

Syllabus

IN THE MATTER OF

SAMUEL SMITH, ABRAHAM WEINSTEIN, AND AARON SMITH, TRADING AS IDEAL MAIL ORDER CO. AND SMITH & STRICKLAND TRADING CO.

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

Docket 5246. Complaint, Nov. 9, 1944—Decision, Apr. 28, 1947

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.

Where three partners engaged in the sale and distribution of second-hand wearing apparel and other merchandise direct to the consuming public by mail order, and also in sale of such merchandise to retail dealers under a separate trade name; through catalogs and circulars—

- (a) Represented falsely that their second-hand merchandise was offered to the purchaser-consumer at bankrupt and close-out prices; when in fact they operated their business on a margin of profit;
- (b) Represented falsely that they had for many years been a style and fashion leader, made the hats sold by them, sold direct from factory to purchaser-consumer, and saved their customers the middleman's or jobber's profit; the facts being they dealt almost entirely in second-hand clothing, had no factory, and did not save purchasers the middleman's profit;
- (c) Represented that they had buying connections throughout the Nation that enabled them to supply quality merchandise; when in fact they procured all their merchandise in New York City; and

Where said partners, engaged as aforesaid, and in the purchase of old, worn, or previously used hats, which they had cleaned, dyed, and blocked, and to which, whenever necessary, they added new trimmings, sweatbands, and linings, so that they had the appearance of new—

- (d) Sold such hats to retailers and to the public, with no label or marking stamped thereon or attached thereto to indicate to the buyers 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 and thereby induce it to purchase substantial quantities of their products; and with the effect, as respects said used hats, of placing in the hands of retailers an instrumentality whereby they were able 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.

In a proceeding in which it appeared that partner respondents falsely and misleadingly represented their second-hand merchandise as offered at bankrupt and close-out prices, themselves as style and fashion leaders for many years, as makers of the hats sold by them, etc., and as having buying connections

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throughout the Nation, and failed to indicate the made-over character of the hats dealt in by them, the Commission made no finding with respect to various other charges, but was of the opinion that such charges, including the charge that they falsely represented their wearing apparel as consisting of various types of fabric such as wool, silk, crepe, chiffon and acetate, their pictorial illustrations in their catalogs as representing typical garments offered by them, their business as having many separate and distinct departments, their garments as always cleaned, repaired, and pressed, their second-hand garments as only slightly used, and all merchandise as made and produced on their premises, had not been sustained by a greater weight of the evidence, and that no prohibitions should be entered with respect thereto.

Before *Mr. Randolph Preston* and *Mr. Clyde M. Hadley*, trial examiners.

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

Mr. George Landesman, of New York City, 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 Samuel Smith, Abraham Weinstein, and Aaron Smith, individually and as copartners trading as Ideal Mail Order Co. and Smith & Strickland Trading 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, Samuel Smith, Abraham Weinstein, and Aaron Smith, are copartners trading as Ideal Mail Order Co. and Smith & Strickland Trading Co., and have their principal office and place of business at 207 Thatford Avenue, Brooklyn, N. Y. Respondents are now and for more than 3 years last past have been engaged in the sale and distribution of new and 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 ways. Among and typical of such false and misleading representations and statements were the following:

OUR SPECIALTY

Bankrupt stocks, manufacturer's surpluses, auction stocks, close-out lots, manufacturer's sample lots. You get your merchandise at bankrupt and close-out prices.

Overcoats.

All silk lined.

Men's O. D. army shirts.

These all wool shirts are in excellent condition.

All brand new acetate mixtures.

Our Tailoring Department.

Men's Felt Hat Department.

Our Shoe Department.

Ladies', Miss, Girls Department.

Men's Felt Hat Department.

Ideal Mail Order Co. has for years been an Ideal Leader in styles and fashions in both the new and reconditioned field.

Leaders for Latest Styles.

Junior Miss Dresses.

Fine Styles.

Ladies Evening Gowns.

Late Styles in satin, crepe, and chiffon, etc.

Slightly used.

All boy's suit coats are pressed, repaired, and French dry cleaned.

All suits in our department are cleaned, pressed, expertly repaired.

Ladies: Misses: Girls:

Fall & Winter Coats

There are

soft expensive woolens

a beautiful assortment of crepes,

satins, flowered chiffons, and printed

silks.

Buying connections throughout the nation enable us to supply you with quality merchandise.

