

Syllabus

IN THE MATTER OF
DIRIGOLD DISTRIBUTORS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2816. Complaint, May 21, 1936—Decision, Aug. 3, 1937

Where a corporation engaged in sale at retail, chiefly, of highly polished, flat and hollow tableware and other articles made of alloy containing no gold, but composed chiefly of aluminum and copper, and so finished that they had the color, appearance and luster of 14-karat or 18-karat gold, depending upon the discernment of the particular observer, in direct and substantial competition with those engaged in 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 silver, silver-plated ware, and other materials—

Included word "Dirigold" in its corporate name and thus made use thereof in its printed matter and otherwise, and sold said ware under said name and as a descriptive term thereof, and with each piece thereof thus stamped, and made use of printed matter in its business in promoting sale of said ware, in which said word was most prominent part of trade mark thereon depicted, and thereby falsely represented that said ware contained gold, and through use in circular advertising matter, in connection with word "Dirigold," of many statements, phrases and descriptive terms, such as " * * * a wonderful merchandise with the color of fine gold * * *," " * * * the homogeneity of structure, the fine texture, and the lustrous brilliance of gold, * * *," " * * * may be quite truthfully described as **BETTER THAN GOLD**," "Beautiful as Gold," "Here, in effect, is the luxury and splendor of solid gold," "SOLID not plated," " * * * the ultimate gift of a Golden Age," and "Golden Anniversaries * * * ideal for such momentous occasions," served to create impression that said ware contained gold, and failed, through such qualifications as "Contains no gold" on some of its printed matter and in connection with aforesaid trade mark on some of such matter, but not in connection with stampings thereof nor with its said corporate name in all instances where word was used in print, nor in every instance by those making oral use of word in selling such ware, to reach all members of the public, or all those coming in contact with said name, or all members of the public shopping for flat and hollow ware including that sold by it, or all those actually buying such ware;

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 cause them to look with favor thereon by reason thereof, and with tendency and capacity to confuse, mislead, and deceive members of the public, notwithstanding practice of its representatives of informing customers there was no gold in such ware, into erroneous belief that its said products contained at least some gold, and to induce them to buy same because of erroneous belief thus engen-

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dered, 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 the materials from which their ware is made, but who truthfully and accurately state the facts in such respect; to their substantial injury and prejudice:

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 Dirigold Distributors, Inc., 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 respondent, Dirigold Distributors, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business in the city of Chicago in said State.

PAR. 2. That said respondent is now and has been engaged for more than two years last past in the sale in commerce of tableware and other articles designated and described as "Dirigold," as herein set out. Said respondent sells said products at retail to members of the consuming public and acts as a retail outlet for the manufacturer thereof. Said respondent, in the course and conduct of its said business, causes said products, when sold by it, to be transported from its said place of business in Illinois to, into and through States of the United States other than Illinois to customers in such other States to whom such products are or have been sold.

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 sale and distribution in commerce of tableware and other articles of the same general kind and for the same purposes of use as those 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 designated and described as aforesaid with such other individuals, firms, and corporations. Some of such competitors sell their products directly to the purchasing public while others sell to dealers through whom or which they are in turn sold to members of the public.

PAR. 4. That the respondent, in connection with the sale of its said tableware and other articles, as aforesaid, represents by the means and methods as herein set out that such products contain gold. In truth and in fact, said products do not contain any gold but are made from an alloy consisting of other metals, the chief of which are aluminum and copper. Said products made from such alloy are highly polished and so finished that they are of the color, appearance and lustre of 14-carat gold.

Said name "Dirigold" is stamped on each article made from said alloy so sold by respondent. It is the most prominent part of the trade-mark used by respondent in its advertising literature, letter-heads and other printed matter. It is used as a part of respondent's corporate name. It has been adopted by respondent as a descriptive term and is so used by it in its printed matter. It is also used by respondent's representatives 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 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

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or buy said 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 occur in connection with the stampings on said ware nor in connection with respondent's corporate name. Nor are they made in every instance when 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. Formerly, respondent made no such modifications or explanatory statements in its printed matter as above described.

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:

Dirigold is a wonderful merchandise with the color of fine gold * * *.

It has the homogeneity of structure, the fine texture, and the lustrous brilliances of gold, * * *.

Dirigold may be quite truthfully described as BETTER THAN GOLD.

The Beauty and Color of Gold with Dirigold.

* * * Dirigold—with its irresistible golden beauty.

Beautiful as Gold.

Color and Beauty of Gold.

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

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

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

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 said ware so sold by respondent 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 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 those 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 Dirigold Distributors, Inc., 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

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same, and being now 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, Dirigold Distributors, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 70 East Jackson Boulevard, in the city of Chicago, in said State. Said corporation was organized on October 29, 1930.

PAR. 2. The respondent is now and has been engaged since said date of organization in the sale in commerce between and among the various States of the United States of tableware, consisting of flatware and hollow ware, and other articles designated and described as "Dirigold." Respondent sells said ware generally at retail direct to members of the consuming public. Said business is confined largely to the city of Chicago and vicinity. Sales are made and have been made, however, to members of the public located in States other than Illinois. In a few instances, during the year 1934, respondent sold said ware at wholesale to retail dealers located in States other than Illinois. The respondent, in the course and conduct of its said business as aforesaid, causes and has caused said ware to be transported from its said place of business in Illinois to, into and through States of the United States other than Illinois to various and numerous customers in such other States, to whom said ware is or has been sold.

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 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 and for the same purposes of use as the ware sold by respondent as aforesaid, some of which said ware is of sterling silver, some of silver-plate, and some 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. 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 said ware, as aforesaid, has represented by the means and methods herein set out, that such ware contains gold when in truth and in fact such is not the fact. The ware so sold by respondent and described and designated as "Dirigold" is composed of an alloy consisting 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 their identities were not revealed. It was admitted, however, that there is no gold in said alloy or the products made therefrom. Said ware 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. The name "Dirigold" is stamped upon each piece of said ware sold by respondent. It is the most prominent part of the trade-mark depicted on the printed matter used by respondent in its business and in promoting the sale of said ware. Said term is also 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 said ware. It is also used by respondent's representatives in the sale thereof as the term to describe it in conversation and otherwise.

PAR. 5. Respondent, in its circular advertising matter, has used many statements, phrases and descriptive terms in describing said ware that served to create the impression, when used in connection with said word "Dirigold," that said ware contains gold. Among such statements, phrases, and descriptive terms so used are the following:

Dirigold is a wonderful merchandise with the color of fine gold * * *.

It has the homogeneity of structure, the fine texture, and the lustrous brilliancy of gold, * * *.

Dirigold may be quite truthfully described as BETTER THAN GOLD.

The Beauty and Color of Gold with Dirigold.

* * * Dirigold—with its irresistible golden beauty.

Beautiful as Gold.

Color and Beauty of Gold.

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

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

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

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

SOLID not plated.

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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. On some of the printed matter used by respondent the statement "Dirigold contains no gold" has been used. Also the phrase "contains no gold" has been used on some of such printed matter in connection with the trade-mark containing the word "Dirigold." 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 the said ware sold by respondent. Nor do they reach all those who actually buy said ware. Not all buyers or prospective buyers of said ware see or have the opportunity to see printed matter containing said statements and modifications above referred to. No such modifications are made on the stampings on said ware, nor in connection with respondent's 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 said ware in every instance where said term "Dirigold" is used when spoken by word of mouth. Representatives of respondent have made it a practice to inform customers that there is no gold in "Dirigold" ware but there is no certainty that such information is given or will be given in all cases.

PAR. 7. 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 ware contains at least some gold. The use of said term as a name for flatware, hollow ware, and other ware such as that sold by respondent, has the tendency and capacity to lead members of the public to believe that the ware so designated contains gold. Some members of the public have in fact been so misled and have entertained the belief that "Dirigold" ware contains gold, which said belief was engendered by the use of said word "Dirigold" or by a combination of the impression created by said word "Dirigold" and the appearance of the ware to which it was applied. The tendency and capacity to mislead by use of the word "Dirigold" to

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describe said ware 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 serves as a means to attract members of the public to the ware so designated and causes them to look upon it with favor because of the misleading implication contained therein, as aforesaid.

PAR. 8. 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 the ware sold by respondent as aforesaid 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 the ware so sold by respondent is used. There were and are among the competitors of respondent those who do not misrepresent the materials 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 competitors to the substantial injury and prejudice of such competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, Dirigold Distributors, Inc., 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 Hahn, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion

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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, Dirigold Distributors, Inc., 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:

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.

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IN THE MATTER OF

SILVER ROD STORES SUPPLY COMPANY, INC., AND
DALE DRUG COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2955. Complaint, Oct. 22, 1936—Decision, Aug. 4, 1937*

Where a corporation and its subsidiary engaged in distribution and sale, from the warehouse of the former, of aspirin to group of drug and cigar stores in certain other States, as requisitioned from time to time by such stores under arrangement set up and established between them—

(a) Represented that they were the first or original manufacturers or dealers in aspirin, through stamping word "ORIGINAL" in large red letters on all cartons, bottles, and tin containers of their said product, and through such statements, in advertising matter and pamphlets and containers of their tablets, as "Insist upon the Original 'Dale's Aspirin'," "Look for the 'D' on each tablet which is the Original 'Dale's Aspirin'," and "Original 'Dale's Aspirin' is packaged in convenient tins," etc., facts being they were not the first or original manufacturers of or dealers in said product, manufacture of which was begun under patent and continued for many years thereafter by the predecessor of a corporation other than that from which they purchased their said product, thus described and referred to; and

(b) Represented that their said product had a retail value in excess of the actual selling price and in excess of the actual value thereof, through stamping on 100-tablet containers of said "Dale's Aspirin," "Price \$1.00," and on 50-tablet containers, "Price \$.50," notwithstanding fact retail price at which they sold their said product fluctuated between 39¢ and 49¢ for the 100-tablet quantities and was about 23¢ during said period for the 50-tablet units, and said tablets in such quantities at no time sold for \$1.00 or 50¢, as case might be, and prices in question, thus appearing as selling prices thereof, were not those at which tablets were actually sold or intended to be sold, but were greatly in excess of such prices in usual course of trade;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that all said representations were true, and with result that a substantial number of consuming public, as a consequence of erroneous beliefs induced by such false and misleading statements, purchased substantial volume of its said tablets and trade was unfairly diverted to them from those likewise engaged in distribution and sale of such tablets and who truthfully advertise the same; to the substantial injury of competition in commerce:

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

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

Mr. George Foulkes for the Commission.