

IN THE MATTER OF

BEN D. FOGEL AND LOUIS SINGER, TRADING AS B. & L.
HAT COMPANY

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

Docket 4679. Complaint, Jan. 23, 1942—Decision, Sept. 28, 1942

Where two individuals, engaged in the manufacture of women's hats from felt and other materials obtained from old, worn, and previously used hats, which, after being cleaned, shaped, and fitted with new trimmings, had the appearance of new hats made entirely from new materials; and in interstate sale and distribution of said products—

Sold such hats, with no labeling, marking, or designation stamped thereon or attached thereto to indicate that they were in fact made from previously used materials, to dealers by whom they were resold to the purchasing public without disclosure of aforesaid fact, and through said failure to disclose their true nature, represented that the hats were new hats manufactured entirely from new materials;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, thereby causing it to purchase substantial quantities of said hats, and to place in the hands of dealers a means to mislead and deceive the purchasing public:

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. Edward E. Reardon*, trial examiner.

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

Malkin, Glick & Malkin, of Chicago, Ill., for Louis Singer.

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 Ben D. Fogel and Louis Singer, individually, and trading as B. & L. 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. Respondents, Ben D. Fogel and Louis Singer, are individuals, trading as B. & L. Hat Co., and have their principal office and place of business at 612 West Lake Street, Chicago, Ill.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the business of manufacturing women's hats from

Complaint

felt and other materials obtained from old, worn, and previously used hats, and of selling the same to retailers, jobbers, or wholesale dealers in the various States of the United States. Respondents cause said hats, when sold, to be transported from their place of business in the State of Illinois to the aforesaid purchasers located in the various States of the United States other than the State of Illinois. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said hats 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 old, worn, and previously used felt hats. The old, worn, and previously used felt hat bodies are cleaned and shaped and fitted with new trimmings, and sold by respondents to dealers, who, in turn, sell said hats to the purchasing public.

PAR. 4. The aforesaid old, worn, and previously used hat bodies, after being manufactured into hats, as hereinbefore described, have the appearance of new hats manufactured from felt and other materials which have never been worn or used. When articles manufactured from old, worn, and previously used materials having 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 old, worn, and previously used materials, they are easily and readily accepted by members of the purchasing public as being manufactured entirely from new materials.

Said hats are sold to retailers and other dealers without any label, marking, or designation stamped thereon, or attached thereto, to indicate to the purchasing public or to the dealers that said hats are, in fact, manufactured from old, worn, and previously used hat bodies. Said hats are resold to the purchasing public without the fact being disclosed that they are manufactured from hat bodies and other materials which are old, worn, and previously used, and a substantial portion of the purchasing public is thereby misled to believe that they are, in fact, new hats manufactured entirely from new materials. As a result of this erroneous and mistaken understanding and belief, substantial portions of respondents' hats are purchased by members of the public.

PAR. 5. Through the use of the aforesaid acts and practices, the respondents place in the hands of dealers the means and instrumentalities whereby said dealers may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing hats manufactured from new materials, when, in fact,

said hats are composed entirely or in part of old, worn, and previously used hat bodies.

PAR. 6. The aforesaid acts and practices of the respondents, 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 January 23, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Ben D. Fogel and Louis Singer, individually, and trading as B. & L. Hat Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer (which admitted the principal allegations of the complaint), testimony and other evidence in further support of the allegations of the complaint were introduced by the attorney for the Commission before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by respondents), and such 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 complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents 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. During the period beginning December 1, 1939, and ending June 27, 1941, the respondents, Ben D. Fogel and Louis Singer, were copartners, operating under the name of B. & L. Hat Co., with their principal office and place of business at 612 West Lake Street, Chicago, Ill. On June 27, 1941, the copartnership was dissolved, and thereafter respondent, Louis Singer, continued to operate the business individually, retaining the trade name B. & L. Hat Co. Respondent, Ben D. Fogel, entered upon a similar line of business at 226 South Wabash Avenue, Chicago, Ill., using a different trade name.

PAR. 2. During the period of their copartnership, the respondents were engaged in the business of manufacturing women's hats from

564

Order

felt and other materials obtained from old, worn, and previously used hats, and of selling their products to retailers and other dealers. Respondents caused their hats, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Respondents maintained a course of trade in their hats in commerce among and between various States of the United States.

PAR. 3: In the operation of their business respondents, upon acquiring the old, worn, and previously used felt hats referred to above, cleaned and shaped the hat bodies thus obtained, fitted them with new trimmings, and then sold the finished product to dealers, who in turn sold the hats to the purchasing public. Respondents' hats had the appearance of new hats manufactured entirely from felt and other materials which had never been worn or used, and for a time the hats were sold by respondents to dealers without any label, marking, or designation stamped thereon or attached thereto to indicate that the hats had in fact been manufactured from previously used materials. In reselling the hats to the public, the dealers likewise failed to disclose that the hats were used or second-hand hats rather than new hats. In view of the appearance of the hats, respondents' failure to disclose their true nature constituted a representation that the hats were new hats manufactured entirely from new materials.

PAR. 4. The acts and practices of the respondents had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' hats were new hats manufactured entirely from new and unused materials, and to cause such portion of the public to purchase substantial quantities of respondents' product as a result of the erroneous and mistaken belief so engendered. Respondents' acts and practices served also to place in the hands of dealers a means or instrumentality whereby such dealers might be enabled to mislead and deceive members of the purchasing public.

CONCLUSION

The 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 complaint of the Commission, the answers of re-

Order

35 F. T. C.

spondents (which admitted the principal allegations of the complaint), testimony and other evidence in further support of the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by respondents), report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act. .

It is ordered, That the respondent, Ben D. Fogel and Louis Singer, individually, and trading as B. & L. Hat Co., or trading under any other name, and 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 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 in some conspicuous place on the exposed surface of the inside of the hat, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the hat itself, a statement that said hats are composed of second-hand or used materials: *Provided*, That if substantial bands, placed similarly to sweat bands in men's hats, are attached to said hats, then such statement may be stamped upon the exposed surface of such bands: *Provided further*, That said stampings are of such nature that they cannot be removed or obliterated without mutilating the band and the band itself cannot be removed without rendering the hat unserviceable.

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 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.

It is further ordered, That no provision in this order shall be construed as relieving respondents in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the authorized rules and regulations thereunder.

Syllabus

IN THE MATTER OF

CHICAGO TECHNICAL COLLEGE

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4089. Complaint, Apr. 13, 1940—Decision, Oct. 12, 1942*

Where a corporation, engaged, in addition to conduct of day and evening classes, in competitive interstate sale and distribution of correspondence courses in drafting, building, air-conditioning and refrigeration; in soliciting sale thereof through advertisements in newspapers, periodicals of general circulation and radio broadcasts—sending to those replying thereto various forms, contracts and advertising material, and in some instances calling upon prospective purchasers through its agents—

(a) Represented that the employment and consultation services which it offered to its students and graduates were free, and that its home study courses were available to a limited number of students only;

The facts being that the cost of its featured employment and consultation service through which it aided students completing its courses in securing employment, was included in the amount paid for the course and was therefore not "free"; and the only limit on the number of its students was the number which could be induced to enroll;

(b) Represented that it was a "recognized" or "accredited" school, implying thereby that credits for work done in its courses were transferable to other schools;

The facts being that while it had received recognition from the Illinois Superintendent of Public Instruction, the Chicago Board of Education, and the Illinois State Examining Board for Teachers Certificates, such recognition did not mean that other institutions had agreed to or would give transferring students credit for work done at its said school; and few, if any, colleges would accept credits for home study courses given by other institutions;

(c) Represented that individuals completing its home study courses were thereby insured of employment, promotion, and success;

The facts being that such results were necessarily dependent upon many factors beyond its control;

(d) Falsely represented that individuals completing its home study training in drafting would thereby be qualified to do expert drafting work and for the top-ranking positions in drafting; and that its home study training in air-conditioning and refrigeration would qualify students for top-ranking positions in those fields;

The facts being said courses would not thus qualify the typical or average individual for the top-ranking or more difficult and intricate work in the fields in question;

With tendency and capacity to mislead prospective purchasers into the mistaken belief that such representations were true, thereby inducing them to purchase and pursue such courses; whereby trade was unfairly diverted to said corporation from competitors, to the injury of competition in commerce: