

Complaint

IN THE MATTER OF
HOLLYWOOD HAT COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (A) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936, AND OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3020. Complaint, Dec. 23, 1936—Decision, July 17, 1937

Where a corporation engaged in manufacture, sale, and distribution of women's hats to customers in the several States, largest customer of which was a syndicate maintaining in excess of 200 millinery departments in stores located throughout the United States, in competition with, in many cases, other customers of such hat manufacturer—

- (a) Sold, to said customer, in practically all instances, assorted suede hats at \$21.00 per dozen and assorted velours at \$36.00 per dozen, while contemporaneously selling competitor-purchasers, of much smaller volume, assorted suede and assorted velour hats of same style, grade, and quality at prices of \$24.00 or \$27.00 per dozen for the former, and \$39.00 or \$42.00 per dozen for the latter; without justification therefor by reason of differences in cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such commodities were to such purchasers sold and delivered, or other justification under the saving exceptions or provisos of the statute, and with result that effect of such discrimination might be to destroy, injure, or prevent competition with such customers who received benefit thereof;

Held, That such discriminations were in violation of Section 2 of the Clayton Act, as amended; and

Where aforesaid corporation—

- (b) Shipped, pursuant to order offered a customer of style line #200 hats at \$27.00 per dozen, and placed and accepted, at \$24.00 a dozen, substituted hats of a cheaper grade and quality than that shown and priced in sample line at \$27.00, as above set forth, without knowledge or consent of customer placing order for the superior grade and quality; and
- (c) Shipped a jobber, pursuant to order therefrom for its assorted #100 line of Ballibuntl hats at a price of \$25.50 per dozen, Ballibuntl hats of the cheapest grade customarily sold by it for \$24.00 a dozen;

With result of misleading its customers, in that articles of millinery of a grade and quality inferior to that ordered were received:

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

Before *Mr. Edward M. Averill*, trial examiner.

Mr. A. W. DeBirny for the Commission.

Roberts & McInnis, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved October 15, 1914, (the Clayton Act) as amended by an Act approved

June 19, 1936, Public 692 (the Robinson-Patman Act); and 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 hereby issues its complaint against Hollywood Hat Company, Inc., stating its charges in respect thereto as follows:

I

PARAGRAPH 1. The respondent, Hollywood Hat Company, Inc., is a corporation organized under the laws of New York with its principal place of business at 42 West 39th Street, New York City, and is and has been engaged in the business of manufacturing and selling women's hats. Pursuant to such sales, and as a part thereof, respondent ships and has shipped its hats from its place of business through and into various other States of the United States to the purchasers thereof.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is now, and for many years past has been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of selling and distributing women's hats in commerce between and among the various States of the United States; and the customers of respondent have been and are now in competition with each other.

PAR. 3. In the course and conduct of its business as aforesaid, said respondent, contrary to the provisions of subsection (a) of Section 2 of said Act of Congress approved October 15, 1914, as amended, has been, since June 19, 1936, and now is, discriminating in price between different purchasers of its said hats of like grade and quality, sold for resale within the United States, by giving and allowing certain purchasers, particularly Si Fish, Inc., a retail dealer of women's hats with retail stores at San Francisco, Sacramento, and Oakland, Calif., different prices than those given or allowed other of its purchasers competitively engaged in the resale of women's hats, particularly in said cities of San Francisco, Sacramento, and Oakland, Calif., and other cities of the United States. Respondent discriminates as aforesaid by allowing the said Si Fish, Inc., and others, a lower price for women's hats than it allows other customers of respondent competing with them.

PAR. 4. The effect of said discriminations in price made by respondent, as described in paragraph 3 hereof, has been, or may be, substantially to lessen competition, or to injure, destroy, or prevent competition in the sale and distribution of women's hats between

those of respondent's customers who receive the benefit of such discrimination and lower prices, and competing customers who do not receive such benefits and are charged higher prices.

PAR. 5. The foregoing alleged acts of said respondent, Hollywood Hat Company, Inc., are a violation of subsection (a) of Section 2 of said Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended by said Act approved June 19, 1936.

II

PARAGRAPH 1. Paragraphs 1 and 2 of charge 1 hereof are hereby adopted and made a part of this charge as fully as if set out herein verbatim.

PAR. 2. In the course and conduct of its business as aforesaid, respondent has followed the practice of filling orders for its hats with hats of a grade and quality lower than its customers are led to believe they will receive by the exhibition of samples by, and representations of, its salesmen and other agents at the time of soliciting and receiving such orders.

PAR. 3. The foregoing acts and practices of respondent, as described in paragraph 2 of this charge, constitute unfair methods of competition in commerce in that said acts and practices have a tendency to lead its said customers to believe that they are receiving women's hats of a higher grade and quality than they do in fact receive, and of a higher grade and quality than the women's hats they are offered by competitors of respondent at the same or similar prices, thus diverting business to respondent from its said competitors.

PAR. 4. The acts and things hereinabove in this charge alleged to have been done by respondent are to the prejudice of the public and the competitors of respondent, and constitute an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C., title 15, sec. 13) and pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal

Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914 (U. S. C., title 15, sec. 45), the Federal Trade Commission, on December 23, 1936, issued and served its complaint in this proceeding upon the respondent, Hollywood Hat Company, Inc., a corporation, charging it with discriminating in price between different purchasers of hats in violation of subsection (a) of Section 2 of the aforesaid act of October 15, 1914, and charging it with the use of unfair methods of competition in commerce in violation of the said act of September 26, 1914.

After the issuance of said complaint, the respondent herein filed answer thereto. Thereafter said respondent petitioned the Commission to allow it to withdraw the answer theretofore filed and, pursuant to permission granted by the Commission, filed its substituted answer thereto, in which substituted answer the respondent stated that it waived hearing on the charges set forth in the complaint, that it admitted all of the material facts alleged in the complaint, and the Commission having duly considered the same, and being now fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Said corporate respondent, Hollywood Hat Company, Inc., now is, and at all times since June 19, 1936, has been a corporation organized under the laws of the State of New York, with its principal office and manufacturing plant located at 65 West 39th Street, New York, N. Y. At all times herein mentioned said respondent has been engaged in the business of selling and distributing women's hats to customers located in the several States of the United States.

PAR. 2. The millinery industry consists of approximately 1200 establishments, more than 50% of which are located in New York City. New York milliners comprise about 70% of the industry by volume. The gross annual business of all milliners in the United States is approximately one hundred million dollars.

PAR. 3. Said respondent purchases the so-called "body" of the hat which it styles, reshapes and frequently ornaments with brilliants or similar articles. Straw and felt hats are seasonally manufactured and sold. The straw hat manufacturing season extends from December to May inclusive and reaches its height between February 1 and March 15. The manufacturing season for felt, suede or velour hats made from fur felts commences about July 1 and extends through October. The respondent has a longer season than most

manufacturers in the industry. Generally, the straw hats are first sold in Florida and California and according to public acceptance the styles are developed. Each design or style is given a number by the respondent herein and generally so in the industry. There are certain variations from such style numbers by reason of desire of the buyers for certain ornaments or different grade and quality of bodies.

PAR. 4. Fur felt bodies were purchased by respondent during the period from June 19, 1936 to January 1, 1937 at prices of \$8.00, \$8.50 and \$10.00 per dozen, the prices depending upon size and quality and the advancement of the season. Bodies advanced in price steadily from June to August 1936. Price of fur felts for the bodies of the same general class did not vary at the same time by reason of grade and quality more than 50¢ a dozen. Suede is produced by brushing and clipping a felt base which, prior to being sueded, is somewhat thicker than the felt of which plain felt hats are constructed. Poorer grades of suedes can easily be distinguished from the higher grades but it is difficult to distinguish the intermediate successive grades.

PAR. 5. There is a great variation in the number of hats sold in the several style numbers. Many styles are developed early in the season and manufacturing processes completed for production, and styles which do not attract consumers are closed out as the season progresses. The designers, stock room employees, blockers, and other employees engaged in the preparation of the hat for trimming are carried on a weekly wage, but other operations in forming the hat and the important operation of trimming are on a piece work basis. The unit cost of trimming does not vary between large and small orders in the production styles in which there is considerable selling. Differentials are established for trimming graduated with selling prices. Thus, for labor in trimming hats of the \$16.50 to \$19.50 per dozen grade the prices for stated operations in applying similar trim are \$1.25, \$2.00 and \$2.50. Whereas, hats that sell for \$19.50 to \$28.50 per dozen required, in one instance, labor costs for trimming of \$1.40, \$2.35 and \$2.75. Similar trimming on hats of like style, but higher quality, selling from \$28.50 to \$39.00 a dozen necessitated labor costs from \$1.65, \$2.75 and \$3.30 per dozen. Occasionally, buyers require variation from the standard trim for a given style, usually for small lots of a few dozen hats. In such instances, special piece work rates are contemporaneously agreed upon between the manufacturer and the head of the labor committee representing the employees who do the trimming. Whereas, the

labor contracts of the respondent are all graduated in accordance with price range classifications. Certain other manufacturers producing hats of more restricted quality variation have labor contracts with the unions which are fixed regardless of selling price. The respondent's business is almost exclusively with jobbers and "syndicates," representing numerous retail outlets and in the quantities customarily purchased there is no major variation in production costs by reason of the quantity involved in a particular order so far as the piece work labor is concerned. Hats are customarily packed in lots of three to the box.

PAR. 6. The largest customer of respondent is a syndicate maintaining in excess of two hundred millinery departments in stores located throughout the United States, many of said departments being competitive with other customers of Hollywood Hat Company, Inc.

PAR. 7. During the felt hat buying season, commencing about July 1, 1936, and extending through the fall of 1936, the respondent, Hollywood Hat Company, Inc., sold, in practically all instances, to its said largest customer suede hats, usually designated as assorted suede, at \$21.00 per dozen. Similarly assorted velours were, in practically all instances, sold to such customer at \$36.00 per dozen. Competitors of this largest customer, purchasers of much smaller volume, were sold assorted suede and assorted velour hats of the same style, grade and quality, at the same time, at prices of \$24.00 or \$27.00 per dozen for suede hats and at \$39.00 or \$42.00 per dozen for velour hats.

PAR. 8. Si Fish, Inc. is a corporation located in the State of California, engaged in the retail sale of millinery in competition with others engaged in similar business. It operates five retail stores in California. It employs a salaried buyer located in the city of New York who purchases millinery for its account. The salaried buyer representing Si Fish, Inc. likewise represents some 500 retail outlets and purchases approximately \$2,500,000 worth of millinery per year.

PAR. 9. In the cities where Si Fish, Inc., operates its several retail stores are located competitors who purchase millinery from the Hollywood Hat Company, Inc., respondent herein. Said competitors purchase frequently directly from the manufacturers and the respondent and otherwise.

PAR. 10. The respondent herein, Hollywood Hat Company, Inc., during the months of July and August employed a salesman in the State of California to sell its millinery. During the month of June 1936, the aforesaid sales representative of the respondent, Hollywood Hat Company, Inc., called upon Si Fish, Inc. in the State of California and offered to sell an assortment of style line #200 hats at

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\$27.00 a dozen. This sales representative was advised by Si Fish, Inc. that the same hat could be purchased by Si Fish, Inc. through its salaried buyer in New York for \$24.00 a dozen. Thereupon the salesman in California accepted an order for seven dozen assorted style line #200 hats at \$24.00 a dozen and advised the respondent herein that he had accepted the order at \$24.00 a dozen rather than at \$27.00 per dozen because of the statement made by Si Fish, Inc. Thereafter on July 3, 1936, Hollywood Hat Company, Inc. accepted the order at \$24.00 per dozen and so advised its salesman in Los Angeles by letter, stating also that "in order for me to fill the order at this price I will be compelled to use a cheaper price body. The reason I did not want to return this order is that I do not want to get in wrong with their New York office." And further advising that the salesman not tell Si Fish, Inc. of the substitution of a cheaper grade and quality than that shown which was priced in the sample line at \$27.00 per dozen. Replacement orders for style #200 hats were placed by Si Fish, Inc. through its salaried buyer in New York City and shipped on August 4 and August 27, 1936 as evidenced respectively by invoices A 2043, A 2342, and A 2343, all at a price of \$24.00 per dozen.

PAR. 11. In manufacturing straw hats, the respondent purchases an imported straw body known as Ballibuntl which is purchased by the respondent in assorted lots containing approximately 10% of the finest quality, grade 1, 40% each of intermediate grades, designated as 2 and 3, and 10% of the cheapest grade, designated as grade 4. The casual observer can detect little, if any, difference between grades 1 and 2 or 2 and 3 but there is a marked difference between grades 1 and 4. For practical economic reasons, the respondent separates the Ballibuntl bodies into two quality lines for which during the past season prices of \$25.50 and \$24.00 were charged, grades 1 and 2 being used in the hats sold for \$25.50 and grades 3 and 4 were consumed in the manufacture of the \$24.00 price line.

PAR. 12. During the month of March 1937 respondent, Hollywood Hat Company, Inc., sold a jobber in the city of Chicago assorted #100 line Ballibuntl hats at a price of \$25.50 per dozen and shipped, pursuant to the order for \$25.50 per dozen hats, Ballibuntl hats of the cheapest grade customarily sold by respondent for \$24.00 per dozen.

PAR. 13. Respondent's acts in the matters referred to in paragraphs 10 and 12 resulted in misleading its customers in that articles of millinery of a grade and quality inferior to that ordered were received. The difference between the \$27.00 per dozen grade of

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suede hats and the \$24.00 per dozen grade of similar merchandise is so slight as not to be readily discernible by the average retailer unless samples of each grade are at the same time available for comparison.

PAR. 14. The Commission concludes that the aforesaid acts and practices of the respondent, Hollywood Hat Company, 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."

PAR. 15. The Commission concludes that the price discriminations found in paragraph 7 were not justified by reason of differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities were to such purchasers sold or delivered, nor justified by any other exception or proviso contained in Section 2 of the Clayton Act as amended. The Commission further concludes that the effect of such discrimination may be to injure, destroy or prevent competition with such customers who receive the benefit of the said discrimination. The Commission, therefore, finds that the said discriminations were and are in violation of Section 2 of said Clayton Act as amended by the Robinson-Patman Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substituted answer filed herein on July 6, 1937 by respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusions, which findings and conclusions are hereby made a part hereof, 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," and also violated the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended;

It is ordered, That the respondent, Hollywood Hat Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of hats in interstate commerce or in the District of Columbia, do forthwith cease and desist

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from, selling, shipping, and invoicing millinery of a grade and quality different from the goods ordered, unless the buyer is advised of such difference.

It is further ordered, That the respondent, Hollywood Hat Company, Inc., its officers, representatives, agents, and employees, do forthwith cease and desist from the unlawful discriminations in price found in paragraph 7 of the aforesaid findings as to the facts and conclusions.

It is further ordered, That the respondent, Hollywood Hat Company, Inc., its officers, representatives, agents, and employees cease and desist from engaging in any similar discrimination in price in sales in interstate commerce under substantially like circumstances and conditions between purchasers competitively engaged with one another in the resale of suede hats of like assortment, style, grade and quality.

It is further ordered, That the said respondent, Hollywood Hat Company, Inc., within 60 days from the date of the service upon it of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
BIDDLE PURCHASING COMPANY, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. C OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3032. Complaint, Jan. 13, 1937—Decision, July 17, 1937

Where manufacturers, processors, and producers engaged in sale of commodities, in course of interstate commerce, to distributing concerns and buyers of such commodities in course of such commerce, through orders placed with it in behalf of such buyers by a purchasing agency engaged in (1) sale under contract of a market information service to over 2,400 distributing concerns scattered over the United States, and consisting principally of wholesalers of groceries, drugs, hardware, plumbing, automobile and electrical supplies, lumber, stationery, and other general merchandise, and in (2) providing, under said contract as interpreted, optional purchasing service for its contracting buyers under which service by it, if any, to seller was incidental, seller shipped direct to buyer in response to order placed with such purchasing agency by buyer, buyers rendered no service to sellers or to agency which, as agent and representative of buyer and subject to his control, received and accepted, for use of and payment over to buyer, in its entirety, such brokerage, with result that such payments, in effect, were actually made from seller to buyer, and latter received a discount in price equivalent to brokerage fee paid, and such buyers secured a lower price on commodities thus purchased than others, not members of such purchasing organization, received, on similar goods in like quantity bought direct from such sellers; in pursuance of a general plan and scheme whereby fees and commissions paid by sellers were made available to and transmitted to buyer—

- (a) Payed fees and commissions as brokerage on the sale of commodities to various distributing concerns and buyers engaged in purchase of commodities in course of interstate commerce, with knowledge of the fact that such fees were intended to be and were being paid over to such buyers by aforesaid purchasing company, as above set forth; and

Where distributing concerns engaged in sale of commodities in course of interstate commerce, and purchasers of the market information service and purchasing service of the purchasing company or agency hereinabove described—

- (b) Received and accepted fees and commissions paid as brokerage by such various sellers, as hereinabove set forth, in connection with purchase of commodities by such buyers through such purchasing agency; and

Where such purchasing agency, as hereinabove set forth, as instrumentality and means through which such sellers unlawfully were enabled to make payment of such fees and commissions as brokerage to such buyers and latter were enabled to receive and accept same—

- (c) Received such fees and commissions as brokerage from aforesaid sellers; and
(d) Transmitted and paid over same to aforesaid buyers: