

IN THE MATTER OF
CENTURY METALCRAFT CORPORATION

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

Docket 3601. Complaint, Sept. 22, 1938—Decision, Apr. 29, 1939

Where a corporation engaged in sale and distribution of kitchen utensils under trade name "Silver Seal," and in advertising and selling its said kitchen ware and utensils principally through its agents, representatives or employees who, through personal contacts, advertised, and by personal solicitation, sold, said products through, chiefly, giving manual demonstrations, at its direction, of uses for which it represented its said products to have been made, and making such demonstrations generally before groups of prospective purchasers and accompanying the same by various statements and representations as to character, nature and quality of its said products and their effectiveness for purpose for which sold—

- (a) Represented and implied, as above set forth, that it manufactured the utensils offered and sold by it, and that they contained an appreciable amount of silver and no aluminum, or so little as not to be noticeable, and that the method of cooking made possible by such utensils was new and revolutionary, and that they were more durable and more easy to clean than were the aluminum or granite utensils of competitors, and that they would not pit;

Facts being it did not make such products, they contained no appreciable amount of silver but, on contrary, contained aluminum as their chief constituent metal, method of cooking made possible through use thereof was neither new nor revolutionary, but had been long in use, they were not any more durable or more easily cleaned than the aluminum or granite products made by competitors and would pit as readily as would such competitive products; and

- (b) Represented that competing granite and aluminum utensils were dangerous to the health of consumers of food cooked therein, and represented and implied that certain named competitors were in a precarious financial condition, and that the kitchen utensils sold and distributed by such competitors were inferior in quality to those offered and sold by it; and
- (c) Represented that use of food cooked in its utensils would insure improved health and that certain doctors and hospitals had indorsed and recommended its said products, and that they were used generally by the United States Army during the World War;

Facts being use of aluminum or granite utensils of competitors in no wise affects purity or quality of food cooked therein, use of its said utensils would not insure improved health or have any effect on persons consuming such food prepared therein different from or more beneficial than that occasioned by use of food prepared in aluminum, granite, or other types of utensils made by competitors, and no doctors, officials, or employees of hospitals in capacity of dietary experts had recommended its said utensils, which were not used generally by the Army during the World War, and representations and implications with respect to competitors' precarious

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financial position were without foundation and unfairly defamed and disparaged them, products of which, similarly unfairly defamed and disparaged by it, were not inferior to its own;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that said statements, representations and implications were true, and of causing substantial portion of purchasing public, because of such belief, to buy its said utensils, and with result, as direct consequence thereof, of diverting unfairly trade to it from its competitors engaged in sale and distribution of kitchen ware and utensils in commerce among the various States and in the District of Columbia, and many of whom do not in any manner misrepresent their products or defame and disparage their competitors or competitors' products:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Mr. Edward H. McDermott, Mr. William M. Emery, Mr. Daniel R. LaBar, Mr. R. S. Oldberg, and Mr. John W. Cavanaugh, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Century Metalcraft Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint against said respondent, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Century Metalcraft Corporation, is a corporation existing under and by virtue of the laws of the State of Delaware, having its principal office and place of business at 1105 Lawrence Avenue, in the city of Chicago, in the State of Illinois. Respondent is now and since 1933 has been engaged in the sale and distribution of kitchen utensils under the trade name "Silver Seal." Respondent causes and has caused its said products when sold to be transported from its place of business in the State of Illinois to the purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia. Respondent has at all times mentioned herein maintained and now maintains a constant current of trade in commerce in such ware and utensils into and through the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business respondent is in competition with other corporations and with individuals, firms, and copartnerships likewise engaged in the sale and distribution of kitchen ware and utensils in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The advertising and selling of respondent's said kitchen ware and utensils are conducted principally through the medium of agents, representatives or employees who through personal contacts advertise and by personal solicitation sell said products.

The method chiefly employed by said agents, representatives or employees of respondent at respondent's direction is the giving of manual demonstrations of the uses for which respondent represents its said products to have been manufactured. These demonstrations are given generally before groups of prospective purchasers and are accompanied by various statements and representations as to the character, nature, and quality of respondent's said product and their effectiveness in use as hereinafter set forth.

PAR. 4. Among and typical of the statements and representations so made and used by the agents, representatives and employees of the respondent at its direction and instigation in connection with the offering for sale, sale and distribution of said products in commerce as hereinabove alleged are those to the effect that said utensils, offered for sale and sold under the trade name "Silver Seal," contain no aluminum or such a small amount of aluminum that the presence of such metal is not noticeable; that the method of cooking made possible by said utensils is new and revolutionary; that said utensils are more durable and more easily cleaned than are aluminum or granite utensils manufactured by competitors; that said utensils will not pit; that competing granite and aluminum utensils are dangerous to the health of consumers of food cooked therein; that the use of food cooked in respondent's said utensils will insure improved health; that certain doctors and hospitals have endorsed and recommended respondent's said utensils, and that said utensils were used generally by the United States Army during the World War.

By the means and in the manner aforesaid respondent further represents and implies that it manufactures the utensils offered for sale and sold by it and that said utensils contain an appreciable amount of silver. Respondent represents and implies that certain named competitors are in a precarious financial condition, and represents that the kitchen utensils sold and distributed by such competitors are inferior in quality to the utensils offered for sale and sold by respondent.

PAR. 5. The above and foregoing representations so made and used by the respondent in connection with the offering for sale and sale of its said products are grossly exaggerated, false, and misleading. In truth and in fact respondent's said utensils do contain aluminum, aluminum being the chief constituent metal used in the construction of said utensils; the method of cooking "made possible" through the use of said utensils is not new or revolutionary and has long been in vogue; said utensils are not any more durable or more easily cleaned than are aluminum or granite utensils manufactured by competitors of the respondent; and said utensils will "pit" as readily as will utensils manufactured by respondent's competitors. In truth and in fact, food cooked in granite or aluminum utensils manufactured by competitors of the respondent is not dangerous, injurious, or deleterious to the health of the consumers of such food; and the use of aluminum or granite utensils manufactured by competitors of the respondent in no wise affects the purity or quality of food cooked in said utensils. The use of respondent's said utensils in preparing foods will in no wise insure improved health for the consumers of such foods; and the use of foods cooked in respondent's said utensils will not have any effect on the persons consuming food so cooked different from or more beneficial than the effect occasioned by the use of food cooked in aluminum, granite, or other types of utensils manufactured by competitors of the respondent. No doctors or officials or employees of hospitals, in the capacity of dietary experts, have endorsed or recommended respondent's said utensils, and said utensils were not used generally by the United States Army during the World War. The utensils offered for sale and sold by the respondent are not manufactured by the respondent and said utensils do not contain an appreciable amount of silver metal.

Respondent's representations and implications to the effect that certain named competitors are in a precarious financial position, are without foundation and unfairly defame and disparage such competitors. In truth and in fact, the competitors mentioned are not in a precarious financial position or in such a condition as to justify or warrant such representations and implications by the respondent. The products offered for sale and sold by such competitors are not inferior in quality to the products offered for sale and sold by the respondent.

Through the use of the false representations concerning the deleterious effect of the use of food cooked in aluminum and granite utensils and the false representations and implications as to the financial condition of certain named competitors and the false repre-

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sentation as to the superior quality of respondent's said utensils, respondent falsely and unfairly defames and disparages its competitors and their products.

The acts and practices of the respondent in using and making the false and deceptive statements, representations, and implications regarding its products and its competitors and their products, as hereinabove alleged, have a tendency and a capacity to, and do, mislead and deceive a substantial number of the members of the purchasing public into the erroneous and mistaken belief that said statements, representations, and implications are true, and cause a substantial portion of the purchasing public, because of said mistaken and erroneous belief, to purchase respondent's said utensils, thereby unfairly diverting trade in said commerce from its competitors to the respondent as described in paragraph 3 hereof, many of whom do not in any manner misrepresent their said products or defame and disparage their competitors or competitors' products. As a consequence, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices 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 the 22d day of September, A. D., 1938, issued, and on the 23d day of September, A. D., 1938, served, its complaint in this proceeding upon respondent, Century Metalcraft Corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and

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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, Century Metalcraft Corporation, is a corporation existing under and by virtue of the laws of the State of Delaware, having its principal office and place of business at 1105 Lawrence Avenue, in the city of Chicago, in the State of Illinois. Respondent is now and since 1933 has been engaged in the sale and distribution of kitchen utensils under the trade name "Silver Seal." Respondent causes and has caused its said products when sold to be transported from its place of business in the State of Illinois to the purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia. Respondent has at all times mentioned herein maintained and now maintains a constant current of trade in commerce in such ware and utensils into and through the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business respondent is in competition with other corporations and with individuals, firms, and copartnerships likewise engaged in the sale and distribution of kitchen ware and utensils in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The advertising and selling of respondent's said kitchen ware and utensils are conducted principally through the medium of agents, representatives, or employees who through personal contacts advertise and by personal solicitation sell said products.

The method chiefly employed by said agents, representatives, or employees of respondent at respondent's direction is the giving of manual demonstrations of the uses for which respondent represents its said products to have been manufactured. These demonstrations are given generally before groups of prospective purchasers and are accompanied by various statements and representations as to the character, nature, and quality of respondent's said products and their effectiveness in use for the purpose for which they are sold.

PAR. 4. Among and typical of the statements and representations so made and used by the agents, representatives, and employees of the respondent, at its direction and instigation, in connection with the offering for sale, sale and distribution of said products in commerce as herein stated, are those to the effect that said utensils, offered for sale and sold under the trade name "Silver Seal," contain no

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aluminum, or such a small amount of aluminum that the presence of such metal is not noticeable; that the method of cooking made possible by said utensils is new and revolutionary; that said utensils are more durable and more easily cleaned than are aluminum or granite utensils manufactured by competitors; that said utensils will not pit; that competing granite and aluminum utensils are dangerous to the health of consumers of food cooked therein; that the use of food cooked in respondent's said utensils will insure improved health; that certain doctors and hospitals have endorsed and recommended respondent's said utensils, and that said utensils were used generally by the United States Army during the World War.

By the means and in the manner aforesaid respondent represents and implies that it manufactures the utensils offered for sale and sold by it and that said utensils contain an appreciable amount of silver. Respondent represents and implies that certain named competitors are in a precarious financial condition, and represents that the kitchen utensils sold and distributed by such competitors are inferior in quality to the utensils offered for sale and sold by respondent.

PAR. 5. The above and foregoing representations so made and used by the respondent in connection with the offering for sale and sale of its said products are grossly exaggerated, false, and misleading. In truth and in fact respondent's said utensils do contain aluminum, aluminum being the chief constituent metal used in the construction of said utensils; the method of cooking "made possible" through the use of said utensils is not new or revolutionary and has long been in use; said utensils are not any more durable or more easily cleaned than are aluminum or granite utensils manufactured by competitors of the respondent; and said utensils will "pit" as readily as will utensils manufactured by respondent's competitors. In truth and in fact, food cooked in granite or aluminum utensils manufactured by competitors of the respondent is not dangerous, injurious, or deleterious to the health of the consumers of such food; and the use of aluminum or granite utensils manufactured by competitors of the respondent in no wise affects the purity or quality of food cooked in said utensils. The use of respondent's said utensils in preparing foods will in no wise insure improved health for the consumers of such foods; and the use of foods cooked in respondent's said utensils will not have any effect on the persons consuming food so cooked different from or more beneficial than the effect occasioned by the use of food cooked in aluminum, granite, or other types of utensils manufactured by competitors of the respondent. No doctors or

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officials or employees of hospitals, in the capacity of dietary experts, have endorsed or recommended respondent's said utensils, and said utensils were not used generally by the United States Army during the World War. The utensils offered for sale and sold by the respondent are not manufactured by the respondent and said utensils do not contain an appreciable amount of silver metal.

Respondent's representations and implications to the effect that certain named competitors are in a precarious financial position, are without foundation and unfairly defame and disparage such competitors. In truth and in fact, the competitors mentioned are not in a precarious financial position or in such a condition as to justify or warrant such representations and implications by the respondent. The products offered for sale and sold by such competitors are not inferior in quality to the products offered for sale and sold by the respondent.

PAR. 6. Through the use of the false representations concerning the deleterious effect of the use of food cooked in aluminum and granite utensils and the false representations and implications as to the financial condition of certain named competitors and the false representation as to the superior quality of respondent's said utensils, respondent falsely and unfairly defames and disparages its competitors and their products.

PAR. 7. The acts and practices of the respondent in using and making the false and deceptive statements, representations, and implications regarding its products and its competitors and their products, as hereinabove found, have a tendency and a capacity to, and do, mislead and deceive a substantial number of the members of the purchasing public into the erroneous and mistaken belief that said statements, representations, and implications are true, and cause a substantial portion of the purchasing public, because of said and mistaken and erroneous belief, to purchase respondent's said utensils. As a direct result thereof trade in commerce, as commerce is defined in the Federal Trade Commission Act, has been diverted unfairly to the respondent from its competitors, described in paragraph 2 hereof, many of whom do not in any manner misrepresent their said products or defame and disparage their competitors or competitors' products.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and respondent's competitors and constitute unfair methods of competition in

commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Century Metalcraft Corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of kitchen utensils in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that doctors or hospitals have endorsed and recommended respondent's utensils unless and until such recommendation and endorsement has been made by doctors who are dietary experts or by hospitals acting by and through their dietary experts.

2. Representing that respondent manufactures said utensils unless and until it owns and operates or directly and absolutely controls the factory or factories wherein the same are manufactured by it.

3. Circulating or publishing unfair or disparaging statements concerning the business status or the quality of the products of the competitors of the respondent.

4. Representing that food cooked in granite or aluminum utensils is dangerous to the health of the consumers of such food.

5. Representing through the use of the term "Silver Seal," or any other term or terms of similar import or meaning, as the trade name for said utensils, or in any other manner, that the usefulness, durability or value of such utensils is enhanced or affected by reason of silver metal contained in such utensils.

6. Representing that the utensils now designated as "Silver Seal" contain no aluminum or are not aluminum.

7. Representing that the utensils now designated as "Silver Seal" are more durable or more easily cleaned than are aluminum or granite utensils; that said utensils will not pit; that the method of cooking made possible by said utensils is new or revolutionary; that the use

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of food cooked in said utensils will insure improved health; or that said utensils were used generally by the United States Army during the World War.

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

FEE & STEMWEDEL, INC.

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

Docket 3202. Complaint, Aug. 11, 1937—Decision, May 2, 1939

Where a corporation engaged in manufacturing, assembling, and selling and distributing thermometers, hygrometers, barometers, and other weather-indicating instruments, and combinations thereof, including certain barometer models and combination model of thermometer, hygrometer, and barometer, which models it assembled through adding to barometer movements, imported from foreign country and marked "Made in Germany," dial and indicator and placing in case such movements and thereby concealing aforesaid words—

Set forth on the dial of cases enclosing, as aforesaid, said barometers, words "Made in U. S. A. by," followed by corporate name and address, and caused to be riveted on combination instrument words "Airguide Trio, Made in U. S. A. by," followed, as aforesaid, by its corporate name and address, and sold, thus assembled and marked, said instruments to jobbers and dealers, by whom they were in turn resold to public;

With capacity and tendency to deceive purchasers thereof into false and erroneous belief that barometers in question were made in the United States and by it, and with effect of misleading and deceiving members of purchasing public into such erroneous and mistaken belief and into buying its said barometers and "Airguide Trio" by reason thereof, and of thereby diverting unfairly trade in commerce to it from its competitors who truthfully advertise and represent place of manufacture and manufacturer of their respective products; to the substantial injury of competition in commerce:

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

Before *Mr. Arthur F. Thomas* and *Mr. John W. Addison*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Wham & O'Brien, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Fee & Stemwedel, 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, and it appearing to said Commis-