

Syllabus

IN THE MATTER OF
SPEIDEL CORPORATION

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

Docket 2555. Complaint, Sept. 18, 1935—Order, Dec. 31, 1935

Where a corporation, engaged in the manufacture and sale and distribution at wholesale of watch chains made by a special electrolytic method similar to heavy gold electroplating, with gold deposit thereon by weight approximately ten times greater than that produced by light electroplating processes known to the trade as "gold wash" or "gold flashing", but not with the maximum amount obtainable through the electroplating process, or with a substantial deposit as compared with "gold-filled" articles, or of the grade or quality of "rolled gold plate" as understood by the trade—

Represented to the purchasing public that a substantial quantity of gold, both in weight and thickness, had been deposited upon the metal core of said links, through use of words "gold shell" together with its trade name "Oresto", in legend on cardboard mountings on which said chains were sold by it and displayed by jobbers and retailers in windows and show-cases, and which legend was made use of by jobber-purchasers in describing and selling to consuming public, products in question, sold by it in competition with those who do not in any way misrepresent the composition, nature, character, or quality of articles produced through electroplating process, but truthfully represent the same;

With result of placing in the hands of such jobbers and retailers an instrument and means whereby a portion of the consuming public might be led to the mistaken and erroneous belief that the products thus marked or designated were encased in a layer or shell of gold of such substantial thickness that in purchasing said chains, it was buying a product of a quality comparable to that generally known and designated as "gold-filled", and to that produced by electroplating, in which heavier gold deposits are obtained than in the articles herein involved, and to purchase substantial quantities thereof in such mistaken belief, and with tendency to enable such jobbers and retailers to confuse aforesaid articles in the minds of a substantial portion of the public with products designated "rolled gold plate", which exceed in value those herein concerned irrespective of whether or not the gold deposit by weight and thickness is greater, and with result of unfairly diverting trade from and otherwise substantially injuring competitors engaged in the sale of gold-covered articles, properly described and designated as "gold-filled", and as "rolled gold plate":

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

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Before *Mr. John W. Norwood*, trial examiner.

Mr. J. T. Welch for the Commission.

Huddy & Moulton, of Providence, R. I., for respondent.

COMPLAINT

Pursuant to an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that the Speidel Corporation, a corporation, hereinafter designated as respondent, is now, and has been, using unfair methods of competition in commerce as "commerce" is defined in said act and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is now, and has been since its incorporation in 1932, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 70 Ship Street in the city of Providence in said State, and is now and has been at all times mentioned herein, engaged in the business of manufacturing, selling, and distributing at wholesale to jewelry jobbers and retailers certain novelty jewelry, including watch chains, in commerce as hereinafter set out.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said novelty jewelry, including said watch chains, as hereinabove described, when sold, to be transported from its principal office and place of business in the State of Rhode Island to the purchasers thereof located in various cities in other States of the United States and in the District of Columbia, and there is now and has been at all times mentioned herein, a constant current of trade and commerce in said jewelry and watch chains so sold and distributed by respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with individuals, firms and corporations engaged in the business of manufacturing, selling and distributing novelty jewelry and watch chains, as herein described, to jobbers and retailers in commerce among and between the various States of the United States and the District of Columbia.

PAR. 4. In the course of the operation of said business, and for the purpose of inducing individuals, firms, and corporations to purchase said novelty jewelry and watch chains hereinafter described,

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to wit: watch chains sold under the name "Oresto", respondent has mounted said watch chains on cardboard mountings attached to each chain, each mounting bearing a legend which states, among other things, that the chain is "gold shell guaranteed."

The entire legend appearing on said cardboard mounting to which the watch chain sold by the respondent under the name of Oresto, is attached, reads as follows:

ORESTO GOLD SHELL GUARANTEED SOLDERED LINKS

Made by

SPEIDEL CORPORATION

The said cardboard mountings above referred to are attached to the watch chains before being sold to or distributed to the jewelry jobbers and retailers buying same, and are displayed to the consuming public by said jobbers and retail jewelers through window or show-case displays.

The legend appearing on said cardboard mountings serves as a representation, both to the jobbers and retailers purchasing said watch chains for resale, and to the purchasing public, that the said watch chains are manufactured by a process of such a character that gold, of substantial weight and thickness, is deposited on the base metal core of each link of said watch chain in such a way as to form a complete shell around said core.

