

Complaint

IN THE MATTER OF
SHEFFIELD SILVER 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 2638. Complaint, Nov. 21, 1935—Decision, Feb. 14, 1938*

Where a corporation engaged in manufacture and sale, to retail jewelers located throughout the United States, of silver-plated hollow ware made by the electro-plating process, in purchase of products of which process, absent fixed standard for composition of base metal or fineness or quantity of silver to be applied generally, public is obliged to depend upon reputation of maker or of trade name or brand attached to product, or representations of maker or seller thereof—

Used, in conduct of its business, corporate name including words "Sheffield Silver," and featured its said name containing word "Sheffield" on letter-heads and invoices distributed in interstate commerce, and on labels affixed to cartons in which its said products were packed and shipped, and supplied salesmen, for presentation to prospects, with photographs of its said ware featuring corporate name as aforesaid, notwithstanding fact its said products were not made or manufactured in accordance with Sheffield process, long theretofore employed and identified by name "Sheffield" with ware of high sales value made by historic process in question;

With result that its said products were advertised as "Sheffield Silverware by Sheffield Company," and with tendency and capacity to confuse and deceive purchasing public with regard to true nature and quality thereof, and to induce purchasers to buy same in and on account of mistaken belief that they were made by aforesaid Sheffield process, and of thereby unfairly diverting trade to it from competitors engaged in sale in interstate commerce of products similar to those sold and distributed by it, and who truthfully and honestly advertise and represent the same, and of placing in hands of unscrupulous or uninformed retailers means and instrumentality whereby they might mislead members of purchasing public into erroneous belief that its said silver-plated hollow ware products were made in accordance with process aforesaid:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Alden S. Bradley and *Mr. Gerard A. Rault* for the Commission.

Mr. J. Leo Rothschild, 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

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Federal Trade Commission, having reason to believe that Sheffield Silver Company, Inc., a corporation hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, and in violation of Section 5 of 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 is a corporation, organized and doing business by virtue of the laws of the State of New York, having its principal office and place of business in Jersey City, N. J.; and is now and for more than 1 year last past, has been engaged in the business of manufacturing silver-plated hollow ware, and in the sale and distribution thereof to retail jewelry dealers located throughout the United States, and causes said products when sold to be transported from its principal place of business in Jersey City, State of New Jersey, or from its place of origin in other States, to purchasers thereof in the States of Tennessee, Texas, Georgia, and other States of the United States and in the District of Columbia, at their respective places of business, and there is now, and there has been for more than 1 year last past, a course of trade and commerce by said respondent in such silver-plated hollow ware, between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture of silver-plated hollow ware and in the sale and distribution thereof in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. Competitors of the respondent, and the respondent, use, in the manufacture of their product, the electroplating process, which process involves the submersion of the base metal form in a chemical solution or bath and, by the electrolyzation of silicate salts, causes a coating of silver to adhere to this base metal form. The plated silver thus produced varies in quality and value according to the composition of the base metal, the workmanship upon its form and the decoration, the amount and fineness of the silver deposited upon it and left upon it after the finishing process, and the projection of the surfaces exposed to wear and abrasion. There is no fixed standard for the composition of the base metal, nor for the fineness or quality of silver to be applied generally or to wearing of surfaces, so that the purchasing public is obliged to depend upon the reputation of the maker of such plated silverware, or the reputation of the trade name

or brand attached thereto, or the representations of the maker or seller thereof, in purchasing said silverware, since the quality of the ware cannot be determined except by laboratory tests.

PAR. 3. About the year 1742 there was originated in Sheffield, England, a process for the production of silver-plated ware, which process involved the welding of a silver plate to one or both sides of a sheet or bar of copper so as to form one thoroughly coherent mass, which was rolled to the desired gauge and subsequently worked into the desired form. The ware produced by this process was properly known as "copper-rolled plate," though this name was not used as a trade name or designation. The copper-rolled plate of Sheffield, England, acquired a very considerable reputation for excellency in quality, workmanship and design, and though the name "Sheffield" was not generally impressed upon or affixed to the ware itself, which was identified by the maker's registered marks, the copper-rolled plate came to be generally known and is still known as "Sheffield." While the cheaper electroplating process displaced the "Sheffield" copper-rolled plate which practically went out of production, there have been and still are, from time to time, importations of the "Sheffield" copper-rolled plate into the United States, and there is a considerable trade in "Sheffield" copper-rolled plate in this country at prices which reflect not only its value as silver-plated ware, but its artistic and historic value as well. The name "Sheffield" as applied to silverware at the present time, implies a quality and a value peculiar to the "Sheffield" copper-rolled plate itself as well as to the process itself, and the use of the term "Sheffield" is a representation thereof.

PAR. 4. In the course and conduct of its said business, respondent, for more than 1 year last past, has been using as its corporate name, "Sheffield Silver Company, Inc.," and has caused said corporate name, containing the word "Sheffield," to be featured on its letter-heads and invoices distributed in interstate commerce and on its labels affixed to the cartons in which said products were packed and shipped in interstate commerce; and it has furnished to its salesmen for presentation to prospective customers in their sales talk, photographs of its silver-plated hollow ware featuring its corporate name; when, in truth and in fact said products sold by the respondent were not made or manufactured in accordance with the process used in the manufacture of Sheffield silver or Sheffield plate, nor are said products made or manufactured in Sheffield, England, in accordance with such process.

PAR. 5. The said representations made by the respondent in the use of the word "Sheffield" in its corporate name "Sheffield Silver

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Company, Inc.," as set forth in paragraph 4 hereof, have, and have had, the capacity and tendency to deceive the purchasing public and induce purchasers to buy the products of respondent on account of the belief that said representations are true and that the respondent's product is "Sheffield," thus diverting trade to respondent from competitors of respondent engaged in the sale in interstate commerce of such products as are sold and distributed by respondent, which said competitors truthfully and honestly advertise and represent their products.

PAR. 6. The above acts and things done by the respondent as aforesaid, have tended to induce, and have induced, the purchase of respondent's products by various retail dealers of silver-plated hollow ware and have tended to divert trade, and have diverted trade, from competitors of respondent, and have thereby injured such competitors of respondent.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of the respondent's competitors, as hereinabove alleged. Such methods, acts, and practices constitute an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 21st day of November 1935, issued, and on December 27, 1935, served its complaint in this proceeding upon respondent, Sheffield Silver Company, Inc., charging it with the use of unfair methods of competition 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 Alden S. Bradley, attorney for the Commission, and in opposition thereto by J. Leo Rothschild and Walter S. Beck, attorneys for the respondent, before William C. Reeves, an Examiner of the Commission theretofore duly designated by it. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs, and oral arguments by counsel aforesaid, in support of the

complaint and in opposition thereto, and the Commission having duly considered the 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. Respondent, Sheffield Silver Company, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of Jersey City, N. J., and is now, and for more than 2 years last past has been, engaged in manufacturing silver-plated hollow ware, and in the sale and distribution thereof to retail jewelry dealers located throughout the United States. Respondent causes said products, when sold, to be transported from its principal place of business in Jersey City, State of New Jersey, into the various States of the United States other than New Jersey, and in the District of Columbia, at the respective places of business of purchasers. There is now, and for more than 2 years last past has been, a course of trade in commerce by said respondent in such silver-plated hollow ware between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business, respondent is in competition with individuals, partnerships, and corporations engaged in the manufacture of silver-plated hollow ware and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Competitors of respondent, and the respondent, use, in the manufacture of their products, the electroplating process, which process consists in taking a finished article, so far as its structure is concerned, and immersing it in a solution through which silver is electrolytically deposited on the base metal so that each part of the exposed surface is covered with a layer of silver. The plated silver thus produced varies in quality and value according to the composition of the base metal, the workmanship upon its form, the decoration, the amount and fineness of the silver deposited upon it, and left upon it after the finishing process.

There is no fixed standard for the composition of the base metal nor for the fineness or quantity of silver to be applied generally, so that the purchasing public, in purchasing said silverware, is obliged to depend upon the reputation of the maker of such plated silverware, or the reputation of the trade name or brand attached thereto, or the representations of the maker or seller thereof, since the quality of the silverware cannot be determined except by laboratory tests.

PAR. 3. About 200 years ago a process was developed at Sheffield, England, by which sheets of copper and silver were fused, then rolled to sheets of the desired thickness, and from these sheets various articles of hollow ware were made. Hollow ware made by this process is of high quality and has been known in the silver industry as "Sheffield." The word "Sheffield," when applied to silver-plated ware, has a sales value. The Sheffield process is not now generally employed in the manufacture of hollow ware, but existing pieces of ware made by that process carry a high sales value. The name "Sheffield" has thus become identified in the public mind with a high quality of silverware manufactured by the Sheffield process.

PAR. 4. In the course and conduct of its said business, respondent, for more than 2 years last past, has been using as its corporate name Sheffield Silver Company, Inc., and has caused said corporate name containing the word "Sheffield" to be featured on its letterheads, and invoices distributed in interstate commerce and on its labels affixed to the cartons in which said products are packed and shipped in commerce as herein described, and has furnished its salesmen, for presentation to prospective customers in their sales talks, photographs of its silver-plated hollow ware featuring its corporate name. In truth and in fact, said products sold by the respondent were not made or manufactured in accordance with the process used in the manufacture of Sheffield silver or Sheffield plate, nor are said products made or manufactured in Sheffield, England, in accordance with said process.

As a result of the use of the word "Sheffield" in the manner herein described, in connection with the sale, advertising, and distribution of silver-plated hollow ware products of the Sheffield Silver Company, Inc., a retailer of Atlanta, Ga., advertised respondent's products in the Atlanta Journal, a newspaper having an interstate circulation, as "Sheffield Silverware by Sheffield Company."

PAR. 5. The acts and practices of the respondent in using the word "Sheffield" as part of its corporate name and otherwise, as herein described, in connection with the sale and distribution of silver-plated hollow ware in commerce, as herein set out, have had and have the tendency and capacity to confuse and deceive the purchasing public with regard to the true nature and quality of its products, and to induce purchasers to buy such products on account of the mistaken belief that respondent's products are made by the Sheffield process herein described. Trade is thereby unfairly diverted to respondent from competitors engaged in the sale in interstate commerce of products similar to those sold and distributed by respondent, which said competitors truthfully and honestly advertise and represent their products.

Further, the acts and practices of respondent, as herein detailed, serve to place in the hands of unscrupulous or uninformed retail

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dealers a means and instrumentality whereby said dealers may mislead members of the purchasing public into the erroneous belief that said silver-plated hollow ware products manufactured by the Sheffield Silver Company, Inc., are manufactured in accordance with the Sheffield process hereinbefore described.

CONCLUSION

The aforesaid practices of said respondent, Sheffield Silver Company, Inc., under the conditions and circumstances hereinbefore set forth, are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce in violation 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 answer of respondent, testimony and other evidence taken before William C. Reeves, 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 made by Alden S. Bradley, counsel for the Commission, and J. Leo Rothschild, counsel for the respondent, and the Commission having made its findings as to the facts and 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, Sheffield Silver Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of its silver plated hollow ware, produced by electroplating, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Using the word "Sheffield" in its corporate name or in any other manner, so as to represent or imply that said electroplated hollow ware products are "Sheffield" or are made by the Sheffield process.

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

WILLARD F. MAIN, DOING BUSINESS UNDER THE TRADE
NAME AND STYLE OF W. F. MAIN COMPANY, THE
MACHEN COMPANY, ETC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2892. Complaint, Aug. 8, 1936—Decision, Feb. 14, 1938*

Where an individual engaged in distribution and sale of coin operated vending machines and candy, confectionery, peanuts, and other commodities usually sold or vended through such machines; in selling his aforesaid machines through salesmen instructed by him in, and supplied with, examples of high-pressure salesmanship and with suggested forms of contact advertisements for their use in newspapers in communities in which they were canvassing—

- (a) Falsely represented, through such contact advertisements under such headings as "Help Wanted," "Male Help Wanted," "Employment," "Local Manager Wanted," "Position Open," "Manager Wanted," "County Manager Wanted," or headings of similar import and effect, in classified advertising pages of newspapers or periodicals and through such statements therein as "Manufacturer, well-rated, wants RELIABLE MAN in (name of town) TO HANDLE BUSINESS PROVEN TO BE PROFITABLE," etc., "Field Superintendent will be in ——— for a few days to select through personal interviews, a local Manager for ——— and vicinity. We want a man of integrity and average ability to look after business here. \$1,500 cash investment required. Investment protected. We are a national organization rated up to half million dollars. References required," etc., and others of similar tenor, that it had such positions or jobs at its disposal and was offering employment to persons who answered said advertisements;
- (b) Represented through his said agents, to prospective purchasers or "operators" of his said machines, thus contacted, that prospect's investment was fully protected and that cash return of 120 percent was guaranteed thereon and that if machines operating over a period of time varying from 18 months downward did not make such return, said individual would repurchase same at full purchase price, plus 6 percent interest, and less specified deductions, and that such undertaking was fully protected by guarantee bond and by his credit rating (operating under any one of various trade names employed by him) by Dun & Bradstreet, in claimed amounts ranging from \$300,000 to \$500,000;

Facts being contract employed by him in dealing with operators thus secured embodied large number of conditions precedent to such undertaking, or pretended undertaking, and it was his practice in case of operators failing to realize 120 percent on their investment and, after seeking diligently to comply with numerous terms and conditions imposed as aforesaid, to take advantage of such supposed repurchase agreement, to keep putting off such operators and finally refuse outright to repurchase machines in question, so that many of them, lacking funds, were unable successfully to prosecute suits instituted or were forced to settle for trivial amounts;