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 and are now representing that their merchandise consists of bankrupt stocks, manufacturers' surpluses, auction stocks, close-out lots, and manufacturers' sample lots which respondents have purchased direct from such sources

of supply, and that their said products are obtained by the purchaser-consumer at bankrupt and close-out prices; that their concerns have many separate and distinct departments; that Ideal Mail Order Co. has for many years been a leader in styles and fashions; that their garments 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 the pictorial illustrations contained in their catalog represent typical garments they offer for sale and sell, and that they have buying connections throughout the Nation that enable them to supply purchasers with quality 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, manufacturers' surpluses, auction stocks, close-out lots, and manufacturers' sample lots, and the purchasers of respondents merchandise do not get it at the aforesaid prices. Respondents do not have their garments analyzed for the fiber content and do not know whether their garments are all wool, acetate, silk, crepe, chiffon, or satin. Respondents have only a few employees and their business is not highly departmentalized. Respondents organized Ideal Mail Order Co. on September 1, 1943, and said company has not been a style leader for many years. Respondents are not style leaders in any sense of the word, but purchase their garments by the lot, with no chance for discriminating selection. Respondents' sole buying connections are dealers in and around New York City, who in turn buy from their own connections throughout the country. Respondents' clothes, instead of having the characteristics as implied by the pictorial illustrations and accompanying descriptions contained in their catalogs, are frequently old, worn, soiled, and unpressed. Many of respondents' army shirts are second-hand and in many instances are not in good condition.

PAR. 5. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said merchandise, the respondents have made other false and misleading representations with reference to their said merchandise, savings that can be effected through the purchase of respondents' products, and the type and nature of business engaged in by the respondents. Said false and misleading representations are circulated in catalogs circulated among prospective purchasers located throughout the various States of the United States and in newspaper advertisements and in various other ways. Among and typical of such false and misleading representations and statements are the following:

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All our hats are manufactured on our premises.

All our hats are made for each customer in our modern plant.

All merchandise manufactured and produced on premises.

We guarantee each and every item shipped from factory.

We manufacture our clothing and other items in our factory. In this way you can save the jobbers profit when we send direct to you.

PAR. 6. Through the foregoing statements and representations set forth in paragraph 5 hereof, and others similar thereto not specifically set out herein, the respondents have represented and are now representing that they are the manufacturers of the merchandise they offer for sale and sell; that they sell direct from their factory to purchaser-consumers and that by dealing with respondents purchasers of their said products save the middleman's or jobber's profit; that all of their merchandise is guaranteed and that the customer is protected by respondent's refusal to handle inferior grades of merchandise.

PAR. 7. The foregoing statements and representations are false and misleading. Respondents do not own, operate, or control a factory or factories wherein said merchandise is manufactured, and they do not sell direct from the factory to the purchaser-consumer and do not save the purchasers of their merchandise the middleman's profit. Respondents handle little, if any, first-quality merchandise, but have in some instances sold garments which were practically worn out and were in a soiled condition.

PAR. 8. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations as aforesaid has had and now has the 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. 9. 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. 10. 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. 11. 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 or 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 November 9, 1944, issued and subsequently served its complaint in this proceeding upon the respondents, Samuel Smith, Abraham Weinstein, and Aaron Smith, individually and as copartners trading as Ideal Mail Order Co. and Smith & Strickland Trading 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 and the filing of the answer of the respondents thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were taken 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, and brief filed in support of the complaint (the respondents not having filed brief or requested oral argument); and the Commission, hav-

ing 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, Samuel Smith, Abraham Weinstein, and Aaron Smith, are individuals and copartners trading as Ideal Mail Order Co. and Smith & Strickland Trading Co. and at the time of the filing of the complaint herein had their principal office and place of business at 207 Thatford Avenue, Brooklyn, N. Y. Respondents also maintained a mailing address for the trade name Smith & Strickland Trading Co., at 386 Alabama Avenue, Brooklyn, N. Y. Since September 1943, the respondents have been engaged in the sale and distribution of used or second-hand wearing apparel and other merchandise direct to the consuming public under the trade name Ideal Mail Order Co. In addition, the respondents also sold such merchandise to retail dealers under the trade name of Smith & Strickland Trading Co.

PAR. 2. In the course and conduct of their business the respondents have caused their said 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. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business, the respondents advertise their products by means of catalogs and circulars disseminated among prospective purchasers located in various places throughout the United States. Through the use of various statements in such catalogs, the respondents represented, among other things, that their second-hand merchandise was offered to the purchaser-consumer at bankrupt and close-out prices; that the respondents had for many years been a style and fashion leader; that they manufactured the hats sold by them; that they sold direct from factory to purchaser-consumer; that their customers saved the middleman's or jobber's profit; and that they have buying connections throughout the Nation that enable them to supply quality merchandise.

