

Syllabus

IN THE MATTER OF
THE AMERICAN DIRIGOLD CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2814. Complaint, May 21, 1936—Decision, Aug. 3, 1937*

Where a corporation engaged in manufacture and sale of an alloy, containing no gold but composed chiefly of aluminum and copper, and of highly polished flat and hollow tableware and other articles fabricated therefrom, and so finished that they had color, appearance and luster of 14-karat or 18-karat gold, depending upon discernment of particular observer, in direct and substantial competition with those engaged in manufacture, sale and distribution, in commerce among the various States and in the District of Columbia, of similar tableware and other articles of the same general kind and for the same purposes, composed, as case might be, of sterling silverware, silver-plated ware, and other materials—

Included word "Dirigold" in its corporate name, and thus named, designated, and described said alloy and ware made therefrom, and stamped said word on each article made from said alloy and sold by it as aforesaid, and featured same in trade-mark used by it and placed upon its letterheads and other printed matter, and thereby falsely represented that said tableware and other articles contained gold, and through tolerance of use by its retail dealers of predecessor's advertising literature containing many statements, phrases and descriptive terms calculated, in connection with said word "Dirigold," to describe said ware, to create belief that same contained gold, such as "Color and Beauty of Gold," " * * * the alluring golden color and finish," etc., "SOLID not plated," "Golden Anniversaries * * * the ideal gift for such momentous occasions," became responsible for such use and representations made therein, and failed, through such qualifications as "contains no gold" on its price lists and letterheads, and through said phrase on some of aforesaid folders, but not on its address slips and envelopes, nor in connection with reproduction of its aforesaid trade-mark, nor with stamping of its said ware, nor with its corporate name, nor in all instances where said word was used in print, to reach all members of the public, nor all those coming in contact with said name, nor all members of the public shopping for flat and hollow ware, nor all those who actually purchase its said ware;

With result that some members of the public were in fact misled through such inherently misleading designations used as aforesaid, which, together with misleading implications thereof, served to attract prospective customers to ware thus designated and to cause them to look with favor thereon by reason thereof, and with tendency and capacity to lead members of the public, informed by many, but not all, retailers and clerks selling said ware of aforesaid fact, to believe that said ware, thus designated, contained at least some gold, and to induce them to buy same because of erroneous belief engendered as above set forth, and to divert trade to it from competitors engaged in sale in interstate commerce of flat, hollow and other ware adapted to and used for same general purposes, and with effect of

Complaint

25 F. T. C.

diverting business to it from competitors who do not misrepresent materials from which their ware is made, but who truthfully and accurately state the facts in such respect, to their substantial injury and prejudice, and with result of placing in the hands of retail dealers an instrument of fraud and deception through which such dealers might mislead purchasing public and promote sale of such ware and cause purchase thereof by members of public because of misleading impressions thereby created:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Harry D. Michael for the Commission.

Hood & Hahn, of Indianapolis, Ind., and *Sanborn, Graves, Appel, Andre & Morton*, of St. Paul, Minn., 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 American Dirigold Corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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. That said respondent, The American Dirigold Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office, factory, and principal place of business in the city of Kokomo in said State.

PAR. 2. That said respondent is now and has been engaged for more than six months last past in the manufacture of an alloy designated and described as "Dirigold" and of tableware and other articles fabricated therefrom and in the sale of such tableware and other articles made from such alloy in commerce, as herein set out. Said respondent, in the course and conduct of its said business, causes the said tableware and other products manufactured from said alloy to be transported from its said place of business in Indiana to, into and through States of the United States other than Indiana to various and numerous customers in such other States. Respondent's usual course of dealing is to sell said products to department stores, jewelers, or other retail dealers through whom or which they are in turn sold to members of the consuming public.

PAR. 3. That, during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the manufacture, sale, and distribution in commerce of tableware and other articles of the same general kind and for the same purposes of use as those made and sold by respondent as aforesaid, some of which said ware is of sterling silver, some of silver plated ware and some of other materials, and such other individuals, firms and corporations have caused and do now cause their said tableware and other such articles as aforesaid, when sold by them, to be transported from the respective States of the United States where they are located to, into and through States other than the State of origin of the shipment thereof to the purchasers thereof at their respective places of location. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of its said tableware and other articles made from said alloy with such other individuals, firms, and corporations.

PAR. 4. That the respondent, in connection with the sale of its said tableware and other articles made from said alloy, as aforesaid, represents by the means and methods as herein set out that they contain gold. In truth and in fact, there is no gold in such tableware and other articles manufactured from said alloy. Said alloy and the products made therefrom by respondent are composed chiefly of aluminum and copper. The products made therefrom by respondent are highly polished and so finished that they are of the color, appearance and lustre of 14 karat gold. Respondent causes said alloy and the articles made therefrom to be named, designated and described as "Dirigold." Said name "Dirigold" is stamped by respondent on each article made from said alloy and sold by it, as aforesaid. It is the most prominent part of the trade-mark used by respondent in its advertising literature, letterheads and other printed matter. It is used as a part of respondent's corporate name. It has also been adopted by respondent as a descriptive term and is so used by it in its printed matter. It is also used by its representatives and its retail dealers as the term to describe such products in conversation and otherwise.

Said name "Dirigold," so applied to articles containing no gold, is inherently misleading in that it implies and serves as a representation that such products contain at least some gold. The use of said term as a name for such articles and in the connections, as aforesaid, further has the tendency and capacity to lead members of the public to believe that the products so designated contain gold and it has had and does have such effect. Respondent places on some of its printed matter the statement "Dirigold contains no gold" and the

phrase "Contains No Gold" is sometimes used in conjunction with the trade-mark heretofore referred to. Such statements and modifications do not reach all members of the public nor all those who come in contact with the name "Dirigold." Neither do they reach all members of the public who shop for or buy respondent's ware. Not all ultimate buyers or prospective buyers of said products see or have the opportunity to see respondent's printed matter containing such statements and modifications. No such modifications are made by respondent on the stampings on its said ware nor in connection with its corporate name. Nor are they made in every instance where the word "Dirigold" is used in its printed matter. Neither do such printed modifications affect the misleading effect of the word "Dirigold" as applied to respondent's ware when used by word of mouth. Nor do retail dealers make use of such modifications in their advertisements.

PAR. 5. That respondent in its circular advertising matter uses many statements, phrases and descriptive terms that serve to increase the said misleading effect of the word "Dirigold." Among such statements, phrases and descriptive terms are the following:

Color and Beauty of Gold.

* * * the alluring golden color and finish, the marvelous sheen and lustre * * *.

*** the perfect harmony and effect when used with gold-trimmed Haviland! Here, in effect, is the luxury and splendor of solid gold!

Dirigold will always retain its lustrous golden color because it's solid clear through.

SOLID not plated.

*** its rich, warm, lustrous golden color * * *.

Dirigold—The fashionable and exquisite ware that possesses the color and lustrous beauty of gold!

Like the precious metals—Dirigold is solid clear through.

No home need be denied the rare luxury and beauty of gold on the table and in the home.

Dirigold is truly—the ultimate gift of a Golden Age.

Golden Anniversaries—How appropriate that Dirigold be always considered as the ideal gift for such momentous occasions.

PAR. 6. That the representations and practices of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's said ware contains gold when such is not the fact, and to induce them to buy the same because of such erroneous belief engendered as above set forth. Said representations and practices further result in placing in the hands of retail dealers, who handle and sell the same, an instrument of fraud and deception by means of which they may mislead the purchasing public and promote the sale of such ware and cause the purchase thereof by members of the public who are thereby caused to entertain such mistaken belief. Said practices

of respondent also have the tendency and capacity to divert trade to respondent from competitors engaged in the sale in interstate commerce of tableware of various kinds and articles of the same general kind as made and sold by respondent. There are among the competitors of respondent those who do not in any wise misrepresent the material or materials of which their products are made or the composition of the same, but who truthfully and accurately state the facts in such regard without the use of misleading terminology or other misleading representations. As a result of respondent's said practices, as herein set forth, substantial injury has been and is now being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 7. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate 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.

