

Complaint.

IN THE MATTER OF

M. & J. BECKER, INC.

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

Docket 2923. Complaint, Sept. 17, 1936—Decision, Oct. 8, 1936

Where a corporation engaged in manufacture, distribution, and sale of hats and caps—

Sold to wholesalers and to retailers baseball caps made from second-hand, old, and discarded felts which had been cleaned and otherwise processed or treated and refitted with new sweat bands and trimmings, and which had appearance of new caps, of new felt, and never worn, and were susceptible of sale at retail under circumstances indicating such to be the fact, with no labels to indicate the true nature of such articles, cost of which to it was much less than new caps;

Notwithstanding fact of common belief and understanding among wholesalers and retailers and purchasing public that caps having appearance of new and unused products as those distributed and sold by it and others dealing in such articles, as aforesaid, with no labels indicating their nature, were in fact new, unused, and never-worn goods, and that such dealers and public, in purchasing such articles with appearance of new and unused goods and without labels as above set forth, were entitled to receive new and unused caps, and not those made from second-hand, old, used, and discarded felts, renovated and made over;

With capacity and tendency to induce a substantial number of wholesalers and retailers and of the purchasing public to buy its aforesaid caps as and for new and unused articles made from new felts, and with result that trade was unfairly diverted to it from competitors engaged in sale and distribution of caps made from new and unused felts, or those made from used, old, second-hand, and discarded felts, and who truthfully labeled the character and quality thereof; to the substantial injury of competition in commerce:

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

Mr. J. T. Welch for the Commission.

Mr. Perry Gottlieb, of New York City, 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 M. & J. Becker, Inc., a corporation, hereinafter referred to as respondent, is:

Complaint

23 F. T. C.

now and has been using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, M. & J. Becker, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 2961 Atlantic Avenue, Brooklyn, in the State of New York. Respondent is now, and has been for more than one year last past, engaged in the business of manufacturing hats and caps made from felt and from other materials and in the distribution and sale of said hats and caps so manufactured by it or manufactured by others, in commerce as herein set out. Among the caps distributed and sold by the respondent are certain baseball caps made from old, used, second-hand, and discarded felts.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said hats and caps, when sold, to be transported from its office and principal place of business in the State of New York to the purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been at all times since the organization of the respondent corporation, a constant current of trade in said products so distributed and sold by the respondent, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business, the respondent is now, and has been, in substantial competition with other corporations, and with firms and individuals likewise engaged in the business of manufacturing, distributing and selling, or in the business of distributing and selling, hats and caps made of felt or other materials, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, as described herein, respondent has manufactured, distributed, and sold, or has purchased, distributed, and sold baseball caps which have been made from second-hand, used, old, and discarded felts which have been renovated by the respondent or by others. The second-hand, old, used, and discarded felts are first cleaned, then steamed, ironed, and shaped and refitted with new sweat bands and trimmings, either by the respondent or by others, and are then sold by the respondent to wholesalers who resell them to retailers, or to retailers direct, all of said retailers reselling said caps to the purchasing public.

PAR. 5. The aforesaid baseball caps made from old, used, discarded, and second-hand felts, after being made over and fitted with new trimmings by the respondent or by others, as distributed and sold by the respondent, have the appearance of new caps which have never been worn and said caps are distributed and sold by the respondent to wholesalers and retailers without any labels being attached to said caps to indicate that they are, in fact, second-hand caps which have been made over from old, used, and discarded felts. Said caps so sold by the respondent to wholesalers and retailers may be, by said purchasers, resold to members of the purchasing public without disclosing the fact that said caps have been previously worn and then renovated and made over in the manner herein set out, and said caps may be sold under such circumstances as to indicate that they are, in fact, new hats.

The cost to respondent of obtaining, renovating and making over said caps, or of purchasing said renovated and made over caps for resale is much less than the cost of new caps of similar quality made from new felt and respondent is thereby able to sell said caps to retailers, jobbers, and wholesalers at substantially lower prices than manufacturers of new caps can sell caps of the same or similar quality to retail and wholesale dealers.

PAR. 6. It is a common belief and understanding among wholesale and retail dealers, and the purchasing public, that caps having the appearance of new and unused caps, as do caps distributed and sold by the respondent and by others dealing in said caps, which do not bear labels indicating that said caps are not new caps, are, in fact, caps which are new and unused and have never been worn or used by anyone previously. Said wholesale and retail dealers, and the purchasing public, when buying caps having the appearance of new and unused caps, said caps not having labels indicating that they are not new and unused caps, are entitled to receive new and unused caps and not caps made from second-hand, old, used, and discarded felts which have been renovated and made over.

PAR. 7. The acts and practices of the respondent, as hereinabove set out, are calculated to, and do, have the tendency and capacity of inducing a substantial number of wholesale and retail dealers, and a substantial number of the purchasing public, to purchase said caps made from second-hand, old, used, and discarded felts in the mistaken belief that they are purchasing new and unused caps made from new felt. As a result thereof, trade is unfairly diverted to the respondent from competitors engaged in the sale and distribution of caps made from new and unused felt or in the distribution and sale of caps made from used, old, second-hand, and discarded felts, who

Findings

23 F. T. C.

truthfully label the quality of said caps, in interstate commerce among and between the various States of the United States. As a result thereof, substantial injury is done by respondent to competition in interstate commerce.

PAR. 8. 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 constitute 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, on the 17th day of September 1936, issued and served its complaint in this proceeding upon respondent, M. & J. Becker, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On September 26, 1936, the respondent filed its answer in which answer it admitted all the material allegations of the complaint to be true and stated that it waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now 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, M. & J. Becker, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 2961 Atlantic Avenue, Brooklyn, N. Y. For more than one year last past, it has been engaged in the business of manufacturing hats and caps made from felt and from other materials. It is also engaged in the business of distributing and selling hats and caps manufactured by it as well as hats and caps

manufactured for it by others. Among the caps distributed and sold by the respondent are certain baseball caps made from old, used, second-hand, and discarded felts.

PAR. 2. The respondent causes the hats and caps distributed and sold by it, including those which it purchases from the manufacturer thereof, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located at various points in other States of the United States. It has, since its organization, maintained a constant current of trade in said hats and caps, including the baseball caps made from old, used, second-hand, and discarded felts, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business, the respondent is now, and has been, in substantial competition with other corporations, and with firms and individuals likewise engaged in the business of manufacturing, distributing and selling, or in the business of distributing and selling, hats and caps made of felt or other materials, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, respondent has manufactured, distributed, and sold, or has purchased, distributed, and sold, baseball caps which have been made from second-hand, used, old, and discarded felts which have been renovated by the respondent or by others. The second-hand, old, used, and discarded felts are first cleaned, then steamed, ironed, and shaped and refitted with new sweat bands and trimmings, either by the respondent or by others, and are then sold by the respondent to wholesalers who resell them to retailers, or to retailers direct, all of said retailers reselling said caps to the purchasing public.

PAR. 5. The baseball caps made from old, used, second-hand, and discarded felts, after being made over and fitted with new sweat bands and trimmings, have the appearance of new caps which have never been worn and have the appearance of caps which have been made from new felts. Said caps are distributed and sold by the respondent to wholesalers and to retailers without any labels being attached to said caps to indicate that they are, in fact, second-hand caps which have been made over from old, used, and discarded felts. Said caps so sold by the respondent to wholesalers and retailers may be resold by said purchasers to members of the purchasing public without disclosing the fact that said caps have been previously worn and then renovated and made over. Said caps may be sold by the retailers under such circumstances as to indicate that they are, in fact, new caps.

Conclusion

23 F. T. C.

The cost to respondent of obtaining, renovating, and making over said caps, or of purchasing said renovated and made over caps for resale is much less than the cost of new caps of similar quality made from new felt, and respondent is thereby able to sell said caps to retailers, jobbers, and wholesalers at substantially lower prices than manufacturers of new caps can sell caps of the same or similar quality to retail and wholesale dealers.

PAR. 6. It is a common belief and understanding among wholesale and retail dealers, and the purchasing public, that caps having the appearance of new and unused caps, as do caps distributed and sold by the respondent and by others dealing in said caps, which do not bear labels indicating that said caps are not new caps, are, in fact, caps which are new and unused and have never been worn or used by anyone previously. Said wholesale and retail dealers, and the purchasing public, when buying caps having the appearance of new and unused caps, said caps not having labels indicating that they are not new and unused caps, are entitled to receive new and unused caps and not caps made from secondhand, old, used, and discarded felts which have been renovated and made over.

PAR. 7. The acts and practices of the respondent are calculated to, and do, have the capacity and tendency to induce a substantial number of wholesale and retail dealers and a substantial number of the purchasing public into purchasing said caps made from second-hand, old, used, and discarded felts, in the mistaken belief that they are purchasing new and unused caps made from new felts. As a result thereof, trade is unfairly diverted to the respondent from competitors engaged in the sale and distribution of caps, made from new and unused felts, or in the distribution and sale of caps made from used, old, second-hand, and discarded felts, who truthfully label the character and quality of said caps, in interstate commerce among and between the various States of the United States. In consequence thereof, substantial injury is done by respondent to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, M. & J. Becker, Inc., are to the prejudice of the public and of respondent's competitors, 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 and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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 ordered, That the respondent, M. & J. Becker, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of hats and caps, including baseball caps, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, directly or by implication, through the sale, or offering for sale, of hats and caps, including baseball caps, manufactured from old, used, second-hand, and discarded felts, without there being stamped upon, affixed, or attached to said hats and caps, in a conspicuous place so as to be easily and readily seen, a word or words clearly indicating that said hats and caps are not manufactured from new and unused felts, or through any other means that said hats and caps manufactured from old, used, second-hand, and discarded felts are manufactured from new and unused felts.

It is further ordered, That the respondent shall, within 60 days after 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 this order.

IN THE MATTER OF
AMERICAN CANDY COMPANY

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

Docket 1807. Complaint, Dec. 24, 1935¹—Decision, Oct. 19, 1936

Where a corporation engaged in manufacture and sale of so-called "break-and-take," "draw," or "deal" assortments, principal trade demand for which comes from the small retailers, with stores in many instances near schools and patronized by the school children, and sale and distribution of which, or similarly sold candy, offering opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, largest class by far of purchasers and consumers of such candy, who buy same in preference to so-called "straight" candy when displayed side by side, by reason of lottery or gambling feature connected with former, and sale of which in market of the other, i. e., the "straight" candy, sold exclusively by many manufacturers, has been followed by a marked decrease in sale of such "straight" candy due to the gambling or lottery feature of so-called "break-and-take," "draw," or "deal" candy—

Sold to wholesale and retail dealers, together with explanatory display cards for latter's use, or "push cards," as the case might be, (1) assortments of penny candies, in which the procuring of one of the larger pieces, or bars, included as prizes along with majority of uniform pieces making up assortments, was contingent upon chance selection of one of such pieces, concealed color of which differed from that of the majority, and in which purchaser of last piece in assortment also received such a prize, and, (2) assortments in which the fortunate five-cent push from card secured such chance selector a box of candy, in addition to bars received by the others; so packed and assembled that such various assortments could be displayed and offered, and with knowledge and intent that such assortments would and could be sold, without alteration, addition, or rearrangement, to public by lot or chance by such retail dealers therein; in violation of public policy, and in competition with many who regard such methods of sale and distribution as morally bad and as encouraging gambling, and especially among children, as injurious to the industry in question through resulting in the merchandising of a chance or lottery instead of candy, and as providing retail merchants with the means of violating the laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed and assembled that it can thus be sold;

With result that competitors refusing, as aforesaid, to sell candy so packed and assembled that it could be sold to the public by lot or chance, and who could compete on even terms only by giving the same or similar devices to retailers, were put to a disadvantage and their sales of "straight" candy showed a continued decrease, some competitors began the sale and distribution of candy for resale to the public by lot or chance, to meet the competition of those who sold and distributed candy resold by such

¹ Amended and supplemental.