

IN THE MATTER OF
NATIONAL SILVER COMPANY

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

Docket 2111. Complaint, Sept. 29, 1933¹—Decision, July 29, 1938

Where a corporation, engaged in sale and distribution of knives and other cutlery and tableware to jobbers, wholesale and retail dealers in cutlery, chain stores, hardware stores, department stores, and house-furnishing stores, with branch sales offices in Chicago and Los Angeles; in competition with others who made and sold similar products and used word "stainless" only as a mark, brand, or stamp for, or in advertising such products made of the chrome-iron alloy, stainless steel, and truthfully used words or terms "chromium plate" or "chromium plated" to indicate a carbon steel product plated with chromium, and did not employ such word as "stainpruf" as a stamp, brand, or mark for, or in advertising such chromium-plated articles that were not in fact stainproof and corrosion resistant;

(a) Stamped its aforesaid products, regardless of whether made from carbon steel or chromium-alloyed steel, with word "stainless," in utter disregard of well established trade custom among cutlery manufacturers, silversmiths and trade generally, of using said word to designate cutlery made from chromium-alloyed steel, and failed to inform purchasers as to whether or not its said products were chromium plated, or were in fact made of the said more costly solid stainless steel, as long understood by trade and ultimate purchasers from word "stainless," as meaning, as applied to knives, cutlery, and tableware, said high-grade type of chromium steel alloy, with its high degree of resistance to oxidation and corrosion against most media, and as used by manufacturers and distributors in their catalogs and advertising materials to designate only those products made of stainless steel, as aforesaid;

With result that purchasers, in view of the almost identically similar appearance of the two kinds of products, purchased its chromium-plated knives and other flat tableware of inferior quality as and for products, metallic parts of which were made of solid alloyed or stainless steel, and were not the cheaper carbon steel articles, with utterly thin and inadequate chromium plating, and notorious amenability to corrosive influence and quality of rusting rapidly in presence of water, dampness, acids or similar agents; and

(b) Sold and distributed carbon steel, chromium-plated knives, marked "stainpruf," made of carbon steel, plated as above set forth, notwithstanding fact that said products were extremely susceptible to corrosion, and were not in fact stainless in any sense, and were further subject to corrosion by reason of tendency of plating to break through sharpening or other abrasive action, etc., and in its advertising of its said "Stainpruf" products as guaranteed against staining by acids contained in vegetables, fruits,

¹ Amended and supplemental.

and meats, and against discoloration in ordinary use, warned against use of scouring materials to polish the blades;

With effect of deceiving wholesalers, jobbers, retailers, and ultimate purchasers into buying said cheap and inferior chromium-plated, carbon steel knives, cutlery, and tableware marked "Stainless" and "Stainpruf" as and for products made of genuine stainless steel, and of placing, as a result of its said advertising and misbranding, in the hands of its wholesale and retail dealers the means of deceiving ultimate purchasers, and with capacity and tendency to divert to it trade of competitors engaged in selling in commerce products of the same kind and nature, which they truthfully advertise:

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. Marshall Morgan for the Commission.

Brill, Bergenfeld & Brill, of New York City, for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit, on August 7, 1933, issue its complaint herein charging and alleging that the respondent corporation is, and has been, guilty of unfair methods of competition 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;

And, whereas, This Commission, since the issuance of said complaint, has been advised that the respondent therein is, and has been, using unfair methods of competition in interstate commerce other than, and in addition to, those in relation to which the Commission issued its complaint aforesaid on August 7, 1933, in violation of the provisions of section 5 of said act;

Now, therefore, Acting in the public interest, pursuant to the provisions of the Act of September 26, 1914, aforesaid, the Federal Trade Commission charges that National Silver Company, a corporation, has been and now is using unfair methods of competition in interstate commerce in violation of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation, organized and existing under the laws of the State of New York with its principal place of business located at 61-65 West Twenty-third Street, in the city of New York, State of New York, and for several years last past has been engaged in the business of selling and distributing to jobbers, wholesale and retail dealers in cutlery, chain stores, hardware stores, department stores and house furnishing stores, knives, other cutlery

and tableware. Said respondent causes said knives, cutlery, and tableware when sold by it, to be transported from its principal place of business in the State of New York into and through the various other States of the United States to the purchasers thereof.

In the course and conduct of its aforesaid business, the respondent is and for several years has been, in direct and substantial competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of knives, cutlery, and tableware, both like and similar to those sold by respondent.

PAR. 2. Through long usage the terms "stainless steel" and "stainless," when used in association with knives and other cutlery, have become and are known in the trade and by the general public to designate cutlery composed of an alloy of steel containing not more than 0.70 percent of carbon and from 9 percent to 16 percent of chromium. Certain grades of knives and other cutlery sold and distributed by respondent, as aforesaid, are manufactured in simulation of "stainless steel" knives and cutlery, when in truth and in fact, they are not composed of such an alloy of steel, and are not "stainless steel" as known to and understood by the trade and the general public.

In the course and conduct of its aforesaid business, respondent solicits its business by advertising in catalogs and price lists widely distributed among customers and prospective customers, in which catalogs and price lists the aforesaid certain grades of its product are by respondent described as "stainless" and by stamping on the blades thereof, respondent describes and designates such knives and cutlery as "stainless." Respondent thereby has falsely represented and does falsely represent to prospective purchaser those certain grades of its products to be such products as are known by the trade and general public as "stainless steel," when in truth and in fact, such grades of cutlery by respondent so described and branded are made from carbon steel plated with chromium, and so prepared as to imitate genuine "stainless steel."

PAR. 3. Among the grades of knives and other cutlery advertised and described in its catalogue, and sold and distributed by the respondent in interstate commerce, as aforesaid, is a carving knife bearing the trade name "Naseo" and stamped "stainpruf." Said knife is made from carbon steel and is merely chromium plated. The term "stainpruf" stamped on said knife is and was employed by respondent to be the equivalent in meaning of the term "stainpruf" in its common, general acceptance, and was, and is, intended by respondent to, and does, create the impression upon the trade and the general public, and causes the trade and general public to believe, that said carving knife

is so made, and is of such quality, as that it resists rust stain and corrosion. Such is not the fact with respect to said knife, it being neither rust nor stain proof on its surfaces, its cutting edge, nor otherwise.

PAR. 4. Among other grades of knives and cutlery advertised and described in its catalogue, and sold and distributed by respondent, as aforesaid, in interstate commerce, are certain knives and forks stamped "stainless," when in truth such knives and forks are composed of carbon steel, merely chromium plated, and are not stainless *in fact*. In addition to thus falsely representing to prospective purchasers in interstate commerce that those certain grades of its products are such products as are known by the trade and general public as "stainless steel" when in truth such was not the fact and said knives and forks were so prepared as to merely imitate genuine "stainless steel," the said knives and forks, as now charged and alleged, are not stainless or rust proof in fact, but on the contrary will and do rust and stain when brought in contact with agencies which do not stain, rust, or blemish a stainless steel made from an alloy of steel containing not more than 0.7 percent of carbon and from 9 percent to 16 percent of chromium. Said knives and forks, apart from any consideration of the technical or trade acceptance or meaning of the word "stainless" as applied to a manufacturing process for steel, are not stainless in fact, using the term "stainless" as a mere common dictionary word.

PAR. 5. Under the foregoing facts and circumstances, both the designation and branding by respondent of certain of its products as "stainless" as set out in paragraphs 2 and 4 above, and the branding by respondent of certain of its products as "stainpruf," as set out in paragraph 3 above, including the advertising, description, and price lists of such products in respondent's catalogs, are false and misleading and have the capacity and tendency to deceive, and do deceive, wholesalers, jobbers, retailers, and the ultimate purchasers into buying that which they did not intend to buy, and through its price lists, catalogs, and misbranding, as aforesaid, respondent has placed and is placing in the hands of its wholesaler and retailer in interstate commerce, the means of deceiving the ultimate purchasers. The aforesaid practices have had 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, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Con-

gress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 7, 1933, issued and served its original complaint in this proceeding on respondent, National Silver Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act, and on September 29, 1933, issued and served its amended and supplemental complaint charging said respondent with the use of unfair methods of competition in commerce other than, and in addition to, those in relation to which the Commission issued its original complaint as aforesaid. After the issuance of said complaints, and the filing of respondent's respective answers thereto, testimony and other evidence in support of the allegations of the complaints were introduced by Marshall Morgan, attorney for the Commission, and in opposition to the allegations of the complaints by Abraham Brill, attorney for the respondent, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and 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 complaints, the answers thereto, testimony, and other evidence, briefs in support of the complaints and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same and being fully advised in the premises, and finding that the proceeding was in the interest of the public, on February 17, 1937, made and issued its findings as to the facts and conclusion based thereon and issued its order to cease and desist from the practices charged. Subsequently respondent filed a motion to modify and amend the findings as to the facts and order to cease and desist, and the Commission having duly considered said motion and the record herein, makes this its modified findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation, organized and existing under the laws of the State of New York, with its principal place of business located at 61-65 West Twenty-third Street, in the city of New York. Respondent, for several years last past, has been in the business of selling and distributing knives and other cutlery and tableware to jobbers, wholesale and retail dealers in cutlery,

chain stores, hardware stores, department stores, and house-furnishing stores. Respondent causes said knives, cutlery, and tableware, when sold by it, to be transported from its principal place of business in the State of New York to the purchasers thereof located in States of the United States other than the State of New York, and into the District of Columbia.

In the course and conduct of its aforesaid business, the respondent is, and for several years last past has been, in direct and substantial competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of knives, cutlery, and tableware. Respondent employs a number of salesmen, directed by a sales manager. It maintains branch sales offices in the city of Chicago, directed by its New York office, and a branch office in Los Angeles, Calif., carrying its own stock.

PAR. 2. Stainless steel, as used in the manufacture of cutlery, is an alloy produced from iron, chromium and carbon, and sometimes contains other minor alloying elements. The metal or alloy so produced has through long commercial usage become known to and designated by steel and cutlery manufacturers, the cutlery trade, retailers, and the purchasing and consuming public by the term "stainless." This term as applied to steel indicates a very specific type of chromium-steel alloy which has the quality of resisting oxidation and corrosion against most media. To a markedly greater degree than is true of carbon steel, chromium-steel resists alkaline materials, fruit acids, nitric acids, dampness and water, salt air and salt water, and weather conditions, including rain and snow. It is a much more expensive product to manufacture than carbon steel, and is comparable to carbon steel at normal temperatures and markedly superior to it at elevated ranges.

Stainless steel possesses great tensile strength, and takes and retains a higher polish than carbon steel, which carbon steel does not retain because it is far less resistant to oxidation and scaling. Stainless steel is from 50 percent to 400 percent stronger than ordinary steel; can be rolled, drawn, stamped, forged, pressed, machined, cast, spun, punched, braced, soldered, welded, ground, and polished. It is furnished in plates, shapes, sheets, bars, rods, flats, strips, tubing, wire, forging, blanks, billets, ingots, castings, etc. It has the inherent and combined characteristics of tremendous strength, resistance to corrosion, to high temperature, to erosion and to abrasion, and has the ability to take and permanently retain a highly polished surface. Stainless steel is either wholly or substantially immune to the action of nearly a hundred corrosive agents. The discovery of stainless steel has been one of the major outstanding developments in metallurgy in the last 20 years.

PAR. 3. The first popular development of stainless steel was in the cutlery field. Harry Brearley, an Englishman, was granted a United States patent on September 5, 1916. In his application, Brearley stated that his invention related to new and useful improvements in cutlery or other hardened and polished articles of manufacture where nonstaining objects were desired, and that it had for its object a tempered steel cutlery blade or other hardened article having a polished surface and composed of an alloy practically untarnishable, when hardened, or when hardened and tempered. "This alloy," he stated, "is malleable, and can be formed, rolled, hardened, tempered, and polished under ordinary commercial conditions." Brearley further stated that his invention resulted from the discovery that the addition of certain percentages of chromium and carbon to iron will produce a steel capable of taking a polish and of having the above specified characteristics.

The American Stainless Steel Co. was organized in 1918 in Pittsburgh, Pa., for the purpose of holding and exploiting various patents covering stainless steel. Among the patents so acquired was the Brearley patent of 1916, and the Haynes and Cox patents, and others, the Brearley cutlery patent antedating all other such patents. Said American Stainless Steel Co. entered upon a campaign, national in scope, to advertise and develop the use of stainless steel. This company has expended more than \$500,000 in such advertising, has entered into numerous agreements licensing others to manufacture this product, and has enumerated many articles for the manufacture of which it has recommended that its "stainless" or "stainless steel" be used. Included among these were such products as trimming and mechanical parts for automobiles, bumpers, hub caps, knives, forks, and scissors. Advertisements of this product were carried in periodicals of national circulation as far back as 1919, and continued for a period of 15 years. Thousands of pamphlets were also distributed during this period, explanatory of stainless steel, its characteristics and its uses. In all of said advertisements the American Stainless Steel Co. used the word "stainless" in a noun sense to indicate and denote the product which it also designated as "The Metal of Endless Possibilities."

As a result of the continuous advertising of this product over a period of 15 years, both the manufacturing and the purchasing and using public came to recognize and still recognizes stainless steel or "stainless" as a high-grade type of chromium-steel alloy, possessing to a high degree the quality of resisting oxidation and corrosion against most media. The manufacturing and the using public for a number of years have been led to expect, and now do

expect, when they purchase knives, cutlery, and tableware marked "stainless," to receive articles, the cutting portions of which are manufactured from said chromium-steel alloy, and which possess the characteristics above enumerated.

PAR. 4. The manufacturers of cutlery, including table cutlery and flatware, and silversmiths, as a trade practice and custom, use the word "stainless" to designate knife blades, forks, and kindred articles made by them from the chromium-steel alloy, stainless steel. It is the practice of manufacturers of stainless steel cutlery and flatware to stamp the word "stainless" upon the blade of said ware, and to superimpose on that the name of the manufacturer. Many silversmiths and manufacturers of cutlery, in pursuance of such trade custom, mark and stamp stainless steel cutlery, particularly the knife blades of the same, as indicated below:

Towle Stainless.

Goodell Stainless.

Clyde Cutlery Company—Stainless.

Community Stainless.

I. N. S. & Company Stainless.

Russell Stainless.

Stainless, under which are the words Universal Resistain.

D. Harrington & Co. Stainless.

Ontario Stainless.

The word "stainless" thus stamped by manufacturers and distributors upon their cutlery and other tableware has through long and continuous usage come to signify both to the manufacturer, to the distributor, to the retailer, and to the ultimate purchaser and user, that such cutlery is produced from stainless steel, that is, from chromium-steel alloy.

Catalogs and other advertising material of cutlery manufacturers and distributors employ the word "stainless" to designate these products only which are made of stainless steel.

A stainless steel knife ground in daily use will not stain or tarnish as a result of grinding or sharpening; it remains stainless under such grinding so long as a piece of it is left, and the corrosion resisting qualities of said knife suffer no deterioration from nicking or scratching or bending. Such a stainless steel knife made fifteen years ago is now as serviceable in the kitchen as though it were made today.

PAR. 5. In addition to the stainless steel cutlery manufactured as hereinabove described and possessing the characteristics specified, knives, cutlery and tableware are also manufactured with knife blades of carbon steel, either plain or chromium-plated. A carbon steel knife blade is one made of the ordinary unalloyed steel, containing no chromium as an alloy and being readily susceptible to rust,

stain, and corrosion. A chromium plated knife blade is manufactured of carbon steel upon which has been deposited a thin coating of chromium, or of nickel and chromium. The chromium plated carbon steel cutlery is not stainless or corrosion resistant.

A stainless steel knife costing from 25 cents to 30 cents can be duplicated, as to appearance, by a chromium plated carbon steel knife costing approximately 6 cents. A 30-piece set of chromium plated flatware can be bought from a well-known mail order house for 98 cents, while a 1-dozen piece set of stainless steel flatware of similar appearance can be bought from the same mail order house at from \$1.18 to \$7.90 per set.

A carbon steel knife blade, a stainless steel knife blade, and a chromium plated knife blade are made and finished by cutlery manufacturers so as to look exactly alike to the eye. In fact, the three types, given a similar finish, are so much alike that cutlery experts, including manufacturers of cutlery, are not able to tell them apart. Numerous tests have shown this to be the fact. The only way in which any purchaser can distinguish a chromium-plated carbon steel knife from a stainless steel knife is by the word "stainless" stamped upon the blade of the knife. When the word "Stainless" is stamped upon a chromium plated knife, the purchaser expects to receive and believes he is receiving a knife made from stainless steel.

PAR. 6. Respondent herein, the National Silver Co., distributes and sells knives, cutlery, and tableware made of the chromium-steel alloy, stainless steel, and similar articles made of carbon steel, chromium-plated, stamping such products, regardless of whether they are made from carbon steel or chromium alloyed steel, with the word "stainless." The respondent has also sold and distributed a carbon steel chromium-plated knife marked "Stainpruf." Respondent's salesmen do not inform the purchasers of its products whether the said products are made of solid metal, that is, stainless steel, or whether they are chromium-plated. Said purchasers, in view of the almost identically similar appearance of the two products, are unable to detect the difference, and have purchased and do purchase chromium-plated knives and other flat tableware of inferior quality in the belief that the metallic parts of said products are composed of solid alloyed or stainless steel. Department and other stores identified in the record as having sold chromium-plated cutlery stamped "stainless" obtained such goods from the respondent. The salesmen of respondent had no knowledge of any other firm, person or manufacturer save the respondent itself, which marked or stamped chromium-plated cutlery with the word "stainless." Respondent did not produce a single chromium-plated knife or fork, stamped "stain-

less," that had been so stamped by anyone other than the respondent. It did not present, as a witness, a single cutlery manufacturer or silversmith in the United States who brands or stamps, or has stamped, a chromium-plated knife or fork with the word "stainless." Respondent did not produce a single catalog put out by any manufacturer or jobber or department store in the United States in which chromium-plated knives or forks are advertised and branded with the word "stainless." Respondent alone has followed the practice of stamping or branding chromium-plated knives and forks with the word "stainless" in utter disregard of the well established trade custom in this country among cutlery manufacturers, silversmiths, and the trade generally of using the word "stainless" to designate steel cutlery made from chromium-alloyed steel.

The chromium-plated cutlery distributed and sold by the respondent is made from a base of carbon steel electrically plated with nickel and chromium. Carbon steel is notoriously subject to corrosive influences, and rusts or oxidizes rapidly in the presence of water, dampness, acids or similar agents. Said chromium-plated cutlery is characterized by the element of porosity; that is to say, the underlying base metal becomes exposed to the atmosphere because the plating is porous.

Chromium is the most porous plating known, and is of negligible value when used alone to protect the underlying base of carbon steel against corrosion. For corrosion protection the common practice is first to apply to the underlying metal a very heavy layer of nickel. The degree of protection afforded depends upon the thickness of the nickel plating applied; the thicker the nickel, the more protection afforded.

The specifications for plating on carbon steel approved by the United States Bureau of Standards call for a minimum of 0.0005 of an inch of nickel for good protection under mild conditions and at least 0.001 of an inch of nickel for severe conditions. The Bureau's conclusions based upon a summary of exposure tests is that chromium coatings from 0.00002 of an inch to 0.00003 of an inch add very little to the protective value of said coatings but maintain their bright appearance owing to their resistance to tarnish; and that relatively thick chromium coatings, from 0.00005 of an inch to 0.0001 of an inch improve the protection against corrosion, especially in an industrial atmosphere.

The plating expert of the United States Bureau of Standards testified in this proceeding that "any coating of chromium less than one hundred-thousandth of an inch, over any coating of nickel less

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than one ten-thousandth of an inch, will furnish very little protection as coating of steel if the steel is subjected to any corrosive influences"; that a thickness of nickel less than one ten-thousandth of an inch "is insufficient to furnish protection against corrosion regardless of what may be the thickness of the chromium that you put over it."

Requirements for the plating of carbon steel to be used, among other things, for cutlery, specified by other plating experts not connected with the United States Government are that the nickel plating be not less than 0.0002 of an inch, preferably 0.0005 of an inch, and that the chromium plating shall be from 0.00002 to 0.00003 of an inch.

The chromium plating on the cutlery and other tableware products distributed and sold by respondent is utterly thin and inadequate. Various specimens of respondent's chromium-plated cutlery were tested at the United States Bureau of Standards to ascertain the thickness of the plating thereon. These tests revealed plating of nickel of thicknesses ranging from 0.00006 to 0.00008 of an inch, and plating of chromium ranging from 0.000007 to 0.000009 of an inch. No underlying copper at all was found underneath that plating.

These thicknesses, as used by the respondent, in the opinion of well-known plating experts, were entirely inadequate to furnish satisfactory protection. They were merely just "a flash," "a quick job," just "smell plating," requiring only a 5-minute period for the plating, a relatively cheap operation; thin plating as plating goes, and distinctly poor for protective purposes. The plated object would be almost as much subject to corrosion as if these weak deposits had not been put on at all. Cutlery plating affording the best protection would be commercially impracticable owing to the cost of and time required for the plating operation—2¾ hours in all. This would constitute very expensive plating. For a knife blade this time would make this cost of the operation almost prohibitive from a commercial standpoint.

Tests made by the Bureau of Standards show that the chromium-plated carbon steel cutlery sold by respondent as "stainless" is not stainless or corrosion resistant in fact. Portions of a chromium-plated fork of the respondent, stamped "stainless" subjected to a 24-hour salt spray test, were attacked, showing the presence of rust in various locations, both on the tines and bowl. An unmounted chromium-plated knife blade sold by respondent and stamped "Stainpruf," after having its cutting edge ground to simulate ordinary use, when placed in tap water became rusty and later, when

cleaned and placed in a salt spray for 24 hours, was severely attacked on the ground edge and along the plated surfaces as well.

Portions of another of respondent's chromium-plated forks, stamped "stainless," when subjected to a 24-hour salt spray test, showed the presence of rust, both on the bowl and on the tines, particularly at the cutting edges. One of respondent's chromium-plated knife blades stamped "Nasco Stainpruf," when subjected to the same salt spray, showed a tremendous amount of corrosion on one side, not confined to the cutting edge but on the surface as well, and the ground edges were severely rusted.

Portions of one of respondent's chromium-plated forks, stamped "stainless" on the bowl, when subjected to the salt spray test, showed rust spots all over the sample, particularly along the sheared edges.

A number of carbon steel knife blades, plated for comparative purposes with plating of the same character and thickness as that used by the respondent, namely, with from 0.00006 to 0.00008 of an inch of nickel and thereafter with from 0.000007 to 0.000009 of chromium, were subjected to various corrosion tests. These samples corroded when immersed in grapefruit juice, lemon juice, acetic acid, and in distilled water for extended periods.

Chromium-plated knives, plated with the same specifications corroded when subjected to December weather, specimens subjected to humid atmosphere arising from a 2 percent solution of vinegar corroded, and specimens similarly chromium-plated and subjected to 48 hours of salt spray corroded.

On the other hand, stainless steel blades subjected to the above-mentioned tests remained shiny and clean and bright. Stainless steel knives and forks as sold by the respondent, subjected to the salt spray test by the United States Bureau of Standards, successfully withstood such test.

PAR. 7. The respondent submitted the results of chemical tests conducted in its behalf upon certain groups of unmounted chromium-plated fork blades. The said forks so tested had been plated with a coating of chromium from 40 to 60 times as thick as that appearing on the original specimens of its cutlery furnished the Commission by the respondent, and had beneath this chromium plate undetermined thicknesses of nickel and copper. It does not appear whether said forks had been or were being sold by the respondent, nor by whom they had been plated. The fork blades so tested were reported as having successfully withstood a salt spray test, but they did not withstand certain other corrosion tests to which they were subjected. One of them, after being immersed for an extended period of time in orange juice, showed the beginning of corrosion and rust on one tine.

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Another of the said forks, similarly subjected to a 5 percent solution of acetic acid, showed two different spots at which the chromium plating had started peeling off. The blade of this fork showed rust on its shank, on the front and back sides and on one of the inside tines near the bowl, all resulting from the action of the acetic acid. Another fork blade of the same lot immersed in lemon juice for an extended period, showed evidence of corrosion of the inside of the first tine. Another of the same forks subjected to the action of orange juice, showed the beginning of rust and corrosion. Two of the fork blades, submitted respectively to the salt spray test and to distilled water, were reported as not corroding.

PAR. 8. The breaking of plating on cutlery by sharpening or other abrasive action will cause and hasten corrosion in the presence of moisture. Dissimilar metals of opposite polarity being thus brought into contact with each other, electrolytic or battery action is created, and corrosion not only results but is hastened. Nickel and chromium are negative to steel and, in a moist atmosphere, the iron goes into solution and the nickel and chromium accelerate the corrosion of the object made of iron or steel. On the other hand, there is no electrolytic action between the component parts of an alloy.

The sharpening of a chromium-plated carbon steel knife tends to wear the chromium plate away. Any abrasion on a plated knife is likely to cut through, and the carbon steel beneath will be attacked and will rust or corrode. After one grinding or sharpening the chromium plate along the ground or sharpened edge of the blade is destroyed, and the broken plating, ceasing to be stain resisting, the blade will corrode and rust.

There is a further tendency for chromium plate to flake or chip off when abraded. It is more difficult to put a satisfactory plating on a fork than on a knife, owing to the tines or prongs of a fork. When the plating on a piece of carbon steel is broken, and moisture or dampness gets to the underlying surface, the steel underneath rusts and a rust streak appears on the nickel plate.

The respondent, in advertising or representing its knife stamped "Stainpruf," after guaranteeing that the cutlery will not be stained by acids contained in vegetables, fruits or meats, and that it will not rust or discolor in ordinary use, sets forth the following cautions in its advertising directions:

To clean, it is only necessary to wash in warm water and dry with cloth. Do not use scouring materials to polish the blades.

The knife concerning which this caution was given was a chromium-plated knife.

PAR. 9. A household and department store survey as to the meaning of the term "stainless" was made by respondent in New York City and environs. A set of questions not seen by nor shown to the person interviewed was used by respondent. No person wrote his own answer or was shown how it was worded. In the first question asked, the word stainless was presented in a distinctly adjective sense. All sorts of replies were reported from these surveys, many of them contradictory and confused. Sixteen per cent of those interviewed are reported as indicating a *material* that would not rust or stain. Only one person out of five hundred reported to have been interviewed made any reference to chromium plate. A number of cutlery salesmen from New York department stores offered by respondent in the capacity of experts or opinion witnesses knew comparatively little of the manufacture or manufacturers of cutlery or of cutlery markings and the significance thereof.

PAR. 10. There are among the competitors of respondent, corporations, firms, partnerships, and individuals who manufacture knives, cutlery, and table flatware similar to that sold by the respondent. Such competitors of respondent use the word "stainless" only as a mark, brand, or stamp for, or in advertising knives, cutlery, and table flatware made of the chrome-iron alloy, stainless steel, and they likewise truthfully use the words or terms "chromium plate" or "chromium plated" to indicate a carbon steel product plated with chromium, and they do not employ such word as "stainpruf" as a stamp, brand, or mark for, or in advertising chromium-plated knives, cutlery, and table flatware that are not in fact stainproof and corrosion resistant.

PAR. 11. The representations of respondent as hereinbefore set forth in falsely stamping, branding, marking, describing, designating, and advertising cheap and inferior products, to wit, chromium-plated carbon steel knives, cutlery, and tableware with the word "stainless" thereby falsely representing such products to be made of the alloy stainless steel, and the further stamping, branding, marking, describing, and advertising of certain of its chromium-plated carbon steel knives and flatware cutlery as "stainpruf," are false and misleading and have the capacity and tendency to deceive, and do deceive, wholesalers, jobbers, retailers, and the ultimate purchasers into buying chromium-plated carbon steel products as and for those made of genuine stainless steel, and through its advertising material and misbranding, as aforesaid, respondent has placed and is placing in the hands of its wholesaler and retailer in interstate commerce, the means of deceiving the ultimate purchasers. The aforesaid practices have

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had 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, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The aforesaid acts and practices of the respondent, National Silver Co., 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 the Federal Trade Commission Act.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the motion of Brill, Bergenfeld & Brill, counsel for the respondent, to modify and amend paragraph 2 of the findings as to the facts and paragraphs 1 and 2 of the order to cease and desist as issued in this proceeding on February 17, 1937, and the Commission having considered said motion and the record herein, and being now fully advised in the premises:

It is ordered, That the motion to modify and amend paragraph 2 of the findings as to the facts and paragraph 2 of the order to cease and desist issued herein on February 17, 1937, be, and the same hereby is granted as prayed;

It is further ordered, That the motion to amend paragraph 1 of said order be, and the same hereby is, denied, but that paragraph 1 of said order be, and the same hereby is, amended to read as hereinafter set forth;

It is further ordered, That the order to cease and desist issued herein on February 17, 1937, be, and the same hereby is, modified so as to read as follows:

This proceeding having been heard by the Federal Trade Commission upon the original and amended and supplemental complaints of the Commission, the answers of respondent thereto, testimony and other evidence in support of the allegations of said complaints and in opposition thereto, taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, briefs filed herein, and oral arguments by Marshall Morgan, counsel for the Commission, and by Abraham Brill, counsel for the respondent, and the Commission having made its findings as to the facts and its con-

clusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered. That the respondent National Silver Co., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of knives, cutlery, and tableware in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the word "Stainless" as a trade name, brand, stamp, label, or part thereof, or in any other way, upon or to designate or describe knives and flatware cutlery, or to advertise or represent the same, unless such knives and flatware cutlery are made from an alloy commonly known in the trade as stainless steel, produced from iron, chromium, and carbon or other alloying elements, said alloy having the ability to resist corrosion, high temperatures, erosion, and abrasion; and being either wholly or substantially immune to the action of most corrosive agents, including alkaline materials, fruit acids, nitric acids, dampness and water, salt air and salt water, and having the further ability to withstand exposure to the weather, including rain or snow, without corroding; and when hardened, or hardened and tempered, ground and polished, being practically untarnishable to the action of the before-mentioned corrosive agents.

2. Marking, branding, stamping, designating, or advertising carbon steel chromium-plated knives and flatware cutlery with the word "Stainproof," or with a similar word or words indicating that such products are, in fact, stainproof.

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

H. R. ZIMMER

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

Docket 2862. Complaint, June 30, 1936—Decision, July 29, 1938

Where an individual engaged in manufacture and sale of a metal holder alleged to contain pure refined radium which holder, according to said individual's instructions and directions, placed in a receptacle containing drinking water, would produce an emanation of radon gas and render the water in question radio active—

- (a) Represented, in pamphlets, leaflets, and other printed matter containing statements relative to the remedial and therapeutic qualities and values of his said product, by doctors, laymen, and himself, that said product had curative, remedial, or therapeutic value, or was beneficial in the treatment of anemia, stiff joints, high blood pressure, bronchitis, neuritis, rheumatism, and a large number of other ailments, conditions, and afflictions specified, through such statements, among many others, as "Yes, it seems to be a cure-all!" "Are you afflicted with any illness such as anemia, asthma," etc. (specifying various ailments, etc.), "Would you like to get rid of them? The answer is 'yes!'," facts being said product would not relieve or cure any of the many ailments or diseases, and had no remedial, curative, or therapeutic value whatever in the treatment thereof; and
- (b) Represented that said product would improve health, prolong life, and destroy all injurious bacteria in water, through such statements, among numerous others, "Do you want to live 15 to 20 years longer? Do you want to have vigorous, robust health? * * * Would you like to have your glands function properly, thereby insuring you the full amount of pep and energy that a person of your age should have? Do you want to feel as young at 45 as you did at 25?" etc., facts being said product would not prevent contraction of diseases, prolong life, or improve health, or destroy injurious bacteria in water;

With effect of misleading and deceiving substantial portion of purchasing public into false belief that such statements and representations were true, and with result that a number of members of said public, in such belief, purchased substantial quantities of said product thus advertised and sold, and trade was unfairly diverted to him from competitors, including those engaged in sale and distribution of various devices, drugs, etc., represented as effective remedies or cures for diseases involved, but who do not falsely represent the curative, remedial, or therapeutic values of their said products; to the substantial injury of said competitors and the purchasing public in the various States:

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

Before *Mr. Charles P. Vicini*, *Mr. John W. Addison*, and *Mr. Robert S. Hall*, trial examiners.