

IN THE MATTER OF
WILLIAM M. IRVINE, TRADING AS CONSOLIDATED
SILVER COMPANY OF AMERICA

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

Docket 3789. Complaint, May 12, 1939—Decision, Mar. 29, 1940

Where an individual engaged in offer and sale of sales-promotional plans, including sales-promotion cards, silverware, and other materials used in connection therewith, to retailers and others in the various States and in the District of Columbia;

In selling, through agents supplied with order blanks, contract forms and various other items of advertising literature, plan in question, which contemplated distribution by dealer-purchaser to dealer's customers of cards, purchased of said individual at from \$3.50 to \$4.50 a thousand (with remaining payment therefor by merchant due upon receipt of cards), for sending in by customer or dealer-purchaser for "redemption" in "William A. Rogers silverware or tableware"—

- (a) Represented, through printed forms prepared by him, and setting forth terms of agreement between him and retailer, and made use of by his agents in taking retailers' orders, that he would supply to retailer, without charge, circulars, posters, and other advertising material and display set of silverware; facts being he failed, in many instances, to supply such circulars and advertising material, failed, in many cases, to supply dealers with particular display set agreed upon, failed, in one instance, to supply any display set until after repeated demands therefor, and, notwithstanding contract reference to "display set," supplied actually, in most instances, as display silverware, three small spoons attached to piece of cardboard;
- (b) Represented, in solicitation of orders through his said agents, that cards and operation of entire plan were without cost to dealer, in that he would refund to dealer entire purchase price of cards as soon as 25 percent thereof had been forwarded to him for redemption by dealer's customers, facts being, under contract provision, no refund was to be made unless and until such proportion had been thus sent in, in which event dealer became entitled only to refund of price of cards actually sent in, and provision in question was couched in such vague and ambiguous language and printed in such inconspicuous type as readily to permit his agents to misconstrue to retailers provision in question, or entirely ignore same, and dealers, in many instances, were unable to obtain from him any refunds, despite fact of sending in 25 percent or more of cards as above set forth;
- (c) Represented, through his agents, permitted readily so to represent, through character of contract forms and other advertising literature put by him into their hands, that he was connected with the manufacturer of William A. Rogers silverware, or Oneida, Ltd., and was putting on, for benefit of such manufacturer, advertising campaign, notwithstanding fact he had no connection whatever with company in question and was not authorized to put on any such campaign therefor, but merely bought, as any other purchaser,

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silverware used by him in connection with plans in question, from said company or from jobbers or wholesalers of such ware in the open market;

- (d) Represented, through his said agents, that, in addition to supplying circulars and other advertising material, he would, at his own expense, distribute such circulars in trade area served by retailer, and would otherwise assist latter in putting sales-promotional plan into effect, notwithstanding fact, in numerous instances, he failed to make such distribution or render such assistance;
- (e) Presented his entire sales-promotional plan aforesaid, through his agents, to retailers in such a way and under such representations, furthered by order blanks and contract forms furnished by him to his agents, as to lead retailer to believe that latter's customers might obtain silverware merely by sending to him designated number of sales cards, and that such ware would be sent without cost to particular customer sending in said cards for redemption, notwithstanding fact that retailer's customers, in order to obtain such silverware, had to remit to him, along with each card, sum of 1 cent, of which requirement and provision set forth on cards themselves, and not submitted to retailers upon being solicited, latter in many instances had no information until subsequent to their purchase and payment for and receipt of delivery of cards in question; and
- (f) Set forth, featured and displayed, in order form and advertising material by him supplied to his agents and by latter exhibited to retailer, representations to effect that latter's customers were beneficiaries of a "free offer" and were to receive something free, facts being 1 cent remitted with each card by participating customers resulted in payment by latter of substantial amount, representing approximately full value of silverware obtained;

With effect of misleading and deceiving substantial number of retailers and members of purchasing public, who were buying, as above set forth, their William A. Rogers silverware of him, into mistaken and erroneous belief that they were participating in a bona fide sales-stimulation plan in connection with the advertisement of such silverware, with the manufacturer of which said individual was in no wise connected other than as indirect purchaser therefrom, and with result, as consequence of such erroneous and mistaken belief that retailers and members of purchasing public were induced to and did purchase substantial quantities of his said sales cards and merchandise:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. George Foulkes and *Mr. M. C. Pearce* for the Commission.

Mr. Harry N. Dell, of Detroit, Mich., 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 William M. Irvine, trading as Consolidated Silver Co. of America, hereinafter referred to as respondent, has violated the provisions of the said act, and it

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appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, William M. Irvine, is an individual doing business under the name and style of Consolidated Silver Co. of America, with his office and principal place of business located at 7338 Woodward Avenue, Detroit, Mich. Respondent is now, and for more than 1 year last past has been, engaged in the business of offering for sale and selling a sales-promotional plan including sales promotion cards, silverware and other materials which are used in carrying the plan into effect, to retailers and others located in various States of the United States and in the District of Columbia.

PAR. 2. The respondent, being engaged in business as aforesaid, causes said sales-promotional cards and silverware, and other materials used in connection with said sales promotion plan, when sold, to be transported from his office and principal place of business in Detroit, Mich., to purchasers thereof located at their respective points of location in various States of the United States other than the State of Michigan and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said sales cards, silverware, and other material in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course of the operation of his business, and in order to sell his products, respondent enters into a form of agreement or written contracts with retail merchants who are contacted by respondent's selling agents.

The written form of contract provides for the purchase by the merchant of so-called advertising cards or advertising trade cards, for which the merchant pays \$4.50 per thousand, and the distribution of the same to the merchant's customers by the merchant upon the purchase by the customers of a certain specified amount of the merchant's goods.

By the terms of said contract respondent undertakes to redeem advertising cards by sending to a customer, who forwards to respondent a specified number of said advertising cards, various items of merchandise.

Respondent furnishes retail merchants with various display posters and advertisements to be used by said retail merchants in putting the aforesaid plan into effect and operation.

PAR. 4. In the course and operation of his business and for the purpose of inducing retail merchants to purchase his advertising

cards and to use the plan above set forth, respondent makes the following representations:

1. That respondent, doing business as Consolidated Silver Co. will redeem the sales cards distributed by merchants to their customers without any additional cost to the customers, by sending all customers who forwarded a specified number of said cards to said company certain designated pieces of silverware or tableware.

2. That said silverware or tableware is sent "free" to customers of retailers who take advantage of and purchase respondent's sales promotion plan.

3. That respondent refunds to merchants the entire purchase price of said sales cards after a designated number of said sales cards have been sent in by customers of said merchants for redemption.

4. That respondent, trading as Consolidated Silver Co. of America, is a representative of, or is connected with, or is putting on an advertising campaign for, the manufacturers of Wm. A. Rogers Silverware Oneida, Ltd., of Oneida, N. Y.

5. That respondent advertises the sales promotional plan locally for merchants who purchase sales cards and assists retail merchants in putting said sales-promotional plan into operation and effect.

6. That the silver spoons sent by respondent to customers in exchange for sales cards are reinforced with additional silver at the point of wear.

7. That the silverware sent to customers by the respondent in exchange for sales cards is superior in quality to Tudor plate.

8. That respondent provides merchants who purchase respondent's plan of sales promotion with display sets of silverware or tableware for use by said merchants in putting respondent's plan into effect.

9. That the customers of merchants can obtain an entire set of silverware or table ware without cost to said customers by securing advertising cards and sending said cards to respondent for redemption.

10. That the purchase and use by merchants of respondent's sales-promotional plan is without cost to said merchants.

PAR. 5. Respondent's representations as above set forth are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent does not redeem the sales cards by sending pieces of silverware or tableware to merchants' customers who forward sales cards to respondent for redemption without any additional cost to said customers. Respondent requires such customers to pay a sum of money in addition to forwarding said sales cards before respondent redeems the sales cards. The silverware sent to customers of

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merchants is not free to said customers but they are required to pay an amount of money for said silverware, which amount of money is substantial and represents full payment for the same. In truth and in fact, respondent does not refund to merchants the amount of money merchants pay for sales cards after part of the sales cards have been sent to respondent for redemption by the merchants' customers. Respondent is not a representative of or in any manner connected with Oneida, Ltd., except as an indirect purchaser of its merchandise. Respondent is not conducting an advertising campaign for Oneida, Ltd. The silverware sent to customers for redemption of sales cards is not superior in quality to Tudor plate and is not comparable with or of similar quality to Tudor plate but is inexpensive and of low quality. The spoons sent to merchants' customers are not reinforced at the point of wear as represented. Respondent does not advertise the sales promotional plan locally for merchants who purchase sales cards or assist said merchants in putting said sales promotional plan into operation and effect. Respondent does not provide merchants, who purchase respondent's promotional sales plan, with display sets of silverware or tableware for use of said merchants in putting said plan into effect. It is not possible for customers to acquire an entire set of silverware or tableware from respondent by collecting and forwarding sales cards to respondent. Respondent's sales promotion plan is not without cost to the merchants who purchase and use the same in their business.

PAR. 6. The use by respondent of the aforesaid false, misleading and deceptive statements and representations has the capacity and tendency to, and does, mislead and deceive retail merchants and members of the purchasing public, situated in various States of the United States, into the erroneous and mistaken belief that such statements and representations are true and into the purchase of respondent's sales-promotional plan and silverware or tableware.

PAR. 7. The aforesaid acts and practices of said respondent, as herein alleged, are all to the prejudice and injury of the public and constitute 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 12th day of May 1939, issued and subsequently served its complaint in this proceeding upon respondent, William M. Irvine, trading as Consolidated Silver Co. of

America, charging him with the use of 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes, attorney for the Commission, and in opposition to the allegations of the complaint by Harry N. Dell, attorney for the respondent, before Webster Ballinger, 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 regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint (respondent not having filed brief and oral argument not having been requested) and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, William M. Irvine, is an individual doing business under the name and style of Consolidated Silver Co. of America with his office and principal place of business located at 7338 Woodward Avenue, Detroit, Mich. Respondent is now, and for more than 2 years last past has been engaged in the business of offering for sale and selling a sales-promotional plan, including sales-promotion cards, silverware and other materials which are used in carrying the plan into effect, to retailers and others located in various States of the United States and in the District of Columbia.

PAR. 2. The respondent causes said sales-promotion cards and silverware and other materials used in connection with said sales promotional plan, where sold, to be transported from his office and principal place of business in Detroit, Mich., to purchasers thereof located at their respective points of location in various States of the United States other than the State of Michigan and in the District of Columbia. Respondent maintains a course of trade in said sales cards, silverware, and other materials in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent sells his sales-promotional plan to retailers located in cities throughout the various States of the United States, such sales being made through the medium of agents who travel about

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the country contacting retailers in various lines of business. Such retailers are solicited by the agents to participate in respondent's sales-promotional plan by giving the agents orders for respondent's sales cards or advertising cards. In making such contacts and solicitations respondent's agents are supplied with order blanks, contract forms, and various other items of advertising literature, which facilitate misrepresentation on the part of such agents with respect to the character of respondent's sales-promotional plan. Such material is furnished to the agents by respondent.

Under the respondent's sales-promotional plan the dealer distributes certain sales cards among his customers as merchandise is purchased by such customers, and the customer may forward such cards to the respondent for "redemption" in "William A. Rogers silverware or tableware." The purchase price of such cards to the retailer ranges from \$3.50 per thousand to \$4.50 per thousand. A part of the purchase price is payable at the time the order is given and the remainder upon the receipt of the cards by the dealer. On one side such cards bear the name of the dealer together with certain advertising on behalf of such dealer. On the reverse side such cards bear certain language purporting to disclose the manner in which the respondent will redeem such cards by giving merchandise therefor.

PAR. 4. The orders taken by respondent through his agents from retail dealers for such sales cards are on printed forms prepared by respondent which set forth the terms of the agreement between the respondent and the retail dealer. Among such provisions is one to the effect that the respondent will supply to the retailer without charge circulars, posters, and other advertising material and a display set of silverware. The Commission finds, however, that in many instances such circulars and advertising material are not supplied by the respondent as provided in the contract, and the respondent has in many cases failed to supply dealers with the particular display set of silverware agreed upon. In one instance the respondent failed to supply any display set until after repeated demands had been made by the retailer. While the contract refers to a display "set" of silverware, thus implying that a substantial number of pieces of silverware will be supplied, actually the only display silverware supplied in most instances has consisted of but three small spoons attached to a piece of cardboard.

PAR. 5. In soliciting orders for sales cards the respondent's agents represent that the cards and the operation of the entire sales promotional plan are without cost to the dealer, in that the respondent will refund to the dealer the entire purchase price of the cards as soon as 25 percent of the cards have been forwarded to the respondent by the

dealer's customers for redemption. The actual provision of the contract is that no refund will be made to the dealer unless and until 25 percent of the cards have been sent in for redemption, and even then the dealer is not entitled to the refund of the entire purchase price of all cards purchased but it is entitled only to a refund of the price of the cards actually sent in for redemption. The Commission finds that this provision of the order is couched in such vague and ambiguous language and is printed in such inconspicuous type as to readily permit respondent's agents to misconstrue to retail dealers such provision of the contract or entirely ignore it.

The Commission further finds that in many instances dealers have been unable to obtain any refunds from the respondent despite the fact that 25 percent or more of the cards had been sent in for redemption.

PAR. 6. The Commission further finds that the contract forms and other advertising literature put into the hands of his agents by the respondent are of such a character as to readily permit representation by such agents to the effect that the respondent is connected with the manufacturer of William A. Rogers silverware, to wit, Oneida, Ltd., or is putting on an advertising campaign for the benefit of such manufacturer. The Commission further finds that respondent's agents have in fact generally made such representations. Actually the respondent has no connection whatever with Oneida, Ltd., and is not authorized to put on any advertising campaign for such company. Respondent merely purchases his silverware used in connection with these plans from Oneida, Ltd., or from jobbers or wholesalers of such silverware in the open market like any other purchaser.

A further representation made by respondent's agents to dealers is that, in addition to supplying circulars and other advertising material, the respondent will, at his own expense, distribute such circulars into trade areas served by the retailer and will otherwise assist the retailer in putting the sales-promotional plan into effect. The Commission finds that in numerous instances the respondent has failed to make such distribution or render such assistance.

PAR. 7. The entire sales-promotional plan is presented by respondent's agents to retailers in such a way and under such representations as to lead the retailer to believe that his customers may obtain silverware merely by sending to respondent a designated number of sales cards, and that such silverware will be sent without cost to the particular customer sending in such cards for redemption. The order blanks and contract forms furnished by respondent to his agents further such representation. The Commission finds, however, that in order to obtain such silverware the retail merchant's customers must remit to

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respondent along with each card the sum of 1 cent. While the sales cards themselves state that 1 cent must be remitted with each card, such cards are not submitted to the retail dealers at the time the dealers are solicited, and in many instances the retailers have no information with respect to this additional charge until after they have purchased and paid for the sales cards and received delivery thereof.

PAR. 8. The order form and advertising material supplied by the respondent to his agents, and exhibited by the agents to retail dealers, prominently feature and display representations to the effect that the retailer's customers are the beneficiaries of a "free offer" and are to receive something "free." Actually the requirement that 1 cent be remitted with each card sent in by customers of retailers participating in the plan results in the payment by such customers of a substantial amount which represents approximately the full value of the silverware obtained.

PAR. 9. The Commission finds that the respondent's use of the acts and practices herein set forth has had, and now has, a tendency and capacity to, and does, mislead and deceive a substantial number of retailers and members of the purchasing public into the mistaken and erroneous belief that they are participating in a bona fide sales stimulation plan in connection with the advertising of William A. Rogers silverware, whereas such retailers and members of the purchasing public are in fact merely purchasing William A. Rogers silverware from the respondent, who is in no way connected with the manufacturer of William A. Rogers silverware other than as an indirect purchaser therefrom. As a result of such erroneous and mistaken belief retailers and members of the purchasing public have been induced to and have purchased substantial quantities of respondent's sales cards and merchandise.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute 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, the answer of respondent, testimony and other evidence taken before Webster Ballinger, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition

thereto, brief on behalf of the Commission in support of the complaint (respondent not having filed brief and oral argument now having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, William M. Irvine, trading as Consolidated Silver Co. of America, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of silverware or of sales promotional plans, including sales cards, gift cards, premium certificates or coupons redeemable in silverware or other articles of merchandise, do forthwith cease and desist from:

1. Representing that the respondent is a representative of or has any connection with the manufacturer of Wm. A. Rogers silverware; provided, however, that this order shall not be construed to prohibit the respondent from dealing in such silverware.

2. Representing that the respondent is conducting any special campaign or advertising campaign to introduce or advertise any article of merchandise on behalf of the manufacturer of Wm. A. Rogers silverware or on behalf of any other manufacturer or concern.

3. Representing to purchasers of respondent's sales-promotional plans, or to their customers, that sales cards, gift cards, premium certificates, or other similar devices can be redeemed in silverware or other merchandise unless and until all the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer and there is no deception as to the price to be paid in connection with the obtaining of such silverware or other articles of to such conditions.

4. Representing that respondent will refund any sum of money to dealers purchasing said sales cards, gift cards, premium certificates, or other and similar devices on the redemption of a specified number of cards or certificates when such refund is not actually made, and if there are any conditions connected with such refund such conditions must be clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer of refund in such a manner that there is no deception as to such condition.

5. Representing that respondent will give silverware or other merchandise free, when such silverware or other merchandise is not actually given free.

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6. Representing that respondent will advertise his sales-promotional plan locally for dealers purchasing such plan or that respondent will assist such dealers in putting such plan into operation, when in fact respondent does not conduct such advertising and render such assistance.

7. Representing that respondent will supply dealers purchasing respondent's sales-promotional plan with display sets of silverware or other merchandise for use in putting such plan into operation, when respondent does not supply such display sets as represented.

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

Syllabus

IN THE MATTER OF
VALLIGNY PRODUCTS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3602. Complaint, Sept. 23, 1938—Decision, Mar. 30, 1940*

Where a corporation engaged in manufacture, sale, and distribution of its "Shampoo-Kolor" hair preparation, to members of purchasing public in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of other preparations and products for treatment of conditions of the hair for which it recommended use of its said preparation, and including many who do not in any manner misrepresent their products or properties thereof, and who do not make any other false statements in connection with their sale and distribution; in advertisements which it disseminated through newspapers and publications circulating throughout the various States, and through bulletins distributed among prospective purchasers, and through other means—

- (a) Represented that said "Shampoo-Kolor" would color roots of hair and affect color of new growth and eliminate necessity of repeated applications to prevent new hair growth from showing gray, streaked, or faded above scalp line, and would cause natural color to be restored to hair, facts being applications of such preparation did not have any effect on color of new growth and use thereof would not restore natural color or cause original natural color to be imparted to hair, and such product would not color roots of hair, and change in color produced by application thereof to gray, streaked, or faded hair was not produced by user's bodily functions, but was result of product's dyeing or staining properties, change in color of hair appearing after application could not be effected subsequent thereto, unless application was thereafter repeated, and its claims for its said product, as above indicated, were grossly exaggerated, false and deceptive, and greatly exceeded any claims as to efficacy thereof which might truthfully be made; and
- (b) Represented that such preparation was manufactured in France or imported therefrom into the United States, and was uniquely different or entirely revolutionary in methods or results, through such statements as "The uniquely different French hair-coloring preparation," "Entirely revolutionary in method and in results," "No other preparation can make same claim for coloring hair * * *," and "The modern French way * * *," etc., facts being it was not made or compounded in France or imported therefrom into the United States, but was domestically made product, mixture of aniline dyes contained therein was also contained in competitive products, similar results could be obtained from use of other hair dyes of similar nature, and it was not uniquely different or entirely revolutionary, etc., as above claimed;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that its said product possessed