

IN THE MATTER OF

J. HERBERT BLACKHURST, DOING BUSINESS AS
UNIVERSITY PRESSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4375. Complaint, Nov. 13, 1940—Decision, Jan. 29, 1941*

Where an individual engaged, under trade name "University Press," in sale of books and other printed matter used in classroom instruction, to purchasers in various other States and in the District of Columbia—

Represented, directly or by inference, through use of words "University Press" in trade name under which he conducted his business and which he featured on printed matter above referred to, and on stationery and other advertising matter disseminated among prospective customers in various States and in said District, that his business was owned, conducted, or supervised by a university or other institution of higher learning, facts being it was not thus owned, controlled, or supervised;

With tendency and capacity, through use of word "University" by said individual as part of his trade name, to mislead and deceive members of purchasing public situated in the various States and in said District into mistaken and erroneous belief that his business was owned, conducted, or supervised by a university or other institution of higher learning, and to cause them, as result of such erroneous belief, engendered as above set forth, to purchase his said products:

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.

Mr. L. E. Creel, Jr., for the Commission.

Mr. Scott Rowley, of Des Moines, Iowa, for respondent.

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 J. Herbert Blackhurst, an individual, trading and doing business under the name University Press, 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 complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, J. Herbert Blackhurst, is an individual trading and doing business under the name University Press. His

principal office and place of business are at Des Moines, Iowa. Respondent is now, and for more than 1 year last past has been, engaged in the sale of books and other printed matter used in classroom instruction.

In the course and conduct of his business, respondent causes said printed matter, when sold, to be transported from his place of business in the State of Iowa to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said printed matter in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course of the operation of his business as aforesaid, respondent has used the words "University Press" as and for the trade name under which he has conducted his business. He has featured this trade name on said printed matter, and on stationery and other advertising matter which have been disseminated among prospective customers located in various States of the United States and in the District of Columbia.

By means of the use of the word "University" in his said trade name, the respondent represents that his business is owned, conducted, or supervised by a university or other institution of learning. By means of the use of the word "Press" in his said trade name, respondent represents that he owns, operates, or controls a printing establishment wherein the printed matter he sells is printed.

PAR. 3. In truth and in fact, the respondent's business is not owned, controlled, or supervised by any university or institution of learning. Respondent does not own, operate, or control a printing press or printing establishment. The printed matter which he offers for sale is printed for him under contract by a printing establishment which he does not own, operate, or control.

PAR. 4. The use by respondent of the aforesaid false, misleading, and deceptive trade name has the tendency and capacity to, and does, mislead and deceive members of the purchasing public situated in the various States of the United States and in the District of Columbia into the mistaken and erroneous belief that his trade name truthfully describes his business.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, 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.

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 November 1940, issued and subsequently served its complaint in this proceeding upon said respondent, J. Herbert Blackhurst, an individual trading and doing business under the name University Press, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 3, 1940, the respondent filed his 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 respondent, J. Herbert Blackhurst, and W. T. Kelley, chief counsel for the Federal Trade 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, J. Herbert Blackhurst, is an individual, formerly trading and doing business under the name University Press. His principal office and place of business are located in the city of Des Moines, State of Iowa. Respondent is now and has been since October 31, 1940, operating by means of a corporation designated Blackhurst Book Sales, Inc., an Iowa corporation. Respondent is now and for more than 1 year last past has been engaged in the sale of books and other printed matter used in classroom instruction.

In the course and conduct of his business respondent has caused said books and printed matter when sold to be transported from his place of business in the State of Iowa to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent at all times mentioned herein has maintained a course of trade in said printed matter in commerce among

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and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course of the operation of his business as aforesaid, respondent has used the words "University Press" as and for the trade name under which he has conducted his business. He has featured this trade name on said printed matter and on stationery and other advertising matter which has been disseminated among prospective customers located in various States of the United States and in the District of Columbia. The trade name University Press was used by respondent up to and including October 31, 1940, but was discontinued on that date.

By means of the use of the word "University" in his said trade name the respondent represented directly or by inference that his business was owned, conducted, or supervised by a university or other institution of higher learning.

PAR. 3. In truth and in fact, the respondent's business was not owned, controlled, or supervised by any university or institution of learning.

PAR. 4. The use by respondent of the word "University" as part of his trade name had the tendency and capacity to mislead and deceive members of the purchasing public situated in the various States of the United States and in the District of Columbia into the mistaken and erroneous belief that respondent's business was owned, conducted, or supervised by a university or other institution of higher learning, and to cause them to purchase respondent's products as a result of such erroneous belief engendered as above set forth.

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 complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein 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 respondent 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, J. Herbert Blackhurst, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of classroom books or other printed matter in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner or by any means that his business is owned, conducted, or supervised by a university or other institution of higher learning;

2. Using the word "University," or any other word or words of similar import and meaning, as part of any trade or corporate name under which said products are sold.

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.

Syllabus

IN THE MATTER OF

SHAPIRO FELT RUG COMPANY, TRADING UNDER ITS OWN NAME AND ALSO AS ESTA HAT COMPANY, AND WM. SHAPIRO, MORRIS SHAPIRO AND SARAH SHAPIRO, INDIVIDUALLY AND AS OFFICERS OF SHAPIRO FELT RUG COMPANY¹

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

Docket 2647. Complaint, Aug. 16, 1939²—Decision, Jan. 30, 1941

Where a corporation and three individuals, who were general officers thereof, and one of whom, as vice president and treasurer, managed, controlled, and dominated its corporate affairs and activities with respect to unfair and deceptive acts and practices below set forth, engaged in manufacture of novelty hats and caps from old, worn, and previously used felt hat bodies purchased by them, through cleaning, steaming, ironing, and shaping, and then fitting with new trimmings, sweat bands, and size labels, such bodies—

Sold, to retailers and to jobbers and wholesalers, by whose retailer vendees they were sold to purchasing public, their said products which, after being thus processed and treated, had appearance of new novelty hats and caps made from felts and other materials which had never been worn or used, with no label, marking, or designation stamped thereon to indicate to purchasing public that said hats and caps were in fact made from old, worn, and previously used hat bodies which had been cleaned and renovated by them, and which, sold and resold as aforesaid, were sold to purchasing public by retail dealers therein without disclosing facts aforesaid, and under such circumstances as to indicate that they were in fact new hats and caps, and failed, through use of phrase "Made Over" stamped or embossed on their products, to disclose to members of purchasing public that said products were made as aforesaid from old, worn, and previously used, rather than from shop-worn, hats, or new material never used or worn, as made by manufacturers from new, but shop-worn, discolored, or otherwise unsalable, hats, or those marked or defaced, with much 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 said products were made from new and unused materials or from new, but shop-worn, hat bodies which had never been worn or used, and into purchase, because of erroneous and mistaken belief aforesaid, of substantial number of such hats and caps, nature of which,

¹ Consent order originally entered in this matter on January 3, 1930, and reported in 21 F. T. C. 741 was set aside by Commission order on August 16, 1939. 29 F. T. C. 1422.

² Amended and supplemental.