

Syllabus

IN THE MATTER OF

ECONOMY MEN'S HAT COMPANY, INC., AND ROSALIND
NISSENBAUM, LENA NISSENBAUM, AND NAT GILMAN,
INDIVIDUALLY AND AS OFFICERS OF ECONOMY MEN'S
HAT COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3837. Complaint, June 28, 1939—Decision, Feb. 24, 1940*

Where a corporation and three individuals who were general officers thereof and as such managed, controlled, and dominated its affairs and activities, and fourth individual who acted as general manager thereof, engaged in manufacture of hats from felt and other materials obtained from old, worn, and previously used hats or 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 used bodies cleaned and renovated as above set forth, to jobber, wholesaler, and retailer dealers by whom as direct or indirect purchasers from it said hats were resold to purchasing public without disclosing facts aforesaid, and failed through use of words "Made Over Hat" immediately preceding such terms as "DeLuxe Quality" or other similar terms and names embossed on sweat bands of hats in question to disclose to purchasers that articles concerned were in fact made from old, worn, and previously used hat bodies as distinguished from products made from shop worn hat bodies never 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 wholesale dealers, jobbers, retailers, and members of purchasing public into erroneous and mistaken beliefs that said products were made from either new and unused materials or from new but shop worn hat bodies which had never been worn or used and into purchase of substantial numbers of said hats because of such mistaken beliefs:

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. Max Bergman, of New York City, for respondents.

Complaint

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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 Economy Men's Hat Co., Inc., a corporation, and Rosalind Nissenbaum and Lena Nissenbaum, individually and as officers of Economy Men's Hat Co., Inc., a corporation, and Samuel Gilman, an individual, 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 this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Economy Men's 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 5 Elizabeth Street, in the city and State of New York. Respondents, Rosalind Nissenbaum and Lena Nissenbaum, are individuals and are president, and secretary and treasurer, respectively, of respondent Economy Men's Hat Co., Inc., and as such manage, control, and dominate its corporate affairs and activities. Respondent, Samuel Gilman, is an individual and is employed by and acts as general manager for respondent corporation. All of said respondents have their office and principal place of business at 5 Elizabeth 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 previously 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 trim-

mings, 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-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 "De Luxe Quality" 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 preceding the words "De Luxe Quality" or other similar terms and names used by respondents in designating said hats respondents have cause 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 said 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 said hats are manufactured from either 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

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of a substantial number of said hats because of such erroneous and mistaken beliefs.

PAR. 5. The aforesaid acts and practices of the 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 28th day of June, A. D. 1939, issued and served its complaint in this proceeding upon said respondents, Economy Men's Hat Co., Inc., a corporation, and Rosalind Nissenbaum, Lena Nissenbaum, Nat Gilman (herein erroneously designated as Samuel Gilman), individually and as officers of Economy Men's 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. On August 15, 1939, the respondents by their attorney, Max Bergman, Esq., filed their 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 respondents' counsel, Max Bergman, Esq., and W. T. Kelley, chief counsel for the 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 complaint, or in opposition thereto, and that the said Commission may proceed upon said 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 proceeding 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, Economy Men's 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 5 Elizabeth Street, in the city and State of New York. Respondents, Rosalind Nissenbaum and Lena Nissenbaum, are indi-

viduals and are president, and secretary and treasurer, respectively, of respondent Economy Men's Hat Co., Inc., and as such manage, control, and dominate its corporate affairs and activities. Respondent Nat Gilman, herein erroneously designated as Samuel Gilman, is an individual and is employed by and acts as general manager for respondent corporation. All of said respondents have their office and principal place of business at 5 Elizabeth 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 previously 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 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 "De Luxe Quality" 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

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said hats. Immediately preceding the words "De Luxe Quality" or other 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 said 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 said hats are manufactured from either 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.

CONCLUSION

The aforesaid acts and practices of the 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 the respondents, and a stipulation as to the facts entered into between counsel for the respondents herein, Max Bergman, Esq., 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 respondents 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Economy Men's Hat Co., Inc., a corporation, its officers, representatives, agents, and employees, and respondents Rosalind Nissenbaum, Lena Nissenbaum and Nat Gilman, (herein erroneously designated as Samuel Gilman), 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 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 said hats then such stamping must appear on the bodies of such hats in conspicuous or 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 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.

IN THE MATTER OF
RATHJEN BROS., INC.

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

Docket 3909. Complaint, Oct. 4, 1939—Decision, Feb. 29, 1940

Where a corporation engaged as rectifier and wholesaler of whiskies, gins, rum, brandy, and liquors in sale of its said merchandise to purchasers in the several other states and in the District of Columbia, in competition with others engaged in manufacture and distillation of whiskies, gins, and other alcoholic beverages who truthfully use word "distilling" or words of similar import or meaning as part of their corporate or trade name or on their stationery, labels and other advertising matter and with those engaged as wholesalers and distributors of such products who do not thus use said word or words—

Represented through use of word "distilling" in trade name employed by it on labels and letterheads that it was a distiller and that the whiskies, gins, and other alcoholic beverages offered by it and by it described by such statements as "Waldens Royal Toddy * * * manufactured by United States Distilling Company, etc.," "Waldens No. 100 Liqueur * * * Made by United States Distilling Company, etc.," "Old Braddock Brand * * * Bottled by United States Distilling Company," were by it made through process of distillation from mash, wort, or wash;

Notwithstanding fact it did not distill said various products sold and distributed by it as aforesaid nor operate or control any places where alcoholic beverages are manufactured by process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until manufacture is complete, as long definitely understood from word "distilling" used in connection with liquor industry and products thereof in wholesale and retail trade and by ultimate purchasing public, and it was not a distiller, for the purchase of the alcoholic liquors of which, direct, there is a preference on the part of a substantial portion of purchasing public as affording, in its belief, elimination of middleman's profit and other advantages;

With effect of misleading and deceiving members of purchasing public into erroneous and mistaken belief that it was distiller of the whiskies, gins, and other alcoholic beverages sold and distributed by it, and into the purchase of substantial quantities of said product because of such erroneous and mistaken belief, and with result that trade and commerce was diverted unfairly to it from its said competitors who do not falsely represent themselves as distillers of their respective products; to the substantial injury of competition in commerce:

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

Mr. Clark Nichols for the Commission.

Sefton & Quattrin, of San Francisco, Calif., for respondent.