

IN THE MATTER OF
**MAF HAT WORKS, INC., ALSO TRADING AS NEW SYSTEM
HAT MANUFACTURING COMPANY, AND ALEX MILDER**

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

Docket 1897. Complaint, Oct. 13, 1939¹—Decision, Nov. 1, 1940

Where a corporation and an individual, who was its president and had long managed, controlled, and dominated its affairs and activities, engaged in manufacture of hats from hat bodies and other materials obtained from old, worn, and previously used hats purchased by them, and in cleaning, steaming, ironing, and shaping said articles, and fitting same with new trimmings, sweat bands, and size labels, so that, after having been thus processed and treated, said products had appearance of new hats made from hat bodies which had never been used or worn—

Sold said hats, with appearance aforesaid, and with no marking or designation stamped thereon to indicate to purchasing public that they were in fact made from old, worn, and previously used hat bodies and other materials, cleaned and renovated by them as above set forth, and with no designation in billing or invoicing thereof to disclose kind or type of materials from which made, to jobbers, wholesalers, and retailers who resold to purchasing public said articles, without disclosure of fact that they were made of old hat bodies which had been previously worn and then cleaned and renovated, and under such circumstances that purchasers were led to believe that they were in fact new products made from new materials, and failed, through use of phrase "Made Over Hat" immediately following words "None Better Jay Bee \$5 Special" and other similar names or words made use of in designating their merchandise and embossed on sweat bands attached to articles in question, to disclose to purchasers that products in question were made from old, worn, and previously used bodies, as distinguished from products made from shopworn hat bodies never used, by hat manufacturers in accordance with practically same process as they employed in manufacture of hats from old, worn, and previously used hat bodies;

With effect of misleading and deceiving substantial number of wholesale dealers, jobbers, retailers, and members of purchasing public into erroneous and mistaken belief that said products were made from either new and unused materials or from new, but shop-worn bodies, and into purchase of a substantial number thereof because of such belief, and with result, as direct consequence of such belief induced by them, that number of consuming public purchased substantial volume of their products, nature of which, as not made entirely from new materials, would not be disclosed by hat purchaser's casual examination, and trade was diverted unfairly to them from those engaged in sale of hats made from old, worn, and previously used hat bodies and other materials, and manufacturers who make hats from new materials; to the substantial injury of competition in commerce:

¹ Amended and supplemental.

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Complaint

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Robert Mathis, Jr., for the Commission.

Mr. Alex Milder, of Newark, N. J., for respondents.

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 Maf Hat Works, Inc., a corporation, trading under its own name and also trading as New System Hat Manufacturing Company, and Alex Milder, individually and as an officer of Maf Hat Works, 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 Maf Hat Works, 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. Respondent Alex Milder is an individual and is president of respondent Maf Hat Works, Inc., and has been such president continuously since on or about June 1931, and as such officer manages, controls, and dominates its corporate affairs and activities with reference to the unfair methods of competition and unfair and deceptive acts and practices herein alleged. Respondent Maf Hat Works, Inc., a corporation, trading under its own name and also trading as New System Hat Manufacturing Co., and respondent Alex Milder, individually and as an officer of Maf Hat Works, Inc., are now, and for more than 7 years last past and during said time have been, engaged in the business of manufacturing hats and caps from hat bodies and other materials obtained from old, worn, and previously used hats and of selling same to retailers, jobbers, and wholesalers, located in various States of the United States and in the District of Columbia. Said respondents have their office and principal place of business at 102 Murray Street in the city of Newark, State of New Jersey. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said hats and caps, as described above, in commerce among and

between 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 and caps to be transported from their place of business in the city of Newark, State of New Jersey, to the 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 their said business respondents are, and have been at all times referred to herein, in competition with other corporations, individuals, firms, and partnerships, also engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of hats and caps manufactured from old, worn, and previously used hat bodies and other materials, and manufacturers who make hats and caps from new materials.

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

PAR. 4. The aforesaid old, worn, and previously used hat bodies after having been made by respondents into hats and caps with new trimmings, sweat bands and size labels, as described herein, have the appearance of new hats and caps manufactured from hat bodies which have never been used or worn, and said hats and caps are sold by respondents to wholesalers, to jobbers and to retail dealers without any marking or designation stamped thereon to indicate to the purchasing public that said hats and caps are in fact manufactured from old, worn, and previously used hat bodies and other materials which have been cleaned and renovated by respondents. Said hats and caps are 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 and caps are manufactured from old hat bodies which have previously been worn and then cleaned and renovated and under such circumstances as to indicate that they are in fact new hats and caps.

In the course of the operation of their business respondents use the words "None Better Jay Bee \$5.00 Special" 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 and caps. Immediately following the words "None Better Jay Bee \$5.00 Special" or other similar terms and names used by respondents in designating said hats and caps, respondents have cause to be embossed the words "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 new felt hat bodies obtained from new but shop-worn hats, as well as from newly manufactured materials. Shop-worn hats are new hats which are 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 the same manner as hats made from old, worn, and previously used hat bodies.

By the use of the words "Made Over" in the manner aforesaid, and the failure to use words or wording clearly indicating that said hats and caps are made from old, worn, and previously used hat bodies, respondents fail to disclose to purchasers that said hats and caps are made from old, worn, and previously used hat bodies and other materials as distinguished from shop-worn hat bodies which have never been worn or used.

PAR. 5. The use by respondents of the acts and practices as 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 and caps are manufactured from either new and unused materials or are made from new but shop-worn hat bodies, and into the purchase of a substantial number of said hats and caps because of such erroneous and mistaken beliefs.

PAR. 6. Further, as a direct consequence of the erroneous and mistaken beliefs induced by respondents, a number of the consuming public purchased, and now purchases, a substantial volume of respondents' products, and trade has been diverted unfairly to respondents from corporations, individuals, firms, and partnerships also engaged in the business of selling hats and caps manufactured from old, worn, and previously used hat bodies and other materials, and manufacturers who manufacture hats and caps from new materials, and who truthfully advertise their products. As a result thereof, substantial injury has been done and is now being done by respondents to competition in commerce between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice 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 13th day of October 1939, issued and subsequently served its amended and supplemental complaint in this proceeding upon respondents, Maf Hat Works, Inc., a corporation trading under its own name and also trading as New System Hat Manufacturing Co., and Alex Milder, individually and as an officer of Maf Hat Works, Inc., 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. After the issuance of said amended and supplemental complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said amended and supplemental complaint were introduced by Robert Mathis, Jr., Attorney for the Commission, and in opposition to the allegations of the amended and supplemental complaint by Alex Milder, appearing for the respondents, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were 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 amended and supplemental complaint, the answer thereto, testimony, and other evidence, 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 Maf Hat Works, 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. Respondent Alex Milder is an individual and is president of respondent corporation, Maf Hat Works, Inc., and has been such president continuously since on or about June 1931 and as such officer manages, controls, and dominates its corporate affairs and activities.

Respondents, Maf Hat Works, Inc., trading under its own name and also trading as New System Hat Manufacturing Co., and Alex Milder, individually and as president of Maf Hat Works, Inc., are now and for more than 7 years last past, have been continuously engaged in the business of manufacturing hats from hat bodies and other materials obtained from old, worn, and previously used hats and of selling same to retailers, jobbers, and wholesalers located in various States of the United States and in the District of Columbia.

Said respondents have their office and principal place of business at 102 Murray Street in the city of Newark, State of New Jersey. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said hats in commerce among and between the various States of the United States, and in the District of Columbia.

Respondents cause, and for the past 7 years have caused, such hats to be transported from their place of business in the city of Newark, State of New Jersey, to the 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 respondents are, and have been at all times referred to herein, in competition with other corporations, individuals, firms, and partnerships also engaged in the sale and distribution in commerce among and between the various States of the United States, and in the District of Columbia, of hats manufactured from old, worn, and previously used hat bodies, and other material, and manufacturers who make hats from new materials. In the course and conduct of said business as described herein, respondents buy old, worn, and previously used hat bodies, which are then cleaned, steamed, ironed, and shaped by respondents; and in some instances fitted with new trimmings, sweat bands, size labels, and then sold by respondents to retailers, jobbers, and wholesalers, 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 and size labels, have the appearance of new hats manufactured from hat bodies which have never been used or worn, and said hats are sold by respondents to wholesalers, to jobbers, and to retail dealers without any marking or designation stamped thereon to indicate to the purchasing public that said hats are in fact manufactured from old, worn, and previously used hat bodies and other materials which have been cleaned and renovated by respondents. In billing and invoicing purchasers for said hats, respondents do

not use any designation to disclose to said purchasers the kind or type of materials from which said hats have been made but, instead, use various numbers in describing said products. Therefore, said hats are 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 making any disclosure of the fact that said hats are manufactured from old hat bodies which have been previously worn and then cleaned and renovated, and under such circumstances that purchasers are led to believe that they are in fact new hats manufactured from new materials.

In the course of the operation of their said business, respondents have used the words "None Better Jay Bee \$5 Special," and other similar names or words in designating said merchandise. Respondents cause said words or similar words or names to be embossed on the sweat bands which are attached to said hats. Immediately following the words "None Better Jay Bee \$5 Special" or other similar terms and names used by respondents in designating said hats, respondents have embossed the words "Made Over Hat," and in a large portion of the respondents' hats which are manufactured from used hats, no marking appears other than the words "Made Over Hat." It is the practice of various manufacturers of hats to manufacture finished hats from previously used hat bodies and from new felt hat bodies obtained from new but shop-worn hats, as well as from newly manufactured materials. A shopworn hat is one that is discolored or badly used in window display or badly handled inside the store so that it is not salable again, or it also might be a hat that came through with a mark or defacement on the surface of the felt or any part of it. It is an unsalable hat. Said shop-worn hats are cleaned, steamed, and renovated by said hat manufacturers in practically the same manner as hats from old, worn, and previously used hat bodies.

By the use of the words "Made Over Hat" in the manner as described herein and the failure to use words or wording clearly indicating that said hats are made from old, worn, and previously used hat bodies, respondents fail to disclose to purchasers that said hats are made from old, worn, and previously used hat bodies and other materials, as distinguished from shop-worn hat bodies which have never been used.

PAR. 4. The use by respondents of the acts and practices set forth herein 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 belief that said hats are manufactured from either new

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and unused materials or are made from new but shop-worn hat bodies, and into the purchase of a substantial number of said hats because of such erroneous and mistaken belief. The casual examination, such as the purchaser makes when buying a hat, would not disclose to such purchaser that respondents' products are not made entirely from new materials.

PAR. 5. It is further found that as a direct consequence of the erroneous and mistaken belief induced by respondents, a number of the consuming public purchased, and now purchases, a substantial volume of respondents' products, and trade has been diverted unfairly to respondents from corporations, individuals, firms, and partnerships also engaged in the business of selling hats manufactured from old, worn, and previously used hat bodies and other materials, and manufacturers who manufacture hats from new materials. As a result thereof, substantial injury has been done by respondents to competition in commerce between 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 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, the answer of respondents, testimony, and other evidence taken before Robert S. Hall, 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, Maf Hat Works, Inc., a corporation, trading under its own name and also trading as New System Hat Manufacturing Co., or trading under any other name or names, its officers, representatives, agents, and employees, and respondent Alex Milder, individually and as an officer of said corporation, his representatives, agents, and employees, directly or through any cor-

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porate 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 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
BASIC FOODS, INC., AND CURTIS HOWE SPRINGER

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

Docket 2844. Complaint, June 16, 1936—Decision, Nov. 1, 1940

Where a corporation and an individual, who was president thereof and in control of its business and of the advertising and sale of its product, respectively engaged in manufacture, sale, and distribution, or sale, of certain so-called herb, drug, and health preparations, including their "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib" proprietary products, to dealers for resale and to members of public in various other States and in District of Columbia, in substantial competition with others engaged in sale in commerce among the several States and in said District, of various products sold and distributed for some of the same purposes for which they offered and sold their products, and including among said competitors many who do not misrepresent the nature or character of the products sold by them, or the efficacy thereof in the treatment of diseases or ailments—

- (g) Represented through use of abbreviation "Dr." in names of their aforesaid products and advertisements thereof in newspapers and periodicals circulated in various States and in said District, and broadcasts and through other statements made orally to the public in advertising the same, that individual in question was a physician or doctor of medicine, licensed to practice by duly constituted authority empowered to issue licenses for such practice, and that products in question were made under direct supervision and with approval of a regularly qualified and duly licensed physician or doctor of medicine, and were, therefore, of substantial therapeutic value and efficacy in the treatment of various diseases, ailments, or symptoms mentioned by them in their advertising;

Notwithstanding fact individual in question was not a physician or doctor of medicine or licensed to practice same by any such authority empowered to issue licenses therefor, and products in question were not preparations made under direct supervision and with approval of regularly qualified and duly licensed physician or doctor of medicine;

- (b) Represented, in their said advertising, that most human aches and pains are due to congestion of the glands and organs of the body, and due to constipation and overacid conditions;

Facts being most such aches and pains are not due to such congestion or constipation or overacid conditions;

- (c) Represented, as aforesaid, that their said products were beneficially effective for the glands and organs of the body by removing poisons therefrom, and that products in question were respectively beneficial, effective and safe therapeutic remedies for majority of human aches and pains, and for treatment, among other ailments, of kidney trouble, diseased tonsils, stiff and aching joints, swollen feet, heartburn, insomnia, and nervousness;