

Complaint

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IN THE MATTER OF
THE ABORN HAT MANUFACTURING COMPANY

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

Docket 2499. Complaint, July 18, 1935—Decision, Sept. 12, 1936

Where a corporation engaged in manufacture of new men's hats from new felts and of men's made-over felt hats from previously worn and discarded hats purchased by it from concerns dealing in such articles, through process involving their dry cleaning, blocking, shellacing, powdering, and dyeing, as necessary, and re-equipment with new sweat leathers, ribbons, and linings with customary or typical stamping of designs or names such as "Quality," "Colonial," "Wellington," etc., brought from regular dealers in such various trimmings, and in sale of said processed, new appearing products direct to the trade and through salesmen—

Sold and invoiced said hats as "seconds" or "specials," with no word or mark thereon to indicate their made-over character, at substantially lower prices than charged by manufacturers of the necessarily more costly new products to jobbers, and to retailers, of whom some did not know their made-over character, and of whom some sold same to purchasers as new, or reconditioned new hats, and of whom some did not advise their purchasers as to said hats' nature except upon inquiry as to reason for their cheap price, in which event customer was advised hat was reconditioned new one;

With result of enabling jobbers, and latter's retailer customers, to sell said hats thus made, equipped, and sold, to such merchants and to purchasing public, respectively, as and for new articles, and with capacity and tendency to induce many retailers and many of purchasing public to buy said renovated and made-over, second-hand, old, theretofore used and discarded hats, indistinguishable from new and unused articles by ordinary purchaser at retail, as and for such articles, and with effect of unfairly diverting trade to it from concerns engaged in manufacture and sale of new hats throughout the various States, and from competitors engaged in sale of such renovated products, and who label, tag, and otherwise indicate thereon their renovated and not new nature; to the substantial injury of competitors in interstate commerce:

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

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

Mr. George Foulkes for the Commission.

Mr. James A. O'Callaghan, 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 Commission, to define its powers and duties, and for other purposes," the

Federal Trade Commission, having reason to believe that the Aborn Hat Manufacturing Co., 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, Aborn Hat Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago in said State. It is now and for more than two years last past has been engaged in the business of renovating second-hand, old, used, and discarded men's felt hats, and of selling the same to retailers, jobbers, and wholesale dealers thereof, located in the various States of the United States. It now causes and for more than two years last past has caused such second-hand, old, used, and discarded felt hats, when renovated by it, to be transported from its place of business in Chicago to the aforesaid purchasers thereof, located in the State of Illinois and to other of the aforesaid purchasers located in various other States of the United States; and there is now and has been for more than two years last past a constant current of trade and commerce by respondent in said renovated second-hand, old, used, and discarded men's felt hats. In the course and conduct of its business, respondent is now and for more than two years last past has been engaged in substantial competition in commerce between and among the various States of the United States with other corporations and with individuals, firms, and partnerships engaged in the sale of renovated second-hand, old, used, and discarded men's felt hats, and with other corporations and with individuals, firms, and partnerships engaged in the sale of new felt hats between and among the various States of the United States.

PAR. 2. In the course and conduct of its business described in paragraph 1 hereof, respondent for more than two years last past has bought and still buys second-hand, old, used, and discarded men's felt hats which are and have been renovated by respondent, and sold by respondent to retailers, jobbers, and wholesalers thereof as set out in paragraph 1 hereof. The second-hand, old, used, and discarded men's felt hats which are renovated by respondent are first cleaned, then steamed, ironed, and shaped by respondent and relined and fitted with new ribbon bands, sweat bands, and size labels by the respondent, and then sold by respondent to retailers, who resell them to the purchasing public, and to jobbers and wholesale dealers who resell them to retail dealers, who resell them to the purchasing public. Said relin-

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ings and sweat bands are in some cases purchased by respondent from manufacturers thereof, and in other cases are manufactured by the respondent. Such new lining and sweat bands purchased by respondent from manufacturers thereof and manufactured by the respondent bear various trade names, designs, devices, and wordings.

PAR. 3. The aforesaid old, used, discarded, and second-hand hats, after being made over by respondent 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 respondent to retailers and 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 respondent. Said hats 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 hats have been previously worn, and then renovated and made over, and under such circumstances as to indicate that they are new hats. Said hats sold by respondent to retailers are resold by such retailers to the public without disclosing the fact that such 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 respondent 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 respondent is thereby able to sell said hats to retailers, jobbers, and wholesalers at substantially lower prices than manufacturers of new hats can sell hats of the same or similar quality to retailers, 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 respondent, and sold by respondent 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 respondent 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 respondent, in the mistaken belief that they are purchasing new and unused hats, and tend to and do unfairly divert trade to respondent from concerns engaged in the manufacture and sale of new hats in interstate commerce throughout the various States of the United States and the District of Columbia.

There are among the competitors of the respondent engaged in the sale of renovated, second-hand, old, used, and discarded men's felt hats as mentioned in paragraph 1 hereof, corporations, individuals, firms, and partnerships who label, tag, and otherwise indicate on the renovated hats sold by them that such felt hats are not new but are renovated. The acts and practices of the respondent, as hereinabove set forth, are calculated to and tend to and do unfairly divert trade to respondent from such corporations, individuals, firms, and partnerships engaged in the sale of renovated felt hats in interstate commerce throughout the various States of the United States and the District of Columbia. 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 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, 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 22nd day of July 1935, issued and served its complaint in this proceeding upon the respondent, The Aborn Hat Manufacturing Company, 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, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint, were introduced by George Foulkes, attorney for the Commission, before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, and in defense of the allegations of the complaint by James O'Callaghan, attorney for the respondent; and said testimony and

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evidence was duly recorded and filed in the office of the Commission. Thereinafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and brief in support of the complaint, the respondent having filed no brief as required by the rules of the Commission; and the Commission having duly considered the 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 AS TO THE FACTS

PARAGRAPH 1. Respondent, The Aborn Hat Manufacturing Company, is a corporation organized under the laws of the State of Illinois. Respondent's principal office and place of business is located at 117 North Wells Street, Chicago, Ill.

About the year 1929 respondent began the business of manufacturing men's made-over felt hats from second-hand, old, used, and discarded men's felt hats, and of selling and distributing said hats to jobbers and retail merchants located in various States of the United States.

Respondent causes said hats, when sold, to be transported from its aforesaid place of business in the city of Chicago, State of Illinois, to the aforesaid purchasers thereof located in States other than the State of Illinois.

In the course and conduct of its business respondent is now and has been engaged in substantial competition in commerce between and among the various States of the United States with other corporations and with individuals, firms, and partnerships engaged in the sale of renovated, second-hand, old, used, and discarded men's felt hats, and with other corporations and with individuals, firms, and partnerships engaged in the sale of new felts between and among the various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business of manufacturing, selling, and distributing men's made-over felt hats, respondent employs workmen in its place of business who are engaged in various operations involved in the processes of making over men's felt hats, described hereinafter.

Sales of said hats are made direct by respondent to jobbers and retail merchants throughout the United States. Respondent does not send out any advertising literature.

Respondent purchases hats which have been previously worn and discarded from concerns which deal in old, discarded and previously worn hats.

Said hats are purchased at prices ranging from \$1.00 to \$1.75 per dozen.

In the course and operation of its said business respondent also purchases new felts from which respondent manufactures new hats. The manufacture of new hats from said new felts constitutes the larger portion of respondent's business.

When the old and previously used felt hats are purchased, respondent strips all trimmings from the hats and sends them to a dry cleaning establishment in the city of Chicago, where they are put through a cleaning process. When the hats are returned they are blocked by respondent, and in some instances shellaced when shellacing is deemed necessary, and refitted with new hat bands, sweat leathers, and linings. The purpose of using shellac is to give the hat body a firmness and to cover up slightly worn defects in the hat. In the process of "blocking" the hat is placed on a wooden hat block and is shaped on said block by ironing. Powder is also applied to the hats in order to give the hats uniformity of color. In some instances after the hats have been received from the cleaning establishment, they are sent to a dye-house where they are put through a process of dyeing.

The linings, sweat leathers, and ribbons used by respondent on the made-over hats manufactured and sold by it, are new and are bought from regular dealers in such trimmings.

All hat linings used in new and made-over hats have printed on them a name or design. Respondent has used and now uses linings in its made-over hats bearing the names "Quality," "Wellington," "Colonial," and "Paragon."

PAR. 3. Respondent has salesmen who sell its made-over hats to jobbers and retail dealers direct. There is no word or mark of any kind on the made-over hats renovated and sold by respondent to indicate that the hats are made-over hats and not new hats.

Some of the jobbers and retail merchants who buy made-over hats direct from respondent know that the hats are made-over hats.

Many of such retail merchants go to respondent's place of business and buy the hats and know that the hats are made-over hats.

In invoicing made-over hats no mention is made that the hats are made-over but said hats being designated on the invoice as "seconds" or "specials."

Some retail merchants who purchased hats from respondent did not know that the hats had been previously worn and then made over.

Made-over hats sold by respondent to retail merchants were sold by said retail merchants to purchasers as new hats or as reconditioned new hats.

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Some retail dealers did not say anything about the hats being made over unless purchasers inquired as to why the hats were being sold so cheap, in which event they told them that the hats were reconditioned new hats.

The cost to respondent of obtaining, renovating, and making over said hats as aforesaid is much less than the cost to hat manufacturers of manufacturing new hats and respondent is thereby able to sell said hats to jobbers and retail merchants at substantially lower prices than manufacturers of new hats can sell hats to jobbers and retail merchants.

The volume of sales by respondent of old hats which had been previously worn and discarded and purchased and reconditioned by it aggregated in the year 1934 approximately \$10,000 and in 1935 approximately \$8,000. The sale by respondent of such reconditioned hats has constituted about one-fourth of its total business.

Respondent sells its made-over hats at prices ranging from \$6.00 to \$13.00 per dozen, depending upon the quality and condition.

New hats made from new felts sell at prices ranging from \$16.50 per dozen to \$36.00 per dozen.

PAR. 4. The made-over hats manufactured, sold, and distributed by respondent so nearly simulate men's new felt hats in appearance that it is impossible for the ordinary purchaser at retail to distinguish between such made-over hats and new hats.

The use of linings and leather sweat bands having imprinted on them marks and designs similar to those used in new hats and bearing words such as "Colonial," "Wellington," and "Paragon," and "Quality" is deceptive and leads purchasers to believe the hats are new hats.

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 sweat bands, respondent enables jobbers to sell said hats to retail merchants as new hats, and retail merchants to sell said hats to the purchasing public as new hats.

The made-over hats manufactured, sold, and distributed by respondent can be sold to retail purchasers as new hats without the purchaser knowing they are in fact made-over hats.

The acts and practices of respondent as hereinabove set forth are calculated to, and do, have the capacity and tendency of inducing many retail merchants and many of the purchasing public, to purchase the said second-hand, old, used and discarded hats which have

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been renovated and made over by respondent, in the mistaken belief that they are purchasing new and unused hats, and tend to and do unfairly divert trade to respondent from concerns engaged in the manufacture and sale of new hats in interstate commerce throughout the various States of the United States.

There are among the competitors of respondent engaged in the sale of renovated, second-hand, old, used, and discarded men's felt hats, corporations, individuals, firms, and partnerships who label, tag, and otherwise indicate on the renovated hats sold by them that such felt hats are not new but are renovated. The acts and practices of respondent as hereinabove set forth are calculated to and tend to and do unfairly divert trade to respondent from such corporations, individuals, firms, and partnerships engaged in the sale of renovated felt hats in interstate commerce in various States throughout the United States.

By the acts and practices of the respondent hereinabove described substantial injury has been done and is being done to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent under the conditions and circumstances described in the foregoing findings as to the facts are to the prejudice of the public and of the competitors of respondent, and are 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 respondent, testimony and evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and brief in support of the complaint, the respondent having filed no brief as required by the rules of the 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."

It is now ordered, That the respondent, The Aborn Hat Manufacturing Co., a corporation, its officers, agents, representatives, servants,

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and employees in connection with the sale or offering for sale of men's hats in interstate commerce, cease and desist from :

Selling or offering for sale men's old, worn, used and discarded felt hats which have been cleaned and fitted with new ribbons, sweat bands, 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, a 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.

It is further ordered, That the respondent above named within 30 days after the service upon it of this order shall file with the Commission a report in writing, setting forth in detail the manner in which it has complied with this order.

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IN THE MATTER OF
REPAIR PARTS & REPLACEMENT 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 2544. Complaint, Sept. 6, 1935—Decision, Sept. 12, 1936

Where a corporation engaged for some years past in manufacture, sale, and distribution of vacuum cleaners under name "Hoover," and in expenditure of large sums of money in advertising same, so that said name, imprinted thereon, had become widely and favorably known to the purchasing public and it had acquired a valuable goodwill therein as applied to its said products and parts, and said word in advertisement, sale, and distribution in interstate commerce of such vacuum cleaners and parts had acquired a secondary meaning and significance as denoting to buying public that cleaners and parts advertised thereunder were made and distributed by it; and thereafter a concern dealing in dust bags made by and for said concern, for use on Hoover cleaners, and of same general size, shape, and color as those made, sold, and distributed in interstate commerce by said corporation—

Sold said dust bags with word "Hoover" imprinted thereon in large and conspicuous letters, together, in some cases, with words, in very small type and much less conspicuous and legible fashion, "Mfr'd by R. P. & R. Co.—Made to Fit," so that attention of average purchaser or prospective purchaser would be drawn only to word "Hoover" in same coloring as used on said corporation's bags and in simulation of its said trade name "Hoover" as used by it;

With result that vacuum cleaner dust bags of said competitor concern were passed off as and for those made and sold by said corporation, and with capacity and tendency to deceive and mislead purchasing public into erroneous belief that dust bags sold and distributed in interstate commerce by said competitor were made by said corporation, and to divert unfairly trade to said competitor from individuals and concerns competing with it in sale and distribution in commerce of vacuum cleaners, parts, and dust bags therefor, and who did not wrongfully make use of word "Hoover" in advertising, describing, and selling their respective products; to the substantial injury of competition in commerce:

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

Before *Mr. Edward M. Averill* and *Mr. W. W. Sheppard*, trial examiners.

Mr. John W. Hildrop and *Mr. J. T. Welch* for the Commission.

Mr. Oscar A. Jordan, 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-