

Syllabus

IN THE MATTER OF

MORRIS HOCHBERG AND DAVID HOCHBERG, COPARTNERS, TRADING UNDER THE FIRM NAME AND STYLE OF GRAND HAT COMPANY

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

Docket 1901. Complaint, Jan. 20, 1931—Decision, June 17, 1933

Where a firm engaged in the purchase of used and discarded men's felt hats, and in the cleaning, renovation, and re-equipment thereof, with new hat ribbons, sweatbands, and linings, with typical designs and words or legends thereon, under a process and treatment which gave said hats the appearance of new,

(a) Sold the same with nothing thereon to advise the uninformed as to their made-over character, through wholesale dealers and agents, whose retail dealer customers (1) included such establishments as customarily deal in new hats and/or other merchandise, (2) made no particular, if any, revealing, distinction in their display and sale of the new, as compared with the cheaper, less durable, and inferior renovated, article, and (3) offered and sold the latter to the ultimate consumer making the customary demand for a "hat", in ignorance of the comparatively new and rapidly growing business in hats renovated as above set forth, and their marketing through retail channels theretofore associated in the public mind with sale of new hats exclusively, without, ordinarily, advising him as to the true nature of the article being sold him;

With the result that wholesale and retail dealers were enabled to sell said hats as and for new, and the ultimate purchaser or consumer was deceived and misled into buying as and for a new and unused hat, one discarded and renovated, as above set forth, notwithstanding the prejudice or distaste frequently or customarily felt for such a purchase, and trade was diverted from wholesale and retail dealers and manufacturers of, the necessarily more costly new felt and wool hats and from the "dry shop" hat body manufacturers or finishers, who were variously unable to meet the competition of the renovated article misleadingly sold as above set forth, and whose business was seriously injured or destroyed thereby, to their prejudice and injury, and that of the industry and purchasing public; and

(b) Sold some of the higher priced renovated hats, dealt in by it as aforesaid, with the mark and label of a long established and well known manufacturer of men's hats of high quality, which had become well and favorably known to the public throughout the United States, and represented said hats as having been originally made by said manufacturer, notwithstanding the fact that hats so marked, labeled, and represented had not been made by the manufacturer in question;

With the effect of inducing wholesale dealers and jobbers and the purchasing public to buy said hats as and for new hats made by said manufacturer, and pay a higher price therefor, because of the well known qualities of said manufacturer's product, and with the capacity and tendency so to induce such

Complaint

17 F.T.C.

purchase at higher prices, and with the further effect of injuring the business of said manufacturer, through diverting to said firm from such manufacturer sales of men's new felt hats, and with capacity and tendency so to divert:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors, and constitute unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Mr. Samuel L. Miller, of New York City, for respondents.

Mr. John Knight Holbrook, Jr., of New York City, for Hat Institute, Inc. (*Amicus Curiae*).

COMPLAINT

Acting in the public interest pursuant to the provision 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 Morris Hochberg and David Hochberg, copartners, trading under the firm name and style of Grand Hat Co., hereinafter referred to as respondents, have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Morris Hochberg and David Hochberg, are copartners, trading under the firm name and style of Grand Hat Co., having their office and place of business at 4-6 Montgomery Street, in the City of New York, State of New York, and have been for more than one year last past engaged in the business of selling and distributing men's felt hats of the character and in the manner hereinafter mentioned to jobbers and wholesale dealers located at points in the various States of the United States and the District of Columbia. Respondents cause said hats when so sold to be transported from the said City of New York, State of New York, through and into other States of the United States and the District of Columbia, to the said jobbers and wholesale dealers thereof at their respective points of location. In the course and conduct of their said business as aforesaid, respondents are in direct and active competition with various other persons, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution of men's felt hats in interstate commerce among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business respondents buy second-hand, old, used, and discarded men's felt hats which hats are in some instances sold by respondents to jobbers and wholesale dealers in the same condition they were in when bought, and in other cases are renovated and sold by respondents to said jobbers and wholesale dealers. All hats which are renovated by

respondents are first sent to a dry-cleaning establishment, where they are thoroughly dry-cleaned and returned to respondents. Said hats are then steamed, ironed, and shaped by respondents at their place of business. The poorer grade of hats are sold by respondents to their customers without being further treated. The higher quality hats are relined and fitted with new ribbon bands, sweatbands, and size labels, and then sold by respondents to jobbers and wholesale dealers, who resell them to retail dealers. Said new relinings and sweatbands are purchased by respondents from the manufacturers thereof, and bear various trade names, designs, devices, and descriptive wording.

PAR. 3. The aforesaid old, used, discarded, and second-hand hats, after being made over by respondents, and fitted with new trimmings, as described in paragraph 2 herein, have the appearance of new hats which have never been worn, and said hats are sold by respondents to jobbers and wholesale dealers without anything on or about said hats to indicate that such hats are in fact second-hand hats which have been renovated and made over by said respondents. Said hats are resold by said jobbers and wholesale dealers to retail dealers, who resell them to the public without disclosing the fact that said hats have been previously worn, and then renovated and made over, and under such circumstances as to indicate that they are new hats.

The cost to respondents of obtaining, renovating, and making over said hats as aforesaid is much less than the cost to hat manufacturers of manufacturing new hats of similar quality, and respondents are thereby able to sell said hats to jobbers and wholesalers at substantially lower prices than manufacturers of hats can sell hats of the same or similar quality to jobbers and wholesale dealers.

PAR. 4. It is the common belief and understanding among wholesale and retail dealers, and the purchasing public, that hats having the appearance of new and unused hats, as do hats distributed by respondents, and sold by respondents and those dealing in men's hats without anything on or about said hats to indicate that such is not so, are in fact hats which are new and unused, and have never been worn or used by anyone previously; and said wholesale and retail dealers, and the purchasing public, when buying hats having the appearance of new and unused hats, and without anything on or about said hats to the contrary, are entitled to receive new and unused hats, and not second-hand, old, used, and discarded hats which have been renovated and made over. The acts and practices of respondents as hereinabove set forth are calculated to, and do, have the capacity and tendency of inducing many wholesale and retail dealers, and many of the purchasing public, to purchase the said second-hand, old, used, and discarded hats which have been renovated and made over by respondents,

Complaint

17 F.T.C.

in the mistaken belief that they are purchasing new and unused hats, and tends to and does unfairly divert trade to respondents from concerns engaged in the manufacture and sale of hats in interstate commerce throughout the various States of the United States and the District of Columbia.

PAR. 5. John B. Stetson Co., of Philadelphia, Pa., is a large and well-known manufacturer of men's hats. The hats manufactured and sold by said company are of a high quality, and have become well and favorably known to the public throughout the United States. Among the second-hand, used, old, and discarded hats which are renovated and made over by respondents as hereinabove set forth, there are some hats manufactured by said John B. Stetson Co., and hats of similar quality manufactured by other hat manufacturers in this country and foreign countries. In offering for sale and selling their said renovated and made-over hats, respondents separate some of the hats made by said John B. Stetson Co. and said other manufacturers of high quality hats, and offer them for sale and sell them as hats manufactured by John B. Stetson Co. For hats so described respondents charge a higher price than for their regular renovated and made-over hats. Such hats described by respondents as John B. Stetson hats are not in all cases hats manufactured by said John B. Stetson Co., but include many hats made by manufacturers other than John B. Stetson Co.; and the fact is that respondents cannot tell and do not know which hats sold by them were originally manufactured by John B. Stetson Co., or any other manufacturer. The sale by respondents of hats described as hats manufactured by John B. Stetson Co., which hats were not in fact manufactured by John B. Stetson Co., is unfair to said John B. Stetson Co., and to wholesale and retail dealers and the purchasing public, who are induced to buy said hats, and pay a higher price therefor, because of the well-known quality of said John B. Stetson Co. hats, and relying on respondent's representations that said hats are hats which were originally manufactured by said John B. Stetson Co. The sale of said hats as and for hats manufactured by John B. Stetson Co. tends to, and does, divert trade to respondents from said John B. Stetson Co., to the injury and detriment of said company.

PAR. 6. The above alleged acts and practices of respondents are each and all of them to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served its complaint upon the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance, and having filed their answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and respondents before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing on the briefs and oral argument of counsel for the Commission and counsel for respondents, and brief *amicus curiae* and oral argument by counsel for The Hat Institute, Inc., the trade association for the hat industry, in support of the complaint, and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Morris Hochberg and David Hochberg are copartners doing business under the trade name and style of Grand Hat Co. and have their place of business at 264 Dawson Street, in the City of New York, State of New York, where for about three years last past they have been engaged in the business of manufacturing men's made-over felt hats, and of selling and distributing said hats to wholesale dealers and jobbers located in the various States of the United States and the District of Columbia. Respondents cause said hats, when sold, to be transported from their aforesaid place of business in the City of New York, State of New York, to the purchasers thereof at their respective points of location in the several States of the United States and the District of Columbia.

In the course and conduct of their business as aforesaid respondents are in direct and active competition with various other persons, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution in interstate commerce among the various States of the United States and the District of Columbia, of men's new and made-over felt hats.

PAR. 2. In the course and conduct of their aforesaid business of manufacturing, selling, and distributing men's made-over felt hats, respondents employ workmen in their place of business who are engaged in the various operations involved in the process of making over men's felt hats, described hereinafter. Respondents sell their made-over hats direct to wholesale dealers and jobbers throughout the

United States. They do not send out any advertising literature. The wholesale dealers and jobbers to whom respondents sell do their own advertising of the hats.

Respondents sell their made-over hats in two grades, at \$9 per dozen and \$12.50 per dozen, less 10 percent discount, with a few being sold at \$13.50 per dozen. The principal difference between the grades of the hats is in the quality of the bodies and trimmings. Some of the lower priced hats may in addition have slight imperfections in the felt. In the years prior to 1930 respondents sold their made-over hats at from \$18.50 to \$21.50 per dozen. The volume of business done by respondents in made-over hats amounts to between \$155,000 and \$160,000 per year.

Respondents also do a large business in buying out-of-style new hats from retail stores and reselling them. Sometimes they are remodeled and sometimes sold as they are. The better grades of these hats are separated from the others and sold under their own names for higher prices. Respondents also reclean and reblock some of the old, worn, used, and discarded hats which they buy, and sell them at cheap prices. These hats are not retrimmed or remade. In addition, for the past fifteen months respondents have been operating a "dry shop", making about 50 dozen new hats per week, which they sell for \$18.50 to \$21.50 per dozen.

PAR. 3. The principal material used in the manufacture of men's hats sold in this country is felt, which is made from the fur of animals. There are a comparatively small number of men's hats manufactured from wool, but these hats are inferior in quality to fur felt hats, and cheaper in price. The principal fur used in the manufacture of the felt is rabbit, or cony fur, although beaver fur and nutria are also used to a considerable extent, beaver being almost exclusively used in the highest priced men's felt hats. The rabbit or cony fur is obtained from England, Australia, France, Poland, and other European countries. The darker colored felt hat bodies are made from British or Australian rabbit fur, while the lighter colored bodies are made from cony, or white rabbit, fur secured principally from France. Many new hat manufacturers purchase the fur from fur cutters, who clip it from the pelt, pack it, and sell it to the hat manufacturer. Some of the larger manufacturers, such as the Frank H. Lee Co., of Danbury, Conn., and John B. Stetson Co., of Philadelphia, Pa., buy the pelts and clip their own fur.

The pelts are seasoned for a certain length of time, and then the fur is clipped from them by machines, cleaned, and the hair separated from the fur. In manufacturing a man's new felt hat a certain amount of fur is selected by weight. Usually several different kinds of fur are used in a hat, depending on the color, weight, or other

characteristics of the finished hat. Each manufacturer has his own formulae of mixtures used in the hats manufactured by him. The fur selected is blown by a machine into a chamber in which there is a truncated perforated cone, and the fur drops on this cone and is uniformly distributed over it. In its first stage the hat is cone-shaped and about $3\frac{1}{2}$ feet high. After its removal from the cone it is dipped in hot water and shrunk by various manipulations by skilled workmen while saturated with hot water, put on a smaller cone, and the same process repeated until finally the hat is the desired size for shaping into a finished hat. It is then put on a blocking form and given its first shaping. Various other shaping operations follow, and the hat is dyed when necessary. It is then ready for the final operations of pouncing, ironing, luring, trimming, and flanging. Pouncing consists of rubbing off the rough hairs on the body of the hat, and luring is the process of smoothing the hat with a cloth, and is the final process before trimming. Trimming consists in sewing silk bands on the outside of the hat, and leather sweatbands and linings on the inside. Flanging is the process of giving permanent shape to the brim of the hat, and is usually done after the hats have been trimmed. All of the operations described above are performed by highly skilled workmen.

Many manufacturers of men's felt hats in this country do not make the hat bodies, but buy them from manufacturers of such bodies and do the finishing in their own plants. These manufacturers are known in the trade as "dry shops."

PAR. 4. Men's made-over felt hats have been manufactured and sold in the United States for more than twenty years, but it has only been during the past six or seven years that their sale has had any substantial effect on the hat industry as a whole. Prior to that time the made-over hats were principally sold in the second-hand stores, and many of them were exported to foreign countries. It was not until an improved method of cleaning the old hat bodies was perfected that it has been possible to remake and refinish the old hats so that they are an important factor in competition with new hats.

The first step in the manufacture of men's made-over felt hats is the purchase of the old, worn, used, and discarded hat bodies. There are regular dealers in such old hats located in Chelsea, Mass., New York City, and other cities. The largest dealers in men's old, worn, used, and discarded felt hats are located in Chelsea, Mass., which city seems to be the principal source of supply of such hats. These dealers in old hats buy them from many sources, including trashmen, junk dealers, peddlers, second-hand clothing collectors, and retail stores. The hats purchased from retail stores are usually hats which have been left in the stores by men who have purchased new hats.

Findings

17 F.T.C.

In some few instances out-of-style hats which have never been worn are purchased from retail stores, but these hats are generally sold without being made over.

The old, worn, used, and discarded men's felt hats purchased by the dealers as aforesaid are sorted by them according to color, quality, and condition, and are packed in bales and sold to made-over hat manufacturers, such as respondents. Respondents purchase their old hat bodies from various dealers in old hats, paying from \$1.50 to \$2.75 per dozen for them.

PAR. 5. The old, worn, used, and discarded men's felt hats are received by respondents packed in bales. Respondents strip all trimmings from the hats and send them to a dry-cleaning establishment in Brooklyn, N.Y., where they are put through a vacuum cleaning process. The hats are put in a vacuum cleaning machine and the vacuum turned on. Then 500 gallons of benzine are put in and the machine started revolving. The benzine circulates all around the hats, and in the course of about 10 minutes runs out of the machine, leaving the hats thoroughly cleaned. The hats remain in the machine altogether about three quarters of an hour, under vacuum. The machine operates slowly because it softens the felt in the hats if it revolves rapidly, or if the hats are left in the benzine too long.

When the cleaned hats are returned respondents turn them inside out. The brims are stiffened with shellac and the crowns are stiffened with gum tragacanth. They are then blocked by steam and put on an electric ironing machine for the shaping of the crown. The hats are then taken to the finishers for pouncing, which consists in smoothing the rough hairs of the body of the hat. Powder is then put on the hats with a wet brush and rubbed in so as to give the hats a uniform color. They are then sent to the trimmers, who sew new hatbands, sweat leathers, and linings on the hats. The hats are then flanged, which consists in shaping the hats to conform to the style which the manufacturer desires to make. The last process is that of luring, in which the whole hat is smoothed with a piece of cloth. The hats are then packed in boxes for shipment to customers.

Some of the old hats bought by respondents are in too bad a condition to justify putting through the above process, in which case they are merely cleaned and sold at a cheaper price than those that are made over.

PAR. 6. Linings of various materials are used in practically all the men's new felt hats manufactured and sold in this country. The linings, leather sweatbands, and ribbons used by respondents on the made-over hats manufactured and sold by them are new, and are bought from regular dealers in such trimmings. These dealers sup-

ply both new and made-over hat manufacturers. All hat linings used in new and made-over men's hats have printed on them a name or design known in the trade as "dies." These dies are imprinted on the linings by the dealer at the order of the manufacturer. New hat manufacturers usually order dies consisting of a trade name, trade mark, or name of the manufacturer, jobber or retail dealer, together with a design of some kind. These are known in the trade as "special dies". Many dies, however, consist of general names or terms, such as "Select Quality", "Felts De Lux", and "Aristocrat", together with a fanciful design. These are known as "stock dies" and are used by both new and made-over hat manufacturers. Dealers in linings have "stock dies" printed in quantities and keep them on hand for sale to new and made-over hat manufacturers. In some instances a dealer will buy a job lot of linings from a manufacturer which bears the name or trade mark of a manufacturer, jobber, or retail dealer, and which for some reason the manufacturer is unable to use. Such linings will be sold to made-over hat manufacturers by the dealer without changing in any way the name or trade mark appearing on the linings.

Respondents buy their linings from dealers in New York City as they need them, and these linings are imprinted with "stock dies." Respondents do not specify any particular names to be printed on the linings, but take whatever the dealer has on hand. There is no uniformity of name or brand used by respondents, as respondents do not sell any hats under brand names. Respondents have used linings in their made-over hats bearing the names: "Sportsmen Hats—Styles Distinctive—Chapeaux-De-Elite"; "Quality Superb"; "Select Quality—Fur Felt—Recognized Standard of Excellence"; and at the time of taking testimony in this proceeding was using linings bearing the names; "Superior Quality—Distinctive Styles—Made by Expert Craftsmen for Fine Trade"; "The Metropolitan Standard"; "Select Quality—Recognized Standard of Excellence"; and others.

Leather sweatbands are purchased by respondents from dealers in such articles, and bear no names or designs when purchased. Respondents have names and designs imprinted on the sweatbands identical with the names and designs appearing on the linings which they are using at the time.

PAR. 7. Respondents sell the made-over hats manufactured by them to jobbers and wholesale dealers direct. There is no word of any kind on the made-over hats manufactured and sold by respondents to indicate that the hats are made-over hats and not new hats. Some of the jobbers and wholesale dealers to whom respondents sell send out circulars in which no mention is made that the hats are

made-over hats. The wholesale dealers and jobbers who buy made-over hats direct from respondents know that the hats are made-over hats. Many buyers for wholesale dealers and jobbers come to respondents' place of business and buy the hats, and in every case respondents advise such buyers that the hats are made-over hats. Other wholesale dealers and jobbers because of their familiarity with the business know that the hats are made-over hats because of the prices at which they are sold; said prices being lower than new men's fur felt hats can be sold for.

In invoicing made-over hats to purchasers no mention is made by respondents that the hats are made over, they being listed usually by lot numbers.

PAR. 8. The made-over hats manufactured and sold by respondents have the appearance of new hats, and respondents endeavor to make the said hats look as much like new hats as possible. The hats are thoroughly cleaned, as described above, and where there is any difference in color it is made uniform by rubbing into the hat powder of the required color. New ribbons, leather sweatbands, and linings are sewed on the hats.

A number of made-over hats manufactured by respondents, together with a number of made-over hats manufactured by another made-over hat manufacturer, were introduced in evidence and marked as exhibits in this proceeding. A new hat manufactured by a new hat manufacturer was also introduced in evidence and marked as an exhibit. All these hats were then mingled and handed to a number of witnesses from different branches of the hat trade with the request that they designate which hats were new and which were made over. The witnesses asked to make this test consisted of the president of one of the largest companies manufacturing men's felt hats in the United States—a man with 46 years' experience in the hat business—and who has personally worked in all the various processes of manufacture of men's felt hats; three managers of hat stores, and one wholesale hat dealer, who has been in the business since 1892.

Not one of these witnesses was able to correctly distinguish between all of the new and made-over hats, even after thorough and careful examination. Nine hats, eight being made-over hats and one a new hat, were examined by the hat manufacturer, and five hats, four being made-overs and one new, were examined by the other witnesses. All of the witnesses identified some of the hats correctly, but none of them designated all of them properly. The new hat manufacturer designated the new hat as a made-over hat, and picked two of the made-over hats as being new hats. One of the retail hat store managers and the wholesale hat dealer picked all of the hats as being made-over hats. Another retail hat store manager desig-

nated three of the hats, including the new hat, as being new hats, and two of the hats as made-over hats. The other retail hat store manager picked four of the hats, including the new hat, as being made-over hats, and one made-over hat as being a new hat.

PAR. 9. It is the invariable custom of men when buying a hat, either in a store selling hats exclusively or in a store selling hats and other articles of merchandise, to ask for a "hat", and never ask for a "new hat." Witnesses connected with four well-known chain store organizations selling men's hats in New York City and in other cities of the United States, and the buyer of men's and women's hats for a chain department store organization operating 1,472 stores in cities and towns in all parts of the United States, testified in this proceeding. These stores sold men's new fur felt hats at varying prices, the lowest being \$1.98 and the average being about \$3. Not one of these witnesses knew of a case where a man purchasing a hat in any of their stores had asked for a "new hat." They simply asked for a "hat."

Twelve representative men, selected at random and not advised in advance as to the nature of the proceeding or the questions to be asked them, were called as witnesses in this case. They included security and advertising salesmen, an accountant, business men, a private detective, instructors, and law clerks. They all testified that they never asked for a "new hat" when making a purchase of a hat, but always asked for a "hat", and that they expected to receive a new hat, and would feel that they had been deceived if the dealer sold them a made-over hat without advising them that the hat was made over. They testified that they had a prejudice against wearing a hat which had been previously worn by someone else and discarded, even though it had been thoroughly cleaned and fitted with new trimmings.

Not one of these men knew that there was such a business as the made-over hat business, or that men's old, worn, used, and discarded hats were made over and resold to the public in stores which handled men's hats.

PAR. 10. The Commission finds that the made-over hats manufactured, sold, and distributed by respondent so nearly simulate men's new fur felt hats in appearance that it is impossible for the ordinary purchaser at retail to distinguish between such made-over hats and new hats, even by careful examination and inspection; that the use of linings and leather sweatbands having imprinted on them marks and designs similar to those used in new hats and bearing words such as "Quality Superb"; "Superior Quality—Distinctive Styles—Made by Expert Craftsmen for Fine Trade"; "Select Quality—Recognized Standard of Excellence"; and other similar phrases is deceptive and

leads purchasers to believe the hats are new hats; that the ordinary purchaser at retail does not know that men's made-over hats are being sold in this country in stores selling men's hats exclusively and in stores selling men's hats and other articles of merchandise; that the ordinary purchaser of men's hats does not know of the existence of the made-over hat industry; that there is a prejudice in the mind of the average man against wearing a hat which has previously been worn by some other person and discarded, even though that hat has been thoroughly cleaned and fitted with new trimmings; and that the made-over hats manufactured, sold, and distributed by respondents can be sold to retail purchasers as new hats without the purchaser knowing that they are in fact made-over hats.

PAR. 11. Wholesale dealers and jobbers know that the hats they buy from respondents are made-over hats. Such dealers handle new hats as well as made-over hats, and from their familiarity with the hat business they are able to tell from the prices at which they buy hats those which are made over and those which are new, even if the made-over hat manufacturer does not advise them that the hats are made over. In selling made-over hats to retail dealers the jobbers and wholesale dealers do not always advise said retail dealers that the hats are not new hats, but are made over. Wholesale dealers and jobbers sell made-over hats by advertising circulars and catalogs sent to retail dealers and by traveling salesmen. The salesmen carry samples of made-over hats to show to retail dealers. Some of the wholesale dealers and jobbers sew tickets in the sample made-over hats bearing the words "made over", or some other word indicating that the hats are not new, and others rely on their salesmen to advise the retail dealers that the hats are made-over hats. In many instances the salesmen do not advise the retail dealers that the hats are made-over hats.

Many wholesale dealers and jobbers of made-over hats offer such hats for sale in advertising circulars or catalogs which are distributed to retail dealers. Such hats are sometimes offered for sale in said circulars or catalogs by themselves, and sometimes together with new hats and hats which have not been worn by anybody, but which are out-of-date because of style or color. Some wholesale dealers and jobbers indicate that the hats are made-over hats, in said circulars or catalogs by use of the words "renovated" or "made over", but many of them do not indicate by any word or words, or other description, that the hats being offered for sale are old, worn, used, and discarded men's felt hats which have been made over.

Many wholesale dealers and jobbers engaged in the sale of made-over hats to retail dealers do not indicate in any way on their invoices

that the hats being sold are made-over hats, and some retail dealers have bought made-over hats from such wholesale dealers and jobbers without knowing that the said hats were not new hats.

PAR. 12. Made-over hats are sold generally throughout the United States, but the principal sale is probably in the Southern States. Testimony of retail dealers, including small general stores, men's furnishing stores, and a few department stores, located in a number of cities and small towns in a number of Southern States, was taken in this proceeding. Witnesses were called by both sides.

Made-over hats sold in retail stores vary in price from 95 cents to \$2.50, with the largest number being sold at \$1 and \$1.95 each. A few years ago made-over hats sold for \$2.50 and more apiece. Some retail dealers keep the made-over hats on shelves, sometimes in boxes, with new hats. Other dealers display them on tables by themselves, with a price card stating the price at which they are to be sold. In no instance does the price card advise the purchaser that the hats are made-over hats.

Made-over hats are sold by retail dealers to purchasers in no different manner than are new hats. All of the stores sell new hats as well as made-over hats. The majority of retail dealers do not advise purchasers that the hats are made-over hats, but a few testified that they did tell the purchaser at the time the sale was made that the hat was a made-over hat. Some retail dealers do not say anything about the hats being made-over hats unless purchasers inquire as to why the hats are being sold so cheap, in which event they tell them that they are made-over hats. In an effort to sell higher priced hats, a few retail dealers advise purchasers that the hats are made-over hats and will not give as good service as will new hats.

The Commission finds that a large majority of retail dealers engaged in the sale of made-over hats to the public sell such hats without in any manner advising purchasers that the hats are made-over hats, and that such a method of sale has the capacity and tendency to mislead and deceive the purchasers of such hats into the belief that they are in fact new hats being sold at bargain prices. This results in a stimulation of the market for made-over hats and the curtailing of the market for new hats.

PAR. 13. Old, worn, used, and discarded men's fur felt hats which have been cleaned and fitted with new trimmings by respondents, as described in paragraph 5 hereinabove, are inferior in wearing qualities to new men's fur felt hats. The process of cleaning the old hats loosens the fibers of the felt and allows atmospheric conditions to affect the bodies to a greater extent than they do new felt bodies, the fibers of which are tightly integrated. Many of the old hats have

Findings

17 F.T.C.

been in contact with wood ashes or other mineral matter after they have been discarded. Any mineral matter will affect any animal matter, of which felt hats are made, and will affect the textile strength of the fur fibers. When the hats are then put through the cleaning process to remove the grease and foreign matter the fibers are loosened and opened up. Gum tragacanth and shellac are used to stiffen the brims and crowns of made-over hats, but upon exposure to atmospheric conditions the stiffening effects are soon lost and the hats lose their shape due to the action of the elements. The felt bodies in made-over hats deteriorate rapidly and the made-over hats will not give as good service as will new hats.

In many cases it is impossible to completely remove stains and dirt spots from the old hats in the cleaning process, and the powder which is rubbed into the hats to cover such spots and other discolorations wears off. In such cases the old spots and stains reappear after the hat has been worn for a time.

Due to the careful treatment given the old hats by respondents during the process of making them over the defects set forth above are not visible by a careful examination, and will not show up until some time after the made-over hat has been worn. It is, therefore, impossible for the purchasing public to protect itself from buying inferior made-over hats unless there is some mark or other indication on the hats advising purchasers that the hats are in fact made-over hats, or unless the retail dealer tells the purchaser that the hat is a made-over hat, which is seldom done.

PAR. 14. The cost of manufacture of made-over men's fur felt hats is considerably less than the cost of manufacture of the lowest priced men's new fur felt hats. The hat body is the principal item of expense in the manufacture of a man's felt hat. Felt hat bodies sold by manufacturers to "dry shops" for finishing and resale to wholesalers and retailers cost from \$8 per dozen up, depending upon the quality. One manufacturer, in order to meet the competition of made-over hats, had put on the market at the time of the taking of testimony in this proceeding a hat body which he could sell to the "dry shop" for \$6.50 per dozen. This is probably the lowest priced fur felt hat body obtainable. As against this price of new hat bodies, respondents pay from \$1.50 to \$2.75 for the old, worn, used, and discarded hats which they buy for use in manufacturing made-over hats.

Five made-over hat manufacturers, including respondents, employ union labor in their factories, but the great majority do not. One made-over manufacturer using union labor pays the following wages in his factory for making over hats:

Finishing bodies:	<i>Per dozen</i>
Cheap hats.....	\$1. 75
Better hats.....	2. 20
Average hats.....	2. 00
Specials (negligible in quantity).....	2. 65
Trimming (flat rate).....	. 95
Sewing on leathers (flat rate).....	. 20
Flanging (flat rate).....	. 45
Steaming (flat rate).....	. 25
Slicking and packing (flat rate).....	. 35
Dry cleaning.....	. 22

Applying these figures, it therefore costs respondents at least \$4.17 per dozen for labor costs in making their cheapest quality made-over hat; \$4.62 per dozen for their better grade; and \$4.42 per dozen for the average made-over hat which they make. Respondents pay \$2.75 per dozen for the best grade of old hat bodies which they buy, and \$1.50 per dozen for the cheapest grade, which makes their highest total labor and body costs for manufacturing finished made-over hats \$7.37 per dozen for the best grade, and \$5.67 per dozen for the cheapest grade. No cost figures for made-over hat manufacturers not employing union labor were introduced in evidence. It is probable, however, that made-over hat manufacturers not employing union labor in their factories do not pay as high wages as those that do, which would make their labor costs lower than those given above.

The union scale of wages paid in New York for finishing men's new fur felt hats is as follows:

	<i>Per dozen</i>
Finishing body.....	\$2. 80
Trimming.....	1. 32
Flanging.....	. 55

No figures for steaming and slicking and packing were available, but adding the wages paid for these processes by made-over hat manufacturers employing union labor which are no higher, if as high, as paid by new hat manufacturers, the total labor cost for manufacturing men's new fur felt hats are \$5.27 per dozen as a minimum. Adding to this figure \$6.50 per dozen for the bodies, which is the price at which one manufacturer was selling bodies to "dry shop" manufacturers, makes a total for body and labor costs of men's new fur felt hats a minimum of \$11.77 per dozen. The price for bodies charged by most manufacturers is from \$8 per dozen up, which would make the general body and labor costs for new hats \$13.27 per dozen and up. Ribbons, linings, and leather sweatbands do not cost made-over manufacturers any more than they do new hat manufacturers.

Men's finished fur felt made-over hats can be made by respondents at a cost of from \$4.40 to \$6.10 per dozen less than "dry shop" manufacturers in New York City, paying union wages, can make the cheapest new fur felt hats. Whenever new hat manufacturers have reduced

the prices of new hats in order to meet the competition of made-over hats, the manufacturers of made-over hats have correspondingly reduced the prices of made-over hats. Because of the higher manufacturing costs of new hats, it is impossible for new fur felt hats to compete in price with made-over fur felt hats, and new hat manufacturers are placed at a great disadvantage in meeting the competition of respondents and other made-over hat manufacturers.

PAR. 15. The manufacture and sale of men's made-over fur felt hats has greatly increased in volume in the past four or five years. Because such hats are sold to the public in retail stores devoted to the sale of new merchandise, without any mark or words on them to indicate that they are made-over hats, and at much lower prices than are charged for new hats, manufacturers of men's new fur felt hats have lost many of their customers owing to their inability to manufacture and sell new hats at a price to compete with made-over hats. In some instances they have had to close their branch factories. Manufacturers of new hats have had to continually decrease prices for their hats until some of them are selling at cost. Sales of new fur felt hat bodies have decreased even though prices have been reduced. "Dry shop" manufacturers have reduced their purchases of hat bodies for finishing, due to the competition of made-over hats; some of them have been forced out of business and others have bought made-over hats for sale to retailers who demand a hat which can be sold to the public at a low price.

Jobbers and wholesale dealers have lost customers because of the sale of made-over hats. Many jobbers and wholesale dealers do not sell made-over hats because they believe that the low price at which these hats sell is detrimental to the hat industry. Many retail dealers demand low-priced hats, and because these jobbers and wholesale dealers do not sell them, many of their retail customers buy their supply of made-over and new hats from other dealers who handle such hats. Other jobbers and wholesale dealers have been forced to handle made-over hats against their wishes because of the demand for cheap hats. The sales of new hats by jobbers and wholesale dealers have steadily decreased during the past few years, due to the increased purchase of made-over hats by retail dealers. Jobbers and wholesale dealers who sell new hats cannot compete with made-over hats because of the low prices at which the latter are sold. The competition of the made-over hat not only affects the sale of men's new fur felt hats, but has also resulted in a decrease in sales of wool felt hats, which is a hat made of wool which is sold at considerably lower prices than fur felt hats.

Retail stores handling men's new fur felt hats are losing business because of the competition of made-over hats. These stores are placed at a disadvantage over stores selling made-over hats because the latter

stores not only sell the made-over hats at a lower price than new hats can be sold for, but do not inform the purchasers that the hats are made-over hats, and there is nothing on the hats to indicate that fact. The sale of made-over hats by some retail stores forces other retail stores not handling such class of merchandise into price competition with stores selling low-priced and cheap merchandise.

PAR. 16. Respondents sell made-over hats to jobbers and wholesale dealers for resale to retail dealers and the purchasing public without any mark, word, or other indication on or about said hats that they are old, worn, used, and men's discarded fur felt hats which have been cleaned and fitted with new ribbons, linings, and leather sweatbands. Respondents advise jobbers and wholesale dealers to whom they sell that such hats are made-over hats. Many of the jobbers and wholesale dealers in reselling said hats to retail dealers do not advise them that the hats are made-over hats, and some retail dealers have bought made-over hats without knowing that said hats are made-over hats. The great majority of retail dealers in selling made-over hats to the public do not advise purchasers that the hats are not new hats but are in fact old hats which have been made over.

By the manufacture and sale of made-over hats which have the appearance of new hats, and which do not have on or about them any mark, word or words, or other indication showing that said hats are not new hats but are in fact old, worn, used, and discarded hats which have been cleaned and fitted with new ribbons, linings, and leather sweatbands, respondents enable jobbers and wholesale dealers to sell said hats to retail dealers, and retail dealers to sell said hats to the purchasing public as new hats.

The sale of said made-over hats in the manner described in the within findings is injurious to the public and competitors of respondents engaged in the manufacture and sale in interstate commerce of men's new fur felt and new wool felt hats. Such sale has the capacity and tendency to, and does in fact, injure the purchasing public because it misleads, deceives, and induces the public to buy such hats in the belief that they are new hats, and that they will give as satisfactory service in wearing qualities as will new hats. Many men would not buy said hats if they knew they were made-over hats because they would not wear a hat which had been previously worn by someone else, even though it had been thoroughly cleaned.

The sale of made-over hats by respondents has the capacity and tendency to, and does in fact, injure competitors of respondents engaged in the business of manufacturing and selling men's new fur felt and wool felt hats because: (1) It diverts to respondents from their said competitors the sales of men's new felt and new wool felt hats;

and (2) it prejudices the purchasing public against the new hat industry because of the deception and deceit in the sale of made-over hats to the public, and because made-over hats are sold at such low prices that competitors of respondents making men's new hats cannot meet such prices, owing to the higher manufacturing costs required to make new hats, and because said made-over hats are inferior in wearing qualities to new hats.

PAR. 17. Among the old, worn, used, and discarded hats purchased by respondents to be made over are many hats manufactured by John B. Stetson Co. and other manufacturers who have an established reputation for manufacturing men's high-grade felt hats. Respondents make over these high-grade hats in the same manner as they do the other made-over hats which they sell, put John B. Stetson Co. labels in them, and sell them to wholesale dealers and jobbers as John B. Stetson made-over hats. Respondents receive a higher price for the made-over hats which they sell as John B. Stetson made-over hats than they do for the highest grade made-over hats they sell which are not represented as John B. Stetson Co. hats.

Among the hats sold by respondents bearing labels of, and represented by them as being, hats manufactured by John B. Stetson Co. are many hats which were not manufactured by said John B. Stetson Co., but which were in fact manufactured by other hat manufacturers.

On or about September 5, 1929, a purchase of three dozen hats was made at the place of business of respondents by a witness in this proceeding. One dozen of the "best hats" made by respondents, and one dozen each of the lower grades, were requested. The purchaser was informed by a representative of respondents at the time of purchase that the better grade hats were "Stetson hats." When the hats were delivered they were packed in boxes—three hats to each box. On the top of each box in which were packed the twelve better grade hats was marked the word "Stetson." These hats were sent to the John B. Stetson Co. in Philadelphia, Pa., for microscopic and chemical examination in the laboratory of that company.

Dr. Ivor Griffith, in charge of the laboratory, has developed a method whereby he can tell what kinds of fur fibers are used in a felt hat by a microscopic examination. After determining the kinds of fur used and comparing the mixture with the various formulae used in the manufacture of felt hats by the John B. Stetson Co. he can determine whether the hats were manufactured by that company. On cross-examination Dr. Griffith was subjected to a test by counsel for respondents which showed that his conclusion that any given hat was not of John B. Stetson manufacture was trustworthy and definite.

Dr. Griffith testified that of the twelve hats sold by respondents as "Stetson hats", eleven of them were not hats manufactured by the

John B. Stetson Co., and the other one "may be" a Stetson hat, but because of its color he doubted that it was. Dr. Griffith explained in detail the reasons for his conclusions.

On or about February 26, 1932, a witness in this proceeding purchased six hats from T. D. Stokes & Sons, a jobber of hats in Richmond, Va. The purchaser asked for "Stetson made-over hats" and was supplied with six hats, each one bearing a label of the John B. Stetson Co. under the leather sweatband. A representative of T. D. Stokes & Sons testified that his company purchased these particular hats from respondents, and had them in stock for at least eight or nine months. They were represented by respondents to be "made-over Stetson hats", and T. D. Stokes & Sons paid a higher price for them than for the other grades of made-over hats purchased from respondents. T. D. Stokes & Sons paid respondents from \$19 to \$21.50 per dozen for Stetson made-over hats, whereas their other grades cost usually \$13.50 and \$16.50 per dozen.

These six hats had John B. Stetson Co. labels in them. They were turned over to the John B. Stetson Co. for microscopical examination. Dr. Ivor Griffith testified that three of these hats were not manufactured by John B. Stetson Co.—two of them "may be" Stetson hats and one of them "probably is" a Stetson hat.

PAR. 18. John B. Stetson Co. is a long-established and well-known manufacturer of men's hats, and the hats manufactured and sold by said company are of high quality, and have become well and favorably known to the public throughout the United States. The sale by respondents of made-over hats which are represented to be hats originally manufactured by John B. Stetson Co., and in which respondents have put labels of the said John B. Stetson Co., when in truth and in fact said hats were not originally manufactured by said company, is unfair to the John B. Stetson Co., and to wholesale dealers and jobbers and the purchasing public because: (1) It has the capacity and tendency to, and does in fact, induce said wholesale dealers and jobbers and the purchasing public to buy said hats in the belief that they are new hats manufactured by the John B. Stetson Co.; (2) it has the capacity and tendency to, and does in fact, induce said wholesale dealers and jobbers and the purchasing public to buy said hats, and pay a higher price therefor, because of the well-known quality of hats manufactured by John B. Stetson Co., relying on the false and deceptive representations made by respondents; and (3) such sales by respondents further have the capacity and tendency to, and do in fact, injure the business of the said John B. Stetson Co. because they divert to respondents from John B. Stetson Co. the sales of men's new fur-felt hats.

Order

17 F.T.C.

CONCLUSION

The practices of respondents Morris Hochberg and David Hochberg, copartners, trading under the firm name and style of Grand Hat Co., under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondents' 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 complaint of the Commission, the answer of the respondents, and the testimony taken and briefs filed herein, and oral argument of counsel, and the Commission having made its findings as to the facts, with its conclusion that the respondents have 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 now ordered, That the respondents Morris Hochberg and David Hochberg, copartners, trading under the firm name and style of Grand Hat Co., their agents, representatives, and employees, in connection with the sale or offering for sale of men's hats in commerce among the several States of the United States and in the District of Columbia, cease and desist from:

(1) Selling or offering for sale men's old, worn, used, and discarded fur felt hats which have been cleaned and fitted with new ribbons, sweatbands, and linings unless and until there is stamped upon, affixed or attached to said hats in a conspicuous place so as to be easily and readily seen, word or words clearly indicating that said hats are not new hats but are used and worn hats which have been cleaned and made over (e.g., "second-hand", "used", or "made-over").

(2) Advertising or representing by means of labels, linings, oral statements, or in any other manner, that any hats sold by them are hats manufactured by a particular hat manufacturer, unless said hats were in fact manufactured by said hat manufacturer.

It is further ordered, That respondents shall within 60 days from the date of the service upon them of the order herein file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

Complaint

IN THE MATTER OF
B. BRUCE BESSEMER, TRADING AS AMERICAN
ACADEMIC RESEARCH SOCIETY

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

Docket 2101. Complaint, Apr. 25, 1933—Order, June 17, 1933

Consent order requiring respondent, his agents, etc., in connection with the sale or offer in interstate commerce of a set of reference works or encyclopedias, designated as "Progressive Reference Library Encyclopedia" to cease and desist from—

- (a) Advertising or representing in any manner that (1) any book or set of books offered and sold by him will be given free of cost, or that (2) a limited number of sets has been reserved to be given away free to a selected and limited number of persons as a means of advertising, or that (3) purchasers or prospective purchasers of the books are only buying or paying for loose-leaf supplements to keep the books up-to-date or are only buying or paying for services to be rendered by way of research for a period of ten years, or that (4) usual and regular price for supplemental and research service is substantially greater than \$39.50, or that a special price is being made to the prospective customer; when such various statements or representations are not true in fact;
- (b) Operating under the name and style "Mount Holyoke Research Society", unless and until purchasers and prospective purchasers are clearly informed that book or books sold are not sponsored by an educational institution known as "Mount Holyoke College", and representing that the "American Academic Research Society" has any connection with such college or that such publications are compiled or published by the college or faculty thereof;
- (c) Falsely representing, directly or indirectly, that a regular force or staff of educational experts or research workers is maintained for the purpose of supplying requested information to purchasers, or representing that any prominent educators, Government officials or others are connected with, or part of his editorial staff, or are contributors of data, or connected in any way with such publications, without first obtaining authority from such prominent educators, Government officials or others; and
- (d) Representing to prospective purchasers that the purchasing price of said publications is payable over a period of 10 years, when in fact payment is required in a shorter period of time.

Mr. PGad B. Morehouse for the Commission.

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 B. Bruce Bessemer, an individual, trading as "American Academic Research Society", has been and now is using unfair methods of com-