

Syllabus

IN THE MATTER OF

MANHATTAN HAT CO., INC., AND HARRY SAMNICK,
JACOB SAMNICK, AND LOUIS REINKEN, INDIVID-
UALLY AND AS OFFICERS OF MANHATTAN HAT CO.,
INC.

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

Docket 1898. Complaint, Dec. 15, 1939¹—Decision, May 28, 1940

Where a corporation and three individuals, who were president, secretary, and treasurer thereof, and managed, controlled and dominated its affairs and activity, engaged in manufacture and sale of men's felt hats and caps from old, worn and previously-used hat bodies which they purchased and which, after being cleaned, steamed, ironed, and shaped by them, and in some instances fitted with new trimmings, sweatbands, linings, and size labels, had the appearance of new hats and caps; acting in conjunction and cooperation with each other in acts, practices and methods below set forth and in substantial competition with others also engaged in sale and distribution of such products in commerce among the various States and in the District of Columbia—

Sold said hats and caps, with appearance aforesaid, and with no marking or designation stamped thereon to indicate to purchasing public that they were made from old, worn and previously used hat bodies and other materials, to wholesale jobbers and retailers, who resold such articles to purchasing public without disclosing facts aforesaid and under such circumstances as to indicate that said hats and caps were in fact new, and failed, through use of words "Made Over" in inconspicuous and illegible type and in connection with and in proximity to such legends as "DeLuxe Quality" stamped or imprinted on said hats and caps, to apprise prospective purchasers that said articles were made from old, worn, and previously used hat bodies rather than from shop-worn hats which had never been worn or used, as made by various manufacturers from shop-worn new hats reclaimed from merchants' shelves and never used or worn, and cleaned, steamed and renovated by manufacturers in practically same manner as with hats made from old and previously used hat bodies;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that said hats and caps were made from new and unused materials or from hat bodies which were merely shop-worn and which had not been previously used, and with result, as consequence of such belief, that purchasing public was induced to, and did, purchase substantial quantities of their said hats and caps, and trade was thereby diverted unfairly to them from their competitors, many of whom do not misrepresent their products; to the substantial injury of competition in commerce:

¹ Amended and supplemental.

Complaint

30 F. T. C.

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

Mr. Robert Mathis, Jr. for the Commission.

Mr. Samuel L. Miller, of New York City, for Manhattan Hat Co., Inc.

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 Manhattan Hat Co., Inc., a corporation, and Harry Samnick, Jacob Samnick, and Louis Reinken, individually and as officers of said Manhattan 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 amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Manhattan 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. Respondents Harry Samnick, Jacob Samnick, and Louis Reinken, are individuals and are president, secretary, and treasurer, respectively, of respondent Manhattan Hat Co., Inc., and as such manage, control, and dominate its corporate affairs and activities. All of the respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices, and methods, hereinafter alleged. All have their offices and principal place of business at 124 Wooster Street in the city of New York, State of New York.

Respondents are now, and for some time last past have been, engaged in the manufacture, sale, and distribution of men's felt hats and caps of the character hereinafter set forth. Respondents cause their said products when sold to be transported from their place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said products 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 their said business respondents are now and have been at all times referred to herein, in substantial competition with other corporations and individuals, and

with firms and partnerships, also engaged in the sale and distribution of men's hats and caps in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents buy old, worn, and previously used hat bodies, which are cleaned, steamed, ironed, and shaped by respondents and in some instances fitted with new trimmings, sweat bands, linings, and size labels. Such hats are then sold by respondents to wholesalers, jobbers and retailers who in turn sell said products to the purchasing public.

PAR. 4. The aforesaid old, worn and previously used hat bodies, after having been reconditioned and refitted as aforesaid, have the appearance of new hats and caps, and said hats and caps are sold by respondents to wholesalers, jobbers, and retail dealers without any marking or designation stamped thereon to indicate to the purchasing public that said hats and caps were manufactured from old, worn, and previously used hat bodies and other materials. Said hats and caps are also resold by jobbers and wholesalers to retail dealers who sell them to the purchasing public without disclosing the fact that said hats and caps are manufactured from old felt hat bodies and other materials which have been previously worn, and under such circumstances as to indicate that said hats and caps are in fact new hats and caps.

Respondents also cause to be stamped or imprinted in said hats and caps the legend "DeLuxe Quality" and other legends of similar import, and in connection with and in proximity to such legends, the respondents also cause to be placed in said hats and caps in inconspicuous and illegible type the further legend "Made Over."

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

The use by respondents of the mere term, "Made Over," to designate their said hats and caps, is wholly insufficient to apprise prospective purchasers of the fact that such hats and caps are made from old, worn, and previously used hat bodies, rather than from shop-worn hats which have never been worn or used.

PAR. 5. 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 members of the purchasing public into the erroneous and mistaken belief that said hats and caps are manufactured from new and unused materials or from hat bodies which are merely shopworn and which have not been previously used. As a result of such erroneous and mistaken belief the purchasing public is induced to, and does, purchase substantial quantities of respondents' products.

In consequence thereof trade has been diverted unfairly to respondents from their competitors, many of whom do not misrepresent their products, and thereby substantial injury has been done 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. 6. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair methods of competition in commerce and 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 15th day of December 1939, issued and thereafter served its amended and supplemental complaint in this proceeding upon the respondents, Manhattan Hat Co., Inc., a corporation, and Harry Samnick, Jacob Samnick, and Louis Reinken, individually and as officers of Manhattan Hat Co., Inc., a corporation, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 5, 1940, the respondents filed their answer, in which answer respondents admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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 Manhattan 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. Respondents Harry Samnick, Jacob Samnick, and Louis Reinken, are individuals and are president, secretary, and treasurer, respectively, of respondent Manhattan Hat Co., Inc., and as such manage, control, and dominate its corporate affairs and activities. All of the respondents have acted in conjunction and cooperation with each other in carrying out the acts, practices and methods herein-after alleged. All have their offices and principal place of business at 124 Wooster Street in the city of New York, State of New York.

Respondents are now, and for some time last past have been, engaged in the manufacture, sale and distribution of men's felt hats and caps of the character hereinafter set forth. Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said products 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 their said business respondents are now and have been at all times referred to herein, in substantial competition with other corporations and individuals, and with firms and partnerships, also engaged in the sale and distribution of men's hats and caps in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents buy old, worn, and previously used hat bodies, which are cleaned, steamed, ironed, and shaped by respondents and in some instances fitted with new trimmings, sweat bands, linings, and size labels. Such hats are then sold by respondents to wholesalers, jobbers, and retailers who in turn sell said products to the purchasing public.

PAR. 4. The aforesaid old, worn and previously used hat bodies, after having been reconditioned and refitted as aforesaid, have the appearance of new hats and caps, and said hats and caps are sold by respondents to wholesalers, jobbers and retail dealers without any marking or designation stamped thereon to indicate to the purchasing public that said hats and caps were manufactured from old, worn, and previously used hat bodies and other materials. Said hats and caps are also resold by jobbers and wholesalers to retail dealers who sell them to the purchasing public without disclosing the fact that said hats and caps are manufactured from old felt hat bodies and other materials which have been previously worn, and under such circumstances as to indicate that said hats and caps are in fact new hats and caps.

Conclusion

30 F. T. C.

Respondents also cause to be stamped or imprinted in said hats and caps the legend "DeLuxe Quality" and other legends of similar import, and in connection with and in proximity to such legends, the respondents also cause to be placed in said hats and caps in inconspicuous and illegible type the further legend "Made Over."

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

The use by respondents of the mere term, "Made Over," to designate their said hats and caps, is wholly insufficient to apprise prospective purchasers of the fact that such hats and caps are made from old, worn, and previously used hat bodies, rather than from shop-worn hats which have never been worn or used.

PAR. 5. 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 members of the purchasing public into the erroneous and mistaken belief that said hats and caps are manufactured from new and unused materials or from hat bodies which are merely shop-worn and which have not been previously used. As a result of such erroneous and mistaken belief the purchasing public is induced to, and does, purchase substantial quantities of respondents' products.

In consequence thereof trade has been diverted unfairly to respondents from their competitors, many of whom do not misrepresent their products, and thereby substantial injury has been done 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.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and 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 and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said amended and supplemental complaint and state that they waive all intervening procedure and further hearing as to said facts, 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 the respondents, Manhattan Hat Co., Inc., a corporation, its officers, and Harry Samnick, Jacob Samnick, and Louis Reinken, individually and as officers of said corporation, respondents' 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.

IN THE MATTER OF
CRETE MILLS

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

Docket 3408. Complaint, May 6, 1938—Decision, May 28, 1940

Where a corporation engaged in milling and selling feed for animals, including its "Victor Chick Pellets" chicken feed, to purchasers in various other States, in substantial competition with others engaged in sale and distribution of similar products in commerce among the various States and in the District of Columbia, and including those who make, sell, and distribute similar products in commerce as aforesaid and do not in any way misrepresent the quality or character of their respective goods—

(a) Represented, through advertisements in newspapers, farm papers, and by radio broadcasts that its said pellets would grow chicks faster, healthier, and cheaper with less likelihood of disease or death than any other feed, regardless of price, and that chicks fed therewith reached the egg-laying period in 4 weeks' less time than those fed mash feed and lay invariably at the age of 5 months, and that said pellets cost less and excel all other feeds, regardless of price;

Facts being that use of such pellets, compared with those of other feeds of same general formula, kind, and quality, would not grow chicks faster, healthier, or more cheaply than other feeds, and use thereof, compared with other comparable feeds, as aforesaid, would not reduce costs substantially nor lessen mortality rate, and said pellets, subject to aforesaid qualification, did not exceed all other feeds nor assure one of greater poultry profits, and they were not the only feed which was properly digested by chicks, and said pellets would not cause chickens to produce eggs within any definite time or period earlier than chicks fed other feeds of similar composition; and

(b) Represented, as aforesaid, that any other feed that did not contain kiln-dried corn was dangerous to the health and life of chicks, and that said pellets would keep indefinitely, and that there was no possibility of any ingredient therein getting rancid or moldy and causing chick deaths;

Facts being corn other than kiln-dried is not dangerous and does not, absent an excess of moisture, become moldy, and said pellets would not keep indefinitely under all conditions or be free from rancidity or mold;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and with result, as consequence of such belief, that number of consuming public purchased substantial volume of its product, and trade was diverted unfairly to it from its competitors engaged in sale and distribution in commerce of products intended and used for purpose for which it recommended its said feed, and who truthfully represent the effectiveness of their respective products:

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