

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 1, 1947, TO JUNE 30, 1948

IN THE MATTER OF SAMUEL E. BERNSTEIN, INC., NOW, NATIONAL SILVER COMPANY

SUPPLEMENTAL FINDINGS AS TO THE FACTS, AND MODIFIED CEASE AND
DESIST ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 5 OF
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 1068. July 3, 1947

While "Sheffield Plate" as made in England during the eighteenth century by the fusion process has not been made for many years, and existing pieces thereof, now found chiefly in public and private collections, are regarded as antiques, a widespread public demand for reproductions of the old designs and patterns, by virtue of their beauty and artistic appeal, is being met by the manufacture of copies of old Sheffield Plate designs and patterns from various base metals, coated with silver by the electroplating process, now used in making of all silver-plated ware.

Where the Commission on July 7, 1926, made findings as to the facts and conclusion, and issued its cease and desist order requiring respondent, Samuel E. Bernstein, Inc. (predecessor in interest of National Silver Co., petitioner herein), its agents, etc., to cease and desist "from employing or using in connection with the sale of silver-plated ware which was not made in Sheffield, England, the word 'Sheffield' alone or in combination with any other word or words, sign, symbol, or device to describe or designate such silver-plated ware either by stamping or impressing the name 'Sheffield' thereon or in any other manner;" and,

Thereafter, successor in interest to said Samuel E. Bernstein, Inc., on November 22, 1946, presented its petition seeking relief from certain alleged unfair competitive disadvantages imposed upon it by said order, and, by later supplemental petition requested that it be permitted, in connection with the sale of reproductions of Sheffield designs and patterns, to use the words " 'Sheffield Design Reproductions,' 'Reproductions of Sheffield Designs,' 'Reproductions of Old Sheffield Designs,' 'Copies of Old Sheffield Patterns,' and 'Reproductions of Old Sheffield Patterns,' together with words indicating the country or place of manufacture of such reproductions that are offered for sale, such as 'Made in the U. S. A.,' or 'Made in Argentina' ":

Held, That while copies of old "Sheffield Plate" designs and patterns do not constitute, in "structure, method of manufacture and material," reproductions of the articles in question, no longer manufactured for many years

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and now regarded as antiques, such articles of modern electroplated silverware do constitute reproductions of such designs and patterns and may truthfully be thus described through such designations as "Sheffield Design Reproduction," etc., as below set out, when qualified by the words "Made in U. S. A." or words of similar import and meaning, of equal size and conspicuousness, clearly revealing the country in which made; and that changed conditions and the public interest require that said original order be reopened and modified by the addition of the proviso specified, permitting the use of the words in question under the conditions set forth and subject to said proviso's qualifications.

Mr. Abner E. Lipscomb for the Commission.

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

SUPPLEMENTAL FINDINGS AS TO THE FACTS AND MODIFIED ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 17th day of September 1923, issued and thereafter served its complaint in this proceeding upon Samuel E. Bernstein, Inc., charging it with unfair methods of competition in commerce, in violation of the provisions of said act. On October 31, 1923, the respondent filed its answer. After a stipulation as to the facts had been agreed to in lieu of the taking of testimony and other proceedings, and the Commission had made findings as to the facts and conclusion, the Commission on July 7, 1926, issued an order, requiring the respondent, Samuel E. Bernstein, Inc., its agents, servants, and representatives to cease and desist:

From employing or using in connection with the sale of silverplated ware which was not made in Sheffield, England, the word "Sheffield" alone or in combination with any other word or words, sign, symbol or device to describe or designate such silverplated ware either by stamping or impressing the same "Sheffield" thereon or in any other manner.

Thereafter, on November 22, 1946, the National Silver Co., with which Samuel E. Bernstein, Inc., had merged in 1928, presented its petition seeking relief from certain alleged unfair competitive disadvantages imposed upon it by said order. On January 7, 1947, the respondent filed a supplement to its petition requesting that to its said petition there should be added the following:

That in connection with the sale of reproductions of Sheffield designs and patterns, it, the National Silver Company, be permitted to use the words "Sheffield Design Reproductions," "Reproductions of Sheffield Designs," "Reproductions of Old Sheffield Designs," "Copies of Old Sheffield Patterns" and "Reproductions of Old Sheffield Patterns," together with words indicating the country or place of manufacture of such reproductions that are offered for sale, such as "Made in the U. S. A.," or "Made in Argentina."

