

IN THE MATTER OF
STANDARD STORES, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 7267. Complaint, Oct. 1, 1958—Decision, Oct. 2, 1962

Order requiring two individuals in Dallas, Tex., to cease representing falsely in advertising that they were conducting a survey to select a pattern of flatware for their stainless steel table flatware club, and that an exaggerated amount was the regular price for their package of eight place settings and additional pieces; and to cease furnishing sales literature making the same deceptive claims to individuals selling the flatware in various states.

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 Standard Stores, Inc., a corporation, and Thomas L. Hall and Jo Ann Hall, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of 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, stating its charges in that respect as follows:

PARAGRAPH. 1. Respondent Standard Stores, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Texas. Said respondent Standard Stores, Inc., does business under the trade name and style of American Silver Club. Individual respondents Thomas L. Hall and Jo Ann Hall are president-secretary and vice president, respectively, of the said corporate respondent. These individuals formulate, direct, and control the acts, practices, and policies of the corporate respondent. All of said respondents have offices and a principal place of business at 4122 Commerce Street, Dallas, Texas.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the promotion, sale, and distribution, among other things, of stainless steel table flatware to customers and prospective customers located in various states of the United States and in the District of Columbia.

Respondents cause said table flatware, when offered for inspection and sale to be shipped from their said place of business in the State of Texas to the recipients thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents' volume of business in the sale and distribution of said table flatware is and has been substantial.

PAR. 3. Respondents, in the promotion, sale and distribution of said table flatware, use and have used advertising in newspapers and magazines, various circulars, letters, post cards, and other printed material which are sent through the United States mails to various individuals throughout the United States. Included in said advertising matter is a contact letter which states that a survey is being made as to the acceptability of a specified pattern of table flatware for adoption by respondents for their club for sale to its membership and offering the recipient thereof a free gift if the recipient will agree to inspect either a place setting or eight place settings of the

Complaint

61 F.T.C.

special pattern of table flatware, and, in some instances, thereafter to return a filled-in questionnaire to respondents.

Typical, but not all inclusive, of the statements appearing in said advertising literature are the following which appear in the initial contact letter:

EXAMINATION INVITATION
WITHIN A FEW DAYS YOU WILL RECEIVE A
GORGEOUS TWO-PIECE PRINCESS KAREN
HOSTESS SET WITH OUR COMPLIMENTS.

* * * * *

WHERE WE GOT YOUR NAME—We asked our list broker to locate names of persons who could help us to determine if Princess Karen is the right pattern for our new stainless club. Before selecting specific lists, we tried to picture the type person we felt would use and appreciate finely crafted stainless flatware. A person with above average income—who more than likely has silver, likes casual living, and is used to nicer things. Your name was selected from a list which came within this bracket * * *.

* * * * *

WHY WE WANT TO GIVE YOU THIS HOSTESS SET—Before we make commitments in order to have this pattern *exclusively*, it is imperative to get a market analysis from the level of those to whom it will ultimately be offered. We will give you this Hostess Set, if you will help us determine if this should be our main pattern before we start a stainless club similar to our silver club. So, before we make a final decision, I would like for individuals from these selected groups, which includes yourself, to accept our invitation to examine a Princess Karen service for eight, in your own home at my expense. The complete set I am going to send you is nationally advertised at \$83.00 (That's \$8.00 a place setting plus \$10.00 for the container and \$9.00 for the Hostess Set). But, you may have all eight place settings and the container, for only \$29.50. * * *

PAR. 4. Through the use of the foregoing statements, and others of the same import not specifically set forth herein, respondents represented that they were conducting a survey to determine whether or not the named pattern of table flatware was one that should be adopted for their table flatware club and that the results from this survey would be the basis on which such a decision will be made; that the regular price of the eight place settings of table flatware, plus the container and Hostess Set was \$83.00 and that the price of \$29.50, at which said place settings and container was offered was a special, reduced price.

PAR. 5. Said representations were and are false, misleading and deceptive. In truth and in fact, respondents had selected, prior to sending out the aforesaid advertising literature, the pattern of table flatware that was to be used in connection with their table flatware club and the so-called survey had nothing to do with such selection.

The regular price of the eight place settings of table flatware, plus the container and Hostess Set, was substantially less than \$83.00, and the price of \$29.50 for the eight place settings and container was not a special or reduced price but was the regular and usual price at which said combination was offered for sale and sold by respondents.

PAR. 6. In addition to engaging in the above practices, respondents have entered into agreements with a large number of firms and individuals located in several states whereby respondents, in consideration of the payment of a percentage of the gross sales, have agreed to, and do, furnish to such firms and individuals advertising matter similar or identical to that used by respondents above referred to, and such firms and individuals have used, and are now using, such advertising matter in conducting businesses of the same nature as that of the respondents.

PAR. 7. Respondents in the course and conduct of their business are in direct and substantial competition in commerce with corporations, firms and individuals engaged in the sale of table flatware, including stainless steel table flatware.

PAR. 8. The use by respondents of the foregoing false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements were and are true, and into the purchase of respondents' merchandise because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been, and is now being, unfairly diverted to respondents from their competitors, and substantial injury has been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Charles S. Cox supporting the complaint.

Mr. Sam Passman and *Mr. Robb Stewart*, of Dallas, Texas, for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

Standard Stores, Inc., a corporation, Thomas L. Hall and Jo Ann Hall, individually and as officers of said corporation, hereinafter

Initial Decision

61 F.T.C.

called respondents, are charged with false advertising in violation of the Federal Trade Commission Act. The named respondents answered and denied the principal allegations set forth in the complaint. After hearings were begun and before their conclusion, the corporate charter of Standard Stores, Inc., was amended and its name changed to Associate Import Corporation. Hearings have now been completed for the receipt of evidence and testimony in support of and in opposition to the allegations of the complaint.

Proposed findings of fact, conclusions of law and order have been filed by counsel for respondents within the time fixed by the hearing examiner in an order dated March 12, 1962, extending the time to file proposed findings of fact, conclusions of law and order, to and including March 19, 1962. Counsel supporting the complaint did not file proposed findings within the extended period. The hearing examiner denied Commission counsel's request for a further extension of approximately ten days from March 19, 1962. Counsel filed an appeal from this ruling to the Commission. By order dated March 29, 1962, the Commission denied the appeal. The matter is now before the hearing examiner for issuance of an initial decision. All findings of fact and conclusions of law proposed by counsel for respondents not found or concluded herein are rejected.

FINDINGS OF FACT

1. At the time of the filing of the complaint herein, the respondent Standard Stores, Inc., was a corporation, organized in June, 1950 under the laws of the State of Texas, with its office and place of business located in Dallas, Texas. Originally, following its incorporation, Standard Stores, Inc., was engaged in the retail business, selling sewing machines, vacuum cleaners and later, silverplate.

2. At the time of its incorporation, the individual respondent Thomas L. Hall was a minority stockholder in Standard Stores, Inc. In 1953 Mr. Hall purchased the majority of the stock and Standard Stores, Inc., then discontinued the retail business and began buying merchandise, including silverplated table flatware, on a wholesale or jobber basis and selling it to the individual respondent Thomas L. Hall, who about that time, began doing a mail order business under the name of "American Silver Club." Mr. Hall, d/b/a "American Silver Club," then resold and distributed the silverplated table flatware to his customers and prospective customers located in various states of the United States and the District of Columbia. Mr. Hall, d/b/a "American Silver Club," operated what he called a "Silver Club," through which customers purchased silverplated table flatware on a "place-setting-a-month" plan.

3. At the time Mr. Hall purchased the majority of the stock in Standard Stores, Inc., Mr. Hall became president-secretary, and his wife, Jo Ann Hall, became vice president of said corporate respondent. After becoming the majority stockholder in Standard Stores, Inc., Mr. Hall formulated, directed and controlled the acts, practices and policies of said corporate respondent. On some date subsequent to August 17, 1959, and prior to October 18, 1960, the corporate charter of Standard Stores, Inc., was amended and its name changed to Associate Import Corporation. Mr. Hall continued as president of the corporate respondent under the new name. Since the amendment of the charter and change of the corporate name, Associate Import Corporation has been engaged in the importation and sale of merchandise at wholesale. It does not make retail sales. Associate Import Corporation has not imported nor sold any silverplated or stainless steel flatware.

4. Between the time of its incorporation in June, 1950 and 1953, when Mr. Hall purchased the majority of its capital stock, Standard Stores, Inc., had established a good credit rating. For this reason, when Mr. Hall began doing business as an individual under the trade name of "American Silver Club," Standard Stores, Inc., purchased the silverplate in its name and resold the silverplate to Mr. Hall, doing business as "American Silver Club." Mr. Hall, d/b/a "American Silver Club," then paid the manufacturer or company from whom Standard Stores, Inc., had purchased the merchandise.

5. In 1956, while Mr. Hall was still trading as "American Silver Club," he began selling stainless steel table flatware on the "club" plan. This was a pattern of stainless steel flatware called "Princess Karen." Princess Karen was manufactured in Japan and imported into the United States by National Silver Company. Mr. Hall, trading as "American Silver Club," had exclusive sales rights on Princess Karen. As in the case of the silverplated table flatware, the Princess Karen stainless steel table flatware was also purchased by Standard Stores, Inc., from National Silver Company and then resold to Mr. Hall, trading as "American Silver Club," for sale and distribution to his so-called "club members." Mr. Hall, trading as "American Silver Club," then paid National Silver Company direct for the Princess Karen.

6. On September 24, 1957, Mr. Hall was instrumental in the incorporation of American Silver Club Inc., under the laws of the State of Texas. Mr. Hall became president of American Silver Club, Inc. After the incorporation of American Silver Club, Inc., Mr. Hall ceased doing business under the name of "American Silver Club" and the

corporation American Silver Club, Inc., took over the sale of Princess Karen stainless steel flatware and continued through 1957 and into 1958, as Mr. Hall had been doing. The corporation American Silver Club, Inc., continued to use the same letterhead "American Silver Club, . . . Dallas, Texas," which Mr. Hall had been using while he was doing business under the name of "American Silver Club." Some time in 1957, Mr. Hall decided to discontinue the promotion and sale of Princess Karen and begin selling stainless steel flatware manufactured in the United States. Mr. Hall discussed with International Silver Company, an American manufacturer, the possible purchase of stainless steel table flatware from that company as a substitute for the Princess Karen. However, both Mr. Hall and the manufacturer believed it advisable and necessary to select a pattern or design for the stainless steel table flatware to be sold before offering it for sale to the public. Mr. Hall desired a pattern similar to the popular Princess Karen. Accordingly, the International Silver Company designed a pattern of stainless steel table flatware which was somewhat similar in design to Princess Karen and employed the research facilities of Young & Rubican, an advertising agency, to make an initial potential acceptability survey of the pattern. Young & Rubican made the survey test (CX-21C-J). The test confirmed their belief in the acceptability of the pattern. They named the pattern "Creation." International Silver Company made its first delivery of "Creation" stainless steel early in 1958. By this time American Silver Club, Inc., had been formed and it took over the sale and distribution of "Creation." As in the case of the "Princess Karen" stainless steel, Standard Stores, Inc. purchased the "Creation" and then sold it to American Silver Club, Inc., for resale and distribution to its so-called "club members." However, since American Silver Club, Inc., is not a party respondent in this proceeding, no findings of fact will be made with respect to the sales by American Silver Club, Inc., of "Creation" stainless steel.

7. In the sale and distribution of said stainless steel table flatware, the individual respondent Thomas L. Hall, doing business under the trade name of "American Silver Club," and later the corporation American Silver Club, Inc., used advertising in newspapers and magazines, circulars, letters, postcards and other printed material which were sent through the United States mail to various individuals throughout the United States. It is this advertising which is the subject of the complaint herein. Included in the advertising complained about was a form letter on the letterhead of "American Silver Club," Dallas, Texas, addressed to persons whose names were obtained

from various commercial mailing lists, purporting to be signed by "Jo Ann," and with the picture of Jo Ann Hall in the upper left hand corner of the page. Mr. Hall identified this letter as an "examination invitation" (CX-1). Mr. Hall prepared this letter, not his wife, Jo Ann Hall, although her name was at the bottom thereof. This letter stated, among other things, that a survey was being made as to the acceptability of the "Princess Karen" pattern of stainless steel table flatware for adoption by "American Silver Club" for its membership and offering the recipient a *Hostess Set*, consisting of a *Cake Server* and *Salad Server* in the Princess Karen pattern, as a free gift if the recipient would agree to examine a Princess Karen service for eight in the recipient's home. In many instances CX-2 and CX-3 were enclosed and mailed in the same envelope with CX-1. CX-2 is a folder showing a picture of some of the pieces of the Princess Karen pattern and on the back, the open stock prices for the various pieces. CX-3 is an addressed, postage paid card which the recipient of the examination invitation was requested to sign and return, stating that the recipient would accept the two-piece "Princess Karen" *Hostess Set* and examine a Princess Karen service for eight.

8. As stated in paragraph 7 above, the "examination invitation," CX-1, is on the letterhead of "American Silver Club," purporting to be signed by "Jo Ann," substantially as follows:

American Silver Club
2825 Main Street—P.O. Box 1383

Dallas, Texas

EXAMINATION INVITATION

Within a few days you will receive a gorgeous two-piece Princess Karen Hostess Set with our compliments.

We will send you this nine dollar value as a free gift.

But first—would you like to know *where* we got your name and *why* we want to give you this Hostess Set as a free gift?

WHERE WE GOT YOUR NAME—We asked our list broker to locate names of people who could help us to determine if Princess Karen is the right pattern for our new stainless club. Before selecting specific lists, we tried to picture the type person we felt would use and appreciate finely crafted stainless flatware. A person with above average income—who more than likely has silver, likes casual living, and is used to nicer things.

Your name was selected from a list which came within this bracket—people who purchased gourmet foods by mail, private boat owners, members of higher grade civic clubs, those who have ordered custom-made sporting equipment, buyers of rare books and prints, carefully selected career and professional people on the executive level, educators, and people with a participating interest in nature conservation causes. This type of list selection was extremely difficult to compile because it is so limited numerically. But, it is this "carriage trade" that would insist their stainless be of the Princess Karen quality.

Initial Decision

G1 F.T.C.

WHY WE WANT TO GIVE YOU THIS HOSTESS SET—Before we make commitments in order to have this pattern *exclusively*, it is imperative to get a market analysis from the level of those to whom it will ultimately be offered. We will give you this Hostess Set, if you will help us determine if this should be our main pattern before we start a stainless club similar to our silver club.

So, before we make a final decision, I would like for individuals from these selected groups, which includes yourself, to accept our invitation to examine a Princess Karen service for eight, in your own home at my expense. The complete set I am going to send you is nationally advertised at \$83.00 (that's \$8.00 a place setting plus \$10.00 for the container and \$9.00 for the *Hostess Set*). But, you may have all eight place settings and the container, for only \$29.50. Of course, the *Hostess Set* (pictured on the back of this letter) is your *free gift*, whether you keep the set or not, if you will examine a set of Princess Karen at this time.

Frankly, I have compared Princess Karen with sets selling for \$120.00 in the finest New York City and Dallas shops and I still believe it is the most beautiful and best finished pattern being offered today—but you must be the final judge. Time is of the essence, so please mail the enclosed card today—it requires no postage.

Very truly yours,

JO ANN

9. The statement in the penultimate paragraph of CX-1 to the effect that the complete set of Princess Karen "I am going to send you is nationally advertised at \$83.00 (that's \$8.00 a place setting plus \$10.00 for the container and \$9.00 for the *Hostess Set*)", refers to an advertisement by American Silver Club in the February, 1957 issue of *House Beautiful* magazine, CX-5. This advertisement, CX-5, contains a picture of a Princess Karen fork and also a picture of Jo Ann Hall. Among other things, the advertisement states the following:

JO ANN HALL

... Personal Shopper

I personally guarantee Princess Karen to be the most beautiful and best finished stainless flatware offered anywhere at any price. Let me send you a 5-piece setting for your inspection. Complete 40-piece service for eight with two serving pieces and packets—\$83.00. Open stock available.

Jo Ann Hall, Personal Shopper

AMERICAN SILVER CLUB

2825 Main Street—Dept. A-1 Dallas, Texas

10. There were other "examination invitation" letters similar to CX-1, such as CX-10A, B, and C, and also "examination invitation" letters on the letterhead of American Silver Club soliciting the sale of the "Creation" pattern of stainless steel table flatware which was later sold by American Silver Club, Inc. These letters were addressed to persons whose names were obtained from various commercial mail-

ing lists, persons engaged in various businesses, trades, professions and categories. It is the contention of counsel supporting the complaint that, through the use of the foregoing statements in the "examination invitation" letters and other advertising material offered and received in evidence at the hearing, the respondents represented that they were conducting a survey to determine whether or not the "Princess Karen" pattern of stainless steel flatware was one that should be adopted for their stainless steel table flatware club and that the results from this survey would be the basis on which such a decision would be made; that the regular price of the eight-place-settings of "Princess Karen," plus the container and Hostess Set was \$83.00 and that the price of \$29.50, at which said place settings and container was offered was a special, reduced price. The complaint alleges that said representations were false, misleading and deceptive; that, in truth and in fact, Mr. Hall, d/b/a "American Silver Club," had selected, prior to sending out the aforesaid advertising literature, the "Princess Karen" pattern of stainless steel and the so-called survey had nothing to do with such selection; that the regular price of the eight-place settings of "Princess Karen" plus the container and Hostess Set was substantially less than \$83.00 and the price of \$29.50 for the eight-place-settings and container was not a special or reduced price but was the regular and usual price at which said combination was offered for sale and sold by respondents.

11. It is found that the substantial allegations of the complaint have been established by a preponderance of the evidence. By the use of the statements and representations in "examination invitation" letters, CX-1, 10A, B, and C, the individual respondents Thomas L. Hall and his wife Jo Ann Hall represented that American Silver Club was conducting a survey to determine whether the "Princess Karen" should be selected as the main pattern for their so-called stainless steel "Club," whereas, said representation was false, misleading and deceptive for the reason that the "Princess Karen" pattern had already been selected as the main pattern for the so-called stainless steel "Club." It is further found that the statement in *House Beautiful* (CX-5) . . . "Complete 40 piece service for eight with two serving pieces and packette—\$83.00" was a representation that \$83.00 was the regular price for the eight-place settings of "Princess Karen" plus the container and *Hostess Set*, whereas, in truth and in fact, \$29.50 was the regular price at which American Silver Club sold this merchandise.

12. It is further found that Mr. Hall made agreements with individuals in various states of the United States whereby Mr. Hall furnished

these individuals with sales literature, similar to CX-1, 10A, B and C, for their use to assist them in the sale of stainless steel table flatware through the mails similar to the mail order business which Mr. Hall was conducting under the name of American Silver Club and later, American Silver Club, Inc. In consideration of the services and sales literature furnished by Mr. Hall, each of these various individuals agreed to pay Mr. Hall 1% of their gross revenues from the sale of stainless steel flatware. The evidence discloses that some of these individuals made numerous mailings of the sales literature furnished by Mr. Hall in an effort to sell the "Creation" stainless steel table flatware through the mail. However, their sales promotions were not financially successful and Mr. Hall has not received any financial remuneration from these individuals under the 1% agreements made with them.

13. The individual respondent Thomas L. Hall d/b/a American Silver Club, caused said stainless steel flatware to be shipped from his place of business in Dallas, Texas to recipients located in various states of the United States and the District of Columbia in direct and substantial competition in commerce with firms and individuals engaged in the sale of stainless steel table flatware and maintained a substantial course of trade in stainless steel table flatware in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business of the individual respondent Thomas L. Hall, trading as American Silver Club in the sale and distribution of stainless steel table flatware was and has been substantial.

14. The individual respondent Jo Ann Hall, wife of the respondent Thomas L. Hall, testified at the hearing that she did not write any of the letters complained about, such as CX-1, and did not participate in the formulation of the policies, practices or management of Standard Stores or American Silver Club. Nevertheless, her picture appeared on and her name purported to be signed to many of the advertising pieces complained about. This was with her knowledge and consent. Therefore, Mrs. Hall is legally responsible for the representations contained in these advertisements.

15. Although not affecting the outcome of this decision, it will be stated that the record shows that the merchandise advertised and sold by Mr. Hall, d/b/a American Silver Club was of good quality and compared favorably with competitive stainless steel table flatware which sold at a much higher retail price.

CONCLUSIONS

The use by respondents of the foregoing false, misleading and deceptive statements and representations has had the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements were true and into the purchase of respondents' merchandise because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors, and substantial injury has been done to competition in commerce. Said acts and practices herein found were to the injury and prejudice of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act.

ORDER

It is ordered, That Associate Import Corporation, a corporation, whose name was Standard Stores, Inc., at the time of the issuance of the complaint herein, its officers, and respondents Thomas L. Hall and Jo Ann Hall, individually and as officers of said corporation, and respondents' representatives, agents and employees, under the name of American Silver Club or any other name, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of table flatware, or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication, that respondents are conducting a survey to select and adopt any specified pattern of table flatware for their table flatware club, unless such is a fact.
2. Representing, directly or by implication, that respondents are conducting a survey for any purpose or that the results of a survey will be tabulated for a specified purpose unless such is a fact.
3. Representing directly or by implication, that any price is the regular price of merchandise when it is in excess of the price at which said merchandise is regularly and customarily sold by respondents in the normal course of business.
4. Furnishing the means and instrumentalities to others, by or through which others may mislead the public with respect to any of the matters set out above.

Complaint

61 F.T.C.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

This matter having been placed on the Commission's docket for review; and

The Commission having determined that the initial decision should be modified:

It is ordered, That the following finding be inserted on page 900 of the initial decision after the sentence "Therefore, Mrs. Hall is legally responsible for the representations contained in these advertisements":

The record does not sustain a finding that the corporate respondent, Associate Import Corporation, was responsible for the dissemination of the representations challenged in this proceeding.

It is further ordered, That the allegations of the complaint as to respondent Associate Import Corporation, formerly named Standard Stores, Inc., be, and they hereby are, dismissed.

It is further ordered, That the initial decision, as modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Thomas L. Hall and Jo Ann Hall, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the initial decision.

IN THE MATTER OF

MOE OSHER TRADING AS RELIABLE
HANDKERCHIEF CO.