

Complaint

IN THE MATTER OF

LESSING HAT COMPANY, INC., AND JOSEPH LORING,
TRADING AS LORING HAT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4245. Complaint, Aug. 20, 1940—Decision, Mar. 13, 1941*

Where a corporation and an individual, who was its president and managed, controlled, and dominated its affairs and activities, engaged in manufacture of caps and hats from old, used, and second-hand hats purchased by them, through cleaning, steaming, ironing, and shaping and, in some instances, fitting with new trimmings, sweat bands, and size labels, such previously used felt hat bodies so that they had appearance of new hats and caps made from felts and other materials which had never been worn or used—

(a) Sold their said hats and caps to retailers, jobbers, and wholesalers, with no labeling, marking, or designation stamped thereon to indicate to purchasing public that they were in fact made from old hat bodies, cleaned and renovated; and

(b) Failed adequately to inform members of purchasing public that such products made by them were in fact made from old, worn, and previously used bodies, as distinguished from those made from newly manufactured materials, through stamping term "Made of Castaway Hats" on sweat bands or size labels in such a way that jobbers, wholesalers, and retailers, leaving number, could readily remove that portion of label bearing aforesaid term;

With result that, through use of said labels and other acts and practices above set forth, they placed in hands of uninformed or unscrupulous dealers means and instrumentality whereby they might deceive or mislead members of purchasing public, by whom, lacking clear and conspicuous label disclosure, articles thus made are readily taken for those of new material entirely, into erroneous and mistaken belief that they were purchasing hats and caps made from new and unused materials or from bodies from shopworn or unsalable hats, and with effect of misleading and deceiving a substantial number of wholesalers, jobbers, retailers, and members of said public into aforesaid erroneous belief and, by reason thereof, into purchase of a substantial number of said hats and caps:

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. Miles J. Furnas*, trial examiner.

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

Mr. S. Jerome Loring, of Long Island, N. Y., for respondents.

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Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal

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Trade Commission, having reason to believe that Lessing Hat Co., Inc., and Joseph Loring, an individual, trading as Loring Hat 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 complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lessing Hat Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondent, Joseph Loring, is an individual and is president of the respondent corporation, Lessing Hat Co., Inc., and as such manages, controls, and dominates its corporate affairs and activities with reference to the unfair and deceptive acts and practices herein alleged. Respondent, Joseph Loring, also trades as Loring Hat Co. All of said respondents have their office and principal place of business at Third and Mercer Streets, in the city and State of New York.

PAR. 2. In the course and conduct of their business described herein, respondents for more than 2 years last past have been engaged in the business of manufacturing caps and hats from felt and other materials obtained from old, used, and second-hand hats and of selling the same to retailers, jobbers, and wholesale dealers located in the various States of the United States. Respondents cause such caps and hats when sold to be transported from their place of business in the State of New York to the aforesaid purchasers located in the various States of the United States other than the State of New York. Respondents maintain and have maintained a course of trade in said 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 business respondents buy second-hand, old, worn, and previously used felt hats. The old, worn, and previously used felt hat bodies are cleaned, steamed, ironed, and shaped by respondent and then are fitted with new trimmings, sweat bands, size labels, and sold by respondents to retailers and wholesale dealers who in turn sell said hats and caps to the purchasing public.

PAR. 4. The aforesaid old, worn, and previously used hat bodies, after being manufactured into hats or caps, are in some instances fitted with new trimmings, sweat bands, and size labels, as described herein, and have the appearance of new hats and caps manufactured from felts and other materials which have never been worn or used. When articles which are in fact manufactured from second-hand or used materials, but which have the appearance of being manufactured

from new materials, are offered to the purchasing public and such articles are not clearly and conspicuously labeled as being manufactured from used or second-hand materials, they are easily and readily taken by members of the purchasing public as being manufactured entirely from new materials.

Said hats and caps manufactured by respondents are sold 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 resold to the purchasing public without disclosing the fact that they are in fact manufactured from hat bodies and other materials which have been previously worn or used and under such circumstances purchasers are led to believe that they are in fact new hats and caps manufactured entirely from new materials.

On some part of the sweat band or size labels which are attached to said hats or caps, the respondents have caused to be stamped the words "Made of castaway hats." This size label is printed so that one portion has the size number printed thereon and the other portion has the words "Made of castaway hats" printed thereon. These labels are so attached to the hat or cap that jobbers, wholesale dealers, and retailers can readily and easily cut off and remove that portion of the label bearing the term "Made of castaway hats," leaving the size number on the remaining portion of said label.

PAR. 5. The term "Made of Castaway Hats" under the conditions of use hereinabove described does not adequately inform members of the purchasing public that the hats and caps manufactured by the respondents and sold under such designation are in fact made from old, worn, and previously used hat bodies as distinguished from hats and caps made from newly manufactured materials which have never been worn or used.

PAR. 6. By the use of the aforesaid label, and the other acts and practices set forth herein, the respondents place in the hands of uninformed or unscrupulous jobbers, wholesalers, and retail dealers means and instrumentalities whereby said jobbers, wholesale and retail dealers may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing hats or caps manufactured from new and unused materials, which are in fact composed entirely or in part of old, second-hand, and previously used hats or materials.

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PAR. 7. 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. 8. 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 the 20th day of August 1940, issued and subsequently served its complaint in this proceeding upon said respondents, Lessing Hat Co., Inc., and Joseph Loring, an individual trading as Loring Hat 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 (no answer being filed on behalf of respondents), testimony and other evidence in support of the allegations of said complaint were introduced by Robert Mathis, Jr., attorney for the Commission, the respondents being represented by S. Jerome Loring, before Miles J. Furnas, 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. The respondents expressly agreed that the Commission may proceed 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. The respondents further expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and other evidence; 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, Lessing Hat Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondent, Joseph Loring, is an individual and is president of the respondent corporation, Lessing Hat Co., Inc., and as such manages, controls, and dominates its corporate affairs and activities with reference to the unfair and deceptive acts and practices herein set forth. Respondent, Joseph Loring, also trades as Loring Hat Co. All of said respondents have their office and principal place of business at Third and Mercer Streets, in the city and State of New York.

PAR. 2. In the course and conduct of their said business, respondents, for more than 2 years last past, have been engaged in the business of manufacturing caps and hats from felt and other materials obtained from old, used, and second-hand hats and of selling the same to retailers, jobbers, and wholesale dealers located in the various States of the United States. Respondents cause such caps and hats, when sold, to be transported from their place of business in the State of New York to the aforesaid purchasers located in the various States of the United States other than the State of New York. Respondents maintain and have maintained a course of trade in said 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 business, respondents buy second-hand, 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 are fitted with new trimmings, sweat bands, and size labels and sold by respondents to retailers and wholesale dealers, who in turn sell said hats and caps to the purchasing public.

PAR. 4. The aforesaid old, worn, and previously used hat bodies, after being manufactured into hats or caps, are in some instances fitted with new trimmings, sweat bands, and size labels as described herein and have the appearance of new hats and caps manufactured from felts and other materials which have never been worn or used. When articles which are in fact manufactured from second-hand or used materials, but which have the appearance of being manufactured from new materials, are offered to the purchasing public and such articles are not clearly and conspicuously labeled as being manufactured from used or second-hand materials, they are easily and

readily taken by members of the purchasing public as being manufactured entirely from new materials.

Said hats and caps manufactured by respondents are sold to retailers and to jobbers and wholesale dealers without any labeling, 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.

PAR. 5. On some part of the sweat band or size labels which are attached to said hats or caps, the respondents have caused to be stamped the word "Made of Castaway Hats." This size label is printed so that one portion has the size number printed thereon and the other portion has the words "Made of Castaway Hats" printed thereon. These labels are so attached to the hat or cap that the jobbers, wholesale dealers, and retail dealers can readily and easily cut off and remove that portion of the label bearing the term "Made of Castaway Hats," leaving the size number on the remaining portion of said label. In some instances the label is attached in the reverse of the manner above described so that the portion of the label reading "Made of Castaway Hats" is attached to the hat or cap.

PAR. 6. The term "Made of Castaway Hats" under the conditions of use hereinabove described does not adequately inform members of the purchasing public that the hats and caps manufactured by the respondents and sold under such designation are in fact made from old, worn, and previously used hat bodies, as distinguished from hats and caps made from newly manufactured materials which have never been worn or used.

PAR. 7. By the use of the aforesaid labels and the other acts and practices set forth herein, the respondents place in the hands of uninformed or unscrupulous jobbers, wholesale and retail dealers, a means and instrumentality whereby said jobbers, wholesale and retail dealers may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing hats or caps manufactured from new and unused materials, or from shopworn hat bodies, when in fact the hats sold by respondents are composed entirely or in part of old, second-hand, and previously used hats or 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 may be a hat that came through with a marking or defacement on the surface of the felt or any part of it. It is an unsalable hat.

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PAR. 8. The use by the 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 belief 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 said hats or caps because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of respondents 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, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the said complaint and in opposition thereto, by Robert Mathis, Jr., counsel for the Commission, and by S. Jerome Loring, 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 Lessing Hat Co., Inc., its officers, directors, representatives, agents, and employees, and respondent Joseph Loring, individually and trading as Loring Hat Co., 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 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 manufactured 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

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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.

Syllabus

IN THE MATTER OF
HEALTH RAY MANUFACTURING COMPANY, INC.

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

Docket 4408. Complaint, Dec. 7, 1940—Decision, Mar. 13, 1941

Where a corporation engaged in manufacture and in interstate sale and distribution of its so-called "Twin-Arc Health Ray Sun Lamp" for home use by the lay individual as an artificial means of obtaining the ultraviolet rays of natural sunlight, and, as alleged, for the prevention, treatment, and alleviation of various ailments, diseases, and abnormal conditions; in advertisements which it disseminated and caused to be disseminated through the mails, newspapers, and periodicals, and advertising literature, and by other means in commerce, and otherwise—

- (a) Represented, directly and by implication, that its said product was a sun lamp and that the wave lengths of the ultraviolet rays which it emitted were of the same wave lengths as natural midsummer sunlight but with an intensity 15 times greater, and that such device was suitable and safe for home use by the layman for treating various bodily ailments and diseases without the direction, supervision, or advice of a qualified physician; facts being its said lamp, by reason of the nature of the ultraviolet rays emitted therefrom, which were not of the same wave lengths as natural sunlight and did not have the intensity claimed therefor, as above set forth, was not a sun lamp, but was in the category of therapeutic lamps which are not suitable for the same type of uses as are sun lamps, nor for home use for therapeutic purposes without supervision of a trained and skilled operator, because of danger of overexposure and severe burns;
- (b) Represented, as aforesaid, that said device would give benefits to the skin and general health of the user comparable and equivalent to, or greatly exceeding, those given by natural midsummer sunlight, and that use thereof would help build strong bones and teeth, tone up the system, and act as a tonic, increase the activity of many glands, build up bodily resistance and improve general health; facts being it would not give benefits to skin and general health comparable to those given by natural sunlight, since ultraviolet rays emitted therefrom were not, in truth, comparable to the ultraviolet rays of natural sunlight, and it would not accomplish other results claimed;
- (c) Represented, as aforesaid, that it served as a cure, remedy, or competent and adequate treatment for athlete's foot and would kill the responsible germs or spores in the skin affected, and that it was such a cure, remedy, or treatment for acne, pimples, and surface skin eruptions, which it caused to disappear; facts being its therapeutic value was limited to the possible destruction of bacteria when present on the surface of the skin, and it had no value in the treatment of athlete's foot or the other ailments or conditions above set forth, and would not accomplish results claimed for it as aforesaid; and