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Subsequently, on January 15, 1947, a stipulation was entered into by and between Abraham Brill, attorney for the respondent, and Daniel J. Murphy, Assistant Chief Trial Counsel of the Commission, whereby it was agreed, subject to the approval of the Commission, that the statement of facts in said stipulation may be taken in addition to and as a supplement of the facts previously stipulated in this case, and the respondent expressly waiving all intervening procedure and agreeing that said Commission may proceed upon said stipulation as to the facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of this proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said petition and said stipulation, and said stipulation having been approved, accepted and filed, 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 its supplemental findings as to the facts and its supplemental conclusion drawn therefrom.

SUPPLEMENTAL FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, National Silver Co. is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at New York in said State. In 1928, the National Silver Co. merged with Samuel M. Bernstein, Inc., the original respondent in this case, and has since been known as the National Silver Co., and, since the aforesaid merger, has been subject to the cease and desist order heretofore issued against Samuel E. Bernstein, Inc. Respondent is now, and has been for many years, engaged in the business of buying and selling cutlery and electroplated silverware.

PAR. 2. "Sheffield plate" as manufactured in England during the eighteenth century by "the fusion process" has not been manufactured for many years, and all silver-plated ware is now manufactured by the electroplating process. The "Sheffield plate" which was manufactured during the eighteenth century is now to be found chiefly in public and private collections, and the existing pieces are regarded as antiques. Because of their rarity, these "Sheffield plate" antiques are not readily obtainable to the buying public. In view, however, of the beauty and artistic appeal of the designs and patterns of old "Sheffield plate" there exists a widespread public demand for reproductions of these old designs and patterns. This public demand is

being met by the manufacture of copies of old "Sheffield plate" designs and patterns from various base metals coated with silver by the electroplating process. Although such modern electroplated silverware does not constitute reproductions of old "Sheffield plate" in the sense of being the same in "structure, method of manufacture, and material," they constitute a reproduction of the old Sheffield designs and patterns and may truthfully be described by the word reproduction when such word is used to modify the words "designs or patterns" or words of similar import and meaning, rather than the article in general. Such a reproduction of the design and pattern of an old Sheffield piece may, therefore, truthfully be described as Sheffield Design Reproduction, Reproduction of Sheffield Design, Reproduction of Old Sheffield Design, Copy of Old Sheffield Pattern, and Reproduction of Old Sheffield Pattern, provided such descriptive words are qualified by the words "Made in U. S. A." or words of similar import and meaning of equal size and conspicuousness clearly revealing the country in which such ware has been manufactured.

SUPPLEMENTAL CONCLUSION

The Commission concludes that the changed conditions of fact herein set forth and the public interest, require that the original order to cease and desist herein be reopened and modified by the addition thereto of a provision, as follows:

Provided, however, That the word "Sheffield" may be used in connection with sale of silver-plated ware, not made in Sheffield, England, if it is used only in immediate connection with the word or words "design" or "pattern," or words of similar import and meaning, so as clearly to reveal that the article described is a modern copy, or modern reproduction, of the "design" or "pattern" of a piece of Sheffield plate manufactured in the 18th century and such descriptive words are qualified by the words "Made in U. S. A.," or words of similar import and meaning of equal size and conspicuousness revealing the country in which said ware has been manufactured.

MODIFIED ORDER TO CEASE AND DESIST

An order having heretofore been entered by the Federal Trade Commission in this proceeding on July 7, 1926, requiring Samuel E. Bernstein, Inc., its agents, servants, employees, and representatives to cease and desist from using the word "Sheffield" in connection with the sale of silverplated ware not made in Sheffield, England; and the National Silver Co. having merged with the original respondent herein in 1928, and having thereafter been subject to the provisions of said

order to cease and desist, and said National Silver Co. having filed its petition on November 22, 1946, seeking the reopening and modification of said order to cease and desist; and on January 5, 1947, having entered into a stipulation with Daniel J. Murphy, Assistant Chief Trial Counsel for the Commission, subject to the approval of the Commission, which stipulation provides, in addition to other provisions, that without further evidence or intervening procedure, the Commission may make its findings as to the facts and conclusions based thereon, and enter its order disposing of this proceeding;

And the Commission having approved said stipulation, and having found that changed conditions of fact, subsequent to the original order to cease and desist herein, and the public interest, require the said order be reopened and modified by the addition thereto of a provision, as follows:

“Provided, however, That the word “Sheffield” may be used in connection with the sale of silverplated ware, not made in Sheffield, England, if it is used only in immediate connection with the word or words “design” or “pattern,” or words of similar import and meaning so as clearly to reveal that the article described is a modern copy, or modern reproduction of the “design” or “pattern” of a piece of Sheffield Plate manufactured in the 18th Century, and such descriptive words are qualified by the words, “Made in U. S. A.,” or words of similar import and meaning of equal size and conspicuousness revealing the country in which said ware has been manufactured.

It is ordered, That the respondent, National Silver Co., 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 silverplated ware in commerce as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist:

From employing or using in connection with the sale of silverplated ware which was not made in Sheffield, England, the word “Sheffield” alone or in connection with any other word or words, sign, symbol, or device to describe or designate such silverplated ware either by stamping or impressing the name “Sheffield” thereon or in any other manner: *Provided, however,* That the word “Sheffield” may be used in connection with the sale of silverplated ware, not made in Sheffield, England, if it is used only in immediate connection with the word or words “design” or “pattern,” or words of similar import and meaning of equal size and conspicuousness so as clearly to reveal that the article described is a modern copy or modern reproduction of the “design” or “pattern” of a piece of Sheffield Plate manufactured in the eighteenth century, and such descriptive words are qualified by the

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words, "Made in U. S. A.," or words of similar import and meaning of equal size and conspicuousness revealing the country in which said ware has been manufactured.

It is further ordered, That 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 said order.

NOTE.—The amended complaint in the original proceeding, dated February 9, 1925, and the original findings as to the facts, conclusion and cease and desist order therein, made as of July 7, 1926, and noted in 10 F. T. C. 223, follow:

AMENDED COMPLAINT

Acting in the public interest 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 charges that Samuel E. Bernstein, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

Count I

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New York with its principal office and place of business in the city of New York, in said State. It is engaged in buying silverplated ware and in the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes said ware when so sold to be transported from its said principal place of business in the city and State of New York into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its said business respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture and/or sale and transportation of silverplated ware in interstate commerce between and among various States of the United States.

PAR. 2. Competitors of respondent, and the manufacturer of respondent's ware, use in the manufacture of their products, the electroplating process which is the covering of a form of base metal with an adherent coating of silver by the electrolysis of silver salts. The plated silverware thus produced varies in quality and value according

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to the composition of the base metal, the workmanship upon its form and the decoration, the amount and fineness of the silver deposited upon it and left upon it after the finishing process and the protection of the surfaces exposed to wear and abrasion. There is no fixed standard for the composition of the base metal nor for the fineness or quantity of silver to be applied generally or to wearing surfaces so that the purchasing public is obliged to depend upon the reputation of the maker of such plated silverware or the reputation of the trade name or brand attached thereto or the representations of the maker or seller thereof, in purchasing said silverware, since the quality of the ware cannot be determined except by laboratory tests.

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

PAR. 4. In the conduct of its business during a period of more than a year past, respondent has sold and continues so to do, electroplated ware coated with silver upon which has been stamped or impressed the words "Sheffield Plate" and other combinations of words including the word "Sheffield" and such ware carrying the word "Sheffield" upon it, is ultimately offered for sale in that form to the consuming public.

PAR. 5. There are competitors of respondent in the manufacture and sale of electroplated ware who are not endeavoring to induce the preferment or purchase of their products by the public by representing

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them as "Sheffield" either with reference to process of manufacture or quality, but recognizing that there is no fixed standard by which the value and quality of electroplated ware can be represented to the purchasing public, have adopted and are following the practice of identifying their products by a firm or house name or by a nondescriptive trade name, the standard for which they severally fix and determine or in unison agree upon, and maintain. The competitive operations of such manufacturers and merchandisers fairly and truthfully representing their products to the public are seriously injured by the methods and practices of the respondent misrepresenting the process and quality of its products as aforesaid.

PAR. 6. The above-alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Count II

PARAGRAPH 1. That paragraphs numbered 1, 2, and 4 of count I are hereby made a part of this count II and are as fully and completely charged as though set out herein verbatim.

PAR. 2. Many years prior to the use of the word "Sheffield" by the respondent as hereinbefore alleged, the silversmiths of the city of Sheffield, England, and vicinity adopted the comparatively new electroplating process, in lieu of the older copper rolled plate process which was practically abandoned, and maintained through the use of the electroplating process the high reputation for quality which they had acquired in the older process. The city of Sheffield, England, and its vicinity have been continuously since many years prior to the said use of the word "Sheffield" by respondent, and are still, and have been and are still quite generally known to be, the largest producing area of silverware and silver-plated ware in England, and the center of and predominant place in the silver industry of that country. Silverware and silver-plated ware made by the silversmiths of Sheffield, England, have been since many years prior to the use of the word "Sheffield" by the respondent, and still are, highly regarded by the trade and public in the United States, England, and other countries, as of uniform, reliable, and dependable quality; and the words "Sheffield Silver," "Sheffield plate," and "Sheffield Silver Plated Ware," when used in connection with silverware or silver-plated ware have signified and denoted, and now signify and denote, to a sub-

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stantial portion of the public that such silverware and silver-plated ware were manufactured in Sheffield, England, and are of the quality which has become associated with that name and industry.

PAR. 3. The use by respondent of the terms "Sheffield," "Sheffield Plate," and other similar designations containing the name "Sheffield" as set out herein has the capacity and tendency to create the impression among a substantial portion of the trade and public that the silver-plated ware upon which such terms appear was manufactured in Sheffield, England, and is of the quality which has been and still is associated with the terms "Sheffield Silver" and "Sheffield Plate" and the silver industry of Sheffield, England; whereas in truth and in fact the silver-plated ware sold by respondent with said terms marked or stamped thereon is not manufactured in Sheffield, England, or in its vicinity, or in England, and is not of the quality which has been and still is associated with the terms "Sheffield Silver" and "Sheffield Plate" and the silver industry of Sheffield, England; and the use of these terms by respondent is a misrepresentation of the origin and quality of respondent's wares, and is confusing and misleading, and tends to create and does create an undue preference for such silver-plated ware among, and tends to induce and does induce the purchase of such silver-plated ware by, a substantial portion of the trade and public in preference to silver-plated ware manufactured and sold by respondent's competitors, some of whom deal in wares which are manufactured in Sheffield, England, and others of whom refrain from the use of such terms in connection with wares not manufactured in Sheffield, England.

PAR. 4. The above-alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served an amended complaint upon the respondent, Samuel E. Bernstein, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

The respondent having entered its appearance, the chief counsel for the Federal Trade Commission and counsel for the respondent there-

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after signed and filed a stipulation containing an agreed statement of facts and the further agreement that the said statement of facts might be taken in lieu of all testimony and other evidence in his proceeding, and that the Commission might proceed further upon the said agreed facts to make its report in the proceeding and its findings as to the facts and enter its order disposing of the proceeding.

Thereupon this proceeding came on for decision and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New York, with its principal office and place of business in the city of New York in said State. It is engaged in buying silver-plated ware and in the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes said ware when so sold to be transported from its said principal place of business in the city and State of New York into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its said business respondent is in connection with other corporations, partnerships, and individuals engaged in the manufacture and/or sale and transportation of silver-plated ware in interstate commerce between and among the various States of the United States.

PAR. 2. Competitors of respondent and the manufacturer of respondent's ware use, in the manufacture of their products, the electroplating process, which is a method of covering a base metal with an adherent coating of silver by the electrolysis of silver salts. The silver-plated ware thus produced varies in quality and value according to the composition of the base metal, the workmanship upon its form and the decoration, the amount and fineness of the silver deposited upon it and left upon it after the finishing process, and the protection of the surfaces exposed to wear and abrasion. There are no fixed standards for the composition of the base metal or for the fineness or quality of silver to be applied generally or to wearing surfaces, so that the purchasing public is obliged to depend upon the reputation of the maker of such silver-plated ware, or upon the reputation of the trade name or brand attached thereto, or upon the representations of the maker or seller thereof, in purchasing said silver-plated ware, since the quality of the ware cannot be determined except by laboratory tests.

PAR. 3. In the course and conduct of its business respondent has

manufactured and sold silverplated ware upon which it stamped or impressed the words "Sheffield Plate" and other words or combinations of words including the word "Sheffield." Such silverplated ware so stamped or impressed with the word "Sheffield" was offered for sale and sold by respondent to its customers and resold by said customers to the consuming public throughout the various States of the United States as set out in paragraph 1.

PAR. 4. About the year 1742 there was originated in Sheffield, England, a process for the production of silverplated ware, which process involved the welding of a silver plate to one or both sides of a sheet or bar of copper so as to form one thoroughly coherent mass which was rolled to the desired gage and subsequently worked into the desired form. The ware produced by this process was properly known as "Copper Rolled Plate" though this name was not used as a trade name or designation. The Copper Rolled Plate of Sheffield, England, acquired a very considerable reputation for excellence in quality, workmanship, and design, and though the name "Sheffield" was not generally impressed upon or affixed to the ware itself, which was identified by the makers registered marks, the copper rolled plate came to be generally known and is now known as "Sheffield." While the cheaper electroplating process displaced copper rolled plate which practically went out of production, there have been and now are from time to time importations of the copper rolled plate into the United States and there is a considerable trade in copper rolled plate in this country at prices which reflect not only its value as plated ware but its artistic and historic value as well. The name "Sheffield" as applied to silverplated ware at the present time implies a quality and a value peculiar to the copper rolled plate process as well as the process itself and its use is a representation thereof.

PAR. 5. Many years prior to the use of the word "Sheffield" by the respondent as hereinbefore stated, the silversmiths of the city of Sheffield, England, and vicinity adopted the comparatively new electroplating process, in lieu of the older copper rolled plate process which was practically abandoned, and maintained through the use of the electroplating process the high reputation for quality which they had acquired in the older process. The city of Sheffield, England, and its vicinity, have been continuously since many years prior to the said use of the word "Sheffield" by respondent, and are still quite generally known to be the largest producing area of silver ware and silverplated ware in England, and the center of and predominant place in the silver industry of that country. Silver ware and silverplated ware made by the silversmiths of Sheffield, England, have been

since many years prior to the use of the word "Sheffield" by respondent, and now are, highly regarded by the trade and public in the United States, England, and other countries, as of uniform, reliable, and dependable quality; and the words "Sheffield," "Sheffield Silver," "Sheffield Plate," and "Sheffield Silverplated Ware" when used in connection with silver ware and silverplated ware have signified and denoted, and now signify and denote, to a substantial portion of the public that such silver ware and silverplated ware were manufactured in Sheffield, England, and are of the quality which has become associated with that name and industry.

PAR. 6. The use by respondent of the term "Sheffield Plate" and other similar designations containing the name "Sheffield" as set out in paragraph 3 herein has the capacity and tendency to create the impression among a substantial portion of the trade and public that the silverplated ware upon which such terms appear was manufactured in Sheffield, England, and is of the quality which has been and now is associated with the terms "Sheffield," "Sheffield Silver," "Sheffield Plate," and the silver industry of Sheffield, England; whereas in truth and in fact the silverplated ware sold by respondent with said terms stamped or impressed thereon is not manufactured in Sheffield, England, or in its vicinity, but is made in the United States of America, and is not of the quality which has been and now is associated with the terms "Sheffield," "Sheffield Silver," and "Sheffield Plate" and the silver industry of Sheffield, England; and the use of these terms by respondent is a misrepresentation of the origin and quality of respondent's ware, and is confusing and misleading, and tends to create and does create an undue preference for such silverplated ware among, and tends to induce and does induce the purchase of such silverplated ware by a substantial portion of the trade and public in preference to silverplated ware manufactured and sold by respondent's competitors, some of whom deal in wares which are manufactured in Sheffield, England, and others of whom refrain from the use of such terms in connection with wares not manufactured in Sheffield, England, the respondent thereby diverting trade from its competitors truthfully marking the wares sold by them.

PAR. 7. There are competitors of respondent in the manufacture and sale of silverplated ware who are not endeavoring to induce the purchase of their products by the public by representing them as "Sheffield" either with reference to process of manufacture or quality, but, recognizing that there is no fixed standard by which the value and quality of silverplated ware can be represented to the purchasing public, have adopted and are following the practice of identifying their

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products by a firm or house name or by a nondescriptive trade name, the standard for which they severally fix and determine or in unison agree upon and maintain. The competitive operations of such manufacturers fairly and truthfully representing their products to the public, are seriously injured by the methods and practices of the respondent misrepresenting the process and quality of its products aforesaid, as they divert trade from said competitors.

CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and respondent's competitors and are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the stipulation as to the facts entered into by counsel for the Commission and by respondent, Samuel E. Bernstein, Inc., and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That respondent, Samuel E. Bernstein, Inc., its agents, servants, employees, and representatives do cease and desist:

From employing or using in connection with the sale of silver-plated ware which was not made in Sheffield, England, the word "Sheffield" alone or in combination with any other word or words, sign, symbol, or device to describe or designate such silverplated ware either by stamping or impressing the name "Sheffield" thereon or in any other manner.

It is further ordered, That respondent shall within 30 days from notice thereof file with the Commission a report setting out in detail the manner and form in which it has complied with the order of the Commission herein set forth.

IN THE MATTER OF
EASTMAN KODAK COMPANY

ORDER SUSPENDING IN PART THE OPERATION OF CEASE AND DESIST ORDER
ISSUED SEPTEMBER 9, 1944

Docket 4322. Order, July 3, 1947

Order in proceeding in question, in which original findings and cease and desist order are reported in 39 F. T. C. 154, and findings, as modified, and order, in 41 F. T. C. 137; and in which—

(a) The Commission found, for the reasons set forth, that respondent's resale price agreements with retail dealer customers in some 44 States with fair trade acts, entered into pursuant to respondent's resale price maintenance policy and system since 1938, did not fall within the saving provisions of the Miller-Tydings amendment to the Sherman Antitrust Act, approved August 17, 1937; and

(b) Said original order required respondent, among other things, in connection with the offer, sale, etc., of its "Kodachrome Film" to cease and desist from entering into any contract, etc., with its dealer-customers which provided that its said film or magazine film is not to be advertised, offered, or sold by them at prices less than those specified by it, or from enforcing or continuing in operation any such contract, etc., as there set out in detail, subject to the provision that "if conditions later change so that there are other commodities of the same general class produced or distributed by others which are sold in free and open competition with respondent's Kodachrome or Magazine Film, then, and in that event, the Commission will, upon proper showing by the respondent, reconsider the terms of this order in the light of such new conditions";

Suspending operation of said order to cease and desist as to Kodachrome Film—following Commission consideration of respondent's petition and affidavits attached thereto, a certain stipulation, and the record in the matter, and its opinion that "respondent's Kodachrome Film is now being sold in free and open competition with color film manufactured, sold, and distributed by General Aniline & Film Corp. so as to bring in operation the provision contained in said order to cease and desist of September 9, 1944, insofar as Kodachrome Film is concerned for the period and during the time that Ansco Color Film manufactured by General Aniline & Film Corp. is sold in free and open competition with respondent's Kodachrome Film"; subject to the provision that nothing therein contained shall affect the operation of said order, insofar as it applies to respondent's "Magazine Film."

Before *Mr. John P. Bramhall*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Nixon, Hargrave, Middleton & Devans and *Mr. William F. Shepard*, of Rochester, N. Y., and *White & Case*, of New York City, for respondent.