

IN THE MATTER OF

JACOB SCHACHNOW, TRADING AS MODERN HAT WORKS

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

Docket 2047. Complaint, Aug. 10, 1939¹—Decision, Nov. 2, 1940

Where an individual engaged in manufacture of men's and boys' hats from felts obtained from old, worn, and previously used hat bodies purchased by him, through cleaning, steaming, ironing, blocking, and fitting with new trimmings, sweat bands, and size labels and, in some instances, new linings, such bodies—

Sold, to jobbers and wholesalers by whose retailer vendees they were sold to purchasing public, his said hats, thus processed, a portion of which had appearance of new hats never worn or used, with no label, marking or designation thereon to indicate to purchasing public that said hats were in fact made from old, worn and previously used bodies which had been dry cleaned and renovated by him, and with no designation in invoicing and billing purchasers to indicate or disclose that his said products were in fact made from old, worn, and previously used bodies, and failed, through use of phrase "Made Over," embossed on hats' sweat bands, immediately under words "Personality Hats" or similar matter, to disclose to members of purchasing public that said hats were made as aforesaid from old, worn, and previously used, rather than shopworn, hat bodies or from new materials which had never been used or worn, as made by manufacturers from new but shopworn, discolored, or otherwise unsalable new hats with much the same process employed in manufacture of such products from old, worn, and previously used hat bodies;

With effect of misleading and deceiving substantial number of wholesalers, jobbers, retailers, and members of purchasing public into erroneous and mistaken belief that his said products were made from new and unused materials or from new or shopworn bodies which had never been worn or used, and into purchase of a substantial number of his said hats, nature of which was not made entirely from new materials would not be disclosed by hat purchaser's casual examination, because of aforesaid erroneous and mistaken belief:

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

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

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

AMENDMENT 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 Jacob Schachnow,

¹ Amended and supplemental.

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

PARAGRAPH 1. Respondent, Jacob Schachnow, is an individual trading as Modern Hat Works, with his office and principal place of business located at 313 Third 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 hats. The old, worn, and used hat bodies are cleaned, steamed, ironed, and shaped by respondent and then, in some cases, fitted with new trimmings, sweat bands, and 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 over 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 hat bodies or materials 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 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 hat bodies 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 the respondent uses the words "Excello, John Dee," "Personality Hats" and other similar

words or names in designating said merchandise. Respondent causes said words or other similar words or names to be stamped or embossed on sweat bands which are attached to said hats. Immediately under the words "Excello, John Dee" and "Personality Hats" or other similar terms and names used by respondent in designating said hats, respondent has caused to be stamped or embossed the words "Made Over in U. S. A. Reg." and the words "Made Over."

It is the practice of various manufacturers of hats to manufacture finished hats from previously used hat bodies, and from new 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 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 U. S. A. Reg." and the words "Made Over" in the manner aforesaid and the failure to use words or wording clearly indicating that said hats are made from old, worn, and previously used 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 materials which have never been worn or used.

PAR. 4. The use by the respondent of the acts and practices, above set forth, has the tendency and capacity to, and does, mislead and deceive a substantial number of wholesale dealers, jobbers, and retail dealers and members of the purchasing public into the erroneous and mistaken belief 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 or used, and into the purchase of a substantial number of said hats because of such erroneous and mistaken belief.

PAR. 5. The aforesaid acts and practices of said 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 10th day of August 1939, issued and subsequently served its amended and supplemental complaint in this proceeding upon respondent Jacob Schachnow, an

individual, trading as Modern Hat Works, charging him 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, testimony, and other evidence in support of the allegations of said complaint were introduced by Robert Mathis, Jr., attorney for the Commission, and in opposition to the allegations of said complaint by Joseph Schachnow, appearing for the respondent, before Robert S. Hall, a trial 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 said complaint, testimony, and other evidence, brief in support of the complaint (respondent 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 Jacob Schachnow is an individual trading as Modern Hat Works with his office and principal place of business located at 313 Third Street in the city of Jersey City, State of New Jersey. Respondent is now and has been continuously since the 6th day of June 1932, engaged in the business of manufacturing men's and boy's hats from felts obtained from old, worn, and previously used hat bodies, and of selling the same to purchasers in various States of the United States and in the District of Columbia. Respondent causes such hats, when sold, to be transported from his place of business in the city of Jersey City, State of New Jersey, to the aforesaid purchasers 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 his business the respondent buys old, worn, and previously used hat bodies which he cleans, steams, irons, and blocks, and then fits with new trimmings, sweat bands, and size labels, and, in some instances, with new linings. Said hats are then sold by respondent to jobbers and wholesale dealers who in turn sell them to retailers, and said retailers sell such hats to the purchasing public.

PAR. 3. Said hats are sold by the respondent, as aforesaid, without any label, marking, or designation thereon to indicate to the purchasing public that said hats are in fact manufactured from old, worn,

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and previously used hat bodies which have been dry-cleaned and renovated by respondent. A portion of respondent's products have the appearance of new hats which have never been worn or used.

PAR. 4. In the course and conduct of his business the respondent uses the words "Personality Hats" and other similar words and names in designating said merchandise. Respondent causes said words or other similar words to be stamped or embossed on sweat bands which are attached to said hats. Immediately under the words "Personality Hats" or other similar terms and names used by respondent in designating said hats, respondent has caused to be stamped or embossed the words "Made Over."

PAR. 5. The Commission finds that the practice of respondent in stamping or embossing his said hats with the words "Made Over" does not disclose to members of the purchasing public that said hats are manufactured from old, worn, and previously used hat bodies rather than from shopworn hat bodies or from new materials which have never been used or worn. The casual examination such as a purchaser makes when buying a hat does not disclose to such purchaser that respondent's products are made from materials which are not new.

In invoicing and billing purchasers of his products, respondent does not indicate or disclose that his products are in fact made from old, worn, and previously used hat bodies. On such invoices and bills respondent's products are designated by certain numbers only.

PAR. 6. Shopworn hats are new hats which are discolored or which have been used in window displays to the extent that they are not in salable condition or which have marks or defacements thereon. Shopworn hats are cleaned and renovated in much the same manner as hats made from old, worn, and previously used hat bodies. It is the practice of various manufacturers of hats to manufacture hats from previously used hat bodies and from new hat bodies obtained from new but shopworn hats, as well as from newly manufactured materials.

PAR. 7. The use by the respondent of the acts and practices above set forth has the tendency and capacity to and does mislead and deceive a substantial number of wholesale dealers, jobbers, and retail dealers and members of the purchasing public into the erroneous and mistaken belief that said hats are manufactured from new and unused materials or are made from new or shopworn hat bodies which have never been worn or used, and into the purchase of a substantial number of respondent's hats because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury 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, 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 (respondent 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Jacob Schachnow, individually, and trading as Modern Hat Works, or trading 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 the 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.

IN THE MATTER OF
**ALBERT T. CHERRY, DOING BUSINESS AS A. T. CHERRY
COMPANY AND AS ATCO SOAP COMPANY**

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

Docket 3416. Complaint, May 11, 1938—Decision, Nov. 2, 1940

Where an individual engaged in sale and distribution of soap and soap powder to purchasers in various States and in the District of Columbia, in active and substantial competition with others engaged in sale and distribution of such products in commerce as aforesaid;

In selling his said products to house-to-house canvassers for resale in so-called "Combination Deals" in case lots of 48 cartons of soap to the case and at prices ranging from \$2.30 to \$3.00 a case, together with boxes of soap powder with trade name, usually, but without price mark, on each, for sale in combination with such soap, in case lots of 100 boxes to the case, at \$1.75 per case—

Offered and sold said soap in 3-cake cardboard cartons on which were printed brand name of soap and statement "Combination Deal 75¢," or some equivalent words, for sale, as aforesaid, in combination deals as made up by individual canvassers and as sometimes suggested by him, and including, as typical, two cartons of soap, four boxes of powder, costing wholesale about 18 cents, and consisting, in other instances, of three boxes of powder and three cartons of soap, and in still others of one box and one carton of each, respectively;

Notwithstanding fact price of 75 cents indicated on said cartons or such other amount as might be indicated thereon, did not represent the price at which such carton was generally and customarily offered and sold at retail, and such prices were wholly fictitious and in no sense represented actual retail selling price of soap concerned, but were greatly in excess thereof; and

Supplied thereby to and placed in the hands of house-to-house canvassers, means whereby purchasing and consuming public might be misled and deceived as to regular retail price and value of his said soap products, in accordance with general public understanding of custom of marking or stamping actual retail prices on various commodities, and into purchase by it of substantial volume of merchandise in reliance upon such custom to extent of accepting prices thus marked as indicating quality and fair market price of such commodities thus price-marked;

With result that such acts and practices, in marking such cartons of soap containing three cakes with legend "Combination Deal 75¢," or some other equivalent statement indicating price for three bars of said product, led many members of purchasing public erroneously and mistakenly to belief that regular and customary retail price of soap concerned was 75 cents per box of three cakes, or amount indicated thereon, and of causing them to purchase substantial quantity of his said soap because of such belief, and with effect that trade in commerce was diverted to him from his competitors who do not use deceptive and misleading representations in connection with sale and distribution of their products: