

Complaint

IN THE MATTER OF

LOUIS GOLDENBERG, MORRIS ZIPPER AND HARRY
FAERMAN, TRADING AS DIAMOND CAP COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3230. Complaint, Sept. 24, 1937—Decision, Mar. 19, 1941*

Where three individuals engaged in manufacture of caps from felts and other materials obtained from old, used, and second-hand hats purchased from various sources and thereafter cleaned, steamed, ironed, dyed, and shaped by them into the form of caps, which were fitted with new visors, buttons, trimmings, sweatbands, and size labels so that they had the appearance of new caps made from felt materials which had never been worn or used, and in interstate sale and distribution of said products in substantial competition with others, including manufacturers of such articles from new materials—

Sold their said caps with no disclosure in invoicing and billing, and with no label, marking, or designation of any kind to indicate that they were made from old hat bodies, to retailers, jobbers, and wholesalers by whom said caps were resold to purchasing public without disclosing in any way the fact that they were made from previously worn felts;

With the result that they were enabled to and did undersell manufacturers who produced similar caps from felt and other materials which were entirely new, and with tendency and capacity to induce many wholesale and retail dealers and a substantial portion of purchasing public to purchase their products manufactured from old materials in the erroneous and mistaken belief that they were made from new and unused materials, and, as direct consequence of such erroneous belief to divert trade unfairly to themselves from competitors, of whom many did not misrepresent the quality, kind, or type of material of which their caps were made:

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

Before *Mr. John W. Addison, Mr. John J. Keenan, Mr. Robert S. Hall, and Mr. Randolph Preston*, trial examiners.

Mr. George Foulkes and Mr. Robert Mathis, Jr., for the Commission.

Mr. Charles P. Bloome and Mr. Samuel R. Wurtman, of Philadelphia, Pa., for respondents.

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Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commis-

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sion, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Louis Goldberg, Morris Zipper, and Harry Faerman, individuals, trading as Diamond Cap Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said 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. Respondents, Louis Goldberg, Morris Zipper, and Harry Faerman, individuals, do business under the trade name and style of Diamond Cap Co., with their office and principal place of business located at 2000 South Ninth Street, Philadelphia, Pa. Respondents are now, and for more than 1 year last past have been, engaged in the business of manufacturing caps and hats from felts and other materials obtained from old, used, and second-hand hats, and of selling the same to retailers, jobbers, and wholesale dealers thereof located in the various States of the United States. Respondents cause, and for more than 1 year last past have caused, such caps and hats to be transported from their place of business in Philadelphia to the aforesaid purchasers thereof located in various other States of the United States. In the course and conduct of their business, respondents are now, and have been, in substantial competition with other individuals, corporations, firms, and partnerships engaged in the business of manufacturing and selling new caps and hats or caps and hats similar to those sold by respondents in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business described in paragraph 1 hereof, respondents for more than 1 year last past have bought and still buy second-hand, old, and used felt hats. The second-hand, old, and used felt hats are cleaned, steamed, ironed, and shaped by respondents and then fitted with new trimmings, sweat bands, size labels, and in some cases with peaks or visors, and sold by respondents to retailers, who resell the same to the purchasing public, and to jobbers and wholesale dealers who resell them to retail dealers, who in turn resell said products to the purchasing public.

PAR. 3. The aforesaid old, used, and second-hand hats and caps, after having been made over by respondents into caps and hats with new trimmings as described in paragraph 2 hereof, have the appearance of new caps and hats, manufactured from felts which had never

been worn, and said caps and hats are sold by respondents to retailers and to jobbers and wholesale dealers without any label, marking, or designation on or about said caps and hats to indicate that said caps and hats are in fact manufactured from second-hand materials, which have been renovated and made over by respondents. Said caps and hats sold to jobbers and wholesale dealers are resold by said jobbers and wholesale dealers to retail dealers, who resell them to the public without disclosing the fact that said caps and hats are manufactured from felts previously worn and then renovated and made over, and other used materials, and under such circumstances as to indicate that they are new caps and hats.

The cost to respondents of obtaining, renovating, and making over said old, and previously used hats into caps and hats as aforesaid is much less than the cost to manufacturers of manufacturing new caps and hats of similar quality and respondents are thereby able to sell said caps and hats to retailers, jobbers, and wholesalers and through them to the purchasing public at substantially lower prices than manufacturers of new caps and hats can sell caps and hats of the same or similar quality to retailers, jobbers, and wholesale dealers, and through said dealers to the using public.

PAR. 4. The acts and practices of respondents as hereinabove set forth had, and now have, a tendency and capacity to induce many wholesale and retail dealers and many of the purchasing public to purchase said caps and hats manufactured from old, and used hats which have been renovated and made over by respondents, in the mistaken belief that they are purchasing new and unused caps and hats manufactured from new and unused materials. Further, as a direct consequence of the mistaken and erroneous belief induced by the practices aforesaid, a number of the consuming public purchased a substantial volume of respondents' caps and hats with the result that trade has been unfairly diverted to respondents from individuals, firms, and corporations likewise engaged in the business of selling and manufacturing caps and hats who do not misrepresent the quality and type of material out of which their hats and caps are made. As a result thereof, substantial injury has been done, and is now being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The above and foregoing acts, practices, and representations of respondents have been, and are all to the prejudice of the public and respondents' competitors, as aforesaid, and have been, and are, unfair methods of competition in commerce within the meaning and

intent of section 5 of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 24, 1937, issued and subsequently served its complaint in this proceeding upon respondents, Louis Goldenberg (referred to in the complaint as Louis Goldberg), Morris Zipper, and Harry Faerman, trading as Diamond Cap Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before examiners 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, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and oral arguments of Robert Mathis, Jr., counsel for the Commission, and Samuel R. Wurtman, counsel for respondents; 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. Respondents, Louis Goldenberg, Morris Zipper, and Harry Faerman, are individuals trading as Diamond Cap Co., with their office and principal place of business now located at Fourth and Somerset Streets in the city of Philadelphia, State of Pennsylvania.

The Commission finds that the Louis Goldberg referred to in the complaint and the Louis Goldenberg referred to herein are in fact one and the same person, the correct name being Louis Goldenberg.

Respondents for more than 7 years last past have been engaged in the business of manufacturing caps from felts 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 and in the District of Columbia. Respondents cause, and for more than seven years last past have caused,

such caps, when sold, to be transported from their place of business in Philadelphia, Pa., to the aforesaid purchasers thereof located in various other States of the United States and in the District of Columbia. In the course and conduct of their business respondents are in substantial competition with other individuals, and with firms and corporations engaged in the business of manufacturing caps from new materials and with others manufacturing caps from materials similar to those used by respondents, and in the sale and distribution thereof in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business respondents buy and use old, used, and second-hand felt hats from various sources, including Good-Will Industries which source handles only used merchandise. The felt from such hats is cleaned, steamed, ironed, dyed, and shaped by respondents into the form of caps, which caps are thereafter fitted with new visors, buttons, trimmings, sweatbands, and size labels.

PAR. 3. The Commission finds that the caps thus made by respondents have the appearance of new caps manufactured from felt material which has never been worn or used. In invoicing and billing purchasers respondents do not disclose that their products are made from old, worn, and previously used hat bodies. In such invoices and bills respondents' products are usually designated by numbers only. The respondents sell such caps made of second-hand material as aforesaid to retailers, jobbers, and wholesale dealers without any label, marking, or designation of any kind to indicate or disclose that such caps are in fact manufactured from second-hand felt material. Such dealers then resell said caps to the purchasing public without disclosing in any way the fact that they are manufactured from felts which have been previously worn.

By reason of the use of these methods and practices, the respondents are enabled to and do undersell manufacturers who produce similar caps from felt and other materials which are entirely new.

PAR. 4. The acts and practices of respondents as hereinabove set out have the tendency and capacity to induce many wholesale and retail dealers and a substantial portion of the purchasing public to purchase respondents' products manufactured from old, second-hand, and previously used materials in the erroneous and mistaken belief that they are purchasing caps manufactured from new and unused materials. As a direct consequence of this erroneous and mistaken belief induced by the practices set forth above, trade has been and is diverted unfairly to respondents from their competitors, many of

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whom do not misrepresent the quality, kind, or type of material of which their caps are made.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition 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 respondents, testimony and other evidence taken before examiners of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral argument by Robert Mathis, Jr., counsel for the Commission, and by Samuel R. Wurtman, counsel for the respondents; and the Commission having made its finding 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, Louis Goldenberg, Morris Zipper, and Harry Faerman, individually and trading as Diamond Cap Co., or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of caps in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that caps composed in whole or in part of used, worn, or second-hand materials are new or are composed of new materials, by failure to stamp on the sweatbands thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweatbands, a statement that said caps are composed of second-hand or used materials, provided that if sweatbands are not affixed to such caps then such stamping must appear on the bodies of such caps in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

2. Representing in any manner that caps made in whole or in part from old, used, worn, or second-hand materials are new or are composed of new materials.

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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.

IN THE MATTER OF

EUCOZONE LABORATORIES, INC., AND UNIVERSAL
EUCOZONE OF AMERICA, INC.¹COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3478. Complaint, July 9, 1938—Decision, Mar. 19, 1941*

Where a corporation engaged as predecessor in interest to successor concern which, with its consent, was joined in instant proceedings and undertook to be bound by proceedings therein and by such order as might be entered, engaged in manufacture, under patent formula, of its "Eucozone" product in liquid, capsule, ointment, and nose drop form, and in competitive interstate sale and distribution thereof to, chiefly, wholesale druggists and chain stores; in its advertising in various newspapers and periodicals published throughout the United States—

- (a) Represented that its said "Eucozone" was an ozonide of eucalyptol, "a new strikingly efficient antiseptic, equal in germicidal strength to pure carbolic acid" against types of micro-organisms causing body surface infections and symptoms usually incident to described diseases and conditions, and that the antiseptic action thereof was due to the active oxygen released by use of its special patented formula, whereby oil of eucalyptus was broken down into vapor and brought under temperatures and pressures whereby it absorbed the ozone and in turn released active oxygen;

Facts being said preparation had no properties other than these possessed by oil of eucalyptus and was not an ozonide of eucalyptol nor a holder or carrier of active or nascent oxygen, and was not a germicide; and therapeutic properties thereof were limited to those of a mild antiseptic and counter-irritant, which would not kill streptococcus or other dangerous germs which cause infections of the nose and throat; and

- (b) Represented, more specifically, that said product reached "right down to the tissues of the injured areas liberating active oxygen, thus destroying harmful germs," and was "Remarkable, too, for sore throats," destroying "streptococcus and a number of other dangerous germs," and was "Ideally suited for throat infections," and that in capsules it was "used for a wide variety of internal purposes—including colds, bronchitis, strep throat, etc.," and that such capsules acted "as a general internal antiseptic by supplying active oxygen to the blood stream;"

¹ The Commission by order dated July 16, 1940 (1) joined Universal Eucozone of America, Inc., as additional party respondent; (2) provided that testimony and other evidence be considered as though they had been originally taken subsequent to such joining; and (3) allowed said named respondent 20 days within which to request holding of hearings to rebut testimony theretofore taken in support of the allegations of the complaint and 60 days within which to file brief in opposition to allegations of the complaint; it appearing that said Universal Eucozone of America, Inc., was successor in interest to respondent Eucozone Laboratories, Inc., and was willing to enter its appearance and to be bound by evidence already adduced against the respondent Eucozone Laboratories, Inc., in so far as it affected the various products involved.