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 May 21, 1936, issued and served its complaint in this proceeding upon respondent The American Dirigold Corporation, 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, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Harry D. Michael, attorney for the Commission, before John W. Addison, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Harold B. Hood, representing Hood and Hahn, attorneys for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. On August 24, 1936, during the course of hearings, the Commission received and ordered filed respondent's amended answer. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the amended answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the

Findings

25 F. T. C.

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, The American Dirigold Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office, factory, and principal place of business at 1142 S. Main Street, in the city of Kokomo in said State. Said corporation was organized August 13, 1935.

PAR. 2. The respondent is now and has been engaged since on or about the time said corporation was organized, as aforesaid, in the manufacture of an alloy designated and described as "Dirigold" and of tableware, consisting of flatware and hollow ware, and other articles fabricated therefrom, and in the sale of such ware in commerce between and among the various States of the United States and in the District of Columbia. The respondent in the course and conduct of its said business as aforesaid, causes and has caused the said tableware and other articles manufactured from said alloy to be transported from its said place of business in Indiana to, into and through States of the United States other than Indiana to various and numerous customers in such other States to whom such ware is or has been sold. Respondent's usual course of dealing is and has been to sell its said products to department stores, jewelry stores, or other retail stores through which they are in turn sold to members of the consuming public.

PAR. 3. During the time above mentioned other individuals, firms, and corporations in various States of the United States are and have been engaged in the manufacture, sale, and distribution in commerce between and among the various States of the United States and in the District of Columbia of tableware, consisting of flatware and hollow ware, and other articles, of the same general kind as made and sold by respondent, as aforesaid, and for the same purposes of use, some of which is sterling silverware, some of which is silver-plated ware, and some of which is ware of other materials. Such other individuals, firms, and corporations have caused and do now cause their said tableware and other articles, as aforesaid, when sold by them, to be transported from the respective States of the United States where they are located to, into and through States other than the State of origin of the shipment thereof to the purchasers of the same at their respective places of location. Among such competitors are R. Wallace and Sons Manufacturing Co., Wallingford, Conn.; International Silver Company, Meriden, Conn.; Oneida, Ltd.,

New York, N. Y., and Oneida, N. Y., and National Silver Company, New York, N. Y. Respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of its said tableware and other articles made from said alloy with such other individuals, firms, and corporations. Such competition has been direct and substantial.

PAR. 4. The respondent, in connection with the sale of its said tableware and other articles made from said alloy, as aforesaid, has represented by the means and methods as herein set out that such tableware and other articles contain gold when in truth and in fact such is not the fact. Said alloy and the products made therefrom by respondent are composed chiefly of aluminum and copper. Other metals enter into the composition of said alloy but the process is claimed to be a secret one and respondent did not reveal their identities on that account. However, there is no gold in said alloy or the products made therefrom. It was so admitted. The ware made from said alloy by respondent is highly polished and so finished that it is of the color, appearance and luster of gold, such appearance being that of 14-karat gold or 18-karat gold depending upon the discernment of the particular observer. Respondent has caused said alloy and the ware made therefrom to be named, designated, and described as "Dirigold." Said name "Dirigold" is stamped by respondent on each article made from said alloy and sold by it as aforesaid. It is the most prominent part of the trade-mark used by respondent and placed upon its letterheads and other printed matter. Said term is used as a part of respondent's corporate name and appears wherever the corporate name occurs on respondent's printed matter. Said word is also used by respondent as a descriptive term to describe its said ware. It is also used by respondent's representatives in the sale thereof and by the retail dealers who sell it to the public as the term to describe it in conversation and otherwise.

PAR. 5. The predecessor of respondent corporation in the conduct of said business was The Dirigold Corporation, which prior corporation had been in the hands of a receiver for several years before the business was acquired by respondent corporation. The Dirigold Corporation and said receiver had caused to be published and placed in the hands of retail dealers handling said ware considerable quantities of booklets and folders descriptive thereof. Said booklets and folders were generally in use by such dealers from the time respondent corporation took over the business as aforesaid, to, and including the time during which testimony was taken in this case. During such period of time such dealers continued to use said booklets and folders in the sale of the ware manufactured and sold by respondent

and in advertising the same to the purchasing public. Respondent and its officers knew of this practice and took no adequate measures to secure discontinuance thereof. Respondent did not print or publish any additional advertising literature during said period, except price lists, letterheads and the like. Respondent by its tolerance of the use of said advertising literature, by its retail dealers, became responsible for such use and for the representations made therein. In a few instances respondent furnished copies of said booklet to its retail dealers for use in the sale of "Dirigold" ware. Said booklets and folders contained many statements, phrases and descriptive terms that served, when used in connection with the word "Dirigold" to describe said ware, to create the belief that said ware contained gold. Among such statements, phrases and descriptive terms are the following:

Color and Beauty of Gold.

* * * the alluring golden color and finish, the marvelous sheen and lustre * * *

* * * the perfect harmony and effect when used with gold-trimmed Haviland!

Here, in effect, is the luxury and splendor of solid gold!

Dirigold will always retain its lustrous golden color because it's solid clear through.

SOLID not plated.

* * * its rich, warm, lustrous golden color * * *.

Dirigold—The fashionable and exquisite ware that possesses the color and lustrous beauty of gold!

Like the precious metals—Dirigold is solid clear through.

No home need be denied the rare luxury and beauty of gold on the table and in the home.

Dirigold is truly—the ultimate gift of a Golden Age.

Golden Anniversaries. How appropriate that Dirigold be always considered as the ideal gift for such momentous occasions.

PAR. 6. Respondent has been accustomed to place on its price lists and its letterheads, but not on its address slips and envelopes, the phrase "contains no gold" in connection with reproductions of the trade-mark containing the word "Dirigold." Some of the folders previously referred to as having been distributed by the receiver, have printed thereon at the top of each page the phrase "Dirigold contains no gold." Such statements and modifications do not reach all members of the public nor all those who come in contact with the name "Dirigold." Neither do such expressions reach all members of the public who shop for flatware and hollow ware including respondent's said ware, nor do they reach all those who actually buy respondent's said ware. Not all ultimate buyers or prospective buyers of respondent's products see or have the opportunity to see printed matter

containing said statements and modifications above referred to. No such modifications are made by respondent on the stamping on its said ware, nor in connection with its corporate name, nor are they used in all instances where the word "Dirigold" is used in print. Neither are such expressions used by those who sell respondent's ware in every instance where said term "Dirigold" is used when spoken by word of mouth. Many retail dealers and clerks who sell "Dirigold" ware have made it a practice to inform customers and prospective customers that there is no gold in said ware but said information is not given in all such cases.

PAR. 7. Retail stores which handle "Dirigold" ware do their own newspaper advertising of the same. Some stores have used descriptive terms in so advertising "Dirigold" which, by use of the word "gold" or similar terms therein to describe said ware, in connection with the word "Dirigold" have the tendency and capacity to create the belief that the ware so described contains gold.

PAR. 8. The name "Dirigold" applied to ware containing no gold, especially when such ware has the appearance of gold, is inherently misleading in that it implies and serves as a representation that such articles contain at least some gold. The use of said term as a name for flatware, hollow ware, and other ware as made and sold by respondent, has the tendency and capacity to lead members of the public to believe that the ware so designated contains gold. There have been instances where persons have entertained such belief by reason of said term. Said tendency and capacity is increased by the fact that the ware so designated has the appearance of gold. Furthermore, the use of descriptive terms such as those previously referred to emphasizing the word "gold," or like expressions, serves to increase the misleading effect of said term "Dirigold" when used as aforesaid. Said term together with the misleading implication contained therein, as aforesaid, serves to attract prospective customers to the ware so designated and to cause them to look upon it with favor because thereof.

PAR. 9. The representations of respondent as aforesaid have had the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's said ware contains at least some gold when such is not the fact, and to induce them to buy the same because of the erroneous belief engendered as above set forth and to divert trade to respondent from competitors engaged in the sale in interstate commerce of flatware, hollow ware and other ware adapted to and used for the same general purposes for which respondent's ware is used. There were and are among the competitors of respondent those who do not misrepresent the materials

Order

25 F. T. C.

from which their ware is made but who truthfully and accurately state the facts in such respect. Respondent's said acts and practices have tended to and do in fact divert business to respondent from its said competitors to the substantial injury and prejudice of such competitors. Moreover, the use of said term "Dirigold" to describe and designate respondent's said ware and respondent's representations and practices in regard thereto, as herein set out, result in placing in the hands of retail dealers an instrument of fraud and deception by means of which such dealers may mislead the purchasing public and promote the sale of such ware and cause the purchase thereof by members of the public because of misleading impressions thereby created.

CONCLUSION

The aforesaid acts and practices of the respondent, The American Dirigold Corporation, are to the prejudice of the public and of 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the amended answer of respondent, testimony and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Harry D. Michael, counsel for the Commission, and by Harold B. Hood, representing Hood and Haln, counsel for the 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 ordered, That the respondent, The American Dirigold Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of tableware, consisting of flatware and hollow ware, and other articles made from an alloy of metals containing no gold, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

653

Order

Representing through the use of the word "dirigold" or "gold" or any coined word containing the word "gold," alone or in connection or conjunction with any other word or words, in its corporate name or as descriptive of or as a trade-mark for its products, or in any other manner whatever, or through any other means or device, that such tableware, flatware, hollow ware and other articles contain gold.

It is further ordered, That the respondent shall, within 60 days after service upon it 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 this order.

IN THE MATTER OF
DIRIGOLD METALS CORPORATION

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

Docket 2815. Complaint, May 21, 1936—Decision, Aug. 3, 1937

Where a corporation engaged in the manufacture and sale of an alloy containing no gold, but composed chiefly of aluminum and copper, and of highly polished flat and hollow tableware and other articles fabricated therefrom, and so finished that they had color, appearance and luster of 14-karat or 18-karat gold, depending upon discernment of particular observer, in direct and substantial competition with those engaged in manufacture, sale, and distribution in commerce among the various States and in the District of Columbia of similar tableware and other articles of same general kind and for the same purposes, composed as case might be, of sterling silverware, silver-plated ware, and other materials—
Included word "Dirigold" in its corporate name, and thus named, designated, and described said alloy and ware made therefrom, and stamped said word on each article made from said alloy, and sold by it as aforesaid, and featured and displayed same in trade-mark used by it and placed upon its printed matter and wherever in such matter its aforesaid corporate name occurred, and thereby falsely represented that said tableware and other articles contained gold, and through use in advertising matter distributed to customers, in connection with word "Dirigold," of many statements, phrases, and descriptive terms, such as "Dirigold * * * possesses the color and lustrous beauty of gold!" "No home need be denied the rare luxury and beauty of gold on the table and in the home," "Golden Anniversaries * * * the ideal gift for such momentous occasions," "SOLID not plated," served to create belief that said ware contained gold;

With result that some members of the public were in fact misled through such inherently misleading designation used as aforesaid, which, together with misleading implications thereof, served to attract prospective customers to ware thus designated and to cause them to look with favor thereon by reason thereof, and with tendency and capacity to confuse, mislead and deceive members of the public into the erroneous belief that its said ware contained at least some gold, and to induce them to buy same because of the erroneous belief thus engendered, and to divert trade to it from competitors engaged in sale in interstate commerce of flat, hollow and other ware adapted to and used for same general purposes, and with effect of diverting business to it from competitors who do not misrepresent materials from which their ware is made, but who truthfully and accurately state the facts in such respects, to their substantial injury and prejudice, and with result of placing in the hands of retail dealers an instrument of fraud and deception through which such dealers might mislead and deceive purchasing public and promote sale of such ware, and cause purchases thereof by members of public because of misleading impression thereby created: