

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.

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as made from materials which were not new, would not be disclosed by hat purchaser's casual examination:

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.

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

Mr. Robert Mathis, Jr. for the Commission.

Mr. Benjamin Arons, 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 Shapiro Felt Rug Co., a corporation, trading under its own name and also trading as Esta Hat Co., and Wm. Shapiro, Morris Shapiro, and Sarah Shapiro, individually and as officers of Shapiro Felt Rug Co., 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, Shapiro Felt Rug Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in the city of Newark, in said State. The officers of said corporation are respondents, Wm. Shapiro, president, Morris Shapiro, vice president and treasurer, and Sarah Shapiro, secretary, and as such manage, control and dominate its corporate affairs and activities as to the acts and practices herein alleged. Said respondents Shapiro Felt Rug Co., trading under its own name and also trading as Esta Hat Co., and Wm. Shapiro, Morris Shapiro, and Sarah Shapiro, individually and as officers of Shapiro Felt Rug Co., are now, and for more than 1 year last past have been, engaged in the business of manufacturing hats and caps from old, worn, and previously used hats, and other used materials, and of selling the same to retailers, jobbers, and wholesale dealers in various States of the United States and in the District of Columbia. All of said respondents have their office and principal place of business in the city of Newark, State of New Jersey. Respondents cause, and at all times mentioned herein have caused, such hats and caps to be transported from their place of business in the city of Newark and State of New Jersey to the afore-said 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, as described in paragraph 1 hereof, the respondents buy old, worn, and previously used felt hats. The old, worn, and previously 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, 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 manufactured by respondents into hats or caps and, in some instances, fitted with new trimmings, sweat bands and size labels, as described in paragraph 2 hereof, have the appearance of new hats and caps, manufactured from felts and other materials which have never been worn or used, and said hats and caps 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 and caps are in fact manufactured from old, worn, and previously used hat bodies 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 hat bodies and other materials which have been previously 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 and operation of their business, respondents use various words and names in designating said products. Respondents cause said words and names to be embossed or stamped on sweat bands which are attached to said hats or caps. Immediately under said words and names used by respondent in designating said hats and caps respondents have caused to be stamped or embossed the words "made over" and in some instances respondents have caused the words "made over" to be stamped on the size labels which are affixed to the sweat bands in said hats and caps.

It is the practice of various manufacturers of hats and caps to manufacture hats and caps from previously used hat bodies, and from new hat bodies obtained from new but shopworn hats as well as from newly manufactured materials. Shopworn hats are new hats which have been reclaimed from merchant's shelves by said hat and cap manufacturers and which have never been worn or used.

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Said shopworn hats are cleaned, steamed, and renovated by such hat and cap manufacturers in the same manner as hats and caps 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 the 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, as distinguished from hats and caps made from shopworn hat bodies or newly manufactured felts which have never been worn or used.

PAR. 4. The use by respondents 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, retail dealers, and members of the purchasing public into the erroneous and mistaken beliefs that the said hats and caps are manufactured from new and unused materials or made from new but shopworn hat bodies which have never been worn or used and into the purchase of a substantial number of such hats and caps 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 August 16, 1939, issued and subsequently served its amended and supplemental complaint in this proceeding upon the respondents Shapiro Felt Rug Co., a corporation, trading under its own name and also trading as Esta Hat Co., and Wm. Shapiro, Morris Shapiro, and Sarah Shapiro, individually and as officers of Shapiro Felt Rug Co., charging them 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 and the filing of an answer which admitted all the material allegations of the complaint by Morris Shapiro, individually and as an officer and director of Shapiro Felt Rug Co., a corporation, 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 the complaint by Benjamin Arons, attorney for the respondents William Shapiro and Sarah Shapiro, individually and as officers of Shapiro Felt Rug Co., a

corporation, 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 complaint, testimony and other evidence and brief in support of the complaint (respondents not having filed a brief) and the oral argument of counsel aforesaid; 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, Shapiro Felt Rug Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in the city of Newark, in said State. The officers of the corporation are respondents, Wm. Shapiro, president; Morris Shapiro, vice president and treasurer; and Sarah Shapiro, secretary; Morris Shapiro as vice president and treasurer, manages, controls, and dominates the corporate affairs and activities of the respondent corporation with respect to the unfair and deceptive acts and practices set forth herein. Respondents, Shapiro Felt Rug Co., trading under its own name and also trading as Esta Hat Co., and Wm. Shapiro, Morris Shapiro, and Sarah Shapiro, individually and as officers of Shapiro Felt Rug Co. are now, and for more than 1 year last past have been, engaged in the business of manufacturing novelty hats and caps from old, worn, and previously used hats, and of selling the same to retailers, jobbers, and wholesale dealers in various States of the United States and in the District of Columbia. All of the respondents have their office and principal place of business in the city of Newark, State of New Jersey. Respondents cause, and at all times mentioned herein have caused, such hats and caps, when sold, to be transported from their place of business in the city of Newark and State of New Jersey to 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 as described herein, the respondents buy old, worn, and previously used felt hat bodies which are cleaned, steamed, ironed, and shaped by respondents into novelty hats and caps and then fitted with new trimmings, sweat bands, size labels, and sold by respondents to retailers, jobbers, and

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wholesale dealers who in turn sell such products to the purchasing public.

PAR. 3. The Commission finds that these old, worn, and previously used hat bodies, after having been manufactured by respondents into novelty hats or caps and, in some instances, fitted with new trimmings, sweat bands, and size labels, as described herein, have the appearance of new novelty hats and caps, manufactured from felts and other materials which have never been worn or used. Said products 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 and caps are in fact manufactured from old, worn, and previously used hat bodies 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 hat bodies and other materials which have been previously worn and then cleaned and renovated and under such circumstances as to indicate that they are in fact new hats and caps.

PAR. 4. The Commission further finds that the practice of respondents in stamping or embossing their products with the words "made over" fails to disclose to members of the purchasing public that said hats and caps are manufactured from old, worn, and previously used hat bodies rather than from shopworn hats or from new material which has never been used or worn. The casual examination such as a purchaser makes when buying a hat or cap does not disclose to such purchaser that respondents' products are made from materials which are not new.

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 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. 5. The Commission further finds that the use by respondents 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, retail dealers, and members of the purchasing public into the erroneous and mistaken beliefs that the said novelty hats and caps are manufactured from new and unused materials or made from

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new but shopworn hat bodies which have never been worn or used and into the purchase of a substantial number of such hats and caps 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 amended and supplemental complaint of the Commission, the answer of respondent, Morris Shapiro, individually and as an officer and director of Shapiro Felt Rug Co., a corporation, which admits the material allegations of the complaint, 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 of the Commission, respondents not having filed brief, and oral argument by Robert Mathis, Jr., counsel for the Commission and by Benjamin Arons, counsel for the respondents, 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 respondent, Shapiro Felt Rug Co., a corporation trading under its own name and also trading as Esta Hat Co., its officers, representatives, agents, and employees, and respondents, Wm. Shapiro, Morris Shapiro, and Sarah Shapiro, individually and as officers of Shapiro Felt Rug Co., 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 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

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on the body 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 the 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.

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IN THE MATTER OF

NATIONAL STANDARD PARTS ASSOCIATION, MOTOR & EQUIPMENT WHOLESALE ASSOCIATION, AUTOMOTIVE TRADES ASSOCIATION OF GREATER KANSAS CITY, MISSISSIPPI VALLEY AUTOMOTIVE JOBBERS ASSOCIATION, AND SOUTHWESTERN JOBBERS ASSOCIATION, ET AL.

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

Docket 2942. Complaint, Oct. 14, 1936—Decision, Jan. 31, 1941

Where a voluntary unincorporated trade association engaged as National Standard Parts Association in activities below set forth, and members of which were manufacturers and jobbers of automobile parts and accessories, and business of which members constituted substantial volume of that in the fields concerned in the United States, and which (1) provided that its constitution, bylaws, and amendments thereof should be deemed a contract with it and among its members for the benefit of each and all, to which each member agreed to adhere; (2) fixed definite jobber membership qualifications with respect to operation of regularly established place of business, with stock sufficient to supply demands of trade, and including not less than 12 major lines purchased on regular distributor's basis direct from manufacturer, and similar manufacturer membership qualifications under which, among other things, a person must operate own factory and market product, other than to car manufacturers, "at wholesale only and to legitimate wholesalers," and (3) vested complete supervision of its affairs, between meetings of board of directors and subject at all times to its control, in executive vice president, and important trade ethics committee, to which, entrusted with handling "the dangerous subjects covered by trade ethics, complaints from members, etc., in exceedingly confidential manner," and charged with inviting "the filing of complaints of one member against another for violation of our code of ethics," were referred, with copies to said vice president, such complaints, as aforesaid, including those by jobber members "reporting demoralizing resale schedules by chain stores and mail order houses," etc., complaints against manufacturers charging sales to concerns who were not considered legitimate jobbers, or to jobbers who refused to maintain resale prices suggested by association's manufacturing members;

Acting through its officers, directors, and agents, and, more particularly, said executive vice president and the jobber member chairman of its trade ethics committee, who contacted by mail and in person parties complained against, promoted organization of local jobber groups, and maintenance of contact therewith, assumed initiative in eliminating and correcting difficulties due to price-cutting or price differences as respects action of manufacturer or jobber members, made use of persuasion, along with statement