In truth and in fact said watch chains, manufactured, marketed and distributed as aforesaid, are not manufactured by a process whereby a substantial quantity of gold, either in weight or in thickness is deposited as a covering on the base metal core of the links of said watch chain so as to form a complete gold shell surrounding said core.

PAR. 5. The jewelry manufacturing trade has generally adopted the use of certain terms in describing gold covered articles. The names or designations so used are descriptive of the process used in applying gold to the manufactured articles, and also designate the quantity, quality and character of the gold so applied to the article, and serve as representations to the general purchasing public that the articles were manufactured, and the gold applied, in conformity with certain set standards. The designations generally adopted by the trade, with respect to articles that are not of solid gold, are: "gold filled", "rolled gold plate", "gold plate", and "gold electro plate". In the process of manufacturing articles designated as "gold filled", or "rolled gold plate", a substantial quantity of gold, in weight and thickness, is applied to the base metal core and articles truthfully designated as "gold filled", and "rolled gold plate" are generally accepted by the trade and by the purchasing public as being of a

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character and quality superior to articles manufactured by the process designated as "gold plate" and "gold electro plate".

The watch chains heretofore described in paragraph four are manufactured by a process whereby the base metal core is first gold plated by the use of a gold wash, and subsequently gold electro plated.

PAR. 6. Respondent's said customers, being jobbers and retailers, offer for sale and sell the articles of merchandise referred to in paragraph 4 hereof to the consuming public pursuant to the description and representation of said article as appearing on the cardboard mounting attached thereto by the respondent, as set out in paragraph 4.

The false and misleading statements and representations on the part of the respondent, as hereinabove set out, place in the hands of the aforesaid jewelry jobbers and retailers an instrument and a means whereby said jewelry jobbers and retailers may commit a fraud upon a substantial portion of the consuming public by enabling such jewelry jobbers and retailers to falsely represent, offer for sale, and sell the product known as Oresto watch chains as being a product produced by a process superior to the process of producing gold plate and gold electro plate articles, and possessing on its exterior a gold shell of substantial weight and thickness, and as being a product superior in quality to similar products on which the gold on the exterior thereof is placed thereon either by a gold wash process or a gold electro plating process.

PAR. 7. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale the item of merchandise described in paragraph 4, attached to cardboard mountings, containing the representations hereinabove detailed, is to mislead a substantial portion of the consuming public, as well as jewelry jobbers and retail dealers, in the several States of the United States, by inducing them to believe:

(1) That the item of merchandise attached to said cardboard mounting is a product manufactured by a process of such a character that gold, of substantial weight and thickness, is deposited on the core of each link of said watch chain in such a way as to form a complete shell around said core;

(2) That said item of merchandise, to wit: watch chains sold under the name Oresto, are of a superior quality to similar items of merchandise manufactured under a gold washing or gold electro plating process commonly designated by the trade as "gold plate" or "gold electro plate" process;

and to purchase a substantial quantity of said products in said belief.

PAR. 8. There are among the competitors of respondent many who in no wise misrepresent the composition, nature, character and qual-

ity of the merchandise which they manufacture and sell by attaching said merchandise to cardboard mountings bearing legends containing the same or similar false and misleading representations, or in any manner whatever, and who truthfully represent the composition, character and quality of the products manufactured and sold by them.

The alleged acts, practices, and representations of the respondent are added inducements for a substantial number of jobbers and retail dealers, as well as the consuming purchasers, to buy the products known as "Oresto" watch chains, manufactured and distributed by the respondent, and have a tendency and capacity to, and do, divert a substantial volume of trade from respondent's competitors, with the result that substantial quantities of said Oresto watch chains are sold to said dealers and to the consuming public on account of said beliefs induced as aforesaid. As a consequence thereof, substantial competition in commerce among the several States of the United States and in the District of Columbia has been substantially injured and otherwise prejudiced.

PAR. 9. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent herein, Speidel Corporation, a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent, having entered its appearance and having filed its answer herein, entered into a stipulation whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent, and its counsel, and J. T. Welch, attorney for the Federal Trade Commission, subject to the approval of the Commission, are the facts in this proceeding and shall be taken by the Federal Trade Commission as such and in lieu of testimony before the Commission

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in support of the charges stated in the complaint, or in opposition thereto, and that said Commission may proceed further upon said statement of facts, stating its findings as to the facts and conclusions thereon and enter its order disposing of the proceeding:

And, thereupon, this proceeding came on for final hearing and the respondent having waived the filing of briefs and the hearing of oral argument herein before the Commission, and said Commission having approved and accepted said stipulation as to the facts and having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent corporation was organized in the year 1932 under and by virtue of the laws of the State of Rhode Island. Its principal place of business is located at 70 Ship Street in the city of Providence, in the State of Rhode Island. Since the date of its organization, the respondent has been engaged in the business of manufacturing, selling, and distributing at wholesale to jewelry jobbers, jewelry, novelty jewelry, watch chains, and watch bracelets. The products of the respondent have been, and are now, sold and transported by it, in substantial quantities, in commerce among and between the several States of the United States. The respondent sells substantial quantities of its products in competition with other corporations, firms, and individuals selling like products, to wit: jewelry, novelty jewelry, watch chains, and watch bracelets, in commerce among and between the several States of the United States.

PAR. 2. The respondent, in its said business, has used the trade mark "Oresto" and has, in the prosecution of said business, for the purpose of inducing the purchase of its products, mounted watch chains on cardboard mountings bearing the following legend:

ORESTO
GOLD SHELL
GUARANTEED
SOLDERED LINKS
MADE BY
SPEIDEL CORPORATION

The expression "Guaranteed" applies to the soldering of the links to distinguish these chains from others in the trade having unsoldered links and does not apply to the "gold shell." The legend "guaranteed soldered links" is a usual and well understood legend in the trade.

The cardboard mountings are attached by the respondent to said watch chains before being sold to jobbers and said mountings, with the chains attached, are displayed by the jobbers and retail jewelers to the consuming public through window and show-case displays. Jobbers who purchase the products of respondent sell said products to the consuming public accompanied by the description of said products as appearing on the cardboard mounting attached thereto by the respondent.

PAR. 3. The jewelry manufacturing trade has generally adopted the use of certain terms in describing gold covered articles. The names or designations so used are descriptive of the process used in applying gold to the manufactured article and also designate the quantity, quality, and character of the gold so applied to the article and serve as representations to the general purchasing public that the articles were manufactured and the gold applied in conformity with certain set standards. The designations generally adopted by the trade with respect to articles that are not of solid gold, are "gold colored" or "gold plate", "gold electroplate", "rolled gold plate", and "gold filled."

The term "gold colored" or "gold plate" is used to describe those articles dipped in a gold wash. Some manufacturers obtain the gold effect by a chemical process. If gold is used by the manufacturer, the deposit thereof left on the article after the gold wash, is of the thinnest obtainable.

The term "gold electroplate" is used to describe an electrolytic process whereby gold deposits up to 25 milliemes "Fine Gold" can be obtained. The usual and most common form of electroplating is known as "gold flashing." This process produces a lustre finish or light gold film within 5 to 15 seconds and the gold deposit will vary between $\frac{1}{4}$ and $\frac{3}{4}$ millieme "Fine Gold." "Fine Gold" is 24 kt. gold. The watch chains manufactured by the respondent and marketed under the trade name "Oresto" and described as "gold shell" are manufactured by a process in which 12 kt. gold is deposited upon base metal in the proportion of 5 dwt. 12 kt. gold per 1,000 dwt. of base metal by a special electrolytic method similar to that used in electroplating for heavy gold deposits. The fineness of "Oresto gold shell" watch chains varies from 5 to 6 milliemes 12 kt. gold. By weight, the thickness of the gold deposited on said watch chains is approximately 10 times greater than that produced by "gold wash", "gold flashing", or light electroplating in which from $\frac{1}{4}$ to $\frac{3}{4}$ millieme "Fine Gold" is deposited as a result of the electroplating process. Some electroplated articles, containing more than 5 to 6 milliemes and up to 25 milliemes 12 kt. gold are manufactured and sold

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in commerce among the several States both by the respondent and its competitors. "Oresto gold shell" products, therefore, do not contain the maximum amount of gold deposit that can be obtained by the electroplating process. In order to secure gold deposits of 5 to 6 milliemmes 12 kt. gold such as are obtained on "Oresto gold shell" products and the gold deposits up to 25 milliemmes "Fine Gold" used in producing gold electroplated articles of qualities equal to or superior to "Oresto gold shell" products, it is necessary to give said products an immersion of from 5 to 20 minutes as compared to the short immersion necessary in producing products containing $\frac{1}{4}$ to $\frac{3}{4}$ millieme 12 kt. gold.

A substantial quantity of gold in weight and thickness is in fact deposited on the base metal core in "Oresto gold shell" products as compared with the quantity of gold deposit obtained by the "gold wash", "gold flashing" or light gold electroplating processes.

In the process of manufacturing articles designated as "gold filled" or "rolled gold plate", a substantial quantity of gold, in weight and in thickness is applied to the base metal core, either by an air-tight hydraulic process or by soldering the gold layer onto the base metal by means of suitable solder. The term "gold filled" is properly used to designate articles which are superior to, contain a higher gold content both by weight and thickness and are more expensive than either "rolled gold plate" or "Oresto gold shell" and articles of similar quality. The term "rolled gold plate" is properly used to designate articles which may have a gold content either greater or less than "Oresto gold shell" but which are also, in either case, of a quality superior to and more expensive than "Oresto gold shell." The actual cost of "gold filled" and "rolled gold plate" as compared with "Oresto gold shell" varies from 100 percent to 200 percent more.

A substantial quantity of gold, in weight or in thickness, is not deposited on the base metal core of respondent's "Oresto gold shell" product as compared with the quantity and quality of gold deposit obtained in producing "gold filled" articles or the qualities or grades of "rolled gold plate" articles having a greater gold content than the "Oresto gold shell."

PAR. 4. The legend, "Oresto gold shell" does not serve as a representation of any specific degree of weight or thickness of gold deposited on the base metal core, but does serve as a representation to the purchasing public that a substantial quantity of gold, both in weight and in thickness, is deposited thereon.

The effect of the use of the term "gold shell", and the acts of the respondent in selling and offering for sale the watch chains sold under the trade name "Oresto", attached to cardboard mountings containing

the said legend has been to place in the hands of jewelry jobbers and retailers an instrument and a means whereby a portion of the consuming public might be led to mistakenly and erroneously believe that the products so marked, described or designated were encased in a layer or shell of gold of such substantial thickness that said consuming public would believe they were purchasing a product of a quality comparable to that generally known and designated as "gold filled" and other products produced by that gold electroplating process whereby a heavier gold deposit than that in "Oresto" quality is obtained, and to purchase substantial quantities of said "Oresto" quality gold covered articles in said belief. The marketing of said product so marked and designated also has a tendency to enable said jobbers and retailers to confuse in the minds of a substantial portion of the consuming public the respondent's product with articles designated as "rolled gold plate" which may, or may not, contain more gold deposit by weight and thickness but which are, in either case, of a value greater than "Oresto gold shell" products.

The respondent is not now using the term "gold shell" in marketing or selling its products designated as "Oresto" quality and discontinued the use of the said term prior to the execution of the stipulation as to the facts.

PAR. 5. There are, among the competitors of respondent, many who in no wise misrepresent the composition, nature, character, and quality of the articles produced by an electroplating process which they manufacture and sell by attaching said articles to cardboard mountings bearing legends containing the same or similar false and misleading representations, or in any manner whatever, and who truthfully represent the composition, character, and quality of the products manufactured and sold by them.

PAR. 6. The use of the term "gold shell" by the respondent in marketing and selling its watch chains produced by an electroplating process has served to cause an unfair diversion of trade from, and otherwise substantially injure, competitors of respondent in the sale of gold covered articles properly described and designated as "gold filled" and as "rolled gold plate."

PAR. 7. Any representations that might have been made by said jobbers and retailers in inducing the purchase of respondent's "Oresto" quality products in preference to products manufactured by the gold washing process or the light gold electroplating process, said representations claiming that the respondent's "Oresto" quality watch chains possess on the exterior thereof a gold deposit of substantial weight and thickness as compared to the gold deposit on said products manufactured by the gold washing or light gold electroplating process, are not false and misleading and do not constitute

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a means whereby said jewelry jobbers and retailers may commit fraud upon a substantial portion of the consuming public.

CONCLUSION

The acts and practices of the respondent are each and all to the prejudice of the public, and to the competitors of the respondent and constitute unfair methods of competition in 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".

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 respondent, and a stipulation entered into between the respondent herein, Speidel Corporation, a corporation, and its counsel, Messrs. Huddy & Moulton, and counsel for this Commission, and the Commission having made its findings as to the facts and its conclusion that said 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":

Now, therefore, it is hereby ordered, That respondent, Speidel Corporation, a corporation, its officers, agents, representatives, and employees, in connection with the distribution, offering for sale and sale of jewelry, novelty jewelry, watch chains, and watch bracelets, in interstate commerce, forthwith cease and desist from:

(1) Using the term "gold shell", or words of similar import, in any way to describe or designate any of its gold covered products manufactured by any electroplating or electrolytic process.

(2) Representing by words, terms, figures or designations of any kind or character that said jewelry, novelty jewelry, watch chains, and watch bracelets produced by any process other than that by which gold covered articles commonly designated as "gold filled" and "rolled gold plate" articles are produced, possess a "gold shell" or contain a deposit of a substantial quantity of gold on the exterior thereof, unless and until the said gold deposit contained on the exterior of said articles is comparable, by weight and by thickness, with the amount and quality of gold deposit contained on the exterior of articles correctly designated as "gold filled" and "rolled gold plate" articles.

It is further ordered, That the respondent shall within 60 days after the 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 the order to cease and desist hereinabove set out.

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IN THE MATTER OF

SHAPIRO FELT RUG COMPANY, AND WM. SHAPIRO,
MORRIS SHAPIRO, AND SARAH SHAPIRO, TRADING AS
ESTA 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 2647. Complaint, Dec. 6, 1935—Order, Jan. 3, 1936

Consent order requiring respondent, Shapiro Felt Rug Co., and respondent individuals doing business as Esta Hat Co., their agents, etc., in connection with the sale or offer for sale of baseball caps in interstate commerce, to cease and desist from selling or offering for sale, baseball caps, manufactured from felts obtained from second hand, old, used, and discarded men's and women's felt hats, unless and until there is stamped upon, affixed, or attached to said baseball caps in a conspicuous place so as to be easily and readily seen, word or words clearly indicating that said baseball caps are not manufactured from new and unused felts, but are manufactured from felts obtained from second hand, old, and discarded men's and women's felt hats.

Mr. George Foulkes for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Shapiro Felt Rug Company, a corporation, and Wm. Shapiro, Morris Shapiro and Sarah Shapiro, individuals trading as Esta Hat Company, hereinafter referred to as respondents, have been or are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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 Shapiro Felt Rug Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in the city of Newark in said State. The officers of said corporation are respondents Wm. Shapiro, President; Morris Shapiro, Vice President and Treasurer, and Sarah Shapiro, Secretary. Respondents Shapiro Felt Rug Company, Wm. Shapiro, Morris Shapiro, and Sarah Shapiro, are now and for more than one

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• year last past have been engaged in the business of manufacturing baseball caps from felts obtained from old, used, discarded and secondhand hats, and of selling the same under the trade name "Esta Hat Company", to retailers, jobbers and wholesale dealers located in the various States of the United States. Respondents cause, and for more than one year last past have caused such caps to be transported from their place of business in Newark to the aforesaid purchasers thereof located in the State of New Jersey and to other of the aforesaid purchasers located in various other States of the United States. In the course and conduct of their business, respondents are now and for more than one year last past have been engaged in substantial competition in commerce between and among the various States of the United States, with other corporations, individuals, firms and partnerships engaged in the sale of baseball caps manufactured from new felt bodies, and in the transportation of said products from their respective places of business to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business described in paragraph 1 hereof, respondents for more than one year last past have bought and still buy secondhand, old, used and discarded men's and women's felt hats, which are and have been renovated by respondents and made into baseball caps and which are sold by respondents to retailers, jobbers, and wholesalers, as set forth in paragraph 1 hereof. The said secondhand, old, used, and discarded men's and women's felt hats are cleaned, steamed, ironed, and shaped by respondents, and then fitted with new trimmings, sweat bands, size labels, and with a peak or visor by the respondents, and are then sold by respondents to retailers, who resell same to the purchasing public, and to jobbers and wholesale dealers who resell them to retail dealers, who in turn resell said products to the purchasing public.

PAR. 3. The aforesaid old, used, discarded and secondhand hats, after being made over by respondents into baseball caps and fitted with new trimmings as described in paragraph 2 herein, have the appearance of new baseball caps manufactured from felts which have never been worn, and said caps are sold by respondents to retailers and to jobbers and wholesale dealers without any label, marking or designation on or about said caps to indicate that said caps are in fact manufactured from secondhand hats which have been renovated and made over into baseball caps by respondents. Said caps, sold to jobbers and wholesale dealers, are resold by said jobbers and wholesale dealers to retail dealers who resell them to the public without disclosing the fact that said caps are manufactured from felts pre-

viously worn and then renovated and made over, and under such circumstances as to indicate falsely that they are new baseball caps. Said caps sold by respondents to retailers are resold by such retailers to the public without disclosing the fact that such caps have been manufactured from hats previously worn, and then renovated and made over, and under such circumstances as to indicate that they are new baseball caps.

The cost to respondents of obtaining, renovating, and making over said old hats into baseball caps as aforesaid, is much less than the cost to manufacturers of manufacturing new baseball caps of similar quality, and respondents are thereby able to sell said baseball caps to retailers, jobbers, and wholesalers, and through them to the using public, at substantially lower prices than manufacturers of new baseball caps can sell caps of same or similar goods to retailers, jobbers, and wholesale dealers, and through said dealers to the using public.

PAR. 4. The acts and practices of respondents as hereinbefore set forth, are calculated to and do have the capacity and tendency to induce many wholesale and retail dealers, and many of the purchasing public, to purchase the said baseball caps manufactured from old, used, and discarded hats which have been renovated and made over by respondents into baseball caps, in the mistaken belief that they are purchasing new and unused baseball caps manufactured from new and unused materials, and tend to and do unfairly divert trade to respondents from concerns engaged in the manufacture and sale of new baseball caps in interstate commerce throughout the various States of the United States and the District of Columbia.

There are also among the competitors of respondents corporations, individuals, firms and partnerships engaged in the manufacture of baseball caps from felt material obtained from used, old, discarded, and secondhand hats, which said corporations, individuals, firms and partnerships label, tag, and otherwise indicate on the said baseball caps sold by them that such caps are not manufactured from new and unused material but are manufactured from felt material obtained from used, old, discarded and secondhand hats. There are also among the competitors of respondents, corporations, individuals, firms and partnerships who are engaged in the manufacture and sale of baseball caps manufactured from new and unused felt material. The acts and practices of respondents as hereinbefore set forth are calculated to and tend to and do unfairly divert trade to respondents from said competitors, and by the acts and practices of the respondents hereinbefore described, substantial injury is done by respondents to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of respondents are each and all of them to the prejudice of the public and respondents'

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competitors, and constitute unfair methods of competition in interstate commerce within the 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".

ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon the complaint filed herein on December 6, 1935, and the answer to said complaint filed December 23, 1935, by Shapiro Felt Rug Company, a corporation, and Wm. Shapiro, Morris Shapiro, and Sarah Shapiro, individuals trading as Esta Hat Company, respondents herein, in which answer the said respondents state that they waive hearing on the charges set forth in the complaint herein; that they refrain from contesting the proceeding and that they consent that the Commission without a trial, without evidence, and without findings as to the facts or other intervening procedure, may make, enter, issue, and serve upon the said respondents, an order to cease and desist from the methods of competition charged in the complaint; and the Commission now being fully advised in the premises,

It is now ordered, That the respondents, Shapiro Felt Rug Company, a corporation, and Wm. Shapiro, Morris Shapiro, and Sarah Shapiro, individuals trading as Esta Hat Company, their agents, representatives, servants, and employees, in connection with the sale or offering for sale of baseball caps in interstate commerce, cease and desist from:

Selling or offering for sale, baseball caps, manufactured from felts obtained from secondhand, old, used, and discarded men's and women's felt hats, unless and until there is stamped upon, affixed, or attached to said baseball caps in a conspicuous place so as to be easily and readily seen, word or words clearly indicating that said baseball caps are not manufactured from new and unused felts, but are manufactured from felts obtained from secondhand, old, used, and discarded men's and women's felt hats.

It is further ordered, That respondents shall within 60 days from the date of the service upon it 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.

ORDERS OF DISMISSAL, OR CLOSING CASE¹

DAVID JACOBY AND MORRIS GOTTSHAGEN, co-partners trading as the MILLS SALES Co. Complaint, February 26, 1935. Order, July 6, 1935. (Docket 2305.)

Charge: Misbranding or mislabeling as to quality of product; in connection with the sale of shoe laces.

Dismissed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission, upon the pleadings, the evidence and the brief of counsel for the Commission, and the Commission having duly considered the same and being now fully advised in the premises:

It is ordered, That the complaint be and the same hereby is dismissed.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Astor Hogg for the Commission.

HENRY EMMERICH, trading as MARIE DUNNE. Complaint, April 30, 1934. Order, July 25, 1935. (Docket 2175.)

Charge: Using misleading trade name and advertising falsely or misleadingly as to business status, and qualities, properties and price of product; in connection with the sale of cosmetics, including a massage cream designated "Creamo".

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon the record and it appearing that the respondent is no longer engaged in business, that his present whereabouts and address are unknown, that a fraud order has been issued by the Post Office Department against Marie Dunne under which name this respondent was engaged in business, and that the respondent did not actually own the business in question but has been an employee of and dummy for the business operated by the Titus family under the trade names Nancy Lee, Doris Kent, Marie Dunne and Betty Drew, and the

¹ During the period covered by this volume, i. e., June 25, 1935 to January 13, 1936, orders were issued in four cases rescinding or vacating cease and desist orders theretofore entered and reopening the cases for the purpose of further proceedings, the names of said cases, the first three of which involved use of lottery schemes in merchandising of candy and the last of which involved use of misleading brand names in connection with the manufacture and sale of cigars (together with their docket numbers, rescinding and reopening dates and prior citations, excepting the last, not published), being *American Candy Co.*, Docket 1807, September 14, 1935, 18 F. T. C. 282; *Vonelf-Drayer Co.*, Docket 1724, October 16, 1935, 18 F. T. C. 280; *Paul F. Beich Co.*, Docket 2237, December 30, 1935. 19 F. T. C. 442; and *John F. Bolon Cigar Co.*, Docket 2293, December 30, 1935.

Commission having duly considered the matter and being now fully advised in the premises—

It is ordered, That further proceedings in this case be and the same are hereby closed.

Mr. Marshall Morgan for the Commission.

Mr. Harry Scheer, of New York City, for respondent.

FOOD DISTRIBUTORS ASSOCIATION OF ILLINOIS, ET AL.² Complaint, April 5, 1933, Order, July 30, 1935. (Docket 2099.)

Charge: Combining or conspiring with intent and effect of unreasonably hindering, hampering, lessening, restricting, restraining, controlling and regulating competition in sale and distribution of food products.

Case closed, after answer and trial, by the following order:

This matter coming on for determination by the Commission and the Commission having duly considered the same and being fully advised in the premises—

Now, therefore, it is hereby ordered, That this proceeding be, and the same is, hereby closed, without prejudice to the reopening thereof or the issuance of a new complaint in the event the public interest requires such action.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Edward L. Smith for the Commission.

Butler, Ballard, Pope & Elting, of Chicago, Ill., for respondents.

SINCLAIR G. STANLEY, doing business as Z. G. Herbs Co. Complaint, March 15, 1935. Order, August 8, 1935. (Docket 2331.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product; in connection with the preparation and sale of various herb medicines.

Record closed, after answer, by the following order:

This matter coming before the Commission upon memorandum of the chief trial examiner submitting stipulation signed by the respondent to cease and desist from the practices charged in the complaint and the Commission having accepted said stipulation and being fully advised in the premises.

It is ordered, That said case be and the same is hereby closed.

Mr. Harry D. Michael for the Commission.

Mr. Joshua R. H. Potts, *Mr. Eugene Vincent Clarke*, and *Mr. Basil H. Brune*, of Chicago, Ill., and *Mr. Clarence C. Dill* and *Mr. J. W. Gum*, of Washington, D. C., for respondent.

² Respondents not named include C. B. Keehner, Ed. L. Thompson, Frank Dilts, Walter J. Nichols and P. G. Rapp, President, First Vice President, Second Vice President, Secretary-Manager, and Treasurer, respectively, and active members of said corporation, individually; and Clarence H. Olson, Louis Reichmann, R. G. Gruenwald, John P. Marx, O. W. Johnson, Carl Ochsenschlager, and R. W. Ohl, directors and active members of said corporation, individually; and Paul Russo, E. Weinsheimer, and H. P. Kelder, associate members of respondent corporation, individually.