

Complaint

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IN THE MATTER OF

PRIME HAT COMPANY, INC., AND VINCENT GERBINO,
SAMUEL SCIFO, VITO DIGREGORIO AND JOHN SCIFOCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3830. Complaint, June 22, 1939—Decision, Dec. 29, 1939*

Where a corporation and four individuals, who were general officers thereof and, as such, managed, controlled, and dominated its corporate affairs and activities, engaged in manufacture of hats from felt materials obtained from old, worn, and previously used products, and in so treating and processing, through cleaning, steaming, ironing, and shaping, and fitting with new trimmings, sweat bands and size labels, old, worn, and used felt hat bodies purchased by them that they had the appearance of new hats made from felts which had never been worn—

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 and wholesalers, by whose retail dealer vendees said hats were resold to purchasing public without disclosing facts aforesaid, and failed, through use of words "Made Over Hat" under such terms as "Quality Hats" and other similar words or names embossed on sweat bands attached thereto, to disclose to purchasers that articles in question were in fact made from old, worn, and previously used hat bodies, as distinguished from products made from shop-worn hat bodies which had never been worn or used, as made in many instances by manufacturers through similar process employed with new but shop-worn hats reclaimed by them from merchants' shelves;

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

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.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Robert Mathis, Jr. for the Commission.

Mr. Alan G. Trebach, of New York City, for respondents.

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 Prime Hat Co., Inc., a corporation, and Vincent Gerbino, Samuel Scifo, Vito Digre-

gorio, and John Scifo, individually and as officers of said Prime Hat Co., Inc., hereinafter referred to as respondents, have violated the provisions of 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, Prime Hat Co., Inc., is now and has been at all times mentioned herein, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 97 East Houston Street, in the city and State of New York. Respondents Vincent Gerbino, Samuel Scifo, Vito Digregorio, and John Scifo are individuals and are president, vice president, secretary, and treasurer, respectively, of respondent Prime Hat Co., Inc., and as such manage, control, and dominate its corporate affairs and activities. All of said respondents have their office and principal place of business at No. 97 East Houston Street, in the city and State of New York. Respondents are now, and for more than 1 year last past have 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 retailers, jobbers, and wholesalers located in the various States of the United States and in the District of Columbia. Respondents cause, and at all times herein mentioned have caused, such hats to be transported from their place of business in the city and State of New York to the aforesaid purchasers thereof, at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia.

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

PAR. 3. The aforesaid old, worn, and previously used hat bodies, after having been made by respondents into hats with new trimmings, sweat bands, size labels, as described in paragraph 2 hereof, have the appearance of new hats manufactured from felts which have never been worn, and said hats are sold by respondents to retailers, and to jobbers and wholesale dealers 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

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hat bodies, which have been cleaned and renovated by respondents. 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, previously worn and then cleaned and renovated, and under such circumstances as to indicate that they are in fact new hats.

In the course of the operation of their business respondents use the words "Quality Hats" and other similar words or names in designating said merchandise. Respondents cause said words or similar words or names to be embossed on sweat bands which are attached to said hats. Immediately under the words "Quality Hats" or under similar terms and names used by respondents in designating said hats, respondents have 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 are 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 felt hat bodies.

By the use of the words "Made Over Hat" in the manner aforesaid, respondents fail 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 which have never been worn or used.

PAR. 4. The use by respondents of the acts and practices, above set forth, has the capacity and tendency 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 either from new and unused materials, 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 said hats because of such erroneous and mistaken beliefs.

PAR. 5. The aforesaid acts and practices of respondents, 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 22d day of June A. D. 1939, issued and served its complaint in this proceeding upon the respond-

ents Prime Hat Co., Inc., a corporation, and Vincent Gerbino, Samuel Scifo, Vito Digregorio, and John Scifo, individually and as officers of Prime Hat Co., Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, evidence in support of the allegations of said complaint was introduced by Robert Mathis, Jr., attorney for the Commission, no evidence being introduced in opposition thereto by the respondents, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, and said evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the evidence, and brief in support of the complaint (respondents not having filed brief, and oral argument not having been requested); 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, Prime Hat Co. Inc., is now and has been at all times mentioned herein, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 97 East Houston Street, in the city and State of New York. Respondents Vincent Gerbino, Samuel Scifo, Vito Digregorio, and John Scifo are individuals and are president, vice president, secretary, and treasurer, respectively, of respondent Prime Hat Co., Inc., and as such manage, control, and dominate its corporate affairs and activities. All of said respondents have their office and principal place of business at No. 97 East Houston Street, in the city and State of New York. Respondents are now, and for more than 1 year last past have been, engaged in the business of manufacturing hats from felt materials obtained from old, worn, and previously used hats, and of selling the same to jobbers and wholesalers located in the various States of the United States and in the District of Columbia.

PAR. 2. Respondents cause, and at all times herein mentioned have caused, such hats to be transported from their place of business in the city and State of New York to the aforesaid purchasers thereof, at their respective points of location in various States of the

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United States other than the State of New York and in the District of Columbia.

PAR. 3. In the course and conduct of said business, described in paragraph 1 above, respondents buy old, worn, and used felt hats. The old, worn, and used felt hat bodies are cleaned, steamed, ironed, and shaped by respondents and then fitted with new trimmings, sweat bands, size labels.

PAR. 4. The aforesaid old, worn, and previously used hat bodies after having been made by respondents into hats with new trimmings, sweat bands, and size labels, as described in paragraph 3 above, have the appearance of new hats manufactured from felts which have never been worn, and said hats are sold by respondents to jobbers and wholesale dealers 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 respondents.

Said hats so sold to jobbers and wholesale dealers 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 previously worn and then cleaned and renovated and that they are not in fact new hats.

In the course of the operation of their business respondents use the words "Quality Hats" and other similar words or names in designating said merchandise. Respondents cause said words or similar words or names to be embossed on sweat bands which are attached to said hats. Immediately under the words "Quality Hats" or under similar terms and names used by respondents in designating said hats, respondents have caused to be embossed the words "Made Over Hat."

PAR. 5. 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 are reclaimed from merchants' shelves by said hat manufacturers and which have never been worn or used.

In many instances said shop-worn hats are cleaned, steamed, renovated, and reblocked by said hat manufacturers, part of the methods used by such shop-worn hat manufacturers being similar to the methods used by manufacturers who make hats from old, worn, and previously used felt hat bodies.

By the use of the words "Made Over Hat" in the manner aforesaid, respondents failed to disclose to purchasers that said hats are made

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from old, worn, and previously used hat bodies, as distinguished from hats made from shop-worn hat bodies which have never been worn or used.

PAR. 6. The use by respondents of the acts and practices above set forth has the capacity and tendency to, and does, mislead and deceive, and has misled and deceived, a substantial number of the purchasing public into the erroneous and mistaken belief that the said hats are manufactured either from new and unused materials, 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 said hats because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of respondents, 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 complaint of the Commission, the answer of respondents, testimony, and other evidence taken before John L. Hornor, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the complaint (respondents not having filed a 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, Prime Hat Co., Inc., a corporation, its officers, representatives, agents, and employees and respondents Vincent Gerbino, Samuel Scifo, Vito Digregorio, and John Scifo, 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 in commerce as 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-

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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 the 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.

Syllabus

IN THE MATTER OF

U-NEED CANDY CO., INC., AND LOUIS J. WEGER, MRS.
LOUIS J. WEGER, AND CHARLES R. HOSEY, INDIVID-
UALSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3855. Complaint, July 20, 1939—Decision, Dec. 29, 1939*

Where a corporation and three individuals who were officers and directors thereof and stockholders therein and, as case might be, controlled, formulated, and directed its practices and policies, and who acted together and in cooperation with each other in acts and things below set forth, engaged in manufacture of candy and in sale and distribution of certain assortments thereof which were so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof and with which, as case might be, it included (1) push card for use in sale and distribution of certain assortments under plan by which person, for 5 cents paid, received, in accordance with number pushed by chance from one to four candy bars and last sale on card entitled purchaser to eight of such bars, and (2) various other push cards for use in sale and distribution of their said candy under plan similar to that described and varying therefrom in detail only and involving game of chance, gift enterprise, or lottery scheme;

Sold such assortments, along with such push cards to wholesalers, jobbers, and retailers by whom, as direct or indirect purchasers thereof, such assortments were exposed and sold to purchasing public in accordance with aforesaid sales plan involving game of chance or sale of chance to procure additional bars of candy without additional cost, contrary to an established public policy of the United States Government and in violation of the criminal laws and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance or any other method contrary to public policy and refrain therefrom:

With result that many persons were attracted by said sales plan or method employed by them in sale and distribution of their candy and in element of chance involved therein and were thereby induced to buy and sell their said candy in preference to that of competitors aforesaid who do not use same or equivalent methods and with effect through use of such method and because of said game of chance of unfairly diverting trade to them from their competitors aforesaid:

Held, that such acts and practices under the circumstances set forth were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. L. P. Allen, Jr. for the Commission.