

IN THE MATTER OF

ISIDORE GENDELMAN AND SAMUEL GENDELMAN DOING
BUSINESS AS AMERICAN SALES CO., UNIVERSAL BAR-
GAIN HOUSE, AND NATIONAL SALES CO.

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

Docket 5331. Complaint, June 11, 1945—Decision, Mar. 20, 1947

Where two partners engaged in the interstate sale and distribution of used or second-hand wearing apparel and other merchandise to retail dealers and to the consuming public; through statements in catalogs disseminated to prospective purchasers in various places throughout the United States, among other things—

- (a) Represented that their merchandise was acquired by them direct from bankrupt stocks, manufacturers' surpluses, auction stocks, close-out lots and manufacturers' sample lots and as a consequence was sold by them at greatly reduced prices;

The facts being that they obtained their products from concerns which had themselves bought such stocks, surpluses, and close-out and sample lots;

- (b) Falsely represented that they made many of the items sold by them;
- (c) Represented that the garments sold by them were always cleaned, repaired, and pressed, that their second-hand garments were only slightly used, and that the illustrations in their said catalogs correctly represented the garments which they sold;

The facts being that, on the contrary, their merchandise was frequently worn, soiled, unpressed, and in poor condition;

- (d) Falsely represented that some of their garments were tailored to the customer's measurements, and that they handled no inferior grades of merchandise;

The facts being they tailored no garments to the customer's measurements but only made alterations, and practically all their merchandise was used or second-hand, and much was of an inferior grade; and

Where said partners, engaged also in buying and in reselling to retailers or the public old, worn and previously used hats which they had cleaned, dyed, and blocked, and provided with new trimmings, sweat bands and linings, so that they had the appearance of new—

- (e) Sold said hats with no label or marking to indicate to purchasers that they were in fact used or second-hand products;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character, quality, condition, and value of their products, and thereby to cause it to purchase substantial quantities thereof, and with the result of placing in the hands of retailers a means and instrumentality whereby they were able to mislead and deceive the purchasing public with respect to aforesaid hats, which, when offered to the public without being clearly and conspicuously labeled as used or second-hand, are readily accepted by members thereof as being new products:

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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. Randolph Preston*, trial examiner.

Mr. DeWitt T. Puckett and *Mr. G. M. Martin* for the Commission.

Mr. Julius P. Fischler, of Brooklyn, N. Y., 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 Isidore Gendelman and Samuel Gendelman, individually and as copartners, trading and doing business as American Sales Company, Universal Bargain House and National Sales Company, 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, Isidore Gendelman and Samuel Gendelman, are copartners, trading and doing business as American Sales Company, Universal Bargain House and National Sales Company, and have their principal office and place of business at 367 Sutter Avenue, Brooklyn, N. Y. Respondents are now and for more than 3 years last past have been engaged in the sale and distribution of second-hand wearing apparel and other products to retail dealers and also direct to purchaser-consumers.

Respondents cause and have caused said products, when sold, to be transported from their aforesaid place of business in the State of New York to purchasers thereof at their respective points of location in various 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 aforesaid business, and for the purpose of inducing the purchase of their said merchandise, respondents have made many false, misleading and deceptive statements and representations with reference to their said products. Such statements and representations appeared in catalogs circulated among prospective purchasers located throughout the various States of the United States and in newspaper advertisements and in various other

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ways. Among and typical of such false and misleading representations and statements are the following:

OUR SPECIALTY

Bankrupt Stocks	Close Out Lots
Manufacturer's Surpluses	Manufacturer's
Auction Stocks	Sample Lots

In addition we manufacture many items in our factory.

AMERICAN SALES CO., Brooklyn, New York

—Presents for your convenience

DEPT. K

Under this department are displayed a complete variety of slightly used wearing apparel for the entire family. All merchandise offered to our customers are dry cleaned, pressed and ready-to-wear. Latest styles and famous makes and brands are included in each lot.

Our SHOE DEPARTMENT

Men's Felt Hat Department

LADIES', MISS, GIRLS DEPARTMENT

Men's All Wool Superior Quality
OVERCOATS

* * * *

All the latest styles in the group, including many with belted and sport backs. The original labels of famous makes and brands are in many cases still on coat. All silk lined.

Men's All Wool
PANTS

* * *

All are cleaned, pressed and repaired in perfect condition.
AN AMERICAN VALUE—

A SPECIAL OFFER TO WOMEN!

* * *

- (1) Ten lovely, slightly-used, silk dresses.
 - (2) Each and every dress fashioned in up-to-the-minute style.
 - (3) Each dress Dry Cleaned, Pressed, Repaired if necessary and ready for long and satisfactory wear.
- An assorted lot of clean, slightly used silk, satin and cotton dresses. Late styles.

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SUITS

* * *

Tailored to your dimensions.

A BRAND NEW part wool serge pants.

10 SILK DRESSES \$3

Slightly Used

Made to sell up to \$12.95. Imagine getting a complete dress wardrobe for less than you expected to pay for a single dress. Popular up-to-the-minute New York styles.

Men's High Quality Low Price Shirts—Tailored to your exact dimensions. For our customers' protection we do not permit an inferior grade of merchandise to enter our factory.

LADIES SILK
EVENING GOWNS

GOOD AS NEW—Worn only once or twice. Late styles in satin, crepe and chiffon.

SPECIAL PRICE 55¢ each.

All hats are prepared especially for you.

PAR. 3. Through the foregoing statements and representations set forth in paragraph 2 hereof, and others similar thereto not specifically set out herein, the respondents have represented that their merchandise consists of bankrupt stocks, manufacturer's surpluses, auction stocks, close-out lots and manufacturer's sample lots which respondents have purchased direct from such sources of supply and that as a result thereof their said products are obtained by the purchaser-consumer at greatly reduced prices; that they manufacture many items they offer for sale; that their concerns have many separate and distinct departments; that their products are always cleaned, repaired and pressed; that their second-hand garments are only slightly used; that their wearing apparel consists of various types of fabric, such as wool, silk, crepe, chiffon and acetate; that some of their dresses are up-to-the-minute New York styles; that the pictorial illustrations contained in their catalogs represent the typical garments, that they offer for sale and sell; that some of their garments are tailored to the customer's dimensions; and that they handle no inferior grades of merchandise.

PAR. 4. The foregoing statements and representations are false and misleading. In truth and in fact respondents buy their products from concerns which in turn buy bankrupt stocks, manufacturer's surpluses, auction stocks, close-out lots and manufacturer's sample lots. Respondents do not manufacture any merchandise. Respondents have

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only a few employees and their business is not departmentalized. Respondents do not know whether their garments are all wool, acetate, silk, crepe, chiffon or satin. Respondents' merchandise, instead of having the characteristics as implied by the pictorial illustrations and accompanying descriptions contained in said catalogs are frequently old, worn, soiled, unpressed and in poor condition. Respondents do not tailor any garments to the customers' dimensions, but only make alterations. Respondents sell little if any new clothing, but their products are used or second-hand merchandise most of which is of an inferior grade.

PAR. 5. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, a tendency and capacity to mislead and deceive and has misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations and statements are true and has caused and now causes a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase substantial quantities of respondents' merchandise. By said acts and practices respondents also place in the hands of purchasers of their merchandise for resale a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the true facts in regard to said respondents' merchandise.

PAR. 6. In the course and conduct of their business as aforesaid, the respondents buy old, worn, or previously used hats, have them cleaned, dyed, and blocked and wherever necessary add new trimmings, sweatbands and linings, and sell said products in commerce as aforesaid.

PAR. 7. The aforesaid hats, when offered for sale and sold by respondents, have the appearance of new hats. When such hats having the appearance of new hats are offered to the purchasing public and are not clearly and conspicuously labeled as being second-hand hats, they are readily accepted by members of the purchasing public as being new products.

Said hats are sold to purchaser-consumers and 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 second-hand products that have undergone certain processes which have given them the appearance of new products. As a result, a substantial portion of the purchasing public has been led to believe, and are now being led to believe, that they were and are in fact new hats manufactured entirely from new materials. As a result of this erroneous and mistaken

understanding and belief, substantial quantities of respondents' said hats have been purchased and are now being purchased by members of the public.

By said acts and practices respondents also place in the hands of purchasers of their merchandise for resale a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the true facts in regard to respondents' said hats.

PAR. 8. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair or 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

Pursant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 11, 1945, issued and subsequently served its complaint in this proceeding upon the respondents, Isidore Gendelman and Samuel Gendelman, 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 by respondents of their answer to the complaint, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing certain evidence in support of and in opposition to the complaint was introduced and a stipulation of facts was entered into between counsel for the Commission and counsel for respondents and dictated into the record. Such evidence and stipulation were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by the Commission upon the complaint, answer, evidence, and stipulation (the trial examiner's report, the filing of briefs, and oral argument having been waived); 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. The respondents, Isidore Gendelman and Samuel Gendelman, are engaged in the sale and distribution of used or second-hand wearing apparel and other merchandise, their place of business being located at 367 Sutter Avenue, Brooklyn, N. Y. They sell both to retail dealers and to the consuming public. For some 3 years immediately preceding October 1944 respondents conducted their business under the name American Sales Co.

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PAR. 2. Respondents cause and have caused their products, 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 and in the District of Columbia. Respondents maintain, and have maintained, a course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents advertise their products by means of catalogs disseminated among prospective purchasers located in various places throughout the United States. Through the use of various statements in such catalogs, respondents, while trading under the name American Sales Co., have represented, among other things, that their merchandise consists of bankrupt stocks, manufacturers' surpluses, auction stocks, close-out lots, and manufacturers' sample lots acquired by respondents direct from such sources of supply and that in consequence thereof such products are sold by respondents at greatly reduced prices; that respondents manufacture many of the items sold by them; that the garments sold by them are always cleaned, repaired, and pressed; that their second-hand garments are only slightly used; that the illustrations contained in such catalogs correctly represent the garments sold by respondents; that some of respondents' garments are tailored to the customer's measurements; and that respondents handle no inferior grades of merchandise.

PAR. 4. These representations were misleading and deceptive. In truth and in fact, respondents obtain their products from concerns which have themselves bought bankrupt stocks, manufacturers' surpluses, auction stocks, close-out lots, and manufacturers' sample lots. Respondents do not manufacture any products. Their merchandise, instead of having the characteristics implied by the illustrations in the catalogs, is frequently worn, soiled, unpressed, and in poor condition. Respondents do not tailor any garments to the customer's measurements but only make alterations. Practically all of the merchandise sold by respondents is used or second-hand merchandise, and much of it is of an inferior grade.

PAR. 5. Respondents also buy old, worn, or previously used hats, have them cleaned, dyed, and blocked, and wherever necessary add new trimmings, sweatbands, and linings, and resell such hats to retail dealers or to the public. These hats, when sold by respondents, have the appearance of new hats, and they are sold by respondents without any label or marking stamped thereon or attached thereto to indicate to dealers or to the public that such hats are in fact used or second-hand products.

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When used hats having the appearance of new hats are offered to the public without being clearly and conspicuously labeled as used or second-hand hats, they are readily accepted by members of the public as being new products.

PAR. 6. The acts and practices of respondents, including the sale of used or second-hand hats as herein set forth, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character, quality, condition, and value of respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products as a result of the erroneous and mistaken belief so engendered.

Respondents' acts and practices with respect to their used hats serve also to place in the hands of retail dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive 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 answer of respondents, evidence introduced before a trial examiner of the Commission theretofore duly designated by it, and a stipulation of facts entered into between counsel for the Commission and counsel for respondents (the trial examiner's report, the filing of briefs, and oral argument having been waived); and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Isidore Gendelman and Samuel Gendelman, individually and trading as American Sales Co. or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of wearing apparel and other merchandise, including used or second-hand clothing and hats, do forthwith cease and desist from:

1. Representing that respondents' merchandise consists of bankrupt stocks, manufacturers' surpluses, auction stocks, close-out lots, or

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manufacturer's sample lots which respondents have purchased direct from such sources of supply.

2. Representing that respondents manufacture any of the products sold by them.

3. Representing that garments sold by respondents are cleaned, repaired, or pressed when such is not the fact.

4. Representing that garments are only slightly used when such is not the fact.

5. Representing that respondents' garments are tailored to customers' individual measurements.

6. Representing that respondents handle no inferior grades of merchandise.

7. 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 on the sweatbands thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweatband, a statement that such hats are composed of used or second-hand materials, provided that if sweatbands are not affixed to such hats, then such stamping shall appear on the bodies of such hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating such bodies.

8. Misrepresenting, either through words or pictorial representations the character or condition of respondents' merchandise.

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.

Syllabus

IN THE MATTER OF

CHARLES SHAPIRO DOING BUSINESS AS MODERN HOME
DIATHERMY

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

Docket 5032. Complaint, Aug. 19, 1943—Decision, Mar. 24, 1947

Where an individual engaged in the interstate sale and distribution of "Vitatherm Short Wave Diathermy" machines; through advertisements in newspapers, circulars, and other advertising media—

- (a) Represented that his said device, when used by the unskilled lay public by individual self-application in the home in the treatment of self-diagnosed diseases and ailments was a scientific and effective means and method for the treatment of, and constituted a competent remedy for, neuralgia, lumbago, sinusitis, neuritis, bronchitis, prostatitis, arthritis, asthma, rheumatism, and many kindred disorders;
- (b) Represented that it would alleviate pain resulting therefrom; and
- (c) Represented that it would establish body efficiency and provide resistance to infection and disease;

The facts being that use of said device in the treatment of self-diagnosed diseases and ailments or for the alleviation of pain resulting therefrom is contraindicated, and might result in serious and irreparable injury to health in the treatment of conditions involving acute inflammatory processes, of those involving the special senses and the glandular structures, and of conditions in close proximity to such senses and structures; where pains may be symptomatic of serious underlying causes, use of the device for treatment of pain may fatally delay proper diagnosis and treatment, while application in excess dosage in certain conditions may cause serious burns and tissue destruction; and it is impossible for a member of the lay public correctly to diagnose his ailment or condition and determine the underlying cause of the disorder and whether diathermy is indicated rather than contraindicated and even injurious, as well as to determine correctly the method and duration of its use, upon which efficacy thereof might be dependent; and

- (d) Failed to reveal in said advertisements facts material in the light thereof or with respect to consequences which might result from the use of said device under the prescribed or usual conditions, in that such use might result in serious and irreparable injury to health; and that the device might be safely used only after competent medical authority had determined, as a result of diagnosis, that diathermy was indicated, and had prescribed the frequency and amount of application of such diathermy treatments, and the user had been adequately instructed in operating the device by a trained technician;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true and that said device might be used without ill effects, and with capacity and tendency so to do, and thereby to induce a portion of said public to purchase his said device: