

IN THE MATTER OF
THE MODE NOVELTY COMPANY, WOLF ALBOUM, AND
SAMUEL WEISMAN

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

Docket 3473. Complaint, July 8, 1938—Decision, Aug. 14, 1939

Where a corporation and two individuals, who were general officers thereof and managed, dominated, and controlled its business affairs and activity, and particularly with respect to acts and practices herein involved, engaged in manufacture, sale, and distribution of novelty hats and caps made from new and from second-hand or used materials, including second-hand, old, and used felt hats which they steamed, cleaned, and shaped into novelty caps or hats and sold to jobbers and wholesalers for resale to retailers and general purchasing public—

Sold said old, used and second-hand caps and hats, after being made over into products with new trimmings and with appearance of new articles made from felts which had never been worn, with no label or marking to indicate that they were in fact made from second-hand materials which had been renovated and made over by them as aforesaid, to jobbers and wholesalers by whom said caps and hats were in turn resold to retailers, who resold same to purchasing public without disclosing fact that they had been made from felts previously worn and then renovated, and from other used materials, and under circumstances such as to indicate they were new;

With result that they were enabled, by reason of much lower cost of obtaining and making over such old and used materials than cost of making new articles of similar type, to sell said products to jobbers and wholesalers at substantially lower prices than were manufacturers of new articles of similar type able to sell to jobbers and wholesalers and, through them, to retailers and to purchasing public, and with tendency and capacity to induce many wholesale and retail dealers and many of purchasing public to buy such caps and hats, made as aforesaid, in the mistaken and erroneous belief that they were buying new and unused materials, and with result, as direct consequence of mistaken and erroneous beliefs induced by said practices, that number of consuming public bought substantial volume of their said products and trade was diverted unfairly to them from those likewise engaged in selling and manufacturing caps and hats and who do not misrepresent the quality and type of the material out of which their products are made; to the substantial injury of competition in commerce;
Held, That such acts and practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. George Foulkes and *Mr. Robert Mathis, Jr.* for the Commission.

Mr. Jacob Lipman, of Newark, N. J., for respondents.

COMPLAINT

¹ 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 The Mode Novelty Co., a corporation, and Wolf Alboum, as president and treasurer of The Mode Novelty Co., and individually, and Samuel Weisman as vice president and secretary of The Mode Novelty Co., and individually, hereinafter referred to as respondents, have violated the provisions of the 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, The Mode Novelty Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, having its office and principal place of business at 242-13 Avenue, Newark, N. J. Respondent Wolf Alboum, also of Newark, N. J., is president and treasurer of respondent The Mode Novelty Co., and respondent Samuel Weisman with offices at 242-13 Avenue, Newark, N. J., is vice president and secretary of respondent company.

The said respondents, Wolf Alboum and Samuel Weisman, individually and as officers of the aforesaid corporate respondent, manage, dominate, and control its affairs and activities as hereinafter set out, and have used and now use said corporation, The Mode Novelty Co., as an instrumentality and agency to accomplish such things as said Wolf Alboum and Samuel Weisman propose and plan.

PAR. 2. In the course and conduct of their business described in paragraph 1 hereof, respondents for some time last past have been engaged in the business of manufacturing caps and hats from felt and other materials obtained from old, used, and second-hand hats, and of selling the same to retailers, jobbers, and wholesale dealers located in the various States of the United States. Respondents cause, and for some time last past have caused such caps and hats to be transported from their place of business in Newark to the aforesaid purchasers thereof located in various States of the United States. In the course and conduct of their business, respondents are now and have been in substantial competition with other individuals, corporations and partnerships engaged in the business of manufacturing and selling new caps and hats or caps and hats similar to those sold by respondents in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 3. In the course and conduct of their business respondents buy second-hand, old, and used felt hats. The second-hand, old, and used felt hats are cleaned, steamed, ironed and shaped by respondents into caps or hats, fitted with new trimmings, such as sweat bands and size labels, and in some cases with peaks and vizors and sold by respondents 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. 4. The aforesaid old, used and second-hand hats and caps, after having been made over by respondents into caps and hats with new trimmings, as described in paragraph 3 hereof, have the appearance of new caps and hats manufactured from felts which have never been worn, and said caps and hats are sold by respondents to retailers and to jobbers and wholesale dealers without any label, marking, or designation on or about said caps or hats to indicate that said caps and hats are in fact manufactured from second-hand materials, which have been renovated and made over by respondents. Said caps and hats sold to jobbers and wholesale dealers are resold by said jobbers and wholesale dealers to retail dealers, who resell them to the public without disclosing the fact that said caps and hats are manufactured from felts previously worn and then renovated and made over, and other used materials, and under such circumstances as to indicate that they are new caps and hats.

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

PAR. 5. The acts and practices of respondents as hereinabove set forth had, and now have, a tendency and capacity to induce many wholesale and retail dealers and many of the purchasing public to purchase said caps and hats manufactured from old and used hats, which have been renovated and made over by respondents, in the mistaken belief that they are purchasing new and unused 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 respondents' caps and hats with the

result that trade has been unfairly diverted to respondents from individuals, partnerships and corporations likewise engaged in the business of selling and manufacturing caps and hats 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 respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts and practices and representations of respondents have been and are all to the prejudice of the public and respondents' 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 8, A. D., 1938, issued, and thereafter served, its complaint in this proceeding upon the respondents, The Mode Novelty Co., a corporation, and Wolf Alboum and Samuel Weisman as its president and vice president, respectively, and individually, 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 the respondents' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by George Foulkes, attorney for the Commission, and in opposition to the allegations of the complaint by Jacob Lipman, attorney for the respondents, before A. F. Thomas, an examiner of the Commission duly designated to take testimony and receive evidence in said proceeding, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceedings regularly came on for final hearing before the Commission on said complaint, the answers thereto, testimony and other evidence, and brief of attorney for the Commission; and the Commission, having duly considered the same and being now fully advised in the premises, finds that the proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Mode Novelty Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located

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in Newark, N. J. Respondents Wolf Alboum and Samuel Weisman are, respectively, the president and the vice president and secretary of said corporation. The individual respondents, Wolf Alboum and Samuel Weisman, manage, dominate, and control the business affairs and activities of the corporate respondent, particularly with respect to the acts and practices herein described. Respondents are engaged in the manufacture, sale, and distribution of novelty hats and caps made from new and second-hand, or used, materials, and have caused said merchandise, when sold, to be transported from their principal place of business in Newark, N. J. to purchasers thereof in New Jersey and in other States of the United States at their respective points of location. In the course and conduct of its business, respondent The Mode Novelty Co. has been and now is in substantial competition with other corporations and with firms and individuals engaged in the manufacture, sale, and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, respondents buy second-hand, old, and used felt hats which they steam, clean and shape into novelty caps or hats, and which are then sold by respondents to jobbers and wholesale dealers who, in turn, sell them to retailers and to the general purchasing public.

PAR. 3. The aforesaid old, used and second-hand caps and hats, after being made over by the respondents into caps and hats with new trimmings, have the appearance of new caps and hats made from felts which have never been worn, and said caps and hats are sold by the respondents to jobbers and wholesalers without any label or marking to indicate that said caps and hats are, in fact, manufactured from second-hand materials which have been renovated and made over by respondents. Said caps and hats, so sold to jobbers and wholesale dealers, are by them, in turn, sold to retailers who resell them to the public without disclosing the fact that said caps and hats are manufactured from felts previously worn and then renovated, and from other used materials, and under such circumstances as to indicate that they are new caps and hats.

The cost to respondents of obtaining and making over said old and used materials is much less than the cost to manufacturers of manufacturing new caps and hats of a similar type, thereby enabling respondents to sell said caps and hats to jobbers and wholesalers at substantially lower prices than the prices at which manufacturers of new caps and hats can sell hats and caps of similar type to jobbers and wholesalers, and through said dealers, and retailers, to the purchasing public.

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

PAR. 5. In the course and conduct of their business, on September 10, 1938, Samuel Weisman and William Alboum, trading as The Mode Novelty Co. entered into a stipulation as to the facts and an agreement to cease and desist, with the Federal Trade Commission, by the terms of which agreement said respondents, Weisman and Alboum, agreed to cease and desist from selling or offering for sale in interstate commerce baseball or novelty caps made from second-hand, old, worn, or discarded felt or other material, unless and until there is stamped upon, or affixed or attached to, said products, in a conspicuous place, some word or words clearly indicating that the said products are not made from new and unused materials, but are from old, worn, second-hand, or discarded materials.

PAR. 6. The Commission further finds that subsequent to the date of the execution of said stipulation and agreement, the respondents did sell and distribute in commerce among and between the various States of the United States and in the District of Columbia certain baseball or novelty caps which were made from second-hand, old, worn and discarded materials, and upon which there was not stamped, affixed, or attached any word or words clearly indicating that the said caps were made from second-hand, old, worn, and discarded materials.

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CONCLUSION

The aforesaid acts and practices of the respondents, as set forth in the aforesaid findings of facts, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, in violation 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, the answer of respondents, testimony and other evidence taken before Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (respondents not having filed brief, and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, The Mode Novelty Co., a corporation, its officers, representatives, agents, and employees, and respondents Wolf Alboum and Samuel Weisman, individually and as officers of said corporation, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hats and caps in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that hats or caps composed in whole or in part of used or second-hand materials are new or are composed of new materials by failure to stamp on the sweat bands thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweat bands, a statement that said products are composed of second-hand or used materials, provided that if sweat bands are not affixed to such hats or caps then such stamping must appear on the bodies of such hats or caps in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

2. Representing in any manner that hats or caps made in whole or in part from old, used, or second-hand materials are new or are composed of new materials.

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.

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