nothing that could possibly harm you," "Nothing that could harm a baby," facts being said preparation, by virtue of certain ingredients therein and effect thereof on the body in course of time, was neither safe nor harmless;
- (c) Represented that users of said preparation would reduce five pounds a week, through such statements as "How would you like to reduce five pounds during the next week? You can, if you are overweight—surely, safely, and without discomfort. \* \* \*," facts being said preparation would not reduce fat at rate of five pounds per week or at all;
- (d) Represented that users thereof would obtain results similar to those obtained by "Dr. McCaskey" in his practice as a physician, or to those obtained by a physician in his practice as such, through such statements as "Dr. McCaskey's treatment enables you to do this safely" (i. e., reduce without tiring exercises or starvation diet), "You can easily and comfortably control your weight with Dr. McCaskey's Prescription Tablets," "Reduce as your doctor would advise you with a proven treatment of a prominent American physician, an authority on weight control," facts being users thereof do not get same results as Dr. McCaskey in his private practice as a physician or same results that any physician gets in his private practice as such;
- (e) Represented that, through use of said preparation, a person could reduce any part of the body desired, through such statements as "REDUCE