

Complaint

27 F. T. C.

IN THE MATTER OF

FRANK SHAPIRO, INDIVIDUALLY AND DOING BUSINESS
AS NEWARK FELT NOVELTY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3493. Complaint, July 14, 1938—Decision, Oct. 12, 1938*

Where an individual engaged in manufacture of hats and novelty hats and caps from second-hand, old, and used felt hats which he caused to be cleaned, steamed, ironed, and shaped, and fitted with new trimmings, sweat bands, size labels and, in some cases, with peaks or visors, and in sale thereof to retailers, jobbers, and wholesalers, in competition with those engaged in sale and distribution of new hats and caps and with those engaged in sale and distribution of products similar to his own—

Sold said products, with no label, marking, or designation thereon to indicate their less costly manufacture, as aforesaid, from old and used materials, for resale by direct or eventual retail purchaser-owners thereof to public, without disclosing fact that hats and caps in question had been made from felts previously worn and renovated and made over, and under circumstances such as to indicate that they were in fact new products;

With tendency and capacity to induce many wholesalers, jobbers, and retailers and many members of purchasing public to buy said less costly hats and caps made from old, used, and second-hand products, renovated and made over by him as aforesaid, as and for articles made from new and unused materials, and with result that a number of consuming public, as direct consequence of mistaken and erroneous belief induced as aforesaid, purchased substantial volume of his said caps and trade was unfairly diverted to him from those engaged in manufacture and sale of such products and who do not misrepresent the quality and type of material from which same are made:

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

Mr. George Foulkes for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Frank Shapiro, individually, and doing business as Newark Felt Novelty Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Frank Shapiro is an individual presently doing business under the trade name and style of Newark Felt Novelty Co., with offices located at 416-420 Morris Avenue, Newark, N. J.

Respondent is now, and for some time last past has been, engaged in the business of manufacturing hats and novelty hats and caps from felts and other materials obtained from old, used, and second-hand hats and of selling the same to retailers, jobbers, and wholesalers located in the various States of the United States. Respondent causes, and for some time last past has caused, such hats and novelty hats and caps to be transported from his principal place of business in Newark, N. J., to the aforesaid purchasers thereof located in various other States of the United States.

In the course and conduct of his business respondent is now, and has been, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the business of manufacturing new hats and novelty hats and caps, and hats and caps similar to those sold by respondent in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, described in paragraph 1 hereof, respondent buys second-hand, old, and used felt hats. The second-hand, old, and used felt hats are cleaned, steamed, ironed, and shaped by respondent and then fitted with new trimmings, sweat bands, size labels, and, in some cases, with peaks or visors, and sold by respondent to retailers, who resell the same to the purchasing public, and to jobbers and wholesale dealers, who resell them to retail dealers, who, in turn, resell said products to the purchasing public.

PAR. 3. The aforesaid old, used, and second-hand hats and novelty hats and caps, after having been made over by respondent into hats and caps with new trimmings, sweat bands, size labels, and in some cases with peaks and visors, as described in paragraph 2 hereof, have the appearance of new hats and caps manufactured from felts which have never been worn, and said hats and caps are sold by respondent to retailers and to jobbers and wholesale dealers without any label, marking, or designation on or about said hats and caps to indicate that said hats and caps are in fact manufactured from second-hand materials, which have been renovated and made over by respondent. Said hats and caps are also sold to jobbers and wholesale dealers and are resold by said jobbers and wholesale dealers to retail dealers, who resell them to the public without disclosing the fact that said hats and caps are manufactured from felts previously worn and then renovated and made over, and under such circumstances as to indicate that they are new hats and caps.

Findings

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The cost to respondent of obtaining, renovating, and making over said old and previously used hats into hats and caps, as aforesaid, is much less than the cost to manufacture or make hats and caps of new materials of similar quality, and respondent is thereby able to sell, and does sell, said hats and caps to retailers, jobbers, and wholesale dealers, and through them to the purchasing public, at substantially lower prices than manufacturers of hats and caps from new materials can sell such hats and caps of the same or similar quality to retailers, jobbers, and wholesale dealers, and through said dealers to the using public.

PAR. 4. The acts and practices of respondent, as hereinabove set forth, had, and now have, a tendency and capacity to induce many wholesale dealers and jobbers and retail dealers and many members of the purchasing public to purchase said hats and caps manufactured from old, used, and second-hand hats which have been renovated and made over by respondent, as above alleged, in the mistaken and erroneous belief that they are purchasing hats and caps manufactured from new and unused materials. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the practices aforesaid, a number of the consuming public purchased a substantial volume of respondent's hats and caps, with the result that trade has been, and is, unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of manufacturing and selling hats and caps, who do not misrepresent the quality and type of material out of which their hats and caps are made. As a result thereof, substantial injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The above and foregoing acts and practices of respondent have been, and are, all to the prejudice of the public and respondent's competitors, as aforesaid, and have been and are, unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 14, 1938, issued, and on July 15, 1938, served, its complaint in this proceeding upon respondent, Frank Shapiro, individually, and doing business as Newark Felt Novelty Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer,

the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter 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, Frank Shapiro, is an individual doing business under the trade name and style of Newark Felt Novelty Co., with his offices located at 416-420 Morris Avenue, Newark, N. J.

Respondent is now, and for some time last past has been, engaged in the business of manufacturing hats and novelty hats and caps from felts and other materials obtained from old, used, and second-hand hats. Respondent then sells his products to retailers, jobbers, and wholesalers located in the various States of the United States.

Respondent causes such hats and novelty caps and hats, when sold, to be transported from his principal place of business in Newark, N. J., to the aforesaid purchasers thereof located in various other States of the United States.

PAR. 2. Respondent is now, and has been, in competition in commerce among and between the various States of the United States and in the District of Columbia with other individuals, and with corporations, firms, and partnerships engaged in the business of selling and distributing new hats and novelty caps and hats in such commerce and also with others selling and distributing hats and caps similar to those sold by the respondent in such commerce.

In the operation of his business, respondent buys second-hand, old, and used felt hats and then has such hats cleaned, steamed, ironed, and shaped. They are then fitted with new trimmings, sweat bands, size labels, and, in some cases, with peaks or visors. Respondent then sells said hats and caps direct to retailers who resell the same to the purchasing public and also to jobbers and wholesale dealers who resell said products to retail dealers for resale.

PAR. 3. The hats and novelty hats and caps made over by respondent from old, used, and second-hand felts and other materials and fitted with new trimmings, sweat bands, size labels, and, in some

cases, with new peaks and visors, have the appearance of new hats and caps manufactured from new and unused felts and other materials which have never been worn. Said hats and caps are sold by respondent to retailers and to jobbers and wholesale dealers without any label, marking, or designation on or about said hats and caps to indicate that said hats and caps are, in fact, manufactured from second-hand materials which have been renovated and made over by respondent.

The hats and caps are sold by respondent to jobbers and wholesale dealers and are resold by said jobbers and wholesale dealers to retail dealers, who resell them to the public without disclosing the fact that said hats and caps are manufactured from felts previously worn and then renovated and made over, and under such circumstances as to indicate that they are new hats and caps.

The cost to respondent of obtaining, renovating, and making over said old and previously used hats into hats and caps as aforesaid, is much less than the cost of manufacturing or making hats and caps of new materials of similar quality, and respondent is thereby able to sell, and does sell, said hats and caps to retailers, jobbers, and wholesale dealers, and through them to the purchasing public, at substantially lower prices than manufacturers of hats and caps made from new materials can sell such hats and caps of same or similar quality to retailers, jobbers, and wholesale dealers, and through said dealers to the using public.

PAR. 4. The acts and practices of respondent, as hereinabove set forth, have had, and now have, a tendency and capacity to induce many wholesale dealers and jobbers or retail dealers, and many members of the purchasing public, to purchase said hats and caps manufactured from old, used, and second-hand hats which have been renovated and made over by respondent in the mistaken and erroneous belief that they are purchasing hats and caps manufactured from new and unused materials.

As a direct consequence of the mistaken and erroneous belief induced by the practices aforesaid, a number of the consuming public purchased a substantial volume of respondent's hats and caps, with the result that trade has been, and is, unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of manufacturing and selling hats and caps, who do not misrepresent the quality and type of material of which their hats and caps are made.

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Order

CONCLUSION

The aforesaid acts and practices of respondent Frank Shapiro, individually, and doing business as Newark Felt Novelty Co., are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered. That respondent, Frank Shapiro, individually, and doing business as Newark Felt Novelty Co., or under any other trade name, his representatives, agents, and employees, successors or assigns, in connection with offering for sale, sale, and distribution of hats and novelty hats and caps in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing that hats and novelty hats and caps made in whole or in part from second-hand, old, and used materials are new or are composed of new materials, by failure to affix tags or labels thereto clearly and conspicuously showing that such hats and novelty hats and caps are composed in whole or in part, of second-hand, old, and used materials, or by any other means or device.

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

IN THE MATTER OF
**CLAIR C. HERR, INDIVIDUALLY AND TRADING AS LAN-
CASTER SALTED NUT COMPANY**

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

Docket 3518. Complaint, July 30, 1938—Decision, Oct. 12, 1938

Where an individual engaged in manufacture and processing of salted nuts, and in sale and distribution of assortments thereof which were so packed and assembled as to involve use of a lottery scheme when sold to consumers thereof, and which were composed of (1) number of packages and number of tins of various kinds of nuts, together with punchboard, for sale under a plan, and in accordance with said board's explanatory legend, pursuant to which those selecting last 5 numbers in each of board's 100 sections received number without charge, and receipt of nuts and kind and quantity thereof received by purchaser for nickel paid, in lieu of contingency hereinbefore specified, was dependent upon chance number pushed from board, and pursuant to which maker of last punch on board was entitled to three of the pound tins included with assortment in question, and (2) other assortments similarly for sale by lot or chance under methods illustrated as aforesaid, but in varying detail—

Sold, to dealers for display and resale to purchasing public in accordance with aforesaid sales plans, such assortments and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his products in accordance therewith, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who, unwilling to offer or sell salted nuts, nut confections, and candy as above described or by sales plan or method involving game of chance or by any other method contrary to public policy, refrain therefrom;

With result that many dealers in and ultimate purchasers of such products were attracted by his said sales plan or method and by element of chance involved in use thereof as aforesaid, and thereby induced to purchase his products, thus packed and sold, in preference to salted nuts, nut confections, and candy offered and sold by said competitors who do not use such or any equivalent or similar method, and with tendency and capacity, because of said game of chance, to divert unfairly to him trade and custom from his said competitors as aforesaid, exclude from such salted nuts, nut confections, and candy trades all competitors who are unwilling to and do not use such or equivalent or similar method as unlawful, lessen competition in said trades, create monopoly thereof in him and such other distributors of such products as do use same or equivalent or similar method, deprive purchasing public of benefit of free competition in said trades, and eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent or similar method:

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

Mr. Henry C. Lank and Mr. D. C. Daniel for the Commission.