The Commission finds that the foregoing representations are false, deceptive, and misleading. The respondents operate their business on a margin of profit and do not sell their merchandise at bankrupt or closeout prices. They deal almost entirely in second-hand clothing and are not a style and fashion leader. Said respondents do not own, operate, or control a factory or factories where their hats are manu-

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factured and do not sell direct from factory to purchaser-consumer and do not save the purchasers of their merchandise the middleman's profit. The respondents do not maintain buying connections throughout the Nation, but, instead, during the past 3 years all merchandise has been procured in New York City.

PAR. 4. The respondents buy old, worn, or previously used hats, have them cleaned, dyed, and blocked and, whenever necessary, add new trimmings, sweatbands, and linings and resell such hats to retail dealers and to the public. These hats, when sold by the respondents, have the appearance of new hats and were sold by the respondents without any label or marking stamped thereon or attached thereto to indicate to dealers or to the public that such hats were in fact used or second-hand products. There is some evidence that subsequent to the investigation of this proceeding by the Commission the respondents used the stamp "renovated hat" on the leader sweatbands for their made-over hats.

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. 5. The acts and practices of the 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 the result of the erroneous and mistaken belief so engendered. Respondents' acts and practices with respect to the 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.

PAR. 6. There are additional charges set forth in the complaint upon which the Commission has made no finding. As to these charges, the Commission is of the opinion that they have not been sustained by a greater weight of the evidence and that no prohibitions should be entered relative to such charges in any cease and desist order to be issued by the Commission in this proceeding.

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 on the complaint of the Commission, answer of the respondents, testimony, and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief filed in support of the complaint (the respondents not having filed brief or requested oral argument), 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 respondents, Samuel Smith, Abraham Weinstein, and Aaron Smith, individually and as copartners trading as Ideal Mail Order Co. or Smith & Strickland Trading Co. or trading under any other name or names, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of second-hand wearing apparel 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 manufacturers of the wearing apparel sold by them or representing in any other manner that the respondents own, operate, or control a factory where such merchandise is made.

2. Representing, directly or by implication, that respondents sell direct from factory to consumer or that customers purchasing from the respondents save the middleman's or jobber's profit.

3. Representing, directly or by implication, that respondents are offering wearing apparel or other merchandise for sale at bankrupt or close-out prices.

4. Representing that respondents are a style and fashion leader.

5. Representing, directly or by implication, that the respondents have buying connections in any places other than the city of New York when such wearing apparel and other merchandise are procured only in said city.

6. 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

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conspicuous and legible terms which cannot be removed or obliterated without mutilating such bodies.

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.

Commissioner Mason not participating.

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IN THE MATTER OF

EMMETT J. SMITH AND SARAH ALMA MAXWELL, TRADING AS EMMETT J. SMITH AND DAUGHTER, SMITH BABY CHIX AND EMMETT J. SMITH AND DAUGHTER POULTRY FARMS

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

Docket 5159. Complaint, May 13, 1944—Decision, May 5, 1947

A United States record of performance breeder or hatchery is understood by members of the poultry industry to be one operating under an official state agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture, under what is known as the national poultry improvement plan.

The national poultry improvement plan as approved by the Secretary of Agriculture has for its objective, among other things, improvement in the production and breeding qualities of poultry and authoritative identification of breeding stock, hatching eggs, and chicks with respect to quality by describing them in terms uniformly accepted in all parts of the United States.

Where two individuals engaged in the interstate sale and distribution of chickens and baby chicks, and of two medicinal preparations designated "Save'm" and "Va-Po-Spra"; through circulars distributed generally to the purchasing public and through advertisements in newspapers and other publications—

(a) Falsely represented that they were United States record of performance breeders and that they operated a poultry hatchery under the supervision and in accordance with the rules and regulations of the national poultry improvement plan administered by the Bureau of Animal Industry, United States Department of Agriculture;

The facts being they purchased their baby chicks from various hatcheries for resale to their customers; delivery in some instances being made directly from the hatchery, and in others to them for delivery to their customers;

(b) Represented that their chickens and baby chicks were "U. S. Approved" under the national poultry improvement plan, and that said chicks were record-of-performance sired;

The facts being that their said products were not thus approved, and there was no evidence that the chicks were record-of-performance sired, other than the unsupported statement of the seller that they were thus represented by the supplying hatchery; and

(c) Falsely represented that their said "Save'm" medicinal preparation was a competent and effective treatment for diarrhea, coccidiosis, typhoid, cholera, worms, and paralysis in poultry and blackhead in turkeys, and would effectively prevent chickens or turkeys from contracting any of said ailments or being subject thereto;