

Syllabus

IN THE MATTER OF

MEYER DORFMAN AND ARTHUR COHLER, TRADING
UNDER THE NAME OF STETSON FELT MILLSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4234. Complaint, Aug. 14, 1940—Decision, May 5, 1943*

Where two individuals, engaged in the manufacture and interstate sale of felt rugs; in carrying on said business under a sales plan consisting of false representations and fraudulent schemes—

- (a) Represented, directly and through their salesmen, that they were connected with John B. Stetson Co. of Philadelphia, and that the felt used in their rugs was obtained from trimmings of felt hats made by said company;

The facts being they had no connection with said company, had never purchased any material directly from it, and made no use of any such material except incidentally where some of it might possibly have come into the hands of dealers who bought hat remnants and resold to them, possibility of which did not warrant any such representation as aforesaid; and

- (b) Made use directly and through their salesmen of practice of padding orders, by placing upon order blanks quantities of goods greatly in excess of those actually contracted for by the particular purchaser, and shipping to such purchaser merchandise greatly in excess of that actually ordered by him; and in carrying out such practice—

- (1) Made use directly and through their salesmen of confusing order blanks and, in addition, neglected to extend the totals of the various purchases thereon so that purchaser could immediately determine the amount which he was buying;

- (2) Placed notations, in some instances, upon orders indicating additional purchases or the purchase of more expensive merchandise, which were confusing and not readily recognizable as such upon preliminary examination of the order by the customer upon signing;

- (3) Through such means induced customers on numerous occasions to sign orders without realizing that the items thus enumerated were greatly in excess of those desired by the purchaser and greatly in excess of the amount which he had instructed the salesman to place thereon;

- (4) Invariably refused, if purchaser upon later examination of the order blank or after receipt of shipment attempted to cancel order, to accept such cancellation or return of merchandise unless purchaser would pay their designated cost of handling, usually specified by them as 19 percent of the total amount of the order; and

- (5) Attempted to and did collect from such purchasers larger sums than they originally agreed or expected to pay, and in many instances collected damages for cancellation of such orders by threats to sue and other forms of intimidation;

With effect, through such deceptive and misleading acts and practices, of causing a substantial portion of the purchasing public erroneously to believe that said representations were true, and to purchase said rugs because of such belief, and to pay larger sums of money to said individuals than they originally agreed or expected to pay:

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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. Clark Nichols, *Mr. J. V. Mishou* and *Mr. B. G. Wilson* for the Commission.

O'Connell & Gingold and *Ulvin & Christensen*, of St. Paul, Minn., for respondents.

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 Meyer Dorfman and Arthur Cohler, trading under the name Stetson Felt Mills, 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, Meyer Dorfman and Arthur Cohler, are individuals, trading under the name Stetson Felt Mills, with their principal place of business located at 223 East Fourth Street, St. Paul, Minn. Respondents are now, and for more than 2 years last past have been, engaged in manufacturing and selling felt rugs and felt pillows. The felt rugs and pillows are manufactured by respondents from waste material purchased from different manufacturers of felt products and from the felt contained in rejected felt hats. The respondents advertise their products partly through circulars and placards, but mostly through representations made by the respondents and salesmen employed by them to prospective purchasers. Said felt material is cut into appropriate lengths and assembled in appropriate colors and run through looms which manufacture the rugs and pillows.

Respondents cause their said products, when sold, to be transported from their place of business in the State of Minnesota to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products 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 in said commerce as aforesaid, and for the purpose of inducing the purchase of their said products, the respondents have circulated among prospective purchasers circulars containing representations as to the quality of their

said products. Typical of the statements made to prospective purchasers by the respondents, as aforesaid, are the following:

The method of utilizing the waste from felt mills and hat factories into beautiful hand-woven fire-resisting floor mats has been developed by the Stetson Felt Mills with the result that Stetson floor mats are instantly acknowledged as a practical long-looked-for addition to the hardware and floor covering lines.

Stetson mats are washable and easy to clean, primarily made for use around stoves, gas heaters and fire places.

Fire-resisting Stetson Floor Mats.

A remarkable product made *by hand* from fur and wool felt.

Respondents and salesmen employed by them have represented to purchasers and prospective purchasers that the Stetson Felt Mills is connected with, or an affiliate of, John B. Stetson Co. of Philadelphia, Pa., and that the felt used in making respondents' rugs and pillows is obtained from trimmings from felt hats manufactured by John B. Stetson Co. The John B. Stetson Co. is one of the outstanding and best-known felt hat manufacturing concerns in the United States, and it has the good will and esteem of a substantial portion of the purchasing public. Its products are well and favorably known to the public as being made from high quality felt.

In connection with the sale of their said products, the respondents and their salesmen exhibit to prospective purchasers and purchasers samples of felt rugs and felt pillows made of felt of a quality superior to the felt used in the manufacture of the rugs and pillows delivered to purchasers.

Through the use of the foregoing statements made and used as aforesaid and others of similar import and meaning not herein set out, and the use of the acts and practices aforesaid, respondents represent and imply that the rugs and pillows offered for sale and sold by them are fire-resistant or fire-proof; that they are hand-made; that the rugs and pillows shipped to purchasers will be of the grade and quality of the samples displayed; that respondents are connected with, or an affiliate of, the John B. Stetson Co. of Philadelphia, Pa.; and that the respondents' rugs and pillows are made from felt trimmings obtained from the John B. Stetson Co. of Philadelphia, Pa.

In truth and in fact, the rugs and pillows offered for sale and sold by respondents are not fire-resistant or fire-proof; they are not hand-made; the rugs and pillows shipped to purchasers are not of the grade and quality of the samples displayed, but are inferior in grade and quality; the respondents are not connected with, or an affiliate of, the John B. Stetson Co. of Philadelphia, Pa.

PAR. 3. Respondents and their salesmen have adopted and used the practice of "padding" orders given them orally by purchasers by

stating in the written order blank a quantity of goods greatly in excess of that actually contracted for by a particular purchaser. Respondents have attempted to, and do, collect from such purchasers larger sums of money than such purchasers originally agreed to pay, by threats to sue and other forms of intimidation.

PAR. 4. The use by the respondents of the foregoing false and misleading statements and representations and the foregoing acts and practices, as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and that said products are of the quality and grade indicated by the samples displayed and that purchasers are bound by the terms and conditions of said "padded" orders; and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said products and to pay for products not ordered in many instances.

PAR. 5. The aforesaid acts and practices of 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 August 14, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Meyer Dorfman and Arthur Cohler, individuals, trading as Stetson Felt Mills, 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 respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony, and other evidence, report of the trial examiner upon the evidence, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; 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, Meyer Dorfman and Arthur Cohler, are individuals, trading under the name of Stetson Felt Mills, with their principal place of business located at 223 East Fourth Street, St. Paul, Minn. Respondents are now, and for several years last past have been, engaged in the manufacture and sale, among other things, of felt rugs. Respondents cause said rugs, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other states of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said rugs in commerce among and between the various states of the United States.

PAR. 2. In the course and conduct of their business and for the purpose of inducing the purchase of their said rugs, the respondents have made use of a sales plan consisting of false representations and fraudulent schemes. In carrying out such false and fraudulent sales plan, it was the custom of respondents and their salesmen to variously represent to prospective purchasers that they were connected with John B. Stetson Co. of Philadelphia or that the felt used in the making of respondents' rugs was obtained from trimmings from felt hats manufactured by John B. Stetson Co.

When the respondents originally started the manufacture of felt rugs, they used felt obtained from old or used hats. While some of the hats so used may have been Stetson hats, no particular effort was made by the respondents to get Stetson hats for their rugs but, instead, respondents purchased their old or used hats from various dealers engaged in collecting and selling such merchandise. In later years the respondents have discontinued the purchase and use of used hats and, instead, purchase felt remnants for the manufacture of their rugs direct from the mills which manufacture felt or through dealers in felt scrap who purchase from the various mills; and, in addition, the respondents also use hat remnants, which consist of circles of felt left over when the hat is completed, which are known to the trade as "felt circles." Such hat remnants are purchased from various dealers who accumulate such material. Said felt material is cut into appropriate lengths, assembled in appropriate colors, and run through hand looms, which make respondents' rugs.

The respondents have no connection with J. B. Stetson Co. of Philadelphia and have never purchased any material direct from the J. B. Stetson Co. The respondents do not use any material purchased from the J. B. Stetson Co. except incidentally where some of such material may possibly have come into the hands of dealers who buy hat remnants and who resell to the respondents. The possibility that some of

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the hat remnants purchased by the respondents from various dealers might contain some hat remnants from the J. B. Stetson Co. does not warrant any representation that respondents' rugs are made from remnants from hats manufactured by the J. B. Stetson Co.

PAR. 3. As a further part of respondents' false and fraudulent sales plan, it was the custom of the respondents and their salesmen to use the practice of padding orders by placing upon order blanks quantities of goods greatly in excess of that actually contracted for by the particular purchaser and shipping to such purchaser merchandise greatly in excess of that actually ordered by him.

In carrying out this practice the respondents and their salesmen used order blanks which were to some extent confusing and, in addition thereto, failed and neglected to extend the totals of the various purchases on said order blanks so that the purchaser could immediately determine the amount of the merchandise which he was purchasing. In some instances notations were placed upon orders indicating additional purchases or the purchase of more expensive merchandise, which notations were confusing and not readily recognizable as such upon preliminary examination of the order by the customer upon signing. By these means, the respondents and their salesmen, on numerous occasions, induced purchasers to sign orders without realizing that the items so enumerated on said order were greatly in excess of those desired by such purchasers and greatly in excess of the amount which the purchaser had instructed the salesmen to place upon such orders. If the purchaser, upon later examination of the order blank or after receipt of shipment, attempted to cancel the order with the respondents, the respondents invariably refused to accept such cancellation or to accept return of the merchandise unless the purchaser would pay respondents' designated cost of handling, which was usually specified by the respondents as 19 percent of the total amount of the order. Respondents attempted to, and did, collect from such purchasers larger sums of money than such purchasers originally agreed or expected to pay and in many instances collected damages for cancellation of such orders by threats to sue and other forms of intimidation.

PAR. 4. The use by the respondents of the foregoing acts and practices is deceptive and misleading and causes a substantial portion of the purchasing public erroneously to believe that said statements and representations are true and that respondents are connected with the J. B. Stetson Co. or that the rugs sold and distributed by the respondents are manufactured from trimmings from felt hats manufactured by J. B. Stetson Co., and causes a substantial portion of the purchasing public to purchase respondents' rugs because of such erroneous

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beliefs. Said acts and practices have the further tendency and effect of causing purchasers in many instances to pay for rugs in excess of those ordered by them and to pay larger sums of money to the respondents than such purchasers originally agreed or expected to pay.

CONCLUSION

The aforesaid acts and practices of the 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, answer of the respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; 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 respondents, Meyer Dorfman and Arthur Cohler, individuals, trading as Stetson Felt Mills, 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 felt rugs and other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that the respondents are a part of, or that they are in any way connected with, the John B. Stetson Co. of Philadelphia.

2. Representing directly or by implication that respondents' rugs are manufactured from trimmings from felt hats manufactured by the John B. Stetson Co.

3. The use of any sales plan or method which misleads or deceives purchasers or enables respondents' salesmen to mislead or deceive purchasers, as a means of obtaining orders from such purchasers for rugs or other merchandise in quantities greater than that which such purchasers order or expect to receive, or which enables the obtaining of orders in amounts greater than such purchasers intend or expect to pay.

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4. The use of any sales plan or method which involves the preparation of orders in such a manner that the purchasers cannot readily determine the quantity of rugs or other merchandise ordered or the amount to be paid, as a means of inducing the purchase of greater quantities of such merchandise than that desired or the payment of amounts greater than such purchaser expects or intends to pay.

5. The use of any sales plan or method which involves the placing of notations on orders indicating additional purchases or the purchase of additional rugs or other merchandise which are not readily recognizable as such upon reading of the order at the time signature is attached.

6. Preparing orders for quantities of rugs or other merchandise in excess of the quantities requested by purchasers and obtaining the signature of such purchasers to such orders without disclosing that the order has been prepared for quantities in excess of those desired by such purchasers.

7. Refusing to accept the return of rugs or other merchandise shipped in excess of the amount ordered or requiring a purchaser to pay any sum as damages in order to induce respondents to accept return of such excess rugs or other merchandise.

8. Coercing or attempting to coerce purchasers, by threats to sue or by other forms of intimidation, into accepting rugs or other merchandise in excess of the quantity ordered by such purchasers, or into paying sums of money in excess of that which such purchasers agree or expect to pay.

9. Coercing or attempting to coerce purchasers, by threats to sue or by other forms of intimidation, into paying damages to the respondents for cancelation of orders for quantities of rugs or other merchandise in excess of that ordered by such purchasers, or for amounts in excess of that which such purchasers agree or expect to pay.

10. Coercing or attempting to coerce purchasers, by threats to sue or by other forms of intimidation, into paying damages to the respondents to induce the acceptance of the return of rugs or other merchandise delivered by respondents in excess of the amount ordered.

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.

Complaint

IN THE MATTER OF
MYRON TROTCKY, TRADING AS FRANKLIN SALES
COMPANY

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

Docket 4782. Complaint, July 14, 1942—Decision, May 5, 1943

Where an individual, engaged in competitive interstate sale and distribution of glassware, pen and pencil sets, radios, food mixers, electrical appliances, cigarette lighters, silverware, luggage, and other articles of merchandise—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes in sale and distribution thereof, and distribution to the purchasing public of push cards, depictions of his merchandise, and circulars explaining his plan of allotting the merchandise involved as premiums or prizes to the operators of the push cards and consuming public, under which, as typical, the person selecting the feminine name on the push card found to correspond with that concealed under the card's master seal received, in accordance with explanatory legend thereon, a set of glasses, the number secured from disc adjacent to feminine name selected determined amount paid for chance, and chance selection of a certain number also entitled person securing name to a combination pen and pencil; a similar plan involving a 48-name push card entitling the winner to his choice of four articles announced thereon, including "monogrammed" combination cigarette and compact cases, while two numbers entitled holders to "Guaranteed combination pen and pencil"; and thereby

Supplied to and placed in the hands of others who sold his merchandise in accordance with such plans, involving game of chance to procure an article at much below its normal price, means of conducting lotteries in the sale thereof, contrary to an established public policy of the United States Government and in competition with many who do not use such methods;

With the result that many persons were attracted by said plan and the element of chance involved therein, and were thereby induced to buy and sell his merchandise in preference to that of his competitors aforesaid, with tendency and capacity unfairly to divert to him from them substantial trade in commerce:

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 and unfair acts and practices therein.

Mr. J. W. Brookfield, Jr., for the Commission.

Nash & Donnelly, of Chicago, Ill., 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 Myron Trotcky, an individual, trading as Franklin Sales Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing