

## Complaint

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## IN THE MATTER OF

BENJAMIN HOLIN AND HARRY RICHTER TRADING AS  
BOND TRADING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5535. Complaint, Apr. 7, 1948—Decision, Mar. 14, 1950*

Where an individual engaged in purchasing old, soiled, worn, or previously used hat bodies which had been cleaned and dyed, and were thereafter converted into finished hats, some of which had the appearance of new—

Offered and sold said products in interstate commerce without any label, marking, or designation to indicate that they were reconditioned or second-hand hats;

With the result that a substantial portion of the purchasing public was led to believe that said hats were in fact new products, made entirely from new materials, and purchased substantial quantities; and that there was placed in the hands of purchasers for resale a means of misleading the public in regard thereto:

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

In said proceeding against the two respondent partners, in which it developed that over a year prior to the complaint one partner severed his connection with the partnership, and did not thereafter engage as partner in any of the alleged acts or practices, and in which it further appeared that the record contained no evidence concerning the extent to which he had participated in the affairs of the partnership or engaged in the acts or practices charged, and that he filed no answer and was not represented at the hearing in person or by counsel: the Commission was of the opinion that the complaint as to him should be dismissed without prejudice.

Before *Mr. William L. Pack*, trial examiner.

*Mr. DeWitt T. Puckett* for the Commission.

*Barshay & Frankel*, 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 Benjamin Molin and Harry Richter, individually and as copartners trading as Bond 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 Benjamin Molin and Harry Richter are copartners, trading as Bond Trading Co., and have their principal office and place of business at 201 Greene Street, New York, N. Y. The respondents are now and for more than 1 year last past, have been engaged in manufacturing and selling new, used, made-over and second-hand hats.

Respondents cause 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 business as aforesaid, the respondents purchase old, soiled, worn or previously used hat bodies that have been cleaned and dyed and convert said hat bodies into finished hats, which they offer for sale and sell in commerce as aforesaid.

PAR. 3. Some of 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 reconditioned or second-hand hats, they are readily accepted by members of the purchasing public as being new products.

PAR. 4. Respondents' aforesaid hats are sold to purchasers without any labeling, marking or designation stamped thereon or attached thereto, to indicate to the purchasing public that said hats are in fact second-hand or reconditioned 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 is now being led to believe, that respondents' said hats are in fact new hats manufactured entirely from new material. 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. 5. The aforesaid acts and practices of the respondents as herein alleged, are all to the prejudice and injury of the public and constitute

## Findings

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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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 7, 1948, issued, and subsequently served, its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After respondent Benjamin Molin filed his answer, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, for the purpose of receiving testimony and other evidence in support of, and in opposition to, the allegations of the complaint. At said hearing held on April 8, 1949, a stipulation of facts previously agreed upon between counsel for respondent Benjamin Molin and counsel in support of the complaint was read into the record in lieu of evidence in support of, and in opposition to, the allegations of the complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, the stipulation of facts, and the recommended decision of the trial examiner (no briefs having been filed 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, accepts and approves the stipulation of facts, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Prior to February 1947, respondents Benjamin Molin and Harry Richter were partners engaged in business and trading as Bond Trading Co. The record discloses that on the aforesaid date, the respondent Harry Richter severed his connection with said partnership and since that date has not, in any manner as a partner of respondent Benjamin Molin, engaged in any of the acts or practices alleged in the complaint. The record contains no evidence concerning the extent to which the respondent Richter participated in the affairs of the partnership or engaged in the acts and practices charged in the complaint. He failed to file an answer to the complaint and was not represented at the hearing either in person or by counsel. In view of these circumstances, the Commission is of the

opinion that the complaint herein should be dismissed without prejudice as to the respondent Harry Richter. The respondent Benjamin Molin (hereinafter referred to as "respondent") is an individual trading and doing business as Bond Trading Co., with his office and place of business located at 201 Greene Street, New York, N. Y. He is now, and for several years last past has been, engaged in manufacturing, offering for sale, selling, and distributing new, used, made-over, and second-hand hats.

PAR. 2. In the course and conduct of his aforesaid business, respondent causes, and has caused, his said hats, when sold, to be shipped and transported from his place of business in the State of New York to purchasers thereof at their respective points of location in other States of the United States; and maintains, and at all times mentioned herein has maintained, a course of trade in said hats in commerce among and between the various States of the United States.

PAR. 3. In carrying on his business as aforesaid, respondent purchases, and has purchased, old, soiled, worn, or previously used hat bodies which have been cleaned and dyed. Thereafter, said hat bodies have been, and are, converted into finished hats, which are, and have been, offered for sale, sold, and distributed in commerce as aforesaid. Some of these hats have been sold to purchasers without any label, marking, or designation stamped thereon, or attached thereto, which would indicate or disclose to the purchasing public that said hats were, in fact, second-hand or reconditioned products which had undergone processes that gave them the appearance of new products. Some of such hats, when offered for sale and sold by respondent, had the appearance of new hats, and when offered to the purchasing public without being clearly and conspicuously labeled as being reconditioned or second-hand hats, they were readily accepted by members of the purchasing public as being new hats.

PAR. 4. By and through the aforesaid acts and practices, a substantial portion of the purchasing public has been led to understand and to believe that said hats were, in fact, new hats manufactured entirely from new materials. Because of this erroneous and mistaken understanding and belief, substantial quantities of respondent's said hats have been purchased by members of the public. Said acts and practices of respondent also place in the hands of purchasers of said hats for resale a means and instrumentality whereby said purchasers may, and do, mislead and deceive the purchasing public as to the true facts in regard to such hats.

Order

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## CONCLUSION

The acts and practices of the respondent as herein found are all to the injury and 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 respondent Benjamin Molin, a stipulation of facts agreed upon between counsel for said respondent and counsel in support of the complaint and read into the record in lieu of evidence, and the recommended decision of the trial examiner (no briefs having been filed and oral argument not having been requested); and the Commission having accepted and approved said stipulation of facts and having made its findings as to the facts and its conclusion that respondent Benjamin Molin has violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That respondent Benjamin Molin, an individual trading as Bond Trading Company or under any other name or names, his 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 directly or indirectly representing:

1. That hats composed in whole or in part of old, used, or second-hand materials are new or are composed of new materials, by failing to stamp on the exposed surface of the sweatbands thereof, in legible and conspicuous terms which cannot be removed or obliterated without mutilating the sweatbands, a statement that such products are composed of second-hand or used material (e. g., "second-hand," "used," or "made-over"), provided that, if sweatbands are not affixed to such hats, then such stamping shall appear on the exposed surface of the inside of the body of the hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

2. 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 respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with it.

*It is further ordered,* That, for the reasons set forth in the findings as to the facts herein, the complaint herein be, and it is, hereby dismissed as to respondent Harry Richter without prejudice to the right of the Commission to take such further action at any time in the future with respect to said respondent as may be warranted by the then existing circumstances.

IN THE MATTER OF  
F. & V. MANUFACTURING CO., INC.

COMPLAINT, FINDINGS, ORDER AND OPINION IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

*Docket 5579. Complaint, Aug. 17, 1948—Decision, Mar. 14, 1950*

In a proceeding in which the complaint alleged a violation of Sec. 2 (a) of the Clayton Act as amended by the Robinson-Patman Act, and in which the case was submitted for disposition on the complaint, the respondent's answer, and a stipulation of facts which covered all of the material allegations of the complaint, and included all of the elements necessary to constitute a showing of unlawful price discriminations in violation of said section, but dealt only with price differences ranging from 10 percent to 20 percent of respondent's regular retail prices, the effect of which, as there set forth, might "be substantially to lessen competition in the sale and distribution" of the products involved "in the respective lines of commerce in which respondent and its customers are engaged \* \* \*" etc., and was silent as to what effect, if any, price differences amounting to less than 10 percent might have, the Commission's findings—and, as a consequence, the order to cease and desist—in the absence of any facts to support an inference of the likelihood of competitive injury as a result of smaller price differences, were necessarily limited to differences amounting to 10 percent or more of said retail prices, since the only alternative, namely, to prohibit all price differentials, subject to the proviso that the order shall not be construed to prevent smaller differences which do not tend to lessen, injure or destroy competition, was barred under the decision in *Morton Salt Co. v. F. T. C.*, 334 U. S. 37, 54, as shifting to the courts in possible subsequent proceedings, as there stated, the responsibility which Congress primarily intrusted to the Commission.

Where a corporation engaged in the manufacture of jewelry products consisting of expansion bands and other attachments for ladies', men's and children's watches, and in the competitive interstate sale and distribution thereof to retail jewelers, many of whom were competitively engaged with one another and with the customers of its competitors within their several trade areas—

- (a) Put into operation its so-called "10% Business Volume Rebate" plan, under which each of its retail customers who purchased from it as much as \$1,500 worth of jewelry products, calculated at retail prices, during a calendar year, and without any requirements as to the amount purchased at any one time, and with no contention of statutory cost justification, received from it a 10% cash rebate, paid when said amount was reached, and an additional 10% rebate on all purchases in excess of said amount made during the balance of the year;

With the result that the relatively few customers—generally, the major retail jewelry dealers—who qualified for such volume purchase rebate, were thereby