

IN THE MATTER OF
MILLINERY QUALITY GUILD, INC., ET AL.

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

Docket 2812. Complaint, May 21, 1936—Decision, April 29, 1937

Where a company, held out as a membership corporation and used as a corporate instrumentality by the fourteen "member" concerns and the ten "affiliate" concerns, which the former associated with them in their purpose and plan of preventing and eliminating, as far as possible, piracy of design and style in women's hats; and said "member" and "affiliate" concerns, engaged in the designing and manufacturing of women's hats at their respective factories in New York and California, and in selling their said products to retailers located in the several States, and in substantial competition with one another, but for the understandings and agreements below set out, and included among the recognized leaders in the field of women's hats as respects style and design, and with their said products, in great demand by the purchasing public throughout the United States, normally required, to an extent, at least by high-grade retail dealers in such products in New York and elsewhere in the United States, in order to offer a full line thereof; in pursuance of their aforesaid plan and purpose and the agreement of said "affiliate" concerns to work in unison and cooperation with said corporate instrumentality or "Guild" and its said "members" in making effective the rulings of the former as respects style piracy, and their agreement to make no sales to and show no merchandise to any retail store which had failed to sign the Guild's agreement or so-called "Declaration of Cooperation"—

- (a) Solicited and secured, through a regular series of circular letters and follow-up literature designed to induce and coerce retailers, and advising them that the Guild membership comprised practically every creative firm in the industry in question, and that only a store subscribing could inspect or purchase their hats, such agreements or so-called "Declarations of Cooperation" from some 1000 high-grade retail dealers in women's hats in the various States, under which agreements or declarations the dealer undertook and agreed (1) not to purchase from manufacturers hats which were copies of designs originated and made by them, or alleged to be such copies, as established through Guild's registration bureau and the committee provided for, and (2) to stamp their orders for hats with a statement that such orders were placed upon the seller's warranty that the styles of such products being purchased were not copies of styles originated by them, and that purchaser reserved right to return any merchandise which was not as warranted, and agreed with one another to make it a condition precedent to the sale of their products to retailers that they must be signatories to and agree to be bound by and act in accordance with aforesaid declarations, and announced that they would refuse, and did refuse, to sell their products to retail dealers of stylish millinery who had failed or refused to sign or to cooperate in said declaration and plan and agreement for elimination of style piracy, and brought about return of hats under

aforesaid warranty in cases in which goods in question were declared by aforesaid Guild to be copies originated by certain of such "members" or "affiliates";

- (b) Failed and refused to sell their products to retailers, on the ground or for the reason that such retail dealers (1) purchased, or had purchased, from manufacturers women's hats that were alleged by them to be copies of hats which they originated and made, or (2) failed or refused to stamp their orders for women's hats purchased from manufacturers with statement that such orders were placed upon seller's warranty that styles of goods being purchased were not copies of styles originated by them, and that purchasers reserved right to return any merchandise which was not as warranted; and
- (c) Expelled from their membership any member or affiliate member, on the ground or for the reason that such member or affiliate solicited sale of, or sold, women's hats to a retailer who failed to sign above agreement or declaration or failed or refused to cooperate in the methods therein set forth;

With result of unduly hindering competition in creating a monopoly in sale of women's hats in interstate commerce, and with capacity and tendency so to do, through (1) limiting manufacturers of stylish hats for women as to the outlets of their products and limiting retail dealers as to their source of supply, (2) depriving public of benefits of normal price competition among retailers of stylish hats for women, (3) preventing such retailers from purchasing their requirements of such products in interstate commerce from manufacturers other than those subject to above set forth limitation and restriction, (4) increasing price of such hats to retailers and consumers through protection of profits resulting from their activities to eliminate from trade alleged copies of styles which they claimed and adjudged themselves to have originated, (5) placing in their hands control of business practices of manufacturers of such hats, to extent of limiting and, as far as possible, eliminating retail outlet for copied styles of manufacturers who copy styles originated by them, (6) eliminating from sale in interstate commerce women's hats which are copies of styles and designs claimed to have been originated by them or others and registered with their said Guild, and (7) limiting interstate commerce in high-class women's hats to models originated and designed by the manufacturer thereof, or to copies produced by permission of alleged originators thereof:

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

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

Mr. Astor Hogg for the Commission.

Mr. Lowell M. Birrell, of New York City, for Millinery Quality Guild, Inc., members thereof and various affiliated respondents.

Mr. Lewis G. Bernstein, of New York City, for Lilly Dache, Inc.

Strauss, Reich & Boyer, of New York City, for Henri Bendel, Inc.

Mr. Maurice M. Cohn, of New York City, for Peggy Hoyt, Inc.

Mr. Sanford Jarrett, of New York City, for La Mode Chez Tappe.

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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 Millinery Quality Guild, Inc., and its members, and Uptown Creators' Guild and its members, hereinafter referred to as respondents, have been and now are 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, Millinery Quality Guild, Inc., is a membership corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 711 Fifth Avenue, in the city of New York, in said State. Its membership consists of corporations, individuals, firms, and partnerships, as hereinafter described, all of whom are engaged in designing and manufacturing ladies' hats at factories located in the State of New York and elsewhere in the United States and especially reproductions of hats originally designed, manufactured, and sold by French milliners, and in the sale of said ladies' hats to retail dealers located in States other than the States of manufacture, causing said ladies' hats, when sold, to be transported from their respective places of manufacture to the purchasers thereof. There has been and now is a constant current of trade and commerce in said products between the members of said Millinery Quality Guild, Inc., and retailers in said hats located throughout the several States of the United States. In the course and conduct of their business the members of said Millinery Quality Guild, Inc., were, prior to the organization of said Guild in competition with each other and were at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of similar products in commerce as hereinabove set out. The membership of said Millinery Quality Guild, Inc. is and has been as follows:

Cooper-Russell, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 15 West 39th Street, city of New York, in said State;

Farrington and Evans, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

Dave Herstein Company, a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

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G. Howard Hodge, a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

Edgar J. Lorie, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

L. G. Meyerson, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

Scherman Hat Company, a corporation existing under the laws of the State of New York, with its principal place of business located at 5 East 37th Street, city of New York, in said State;

Sergin F. Victor, an individual trading under the name and style of "Serge," with his principal place of business located at 15 West 39th Street, city of New York, in said State;

Harry Solomons and May F. Solomons, copartners trading under the name and style of Harry Solomons and Son, with their principal place of business located at 711 Fifth Avenue, city of New York, in said State;

Orlolo Hat company, a corporation existing under the laws of the State of New York, with its principal place of business located at 15 West 39th Street, city of New York, in said State;

John Trinner, Inc., a corporation existing under the laws of the State of New York and doing business under the name and style of "Trinner Hats," with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

Vibo Company, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 1 West 39th Street, city of New York, in said State;

Vogue Hat Company, a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

Simon Millinery Company, a corporation existing under the laws of the State of California, with its principal place of business located at 989 Market Street, in the city of San Francisco, in the State of California.

PAR. 2. Respondent, Uptown Creators' Guild, is a voluntary unincorporated association of corporations, individuals, firms, and partnerships engaged in designing, manufacturing, selling and distributing millinery, including ladies' hats, to retail dealers located in States other than the State of manufacture, causing said ladies' hats, when sold, to be transported from the respective places of manufacture in the State of New York or State of manufacture to the purchasers thereof located in the various States of the United States. There has been and now is a constant current of trade and commerce in said ladies' hats between the members of said unincorporated association and retail dealers in said hats. In the course and conduct of their respective businesses, the members of said Uptown Creators' Guild were, prior to the time when they began to cooperate with Millinery Quality Guild, Inc., as hereinafter set out, in competition with each

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other and were at all times herein referred to in competition with corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products. The membership of said Uptown Creators' Guild at the time hereinafter referred to was as follows:

Henri Bendel, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 10 West 57th Street, city of New York, in said State;

Lilly Dache, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 485 Madison Avenue, city of New York, in said State;

Gladys and Belle, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 485 Madison Avenue, city of New York, in said State;

Hatnegle Hats, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

Peggy Hoyt, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 16 East 55th Street, city of New York, in said State;

Jay-Thorpe, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 24 West 57th Street, city of New York, in said State;

John-Frederics, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 501 Madison Avenue, city of New York, in said State;

Minnie Kramer, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 501 Madison Avenue, city of New York, in said State;

La Mode Chez Tappe, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 19 West 57th Street, city of New York, in said State;

Nicole de Paris, Inc., a corporation existing under the laws of the State of New York, with its principal place of business at 7 East 55th Street, city of New York, in said State;

Florence Reichman, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 16 East 52nd Street, city of New York, in said State;

Pauline Kahn, an individual trading under the name and style of Mme. Pauline, with her principal place of business located at 6 East 53rd Street, city of New York, in said State;

Marion Valle, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 501 Madison Avenue, city of New York, in said State.

PAR. 3. The respondent corporations, individuals, firms and partnerships, hereinabove mentioned, who make up and constitute the Millinery Quality Guild, Inc. and Uptown Creators' Guild are originators of the leading styles of the highest class ladies' hats and are manufacturers and sellers of the highest class ladies' hats. No mem-

ber of either Guild originates or manufactures hats to sell at wholesale at less than \$8.00 per hat. Said members of both said Guilds maintain designing departments and employ highly paid designers who are constantly engaged in the origination of new styles of hats. Such designers at intervals journey to Paris, France, to observe the trend of styles and to secure original French models, from which they later devise various adaptations which are called and known as "originations." The style element is the outstanding factor in the sale of ladies' hats and the late style hats, such as are sold and distributed by the members of both Guilds, are in great demand by the purchasing public throughout the United States. The respondent members of said Guilds are the recognized leaders in the field of ladies' hats so far as style and design are concerned and a majority of the high grade retail dealers and outlets are required to procure at least some of their models from the manufacturers in one or both of said Guilds in order to offer a full line of ladies' hats.

PAR. 4. The professed purpose of the organization of Millinery Quality Guild, Inc. was to prevent piracy of style and design of ladies' hats sold and distributed by members of the Millinery Quality Guild, Inc., as hereinabove set out. Acting in pursuance of such professed purpose, said Millinery Quality Guild, Inc. and its members have adopted and still have in effect the following methods and practices:

(a) The establishment and operation of a department in the Millinery Quality Guild, Inc., known as "Registration Bureau," wherein members of the Millinery Quality Guild, Inc., and no others, had and have the right and privilege of filing and registering the original model or models designed by them. By and through the understanding of the members of the Millinery Quality Guild, Inc., it is mutually agreed by all the members of said Millinery Quality Guild, Inc., that the acceptance of any of its members' models or designs for registration constituted and constitutes a conclusive determination by the Millinery Quality Guild, Inc., that such design or designs was or were original designs and thereafter any imitation or copying thereof is to be considered and treated as design piracy. It is further agreed and understood between the members of the Millinery Quality Guild, Inc., that when registration of any design is granted to any member of said Guild, the hat and design are the particular property of the member which had registered them.

(b) Said Millinery Quality Guild, Inc. and its members further solicited and secured from a large number of retail customers in the various States of the United States an agreement styled "Declaration

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of Cooperation" between such retail dealers and the Millinery Quality Guild, Inc., said agreement being incorporated herein and made a part hereof by reference.

(c) Sought and secured the cooperation of the unincorporated group styling themselves the Uptown Creators' Guild in carrying out and enforcing the purpose of its organization, and in that behalf secured the signature of the constituent members of said Uptown Creators' Guild to a certain agreement:

The firms whose signatures are attached hereto have agreed to unite in a circle under a caption of their own choosing. This organization to work in unison with the members of the Millinery Quality Guild on the questions of Style Piracy and the effort to eliminate unfair advertising. The agreement being that the members of this affiliated group will work in unison with the Millinery Quality Guild in making effective the rulings regarding style piracy and unfair advertising. They will display the same sign in their show rooms, stating that on and after July 16 (1934) no sales will be made and no merchandise will be shown to any store who has failed to sign our agreement regarding Style Piracy which is as follows:

This order is placed upon the seller's warranty that the above styles of hats are not copies of styles originated by members of the Millinery Quality Guild, Inc. The purchaser reserves the right to return any merchandise which is not as warranted.

PAR. 5. The constituent members of said Millinery Quality Guild, Inc., for more than three years last past, and the constituent members of the unincorporated association styling themselves the Uptown Creators' Guild, from and after the date of signature by them of the agreement hereinabove set forth, by combination, agreement, and concert of action, made it a condition precedent of the sale of their products to retailers that such retailers must have signed the "Declaration of Cooperation," hereinabove referred to; and by agreement, combination and concerted action, have refused to sell their products to any retailer or retailers who have failed or refused to enlist in the plan and sign the "Declaration of Cooperation." In and by the agreement signed by the retailers of ladies' hats, designated "Declaration of Cooperation," the members of both of said Guilds have coerced and compelled, and now coerce and compel, retail dealers who are desirous of selling such stylish hats as are only produced by the members of said Guilds to refuse to purchase said ladies' hats from manufacturers who have copied hats adjudged and reported by said Guilds to have been designed by said members of said Guilds and to otherwise cooperate with said Guilds in removing from the market hats of manufacturers who are not cooperating with said Guilds in their style protective program set forth herein, under penalty of being blacklisted and boycotted by members of the said

Guilds. In and by such agreement styled the "Declaration of Cooperation," retailers are coerced and compelled to agree to recognize the property rights in styles created by Guild members and to refrain from purchasing copies of pirated styles created by the members of that association, and to stamp each millinery order made by them with the reading matter shown in paragraph two of the agreement hereinabove set out, and in such a manner as to notify the seller that the order is placed only upon the manufacturer's warranty that the hats so ordered are not copies of styles originated by members of the Millinery Quality Guild, Inc. and the members of the Uptown Creators' Guild. Said Millinery Quality Guild, Inc. claims the right, and by common understanding and agreement of its members and the members of the Uptown Creators' Guild has the right, to expel from its membership and to deprive of the benefit of the protection of its system of registration, and its system of style protection generally, any member of the Millinery Quality Guild, Inc. or Uptown Creators' Guild who solicits the business of or sells its products to a retailer who fails or refuses to sign its "Declaration of Cooperation," and it has so expelled one of the constituent members of the Uptown Creators' Guild for the cause stated, and advertised the fact of such expulsion in periodicals, having an interstate circulation, and by circular letters of notification addressed to approximately 1600 retailers in various States of the United States who had signed the "Declaration of Cooperation" and who were cooperating with the plan of the Millinery Quality Guild, Inc.

PAR. 6. The capacity, tendency, purpose, and result of the combination, conspiracy and agreement, and the acts and practices performed thereunder, by said respondents and the retail dealers hereinabove described, have been and now are to unduly and unreasonably restrain commerce by limiting manufacturers of stylish hats as to the outlets of their products and retail dealers as to the sources of supply; to deprive the public of the benefits of normal price competition among retailers of stylish hats by restraining said retailers, under threat of boycott, who desire to purchase the products of the members of the Millinery Quality Guild, Inc. and the Uptown Creators' Guild from making any purchases unless such retailers sign and enter into the Guilds' agreements; to prevent retailers in stylish millinery from freely purchasing their requirements of said products in interstate commerce from the manufacturers thereof; to substantially increase the price of such hats to the retailers and to the consuming public; to place in the hands of the Millinery Quality Guild, Inc. control over the business practices of the manufacturers of stylish hats for women and the power to exclude from this industry those

who do not conform to the rules and regulations established by said Guild and thus to unduly and unreasonably restrain interstate trade and commerce in stylish millinery and to tend to create a monopoly in the said Millinery Quality Guild, Inc., its members and those cooperating with it.

PAR. 7. The foregoing alleged acts and practices of respondents have been and still are to the prejudice of the buying public generally and the customers and competitors of the members of said respondents in particular 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."

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 21st day of May 1936, issued and served its complaint in this proceeding upon respondents Millinery Quality Guild, Inc., Cooper-Russell, Inc., Farrington and Evans, Inc., Dave Herstein Company; G. Howard Hodge; Edgar J. Lorie, Inc., L. G. Meyerson, Inc., Scherman Hat Company; Oriole Hat Company; John Trinner, Inc., Vibo Company, Inc., Vogue Hat Co., Simon Millinery Company; Lilly Dache, Inc., Gladys and Belle, Inc., Hat-negie Hats, Inc., Jay-Thorpe, Inc., John Fredericks, Inc., Minnie Kramer, Inc., Nicole de Paris, Inc., Florence Reichman, Inc., Marion Valle, Inc., Henri Bendel, Inc., Peggy Hoyt, Inc., La Mode Chez Tappe, corporations; Sergin F. Victor, an individual trading as Serge; Pauline Kahn, an individual trading as Mme. Pauline, Harry Solomons and May F. Solomons, copartners trading as Harry Solomons and Sons, charging them 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 respondents' answer thereto, testimony and other evidence in support of said complaint were introduced by Astor Hogg, attorney for the Commission before John W. Norwood, an examiner of the Commission theretofore duly designated by it and in opposition to the allegations of the complaint by Lowell M. Birrell, Maurice M. Cohn, Sanford Jarrett, Lewis G. Bernstein, and Strauss, Reich & Boyer, attorneys for the respondents, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding reg-

ularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint, and in opposition thereto, and the oral argument of counsel aforesaid; 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, Millinery Quality Guild, Inc., hereinafter referred to as the "Guild" is a corporation organized, existing and doing business under the laws of the State of New York with its principal office and place of business located at 711 Fifth Avenue, in the city of New York in said State. Said Guild is now, and for more than three years last past has been, under the domination and control of respondent hat manufacturers hereinafter referred to as "member" respondents, representatives of said member respondents acting as directors of said Guild. Since the month of July 1934, said Guild has held itself out to the public to be a membership corporation with a membership composed of all of the concerns hereinafter named as "member" respondents. Said Guild has been used by all of the said "member" respondents as an instrumentality for the carrying out of the plan, purpose and agreement relative to the prevention of style piracy hereinafter described. The said "member" respondents are:

Cooper-Russell, Inc., a corporation, with its principal place of business at 15 West 39th Street, New York, N. Y.;

Farrington and Evans, Inc., a corporation, with its principal place of business at 711 Fifth Ave., New York, N. Y.;

Dave Herstein Company, a corporation, with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

G. Howard Hodge, a corporation, with its principal place of business at 711 Fifth Ave., New York, N. Y.;

Edgar J. Lorie, Inc., a corporation with its principal place of business at 711 Fifth Ave., New York, N. Y.;

L. G. Meyerson, Inc., a corporation, with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

Scherman Hat Company, a corporation, with its principal place of business at 5 East 37th Street, New York, N. Y.;

Sergin F. Victor, an individual trading under the name and style of "Serge", with his principal place of business at 15 West 39th Street, New York, N. Y.;

Harry Solomons and May F. Solomons, copartners trading under the name and style of Harry Solomons and Son, with their principal place of business at 711 Fifth Avenue, New York, N. Y.;

Oriole Hat Company, a corporation, with its principal place of business at 15 West 39th Street, New York, N. Y.;

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John Trinner, Inc., a corporation, doing business under the name and style of "Trinner Hats", with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

Vibo Company, Inc., a corporation, with its principal place of business at 1 West 39th Street, New York, N. Y.;

Vogue Hat Company, a corporation, with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

Simon Millinery Company, a corporation, existing under the laws of the State of California, with its principal place of business at 989 Market Street, San Francisco, Calif.

PAR. 2. Respondent corporations and individuals hereinafter named and described in this paragraph and hereafter referred to as "affiliate" respondents are:

Lilly Dache, Inc., a corporation, with its principal place of business at 485 Madison Avenue, New York, N. Y.;

Gladys and Belle, Inc., a corporation, with its principal place of business at 485 Madison Avenue, New York, N. Y.;

Hatnegle Hats, Inc., a corporation, with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

Jay-Thorpe, Inc., a corporation, with its principal place of business at 24 West 57th Street, New York, N. Y.;

John-Fredericks, Inc., a corporation, with its principal place of business at 501 Madison Avenue, New York, N. Y.;

Minnie Kramer, Inc., a corporation, with its principal place of business at 501 Madison Ave., New York, N. Y.;

Nicole de Paris, Inc., a corporation, with its principal place of business at 7 East 55th Street, New York, N. Y.;

Florence Reichman, Inc., a corporation, with its principal place of business at 16 East 52nd Street, New York, N. Y.;

Pauline Kahn, an individual trading under the name and style of Madam Pauline with her principal place of business at 6 East 53rd Street, New York, N. Y.;

Marion Valle, Inc., a corporation, with its principal place of business at 501 Madison Avenue, New York, N. Y.

PAR. 3. All of said respondents mentioned in paragraphs 1 and 2 hereof, except the Guild, are engaged in designing and manufacturing women's hats at their respective factories located in the States of New York and California in the United States and in the sale of said women's hats to retail dealers located in the several States of the United States other than the States of manufacture. Said respondents cause said women's hats, when sold, to be transported in interstate commerce from their respective places of manufacture to the purchasers thereof located in practically every State in the Union, and in so doing there is a constant current of trade and commerce maintained by said respondents. In the carrying on of their said respective businesses said respondents are engaged in substantial competition with each other, except as to the understand-

ings and agreements hereinafter set forth, and with other corporations, individuals, firms, and partnerships likewise engaged in the distribution, sale and transportation of similar products in commerce between and among the various States of the United States.

PAR. 4. All of the said respondents hereinbefore named other than the said Guild form a substantial majority of the originators of the leading styles of high grade millinery for women. In general the hats manufactured and sold by said respondents are sold at wholesale for a price of about \$8.00 per hat, but some of the "member" respondents manufacture hats to sell at wholesale at a lower price. Some manufacturers of women's hats, including said respondents, originate their own designs for the hats they make. Some manufacturers do not originate their own designs but copy the designs of other manufacturers. The copying of other manufacturers' designs is commonly known in the industry as style piracy. Manufacturers who originate their own designs are known in the industry as original creators. Many of the said respondents maintain designing departments and employ designers or stylists who are constantly engaged in the origination of new styles of hats for women. Many of such designers visit Paris, France to observe the prevailing French styles and fashions and to determine the style trends. After making such observations and determining the style trends, said designers devise, for their respective manufacturers, design adaptations which are used by said respondents in making their respective hats. Designs prepared in this way are considered in said industry original creations, even though they may not be novel in the sense that nothing like them has ever existed before.

The style element is one of the most important factors in the sale of women's hats. The respondents herein are among the recognized leaders in the field of women's hats so far as style and design are concerned. The leading styles of hats, such as are sold and distributed by said respondents, are in great demand by the purchasing public throughout the United States. The high grade retail dealers in women's hats, both in New York and elsewhere in the United States, in order to offer a full line of women's hats are normally required to procure at least some of their models from the said respondents.

PAR. 5. In the year 1934 the said "member" respondents acting directly and in cooperation with each other and acting through the Guild, entered upon and carried out a plan or purpose to prevent insofar as possible piracy of the style and design of women's hats manufactured and sold by said respondents. In order to more completely effectuate and accomplish said purpose the said "member"

respondents sought and secured the cooperation of the "affiliate" respondents. In carrying out and enforcing their said plan and purpose to eliminate piracy of design and style of women's hats said "member" respondents procured from said "affiliate" respondents an agreement wherein and whereby each and all of said "affiliate" respondents agreed to work in unison and cooperation with said Guild and its said "member" respondents in making effective the rulings of said Guild regarding style piracy, and an agreement that on and after July 16, 1934, they would make no sales to and would show no merchandise to any retail store which had failed to sign a certain agreement entitled a "Declaration of Cooperation" promulgated by said Guild and hereinafter fully set out.

PAR. 6. To facilitate the operation of said plan and purpose a Registration Bureau was established by said Guild cooperating with "member" respondents under the supervision of its officers and employees wherein the creators of original designs and styles might register their models. Once the model is accepted by the Registration Bureau it is the usual practice of said respondents to regard such model as an original design and style of the person registering same, and any imitation or copying thereof in the ordinary course of business is treated by said respondents as design piracy. However, in the case of any alleged design piracy such filing and registration is not deemed conclusive but the matter is determined by a committee consisting of a representative of one or more of the "member" respondents or by the officers and employees of the said Guild.

The said "member" respondents and "affiliate" respondents in order to make their said plan and purpose effective solicited and secured from approximately 1600 high grade retail dealers in women's hats located in various States of the United States the agreement hereinbefore referred to as the "Declaration of Cooperation", which is set forth in full as follows:

DECLARATION OF COOPERATION

BETWEEN ----- AND THE MILLINERY QUALITY
GUILD, INC. IN THEIR EFFORT TO STAMP OUT STYLE PIRACY
IN THE MILLINERY INDUSTRY.

MILLINERY QUALITY GUILD, INC.

452 Fifth Avenue, New York, N. Y.

GENTLEMEN: We wish to express our desire to cooperate with the members of your organization who have decided to confine the sale of their individual merchandise to such retailers as by their conduct indicate their business policy to be that they will recognize the property rights in styles created by your members, and will refuse to countenance so-called "Style Piracy". Believing the

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principles declared by your members to be proper for the protection of the public, the retailer and the manufacturer, we wish to go on record as stating our fixed business policy.

We will instruct all of our buyers in Millinery that we will not buy any copies of pirated styles created by members of your association; that we will explain to them the great damage which the spreading of this practice is doing to our business and ask their complete cooperation.

Furthermore, we will stamp all of our millinery orders with the following clause:

"This order is placed upon the seller's warranty that the above styles of hats are not copies of styles originated by the members of The Millinery Quality Guild, Inc. The purchaser reserves the right to return any merchandise which is not as warranted."

We welcome this opportunity to put ourselves on record to lend you our fullest cooperation for we know it will lessen the confusion in our business and add to the profits.

Very truly yours,

Store's name

By

Store's address.

In soliciting and securing said agreements the said respondents, acting by and through the said Guild, employed a regular series of circular letters and follow-up literature designed to induce and coerce retailers to sign the "Declaration of Cooperation." In and by the circular letters sent out to the various retail stores throughout the United States, such retail stores were advised that the membership of the Guild comprised practically every important creative firm in the millinery industry and that only those stores which had subscribed to the "Declaration of Cooperation" can inspect or purchase the women's hats of respondents.

PAR. 7. From and after the date when the "affiliated" member respondents entered into the said agreement with the said "member" respondents, they and said "member" respondents, by mutual understanding, agreement, combination and concert of action made it a condition precedent to the sale of their products to retail dealers throughout the United States that such retailers must be signatories to the "Declaration of Cooperation," and must agree to be bound by and act in accordance with the principles of prevention of style piracy announced in the said "Declaration of Cooperation." Respondents other than the Guild, publicly announced that they would refuse to sell, and in certain cases did refuse to sell their products to retail dealers in stylish millinery who had failed or refused to sign the "Declaration of Cooperation" or who had failed to cooperate in the plan and agreement for the elimination of style piracy.

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In and by the foregoing plan and agreement said respondents have attempted to compel and still are attempting to compel and have compelled retail dealers who are desirous of selling hats manufactured by said respondents to make it a condition precedent to the purchase of women's hats from millinery manufacturers that the order for same be placed only upon the seller's warranty that the hats purchased are not copies of styles originated by respondents, and that in case the warranty fails then the merchandise may be returned. Pursuant to this method the said respondents have, in certain cases, brought about the return of women's hats by retail stores to manufacturers from whom they had purchased the same when such goods were declared by the respondent Guild to be copies originated by certain of respondents.

Pursuant to said plan, purpose and agreement said respondents agreed among themselves to expel from their membership, and to deprive of the benefits of their system of registration, and their system of style protection generally, any member or affiliate member of the Guild who solicits the business of or sells products to a retailer who has failed or refused to sign the said "Declaration of Cooperation." In one instance the respondents did expel Milgrim Hats, Inc., a corporation engaged in the manufacture and sale of women's hats in interstate commerce from their membership upon determination by the respondents that Milgrim Hats, Inc., was not abiding by the terms of said agreement, and notified the retail outlets and the public in general that they had expelled said concern from their membership.

PAR. 8. The respondents Peggy Hoyt, Inc., Henri Bendel, Inc., and La Mode Chez Tappe, all of New York City, are not shown to have participated in the acts complained of and no finding is made against them.

PAR. 9. The capacity, tendency, and result of the said purpose plan and agreement hereinbefore set forth, and the acts and practices performed thereunder by the respondents, as hereinbefore set forth, have been and now are unduly to hinder competition and to create monopoly in the sale of women's hats in interstate commerce:

(a) By limiting manufacturers of stylish hats for women as to the outlets of their products and by limiting retail dealers as to their source of supply;

(b) By depriving the public of the benefits of normal price competition among retailers of stylish hats for women, and

(c) By preventing the retailers of stylish hats for women from purchasing their requirements of said products in interstate commerce from manufacturers except subject to the limitation and restriction of this plan and agreement as hereinbefore set forth, and

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(d) By increasing the price of stylish hats for women to retailers and consumers through the protection of profits resulting from respondents' activities to eliminate from the trade alleged copies of styles which they claim and adjudge themselves to have originated;

(e) By placing in the hands of respondents control of the business practices of the manufacturers of stylish hats for women to the extent of limiting and as far as possible, eliminating the retail outlet for copied styles of manufacturers who copy the styles originated by the respondents;

(f) By eliminating from sale in interstate commerce women's hats which are copies of styles and designs claimed to have been originated by respondents or others and registered with the Millinery Quality Guild, Inc.; and

(g) By limiting interstate commerce in high class women's hats to models originated and designed by the manufacturer thereof or to copies produced by permission of the alleged originators thereof.

CONCLUSION

The practices of the respondents as set forth in the foregoing findings as to the facts, in the circumstances therein set forth, are to the injury and prejudice of the public and respondents' competitors and retailers of women's hats, and constitute unfair methods of competition in interstate commerce in violation of 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before John W. Norwood, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral argument by Astor Hogg, counsel for the Commission, and by Lowell M. Birrell, Maurice M. Cohn, Sanford Jarrett, Lewis G. Bernstein, and Strauss, Reich & Boyer, counsel for the respondents, and the Commission having made its findings as to the facts, and its conclusion that said respondents have violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondents, Millinery Quality Guild, Inc., Cooper-Russell, Inc., Farrington and Evans, Inc., Dave Herstein Com-

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pany; G. Howard Hodge; Edgar J. Lorie, Inc., L. G. Meyerson, Inc., Scherman Hat Company; Oriole Hat Company; John Trinner, Inc., Vibo Company, Inc., Vogue Hat Co., Simon Millinery Company; Lilly Dache, Inc., Gladys and Belle, Inc., Hatnegie Hats, Inc., Jay-Thorpe, Inc., John Frederics, Inc., Minnie Kramer, Inc., Nicole de Paris, Inc., Florence Reichman, Inc., Marion Valle, Inc., corporations; Sergin F. Victor, an individual trading as Serge; Pauline Kahn, an individual trading as Mme. Pauline; Harry Solomons and May F. Solomons, copartners trading as Harry Solomons and Sons, their respective officers, representatives, agents, and employees, or any group of such respondents or their agents, either with or without the cooperation of persons not parties in this proceeding, cease and desist from following a common course of action pursuant to a mutual understanding, plan, or agreement for the purpose or with the effect, directly or indirectly, of lessening competition in interstate commerce in women's hats, by the following methods, or any one or more thereof, to wit:

1. Soliciting or securing from retail dealers in women's hats any "Declaration of Cooperation" or agreement or understanding whatsoever wherein or whereby said retail dealers undertake or agree to refrain from purchasing, or to refuse to purchase from manufacturers, women's hats that are copies of designs originated and manufactured by respondents, or women's hats alleged by any of the respondents to be such copies; or wherein or whereby said dealers undertake or agree to stamp their orders for women's hats with a statement that such orders are placed upon the seller's warranty that the styles of women's hats being purchased are not copies of styles originated by respondents, and that the purchasers reserve the right to return any merchandise which is not as warranted.

2. Failing or refusing to sell their products to retail dealers on the ground or for the reason that such retail dealers purchase or have purchased from manufacturers women's hats that are alleged by respondents to be copies of women's hats originated and manufactured by respondents.

3. Failing or refusing to sell their products to retail dealers who fail or refuse to stamp their orders for women's hats purchased from manufacturers, with the statement that such orders are placed upon the seller's warranty that the styles of women's hats being purchased are not copies of styles originated by respondents, and that the purchasers reserve the right to return any merchandise which is not as warranted.

4. Expelling from the membership of said Millinery Quality Guild, Inc., any member or affiliate member on the ground or for the reason

that such member or affiliate member solicited the sale of, or sold women's hats to a retailer who failed to sign the agreement set forth in paragraph 1 hereof, or failed or refused to cooperate in the methods therein set forth.

5. Utilizing any cooperative means among themselves or with retail dealers to accomplish or carry out the methods prohibited in paragraphs 1, 2, and 3 hereof.

It is further ordered, That respondents shall within 60 days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That the complaint as against respondents Peggy Hoyt, Inc., Henri Bendel, Inc., and La Mode Chez Tappe be dismissed on the ground that the allegations of the complaint are not sustained as to them.

IN THE MATTER OF
**HEC BARTH, TRADING AS HEC BARTH LABORATORIES
AND DARK-EYES LABORATORIES**

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

Docket 2608. Complaint, Oct. 31, 1935—Decision, Apr. 30, 1937

Where an individual engaged in sale, under name "Dark Eyes," of a combination two-bottle eyebrow and eyelash stain containing silver nitrate and pyrogallol and prepared in black and in brown, and distributed in practically every State through department stores, drug stores, and beauty shops, and, as thus engaged, in substantial competition with others similarly engaged in sale and distribution, or in manufacture, sale, and distribution, of eyebrow and eyelash stains or dyes in commerce among the several States and in the District of Columbia—

- (a) Represented, in advertising his said products in newspapers and periodicals of general circulation and by radio, that the same was safe and harmless and a new discovery, and that use thereof gave permanent beauty to, or was a permanent darkener of, eyebrows and eyelashes, facts being said product was a caustic which would destroy tissue, possibility of danger through use thereof was enhanced if applied by an unskilled person or in an unskilled manner, and it was neither safe nor harmless nor a new discovery, new growth made new applications necessary, and it did not accordingly give permanent beauty nor permanently darken the eyelashes and eyebrows through use thereof; and
- (b) Represented that he owned, operated, or controlled a laboratory in which said product was made, facts being product in question was made for him by a company which owned the formula thereof, and in which he owned no interest and over which he exercised no control;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such representations were true, and with result that such public, as a consequence of mistaken and erroneous beliefs induced by such false and misleading statements, brought a substantial volume of his products, and trade was unfairly diverted to him from competitors likewise engaged in sale and distribution of such darkeners or stains, or in the manufacture, sale and distribution thereof, and who truthfully represent the effects of their products when applied to the eyebrows and eyelashes; 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.

Before *Mr. Robert S. Hall*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Sid Mogul, of Chicago, Ill., for respondent.