

Complaint

IN THE MATTER OF

JOSEPH A. VILLONE, TRADING AS EXCELSIOR HAT
WORKS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2046. Complaint, Aug. 4, 1939¹—Decision, Sept. 19, 1939

Where an individual engaged in manufacture of hats from old, worn, and used felt hat bodies purchased by him and so treated and processed, through cleaning, steaming, ironing, and shaping, and fitting same with new trimmings, sweat bands, and size labels, that they had the appearance of new products made from felts which had never been worn or used—

Sold said hats, with appearance aforesaid, and with no label, marking, or designation stamped thereon to indicate to purchasing public that they were in fact made from old, worn, and previously used bodies, cleaned and renovated as above set forth, to jobbers, wholesalers, and retailers, who resold said articles to purchasing public without disclosing facts aforesaid, and under such circumstances as to indicate that they were in fact new, and failed, through use of words "Made Over Hat," under such terms as "De Luxe Quality" or "Style Distinctive" or similar words, to disclose to purchasers that articles in question were made from old, worn, or previously used bodies, as distinguished from products made from shop-worn bodies, or newly manufactured felts, which had never been worn or used;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that said products were made from new and unused material or from new, but shop-worn, hat bodies which had never been worn or used, and into purchase of substantial number thereof because of such erroneous and mistaken belief:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Robert Mathis, Jr. for the Commission.

Mr. Louis R. Kagan, of Jersey City, N. J., for respondent.

AMENDED AND SUPPLEMENTAL 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 Joseph A. Villone, an individual trading as Excelsior Hat Works, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof

¹ Amended and supplemental.

would be in the public interest, hereby issues its amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Joseph A. Villone is an individual trading as Excelsior Hat Works, with his office and principal place of business located at 275 Fifteenth Street, Jersey City, N. J. Respondent is now and for more than 1 year last past has been, engaged in the business of manufacturing hats from felts and other materials obtained from old, worn, and previously used hats, and of selling the same to jobbers, wholesale dealers, and retailers in various States of the United States and in the District of Columbia. Respondent causes and at all times herein mentioned has caused such hats to be transported from his place of business in the city of Jersey City, State of New Jersey, to the aforesaid purchasers thereof at their respective points of location in various States of the United States other than the State of New Jersey and in the District of Columbia.

PAR. 2. In the course and conduct of said business described in paragraph 1 hereof, the respondent buys old, worn, and used felt hats. The old, worn, and used felt hat bodies are cleaned, steamed, ironed, and shaped by respondent and then fitted with new trimmings, sweat bands, size labels, and sold by respondent to retailers, jobbers, and wholesale dealers who in turn sell such products to the purchasing public.

PAR. 3. The aforesaid old, worn, and previously used hat bodies, after having been made by respondent into hats with new trimmings, sweat bands, and size labels, as described in paragraph 2 hereof, have the appearance of new hats, manufactured from felts which have never been worn or used and said hats are sold by respondent to retailers, and to jobbers and wholesalers without any label, marking, or designation stamped thereon to indicate to the purchasing public that said hats are in fact manufactured from old, worn, and previously used felt hat bodies which have been cleaned and renovated by respondent. Said hats are also sold to jobbers and wholesale dealers and are resold by said jobbers and wholesale dealers to retail dealers who sell them to the purchasing public without disclosing the fact that said hats are manufactured from felts which have been previously worn and then cleaned and renovated, and under such circumstances as to indicate that they are in fact new hats.

In the course and operation of his business respondent uses the words "Style Distinctive," "Style Felt Hats," "De Luxe Quality," and other similar words or names in designating said merchandise. Respondent causes said words or other similar words or names to be embossed on sweat bands which are attached to said hats. Immedi-

ately under the words "Style Distinctive," "Style Felt Hats," and "De Luxe Quality," or under similar terms and names used by respondent in designating said hats, respondent has caused to be embossed the words "Made Over Hat."

It is the practice of various manufacturers of hats to manufacture finished hats from previously used felt hat bodies, and from new felt hat bodies obtained from new but shop-worn hats as well as from newly manufactured felt. Shop-worn hats are new hats which have been reclaimed from merchants' shelves by said hat manufacturers and which have never been worn or used. Said shop-worn hats are cleaned, steamed, and renovated by such hat manufacturers in the same manner as hats made from old, worn, and previously used hat bodies.

By the use of the words "Made Over Hat" in the manner aforesaid and the failure to use words or wording clearly indicating that the said hats are made from old, worn, and previously used felt hat bodies, respondent fails to disclose to purchasers that said hats are made from old, worn, and previously used hat bodies, as distinguished from hats made from shop-worn hat bodies or newly manufactured felts which have never been worn or used.

PAR. 4. The use by respondent of the acts and practices, above set forth, has the capacity to, and does, mislead and deceive a substantial number of wholesale dealers, jobbers, retail dealers, and members of the purchasing public into the erroneous and mistaken beliefs that the said hats are manufactured from new and unused materials or are made from new but shop-worn hat bodies which have never been worn and used, and into the purchase of a substantial number of such hats because of such erroneous and mistaken beliefs.

PAR. 5. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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 the 4th day of August 1939, issued and served its amended and supplemental complaint in this proceeding upon said respondent, Joseph A. Villone, an individual trading as Excelsior Hat Works, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 22nd day of August 1939, the respondent filed his answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed

and executed by the respondent and his counsel, Louis R. Kagan, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the amended and supplemental complaint, or in opposition thereto, and that the said Commission may proceed upon such statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceedings without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Joseph A. Villone is an individual trading as Excelsior Hat Works, with his office and principal place of business located at 275 Fifteenth Street, Jersey City, N. J. Respondent is now and for more than 1 year last past has been, engaged in the business of manufacturing hats from felts and other materials obtained from old, worn, and previously used hats, and of selling the same to jobbers, wholesale dealers, and retailers in various States of the United States and in the District of Columbia. Respondent causes, and at all times herein mentioned has caused, such hats to be transported from his place of business in the city of Jersey City, State of New Jersey, to the aforesaid purchasers thereof at their respective points of location in various States of the United States other than the State of New Jersey and in the District of Columbia.

PAR. 2. In the course and conduct of said business described in paragraph 1 hereof, the respondent buys old, worn, and used felt hats. The old, worn, and used felt hat bodies are cleaned, steamed, ironed, and shaped by respondent and then fitted with new trimmings, sweat bands, size labels, and sold by respondent to retailers, jobbers, and wholesale dealers who in turn sell such products to the purchasing public.

PAR. 3. The aforesaid old, worn, and previously used hat bodies, after having been made by respondent into hats with new trimmings, sweat bands, and size labels, as described in paragraph 2 hereof, have the appearance of new hats, manufactured from felts which have never been worn or used and said hats are sold by respondent to retailers, and to jobbers and wholesalers without any label, marking,

or designation stamped thereon to indicate to the purchasing public that said hats are in fact manufactured from old, worn, and previously used felt hat bodies which have been cleaned and renovated by respondent. Said hats are also sold to jobbers and wholesale dealers and are resold by said jobbers and wholesale dealers to retail dealers who sell them to the purchasing public without disclosing the fact that said hats are manufactured from felts which have been previously worn and then cleaned and renovated, and under such circumstances as to indicate that they are in fact new hats.

In the course and operation of his business respondent uses the words "Style Distinctive," "Style Felt Hats," "De Luxe Quality," and other similar words or names in designating said merchandise. Respondent causes said words or other similar words or names to be embossed on sweat bands which are attached to said hats. Immediately under the words "Style Distinctive," "Style Felt Hats," and "De Luxe Quality," or under similar terms and names used by respondent in designating said hats, respondent has caused to be embossed the words "Made Over Hat."

It is the practice of various manufacturers of hats to manufacture finished hats from previously used felt hat bodies, and from new felt hat bodies obtained from new but shop-worn hats, as well as from newly manufactured felt. Shop-worn hats are new hats which have been reclaimed from merchants' shelves by said hat manufacturers and which have never been worn or used. Said shop-worn hats are cleaned, steamed, and renovated by such hat manufacturers in the same manner as hats made from old, worn, and previously used hat bodies.

By the use of the words "Made Over Hat" in the manner aforesaid and the failure to use words or wording clearly indicating that the said hats are made from old, worn, and previously used felt hat bodies, respondent fails to disclose to purchasers that said hats are made from old, worn, and previously used hat bodies, as distinguished from hats made from shop-worn hat bodies or newly manufactured felts which have never been worn or used.

PAR. 4. The use by respondent of the acts and practices above set forth has the capacity to, and does, mislead and deceive a substantial number of the members of the purchasing public into the erroneous and mistaken beliefs that the said hats are manufactured from new and unused material or are made from new but shop-worn hat bodies which have never been worn or used, and into the purchase of a substantial number of such hats because of such erroneous and mistaken beliefs.

Order

29 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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 amended and supplemental complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, 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 the respondent, Joseph A. Villone, individually, and trading as Excelsior Hat Works, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hats in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that hats 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 then such stamping must appear on the bodies of such hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

2. Representing in any manner that hats 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 respondent shall, within 60 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.

Syllabus

IN THE MATTER OF
KIDDER OIL COMPANY

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

Docket 3026. Complaint, Dec. 30, 1936—Decision, Sept. 19, 1939

Where a corporation engaged in preparation, sale, and distribution of certain packaged lubricant which it designated as "Koatsal," and ingredients of which were lubricating oil and colloidal graphite, and which was recommended for use in fuels and crankcase oils for automobile and aeroplane engines; in advertising its said product through pamphlets, letters, post cards, testimonials, and other advertising matter distributed to members of purchasing public in various States and furnished to customers for such distribution, and through periodicals of general circulation—

- (a) Represented that an individual, whose name it bore, was an original pioneer in the blending of colloidal graphite and lubricating oil and had great scientific knowledge which enabled him to develop said product, facts being many were engaged in selling colloidal graphite and lubricating-oil mixtures similar to such said "Koatsal," long prior to entry into field of lubrication of said individual, who merely compounded said preparation by using well-known formula furnished by corporate seller of product, composed of 10 percent colloidal graphite and 90 percent lubricating oil;
- (b) Represented that said "Koatsal" penetrated and adhered to all metal surfaces which it reached, and that it permeated the pores of the metal and soaked into it, and that metal became plated with it and moving part rode on such plating; and
- (c) Represented, as aforesaid, that said "Koatsal" reduced friction and provided perfect protection against burned-out bearings, and made metal self-lubricating, and improved operation of a motor, and that automobile lubricated therewith would run further distance without oil in crankcase, without damage to any part, than could automobile lubricated with oil thus run;

Facts being that while oil and graphite were for many years the most generally used lubricants, and valuable ones, applied in proper place, viscosity and other properties and qualities of a film of lubricant are unaffected by presence of colloidal graphite as in said preparation, regardless of whether motor is operated under full-film or boundary conditions, said preparation has same properties as oil contained therein and no more, and effect of said preparation upon metal surfaces of a bearing is same effect as produced by said oil therein contained, and no more, no reduction of friction is accomplished by conditioning motor with said "Koatsal," and such conditioning, granted ample supply of oil, results in no measurable effect on friction, power or economy thereof, and bearing will run without substantial damage for indefinite period after oil is drained from crankcase, provided film of oil is maintained between moving and stationary surfaces, irrespective of whether such bearing was conditioned with "Koatsal" or not, and such a bearing is quickly destroyed, irrespective of whether previously