

IN THE MATTER OF
NEWARK FELT NOVELTY COMPANY, INC.

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

Docket 2651. Complaint, Dec. 10, 1935—Decision, May 12, 1936

Where a corporation engaged in the manufacture and sale of baseball caps made from felts obtained from old, used, discarded and second-hand hats under a process by which such hats, cleaned and disinfected and dyed to the desired color, and shaped, blocked, refinished and otherwise so treated that there was imparted to the reconditioned felt body the appearance of a new fabric, and equipped with new sweat band and peak or visor, took on the appearance of the necessarily more costly baseball caps made from never worn felts—

Sold said caps without label, marking or designation on or about the same to indicate that they were in fact made from second-hand and used hats which had been renovated, etc., as aforesaid, to jobbers and wholesalers and to retailers by whom said products were respectively resold to retailers and to public without disclosing fact that they had been made from previously worn and thereafter renovated felts, as hereinabove indicated, and under such circumstances as to indicate falsely that they were new;

With result that it was thereby able to sell said caps to retailers, jobbers and wholesalers, and through them to the using public, at substantially lower prices than manufacturers of new products can thus sell caps of the same or similar goods and with capacity and tendency to induce many wholesale and retail dealers and many of the purchasing public to buy its said caps, made as aforesaid, as and for new and unused articles made from new and unused materials, and with effect of unfairly diverting trade to it from competitors, among whom there are those similarly engaged who label, tag or otherwise indicate nature of their said goods as made from felt obtained from used, discarded and second-hand hats, and those engaged in manufacture and sale of baseball caps made from new and unused materials, and with tendency so to divert; to the substantial injury of substantial competition:

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

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 the powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that the Newark Felt

Complaint

Novelty Company, Inc., a corporation, hereinafter referred to as respondent, has been or is 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, Newark Felt Novelty Company, Inc., 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. It is now and for more than one year last past has been engaged in the business of manufacturing baseball caps from felts obtained from old, used, discarded, and second-hand hats, and of selling the same to retailers, jobbers, and wholesale dealers thereof, located in the various States of the United States. Respondent causes, and for more than one year last past has caused such caps to be transported from its 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 of the conduct of its business respondent is now and for more than one year last past has 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 bodies 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 its business described in paragraph 1 hereof, respondent, for more than one year last past, has bought and still buys second-hand, old, used, and discarded, men's and women's felt hats which are and have been renovated by respondent and made into baseball caps, and which are sold by respondent to retailers, jobbers, and wholesalers as set forth in paragraph 1 hereof. The said second-hand, old, used, and discarded, men's and women's felt hats are cleaned, steamed, ironed, and shaped by respondent, and then fitted with new trimmings, sweat bands, size labels, and with a peak or visor, by the respondent, and are then sold by the respondent 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.

Complaint

22 F. T. C.

PAR. 3. The aforesaid old, used, discarded, and second-hand hats, after being made over by respondent 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 respondent 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 second-hand hats which have been renovated and made over into baseball caps by respondent. 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 previously 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 respondent 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 respondent 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 respondent is 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 respondent 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 respondent 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 respondent 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 respondent, corporations, individuals, firms, and partnerships engaged in the manufacture of baseball caps from felt material obtained from used, old, discarded,

and second-hand 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 second-hand hats. There are also, among the competitors of respondent, 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 respondent as hereinbefore set forth are calculated to and tend to and do unfairly divert trade to respondent from said competitors, and by the acts and practices of the respondent hereinbefore described, substantial injury is done by respondent to substantial competition in interstate commerce.

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

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, on the 10th day of December 1935, issued and served its complaint in this proceeding upon the respondent, Newark Felt Novelty Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint, the respondent filed a consent answer, in and by which the respondent refrained from contesting the proceeding, and admitted all the material allegations of the complaint to be true; and in which consent answer it was provided that the Commission may, without trial, without further evidence, and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue and serve upon it an order to cease and desist from the violations of law alleged in the complaint; and the Commission having duly considered same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

Findings

22 F. T. C.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Newark Felt Novelty Company, Inc., 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 located at 416 Morris Avenue, in the city of Newark, in said State.

Respondent is now and for more than one year last past has been engaged in the business of manufacturing baseball caps from felts obtained from old, used, discarded, and second-hand hats.

Respondent purchases said second-hand and discarded felt hats and bodies from dealers in second-hand clothing, junkmen, and from concerns making it a business to collect this type of merchandise.

Respondent sells said baseball caps, made from old, used, discarded and second-hand hats, to retailers, jobbers, and wholesale dealers thereof, located in various States of the United States. Respondent causes and for more than one year last past has caused such caps to be transported from its place of business in the city of Newark, to the aforesaid purchasers thereof, some located in the State of New Jersey, and others located in various other States of the United States.

In the course and conduct of its business respondent is now and for more than one year last past has 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 caps manufactured from felt bodies, and in the transportation of said bodies from its place of business to the purchasers thereof, located in various other States of the United States, and in the District of Columbia.

PAR. 2. Respondent for more than one year last past has bought and still buys second-hand, old, used, and discarded men's and women's felt hats. After said hats are purchased by respondent, they are assorted for various colors and grades, and are then sent to a cleaning establishment, where they are put through a cleaning and disinfecting process. After the hats have been cleaned and disinfected, they are returned to the respondent, who then removes, or causes to be removed, the sweatbands, trimmings, ribbons, and linings. Respondent then causes the brim of said hat to be cut or sheared off. The part of the hat remaining, called by the trade the body, is then dyed by respondent to the desired color, after which it is shaped, blocked, refinished, and otherwise processed. This refinishing, dyeing, and reblocking, imparts to the reconditioned felt body the appearance of a new fabric.

The bodies are then trimmed by sewing across the crown of the body, narrow ribbons or threads, dividing the crown of the cap into six sections. A sweatband is then sewed into the interior of the body, and respondent completes the process of manufacture by attaching a peak or visor of the same or contrasting color to that of the body to the reconditioned and trimmed felt. Respondent makes these baseball caps of all sizes and colors.

Respondent sells said caps to retailers, who resell them 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 second-hand hats, after being made over by respondent 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.

Said caps are sold by respondent 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 second-hand and used hats which have been renovated and made over into baseball caps by respondent.

Said caps, when 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 previously worn and then renovated and made over, and under such circumstances as to indicate falsely that they are new baseball caps.

The caps which respondent sells 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 falsely that they are new baseball caps.

The cost to respondent 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 respondent is 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 purchasing public.

PAR. 4. The acts and practices of respondent, as set forth in paragraphs one, two and three, are calculated to and do have the capacity and tendency to induce many wholesale and retail dealers, and many

Order

22 F. T. C.

of the purchasing public, to purchase the said baseball caps manufactured from old, used, and discarded hats, which have been renovated and made by respondent into baseball caps, in the mistaken belief that they are purchasing new and unused baseball caps, manufactured from new and unused materials.

The acts and practices of respondent as hereinbefore set forth, tend to and do unfairly divert trade to respondent, from concerns engaged in the manufacture and sale of new baseball caps in interstate commerce, throughout the various States of the United States, and in the District of Columbia.

There are also among the competitors of respondent, corporations, individuals, firms and partnerships, engaged in the manufacture of baseball caps, from felt material obtained from used, old, discarded, and second-hand hats, which said corporations, individuals, firms, and partnerships, label, tag, and otherwise indicate on 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 second-hand hats.

There are also among the competitors of respondent, individuals, firms and partnerships who are engaged in the manufacture and sale of baseball caps, manufactured from new and unused materials.

The acts and practices of respondent as hereinbefore set forth are calculated to and tend to, and do unfairly divert trade to respondent from said competitors, and by the acts and practices of the respondent hereinbefore described, substantial injury is done by respondent to substantial competition in interstate commerce.

CONCLUSION

The acts and practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation 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

Newark Felt Novelty Company, Inc., a corporation, the respondent herein, having filed its answer to the complaint in this proceeding, in and by which answer respondent stated that it desires to waive hearing on the charges set forth in the complaint, and not to contest the proceeding, admitted all the material allegations of the complaint to be true, and consented that the Commission may without

558

Order

further evidence, and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue and serve upon it an order to cease and desist from the violations of law charged in the complaint, and the Commission being now fully advised in the premises.

It is ordered, That the respondent, Newark Felt Novelty Company, Inc., a corporation, its 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 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, used and discarded men's and women's felt hats.

It is further ordered, That respondent 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.

IN THE MATTER OF
MID WEST MILLS, INC.

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

Docket 2526. Complaint, Aug. 21, 1935—Decision, May 18, 1936

Where a corporation, engaged in the business of a jobber of upholstering fabrics, wooden frames, padding, felt, springs, and other materials having to do with construction of furniture, and in soliciting orders from customers comprised mostly of retailers, dealers, furniture manufacturers, and furniture repair men, by mailing out samples of its upholstering material,—

Adopted and used as a corporate and trade name with which to carry on its said business, a name which included word "Mills" and displayed same on tabs attached to samples sent out by it as aforesaid, and upon circular letters enclosing such samples, and upon envelopes and business cards, shipping tags, invoice blanks, billheads, and price lists, together with words in smaller print, upon such various stationery (excepting its envelopes, upon which they did not appear), "Jobbers and Converters", and supplied its said salesmen with aforesaid samples and tabs displaying its said corporate name, for display by them in soliciting orders;

The facts being it was not engaged in the manufacture of merchandise sold by it, but purchased same in job lots at sales or from the manufacturers thereof, and it did not own, operate or control any plant, mill, or factory making such merchandise or own any interest therein, but filled orders with products purchased by it and made in mills or plants which it neither owned, operated, nor controlled;

With effect of deceiving customers and prospective customers into the belief that its said products were made by it and that, in buying from it as a manufacturer of the merchandise sold by it, they were eliminating and saving the middleman's profit and obtaining better terms and prices and merchandise of better quality and later style, and that as both manufacturer and jobber of its said products, it was engaged in selling output of its own mills, and with result that trade was diverted to it from competitors similarly engaged in sale of such products and those engaged in manufacture thereof and who, respectively, do not in any way misrepresent their status as manufacturers of the products which they sell; to the substantial injury of substantial competition in commerce:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. George Foulkes for the Commission.

Kamfner, Halligan & Marks, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Com-