

IN THE MATTER OF
NATIONAL SILVER COMPANY, SAMUEL E. BERNSTEIN,
PHILIP J. BERNSTEIN, MORTON BERNSTEIN, MILTON
BERNSTEIN, BERNARD BERNSTEIN, HARRY S. BERK,
AND STELLA BERK

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

Docket 3162. Complaint, Apr. 19, 1938¹—Decision, July 29, 1938²

Where a corporation, engaged in the offer and sale of silver-plated flatware, controlled and directed, as respects said part of its business and the matters and things hereinbelow set forth, by an individual who was its vice president and sales manager and in charge of its silver-plated flatware department, and in its aforesaid business selling and distributing such silver-plated ware to dealers and users, including retail department stores, jewelry stores, and other purchasers, and making use of a large number of different patterns and brands, including, as typical, its "King Edward," "Devotion," "Condor," "Caroline," and "Josephine"; in promoting the sale of and selling its aforesaid patterns, both in those wares sold by it in sets of various sizes and in the case of those sold by the individual piece, i. e., its "open stock"—

- (a) Distributed to retail dealers and to the purchasing public price lists, which designated retail prices for its silver-plated wares which were greatly in excess of their reasonable or normal retail values or prices, and of any expected or anticipated retail prices therefor, and greatly in excess of those at which its said products were regularly and actually sold at retail, and published and distributed among its retail customers, as a part of its plan to induce purchase of its said wares on the part of the purchasing and consuming public in the belief that such normal retail prices were greatly in excess of those at which such articles were then being offered to the public at retail, circulars describing its "half-price sales plan," in which it invited the cooperation of its said customers and under which its aforesaid price lists were continued, notwithstanding a very great discount therefrom to its said dealers amounting to 60 percent plus 40 percent in the case of one of such wares and 50 percent plus 40 percent in the case of other wares, and whereby the said retail dealers were enabled to offer and feature the so-called "half-price sales" at a profit;

With the result that by reason of such discount and the continuation thereof, a normal and usual retail price for its said wares was established, at which price they were being ordinarily sold, namely, that alleged to be half-price, and aforesaid list prices, continued without change by it, did not represent its customary retail sales prices, or the actual or normal price at which said ware was being sold, or was intended to be sold, to the purchasing and consuming public, as stated in such advertising and price lists, and with effect of misleading purchasing public as to usual and actual retail prices thereof, and with further effect of misleading

¹ Amended and supplemental.

² Order published as modified Nov. 3, 1938.

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substantial portion of purchasing and consuming public as to the regular, current prices of its silverware by placing in the hands of dealers means of enabling them to sell same to consuming public upon representations to effect that said retail dealer prices were "reduced" prices as compared with those shown in its price lists, or were less than retail prices at which its said products were currently sold;

- (b) Advertised and represented its "Josephine" and "Caroline" patterns as being "heavily plated," and its "Devotion" or "Condor" pattern as being triple-plated, facts being that, in accordance with standards recognized for a great many years in the silverware industry, term "heavily plated" could not properly be applied, as recognized in the industry, to any silver-plated flatware below AI, which is understood in the industry to be not of as high quality and standard as "heavily plated," and said "Josephine" and "Caroline" patterns, in accordance with such recognized standards, were not heavily plated, and representations and guarantees in connection therewith were erroneous, and its said "Devotion" pattern, described as "Silver Plated Flatware in Triple Plate Plus," could not properly be thus described;
- (c) Represented that it was one of the country's largest silverware manufacturers, facts being that, while it did make some of the products dealt in by it, it was not a manufacturer either of silverware or silver-plated ware, which was made for it by another; and
- (d) Represented on its letterheads and advertising matter that it was established in 1890, facts being it was not then established, but was organized in 1904, although business of which it was the outgrowth was founded by its president in the earlier year;

With result that a substantial number of consuming public, induced by such misleading acts, advertisements, and representations, purchased substantial volume of its said silver-plated ware, retailers were enabled to increase their own sales of its said products, thereby lessening the market for similar goods made, sold, and distributed by manufacturers and dealers of silver-plated ware who did not employ such misleading acts, etc., as set forth, and trade was diverted to it from manufacturers and dealer competitors, and substantial injury done by it to substantial competition in commerce among the various States and in the District of Columbia:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

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

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit, on June 26, 1937, 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 the Federal Trade Commission Act;

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And, whereas, This Commission, since the issuance of said complaint, has been advised that the respondent corporation, its officers and directors, are, and have 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 June 26, 1937, in violation of the provisions of section 5 of said act.

Now, therefore, Acting in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission charges that National Silver Co., a corporation, its officers and directors, have been, and now are, 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. Respondent, National Silver Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its office and principal place of business at 61 West Twenty-third Street, New York City, N. Y. The business activities, sales policies, and transactions of said respondent National Silver Co. are controlled, managed, and directed by the following officers and directors of said respondent National Silver Co.:

Officers:

Samuel E. Bernstein, Pres.

Philip J. Bernstein, Vice Pres.

Directors:

Samuel E. Bernstein.

Philip J. Bernstein.

Morton Bernstein.

Milton Bernstein.

Harry S. Berk.

Stella Berk.

The acts, practices, and transactions of said National Silver Co. are equally the acts, practices, and transactions of its officers and directors as individuals. The acts and practices of said individual respondents are to be deemed equally alleged herein as being the acts, practices, and transactions of said National Silver Co., as herein-after alleged and charged.

PAR. 2. Respondents have been and are engaged in the business of offering for sale and selling, among other things, silver-plated ware, glass-ware, pottery, and earthenware. They cause said silver-plated ware and other merchandise to be transported, when sold, from their principal place of business in the State of New York into and across the various States of the United States and the District of Columbia to the respective purchasers thereof located at various places in

States other than the State of New York and in the District of Columbia. They have maintained, at all times referred to herein, a constant current of trade and commerce in said silver-plated ware and other merchandise sold by them between and among the various States of the United States and in the District of Columbia.

Other corporations, firms, partnerships, and persons, some of whom are also manufacturers, have been and are engaged in offering for sale, selling, and transporting in commerce between and among the various States of the United States, like and competitive silver-plated ware and other merchandise, and respondents are engaged in substantial competition with such other corporations, firms, partnerships, and persons in the sale and distribution of silver-plated ware and other merchandise in commerce as herein set out.

PAR. 3. In promoting the sale of and selling their silver-plated ware and other products to the purchasing and consuming public, said respondents use a large number of different designs and brands, of which "King Edward," "Devotion," "Condor," "Caroline," and "Josephine" are typical examples.

In promoting the sale of and selling these and other brands of its merchandise, respondents publish price lists, both for that portion of its wares which it sells in sets of various sizes, and that portion sold by the individual piece, which is termed "open stock." These price lists are distributed to retail dealers and to the purchasing public and designate retail prices for respondents' wares greatly in excess of their reasonable or normal retail values or prices, and of any expected or anticipated retail prices therefor and greatly in excess of the prices at which their products are regularly and actually sold at retail. Such purported retail price lists are used and intended to be used to induce the purchase of respondents' wares on the part of the purchasing and consuming public by leading them to believe that the normal and usual retail prices at which said wares are sold are greatly in excess of the prices at which they are, in fact, then offered for sale to the public in retail stores. In furtherance of this scheme, respondents frequently print in large type across the face of these price lists wording such as: "Sale Price 50% Off List," or by other means indicate fictitious and fraudulent regular retail prices for their wares in a way calculated to mislead and deceive the purchasing public.

Respondents also cause, and have caused, advertisements to be simultaneously published over the radio and in nationally circulated magazines and newspapers, advertising their wares for sale at prices greatly in excess of their normal or usual retail values or the prices at which their wares are sold or intended to be sold to the

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consuming public by retail dealers. Prior to or concurrently with the publication of these advertisements showing a high and fictitious retail value for their wares, respondents, in some instances orally, by means of salesmen and representatives, or by mail, solicit the cooperation of retail dealers in the purchase and sale of their wares to the public at prices greatly reduced from those published in said newspapers and magazines, by means of representations, among others, such as the following:

Millions who have seen "King Edward" nationally advertised at \$50.00 will come in throngs to buy at $\frac{1}{2}$ price.

King Edward silverplate will be advertised in Fortune Magazine—Time—Liberty—House & Garden—Screen Book—Screen Play—Movie Classic—Motion Picture—Hollywood—True Confessions—Romantic Stories—Romantic Movie Stories—bringing the story home to over 20,000,000 readers! And then—at the height of all this enthusiasm—at the peak of all this interest in beautiful new King Edward pattern, by National Silver—you—come out with a sale of this very same pattern—this very same set at less than one-half price! People will come in throngs—you will enjoy the greatest silver promotion in your history—without a doubt!

Remember, this promotion begins on November 9th and ends December 14th.

You must act at once, because December 14th the promotion ends and after that the regular \$50.00 price will be maintained! Just a few weeks in which to take advantage of this spectacular promotion—one that will mean extra volume—extra profits for you in your silverware department!

Mat of newspaper ad free—window tie-ups free—

The National Silver Company not only provides the finest merchandising set-up ever offered the jeweler, but also provides the most complete promotional set up! We furnish you with a mat of the powerful, compelling newspaper ad shown on the right! We furnish you with window display tie-ups! The picture is complete—you can't miss! All we urge is that you send in your order at once for a quantity of this silver plate and watch the sales come in!

\$14.38

F. O. B.

New York.

Millions who have seen King Edward nationally advertised at \$50.00 will come in throngs to buy at $\frac{1}{2}$ price—Nationally advertised at \$50.00—99 piece set fine silverplate \$24.95.

Respondents also represent the "Caroline" pattern as follows:

96-piece set silverplate made to sell for \$40.00—tarnish-proof chest included.

By way of further promoting the sale of their wares in the manner and through the means described herein, respondents cause to be circulated among retail dealers samples of suggested advertisements together with mats and cuts therefor, for use and publication, either

in whole or in part, by said retail dealers in newspapers or circulars informing the purchasing and consuming public that respondents' said wares may be purchased at retail at a cost greatly reduced from their regular prices, such as "half-price," "60% off," "70% off," etc. Said retail dealers, by virtue of the representations and inducements offered by the said respondents, as hereinabove described, accompanied by the granting in many cases to the said retailers of disproportionate discounts, such as, "Sixty percent plus Forty percent, plus Five percent," from said alleged regular retail price lists, with additional allowances for advertising, purchase respondents' wares and publish said advertisements as suggested by said respondents, and cooperate in the retail sale of respondents' products, to the public in the manner and through the means herein set out.

In truth and in fact, the customary retail values or retail sales prices of respondents' wares as stated and represented in said advertisements, retail price lists, circulars, catalogs, cuts, mats, sample or suggested advertisements, and over the radio do not reflect and represent the true and customary sales prices of said commodities or the normal and usual prices at which the same are sold or intended to be sold to the purchasing and consuming public, but set out false and fictitious regular retail prices and are calculated to mislead and deceive, and do mislead and deceive, the purchasing public as to the true and actual retail values or usual and customary sales prices thereof and are used by the said respondents to create a false and fictitious opinion in the public mind as to the true prices or values of respondents' wares.

The purported retail price of \$40 indicated in the last advertisement above set forth is false and fictitious and does not represent the true retail price of the products described. The wholesale price of said products is at or about \$9 and the true retail price of said products is at or about \$19.95.

PAR. 4. In the course and conduct of their business, and for more than 1 year last past, the respondents herein, in soliciting the sale of and selling their silver-plated wares, in commerce as herein set out, represent in their advertisements, price lists, and trade literature, among other things that certain patterns of said silver-plated wares are triple plate, triple plate plus, or heavily plated. For example, respondents advertise the "Josephine" pattern as follows:

All flatware sold as 20-year plate is heavily plated with pure silver * * *.

In truth and in fact, respondents particular patterns of silver-plated wares so advertised are not of the standard known to the public and to the trade as triple plate, or triple plate plus, or heavily

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plated, and are not plated with the amount of silver usually and generally contained in silver-plated ware properly designated as triple plate, or triple plate plus, or heavily plated.

PAR. 5. In the course and conduct of their business, and for more than 1 year last past, the respondents herein, in soliciting the sale of and selling their silver-plated ware and other products in commerce as herein set out, represent that they are one of the country's largest silverware manufacturers and that respondent, National Silver Co., was established in 1890, through such statements as:

One of the Country's Largest Silverware Manufacturers

Established 1890

National Silver Company

In truth and in fact, the respondents, National Silver Co., is not one of the country's largest silverware manufacturers or a manufacturer of silverware, or silver-plated ware at all. Said respondent, National Silver Co., is only a dealer or jobber thereof and the said respondent, National Silver Co., a corporation, was not established in 1890 nor for a long time thereafter.

PAR. 6. There are among the competitors of respondents other corporations, firms, partnerships, and individuals, who sell silver-plated ware and other products as hereinabove described, in interstate commerce, who do not misrepresent the customary and usual value of their ware, nor advertise in magazines, newspapers, or over the radio for the purpose of establishing false and fictitious regular retail prices, or false and fictitious comparative prices, for their products, or falsely represent the kind or quality thereof; who do not represent themselves to be manufacturers of silver-plated ware when such is not the case, and who do not represent or advertise themselves as being engaged in the silver-plated ware business for a longer or greater period than is actually the case, or who do not in any other manner misrepresent the value, character, or quality of their product; the duration of their corporate existence; and the true nature and character of their business.

PAR. 7. The acts and practices of respondents in falsely representing and advertising their products in the manner hereinabove set out, are calculated to mislead and deceive and now have, and have had, the capacity, tendency, and effect of misleading and deceiving, and have misled and deceived, a substantial portion of the purchasing and consuming public into the erroneous belief that all of said representations are true and into the purchase of respondents' silver-plated ware and other products, or combinations thereof, in reliance upon said representations. The respondents have also placed in the

hands of wholesalers, jobbers, and retailers the means of making false and misleading representations, as above described, to the purchasing and consuming public, by which means all, or some of them, have increased their own sales of silver-plated ware, and other products, so dishonestly advertised and represented, thereby lessening the market for similar goods sold by other manufacturers, merchants, or dealers, the true value, grade, quality, and nature of which is honestly stated.

As a result thereof, trade is unfairly diverted to respondents from competitors engaged in the sale in commerce as herein defined of similar silver-plated ware and other products, who truthfully represent the value, nature, and quality of their respective products, the nature of their business and the duration of their corporate existence. Further, as a result thereof, substantial injury has been and is being done by respondents to the purchasing public and to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of respondents have been and are all to the prejudice of the public and respondents' competitors, as aforesaid, and have been and are unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 26, 1937, and on April 19, 1938, issued and served its original complaint and its amended and supplemental complaint, respectively, in this proceeding upon respondents, National Silver Co., a corporation, and Samuel E. Bernstein, Philip J. Bernstein, Morton Bernstein, Milton Bernstein, Bernard Bernstein, Harry S. Berk, and Stella Berk, charging them 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 respondents' answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Daniel J. Murphy, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it; the respondents did not introduce any testimony in opposition to the allegations of the complaint; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs not

having been filed, or oral argument requested; 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 National Silver Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its office and principal place of business at 621 West Twenty-third Street, New York, N. Y. The business of the respondent National Silver Co. is directed by the following officers and directors:

Officers:

Samuel E. Bernstein, Pres.

Philip J. Bernstein, Vice Pres.

Directors:

Samuel E. Bernstein.

Philip J. Bernstein.

Morton Bernstein.

Milton Bernstein.

Bernard Bernstein.

Harry S. Berk.

The evidence does not support the allegation in the complaint that Stella Berk is a director of said respondent corporation.

The sales policies and transactions of the said respondent National Silver Co., insofar as its silver-plated ware is concerned, by virtue of a resolution of the board of directors of the said National Silver Co., are controlled, managed, and directed by its vice president, respondent Philip J. Bernstein, who at the same time is the sales manager of the company and in charge of the silver-plated flatware department.

PAR. 2. Respondent corporation has been and is now engaged in the business of offering for sale and selling, among other things, silver-plated flatware. It causes said silver-plated flatware and other merchandise to be transported, when sold, from its principal place of business in the State of New York into and across the various States of the United States and the District of Columbia to the respective purchasers thereof located at various places in States other than the State of New York and in the District of Columbia. It has maintained at all times referred to herein, a constant current of trade and commerce in said silver-plated ware, and other merchandise sold by it between and among the various States of the United States and in the District of Columbia.

Other corporations and firms, partnerships, and persons, some of whom are manufacturers and dealers, have been and are now engaged in offering for sale, selling, and transporting in commerce between and among the various States of the United States like and competitive silver-plated ware and other merchandise, and respondent corporation is engaged in substantial competition with such corporations, firms, partnerships, and persons in the sale and distribution of silver-plated ware and other merchandise in such commerce.

PAR. 3. The respondent corporation is now, and for many years last past in the course of its business has been, engaged in the business of selling and distributing silver-plated ware to dealers and users, including retail department stores, jewelry stores, and other purchasers, and is promoting the purchase and use of such silver-plated ware by the consuming public throughout the United States. Said respondent corporation uses a large number of different patterns and brands of its said silverware, of which "King Edward," "Devotion," "Condor," "Caroline," and "Josephine" are typical examples.

In promoting the sale of and selling the aforementioned patterns, to wit, "Devotion," "Condor," "Caroline," and "Josephine," the respondent corporation publishes price lists, both for that portion of its wares which it sells in sets of various sizes, and that portion sold by the individual piece, which is termed "open stock." These price lists are distributed to retail dealers and to the purchasing public and designate retail prices for respondent corporation's silver-plated wares greatly in excess of their reasonable or normal retail values or prices and of any expected or anticipated retail prices therefor, and greatly in excess of the prices at which its products are regularly and actually sold at retail. Such purported retail price lists are used and intended to be used to induce the purchase of respondent corporation's silver-plated wares on the part of the purchasing and consuming public by leading them to believe that the normal and usual retail prices at which said silver-plated wares are sold are greatly in excess of the prices at which they are, in fact, then offered for sale to the public in retail stores.

For example, the respondent corporation's "Josephine" and "Caroline" sets of silver-plated ware were for many years advertised at \$18.30 for its "Josephine" 26-piece set with hollow handled knives, and \$40 for the "Caroline" 96-piece set, and prior to the filing of the complaint herein and continuing for some time thereafter, respondent corporation allowed the retail dealers a discount of 60 percent plus 40 percent on said "Josephine" and 50 percent plus 40 percent on said "Caroline" brands or sets and the component parts

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thereof, making the net purchase price on the said "Josephine" set referred to \$4.40 and \$10.95 for the said "Caroline" set, thus permitting the retail dealers to make a great reduction in retail prices at which the said silver-plated merchandise was resold to the purchasing public in accordance with the "half-price sales plan" of respondent corporation, as hereinafter disclosed.

In promoting the sale of and selling its "Josephine" and "Caroline" brands of silver-plated ware, sold at a discount respectively of 60 percent plus 40 percent and 50 percent plus 40 percent, the respondent corporation published and distributed among its retail customers and prospective customers circulars describing what it termed its "half-price sales plan," inviting its customers to cooperate in carrying out the said plan. These circulars contained material for proposed advertisements for the use of retailers in furthering the plan described. The said plan and respondent corporation's suggested advertising material were used by many of such retailers, and in some instances a portion of the cost of said advertising was borne by the respondent corporation. In said advertisements, said sales were referred to and represented as being "half-price sales," and the usual and customary retail price of the "Josephine" set was represented at \$18.30 and the "Caroline" set, at \$40, or approximately that sum. Similar representations and comparisons concerning smaller supplemental sets or "open stock" were also made in said advertisements. The "Josephine" and "Caroline" patterns have very rarely been sold at the regular or list price.

Prior to the time when respondent corporation initiated the above-described discounts and promotion of the half-price plans, it had long been the respondent corporation's practice to furnish dealers with price lists for display, or circulation among the purchasing public, showing the retail price of its flat-plated silverware. During the time the practice of granting the above-described discounts to dealers existed, respondent corporation continued thus to circulate and furnish dealers with the same price lists, without making any changes in the retail prices shown thereby.

By the continuation of the said 40 percent added discount of the so-called "half-price sales" a normal and usual retail price for its silverware was established at the price at which they were being ordinarily sold, to wit, the price alleged to be half price, and the list prices, which the respondent corporation continued, without change, did not represent the customary retail sales price of respondent corporation's silverware or the actual or normal price at which the silverware was being sold, or intended to be sold to the purchasing and consuming public as represented and stated in such advertising and price lists, and

had the effect of misleading the purchasing public as to the then usual and actual retail prices thereof.

PAR. 4. The aforesaid continuing practices by the respondent corporation over a protracted period had, and have, the capacity, tendency, and effect of misleading a substantial portion of the purchasing and consuming public as to the regular and usual current prices of such silverware by placing in the hands of the dealers the means of enabling them to sell such silver-plated wares to the consuming public upon representations to the effect that the said retail dealer prices were reduced prices as compared with the prices shown in respondent corporation's price lists, or were less than retail prices at which respondent corporation's products were currently sold, notwithstanding the fact that the same wares were then being generally and regularly sold at the then reduced prices and not at the prices shown by the respondent corporation's price lists.

PAR. 5. Silver-plated ware of sundry competitors of respondent corporation, likewise engaged in commerce, as herein set out, is, and has been, sold and distributed to the purchasing and consuming public in the various States of the United States and in the District of Columbia in competition with respondent corporation's silver-plated ware, but some of these competitors have not made such representations in reference to the regular or usual value, or retail sales prices, as used or made by respondent corporation herein.

PAR. 6. There are standards for silver-plated deposits on the staple pieces of silver-plated flatware, which standards have for a great many years been recognized, and are now recognized, in the silverware industry. The staple pieces of silver-plated flatware are teaspoons, dessert spoons, dessert forks, round-bowl soup spoons, tablespoons, and medium, or dinner, forks. The Commission finds that the recognized standards are as follows:

Grade	Weight of silver (troy oz./gross)			Computed amount of silver for teaspoons	
	Teaspoon	Dessert spoon, dessert fork, round-bowl soup spoon	Table spoon, dinner fork	Average thickness (inch)	Troy oz./sq. ft.
A1 or Standard.....	2	3	4	0.00028	0.222
A1+, or A1X, or Extra.....	2 plus overlay or 2½ no overlay.	3 plus overlay or 3¾ no overlay.	4 plus overlay or 5 no overlay.	.00028+.00035	.222+.278
AA.....	3	4½	6	.00042	.333
Double or XX.....	4	6	8	.00056	.444
Triple or XXX.....	6	9	12	.00083	.667
Quadruple or XXXX.....	8	12	16	.00111	.888
F. S. B.....	9	15	20	.00125	1.000
				(overlay 0.0018)	

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The lowest recognized standard is A1. There are other known lower standards which have not as yet received any uniform recognition, for example: Half plate plus, half plate, quarter plate plus, and quarter plate.

The respondent corporation advertises and represents its "Josephine" and "Caroline" patterns to be "heavily plated." It is recognized in the industry that the term "heavily plated" cannot properly be applied to, or descriptive of, any silver-plated flatware which is A1 or below A1. "Heavily plated" is understood in the industry to be of a higher quality and standard than A1 standard. The respondent corporation's "Josephine" and "Caroline" patterns, in accordance with the above-recognized standards were not heavily plated, and its representations and guarantees in connection therewith were erroneous.

The respondent corporation advertises and represents the staple pieces of its "Devotion" and/or "Condor" pattern to be triple plate. The four staple items of the set tested by the Bureau of Standards showed that the average of the dinner forks was under triple plate, that the tablespoon was considerably above triple plate, that the average of the soup spoons was above triple plate, and the average of the teaspoons was above triple plate. The fancy and non-staple pieces are not usually triple-plated in the industry. The fancy and nonstaple pieces of the said "Devotion" set were not triple plated. The respondent corporation, on the frontispiece of price lists, represents the "Devotion" pattern to be "Silver Plated Flatware in Triple Plate Plus." The "Devotion" set cannot properly be described as triple plate or triple plate plus.

PAR. 7. Respondent corporation represents that it is one of the country's largest silverware manufacturers. In truth and in fact the respondent corporation is not a manufacturer of silverware, or silver-plated ware. Silver-plated flatware is manufactured for the respondent corporation by another. The respondent does, however, manufacture some of the products in which it deals, but not its silver-plated flatware.

PAR. 8. Respondent represents on its letterheads and advertising matter that it was established in 1890. In truth and in fact said corporation was not established in 1890, but was organized in 1904. Samuel E. Bernstein, the president of the corporation, founded the

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business, of which the respondent corporation, the National Silver Co., was the outgrowth, in 1890.

PAR. 9. As a direct consequence of the mistaken beliefs induced by the misleading acts, advertisements, and representations of the respondents, as hereinabove described and detailed, a substantial number of the consuming public purchased a substantial volume of respondent corporation's silver-plated ware, with the result that retailers were enabled to increase their own sales of respondent corporation's products, thereby lessening the market for similar goods made, sold, and distributed by manufacturers and dealers of silver-plated ware who did not employ such misleading acts, advertisements, and representations, as herein set forth, and trade was diverted to the respondent corporation from manufacturers and dealer competitors, whereby substantial injury was done by respondent corporation to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents are to the prejudice of the public and of respondents' 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 ¹

This proceeding having been heard by the Federal Trade Commission upon the motion, and the application to amend motion, of Brill, Bergenfeld & Brill, counsel for the respondents, to modify and amend paragraphs 1 to 5, inclusive, of the order to cease and desist as issued in these proceedings on July 29, 1938, and the Commission having considered said motion and said application to amend motion and the record herein and being now fully advised in the premises.

It is ordered, That the motion, and application to amend motion, to modify and amend paragraphs 1 to 5, inclusive, of the order to cease and desist issued herein on July 29, 1938, be and the same hereby is granted as prayed;

¹ Order published as modified November 3, 1938.

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It is further ordered, That the order to cease and desist issued herein on July 29, 1938, be and the same hereby is modified as to read as follows:

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, briefs and oral arguments having been waived, and the Commission having made its findings as to the facts and its conclusion that the said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents National Silver Co., a corporation, its officers and directors, Samuel E. Bernstein, Philip J. Bernstein, Morton Bernstein, Milton Bernstein, Bernard Bernstein, and Harry S. Berk, and their successors, and its representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of silver-plated ware in interstate commerce or in the District of Columbia, do forthwith, directly or indirectly, cease and desist from:

1. Representing that any price at which silver-plated flatware is offered for sale or sold is a special or reduced price, or a price that is lower than the price ordinarily and usually received therefor, when such is not the fact;

2. Aiding, abetting, or assisting retail dealers in silver-plated flatware in representing that any price at which silver-plated flatware is offered for sale or sold is a special or reduced price, or a price that is lower than the price ordinarily and usually received therefor, when such is not the fact;

3. Representing that said silver-plated flatware is of a certain, specified quality or standard, when such is not the fact;

4. Aiding, abetting, or assisting retail dealers in silver-plated flatware in representing that said silver-plated flatware is of a certain, specified quality or standard, when such is not the fact;

5. Representing, or authorizing others to represent, that the respondent corporation is a manufacturer of silver-plated flatware, when such is not the fact;

6. Representing, or authorizing others to represent, that respondent corporation was established in 1890.

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Order

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to the respondent Stella Berk.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
ASKIN'S RETAIL STORES, INC.

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

Docket 3225. Complaint, Sept. 13, 1937—Decision, July 29, 1938

Where a corporation, engaged in the offer, sale, and distribution of coats, suits, dresses, hats, and other merchandise, through a chain of stores owned and operated by it in several States and in the District of Columbia—

Held out, through advertisements and sales talks, offer to give "free," or in some cases "gratis," and without cost to the purchaser, an article of merchandise of a certain assigned value with the purchase of certain other merchandise amounting to a certain figure, and made so-called "combination" sales, in which sale of certain merchandise was accompanied by the delivery of other merchandise designated as "in combination," through such statements or representations, among others, as "Men's Hat FREE with the purchase of any of these new spring suits or topcoats * * * \$24.50," "Lady's Dress free with the purchase of any of these new spring coats or suits—\$14.95";

Facts being that in such and similar transactions in which a specified article was offered to be included "free" or "gratis" or "in combination," the theretofore selling price of the other merchandise, purchase of which at the price named was made a condition precedent to the receipt of the "free" or "gratis" or "in combination" articles, had been marked up so that the prices were substantially greater than those at which they were regularly and originally sold when unaccompanied by such "free" or "gratis" articles;

With capacity and tendency to confuse, mislead, and deceive a substantial portion of purchasing public into erroneous belief that merchandise thus designated as "free," "gratis," or "in combination," was given to purchaser of other merchandise in the amount stated absolutely free and without cost, as a gratuity, and with result that many purchasers, relying on such representations, bought merchandise in the mistaken and erroneous belief that the articles designated and offered as "free," "gratis," or "in combination," were given to them absolutely free and without cost, and as a gratuity, and with effect of misleading and deceiving prospective purchasers, and causing many of such purchasers erroneously and mistakenly to believe that said so-called "free," etc. merchandise was given free and as a gratuity, and without cost to them, and of causing a substantial portion thereof to buy its said products, and of thereby unfairly diverting substantial trade to it from its competitors, among whom there are many who do not in any way misrepresent the selling price of their products and do not falsely represent that they will give to the purchaser free or as a gratuity, certain articles with the purchase of merchandise in any given amount; to the injury of its competitors and that of the public:

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