

Syllabus

IN THE MATTER OF

BAYONNE-NEWLAND FUR DRESSERS & DYERS, INC.

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

Docket 2121. Complaint, Nov. 9 1933—Order, June 25, 1935¹

Complaint charged respondent corporation, engaged in dressing, dyeing, marking, and designating skins of fur-bearing animals, at the instance and request of and in accordance with special agreements with, the owner-furriers or dealers, who sell the same thus dressed, dyed, marked, and designated to garment manufacturers, with misbranding or mislabeling, in stamping upon the backs of rabbit skins so dressed and dyed by it as to resemble sealskin fur, the letters "B" and "N", superimposed, together with word "Seal" in large and conspicuous letters, and, below, words "Dyed Cony" in much smaller and less conspicuous letters, with full knowledge and in aid of sale in interstate commerce by said owners of said rabbit skins thus dressed, dyed, and marked by it, and by said owners' manufacturer vendees of garments made therefrom, by reason of its aforesaid treatment and marking and their resemblance to the dyed fur of genuine seal, under the name or description "Sealines";

With capacity and tendency to mislead and deceive the public into the purchase of said skins as and for seal, with its superior pliability, durability, wearing quality and luster, and into the purchase of garments made therefrom as and for the more costly sealskin garments, and with effect of furnishing manufacturers and dealers, wholesale and retail, with the means enabling them to perpetrate a fraud upon said public by representing said garments as made of genuine seal, and exhibiting to customers and prospective customers, in support of such false representations, the word "Seal" stamped on the skins thereof, as hereinbefore set forth, and of aiding, assisting and abetting sale in interstate commerce of skins of rabbit and other fur-bearing animals, thus dressed, etc., by it, and of garments therefrom, as and for seal, by the owners and manufacturers, respectively, and by wholesale and retail dealers in said garments, and with further tendency and capacity to divert trade to owners of rabbit skins dressed and dyed by it, offered and sold in interstate commerce, and to manufacturers of garments made therefrom and wholesale dealers therein, offering the same in said commerce, and to latter's retail dealer customers in the United States, from dealers selling skins of rabbit and other fur-bearing animals, truthfully described, and from manufacturers and their wholesale dealers selling garments made from sealskin and skin of other fur-bearing animals, truthfully branded and described, and from their retail customer dealers in the various States; to the prejudice of the public and of the competitors of said corporation and its principals, and those thus aided, assisted and abetted by it in such practices.

Ordered, respondent consenting, that respondent, its officers, etc., in connection with the dyeing or dressing, sale, offer or advertisement of dyed muskrat fur or dyed cony (rabbit) fur, in interstate commerce, cease and desist from describing fur other than by the use of the correct name of the fur

¹The order is published as modified as of that date. Original order, not printed, was made as of May 16, 1935.

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as the last word in the designation thereof, and from the use of the word "Seal" as designation thereof, subject to permitted use thereof in an adjective sense, together with such words as "Dyed" or "Blended", as in said order in detail set forth.

Mr. James M. Brinson for the Commission.

Hershenstein, O'Brien & Tartalsky, of Jersey City, N. J., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Bayonne-Newland Fur Dressers & Dyers, Inc., hereinafter called respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Bayonne-Newland Fur Dressers & Dyers, Inc. is now and for more than a year last past has been a corporation organized, existing, and doing business under the laws of the State of New Jersey with its principal office and place of business in Jersey City in said State and engaged in the business of dressing, dyeing, and trade-marking or otherwise marking and designating rabbit skins and other skins of fur-bearing animals for the owners thereof.

Respondent has rendered and renders such service for owners of rabbit skins and the skins of other fur-bearing animals for the owners thereof, at their instance and request and in pursuance of and in accordance with special agreements therefor. Such owners have been and are furriers or dealers engaged in the business of selling the skins of fur-bearing animals in commerce among and between the various States of the United States. It has been and is the practice of said owners of skins, dressed, dyed, and trade-marked or otherwise marked or designated for them by respondent to sell them with the full knowledge of respondent to manufacturers of fur garments having their places of business in the city and State of New York or elsewhere in said State, and in the various other States of the United States, and such manufacturers have offered for sale and sold garments made from rabbit skins so dressed, dyed, and trade-marked or otherwise marked or designated in commerce among and between the various States of the United States, causing them when sold to be transported from their several places of business to purchasers located in various other States of the

United States than the State or States wherein are situated such places of business.

It has been and is the practice of respondent to render such services in dressing, dyeing, and trade-marking or otherwise marking or designating rabbit skins and skins of other fur-bearing animals for their owners with the full knowledge, expectation, purpose and intent that such skins or garments made therefrom will be offered for sale and sold in interstate commerce, and the acts and practices of respondent hereinafter described in paragraph 2 hereof have been and are directly related to and in furtherance of such business by the owners of such skins and the manufacturers of garments therefrom.

In the course and conduct of its business respondent has been and is engaged in competition with other individuals, partnerships, and corporations, dressing and dyeing rabbit skins or the skins of other fur-bearing animals for their owners for sale in interstate commerce or to manufacturers of fur garments made therefrom to be sold in such commerce. The owners of rabbit skins, dressed, dyed, and trade-marked or otherwise marked or designated by respondent, and the manufacturers of garments therefrom have been and are in competition with individuals, partnerships, and corporations engaged in the sale of similar or competitive products in like commerce.

PAR. 2. Respondent uses and has used a process for dressing and dyeing rabbit skins which causes the fur of such skins to resemble in appearance the fur of genuine dyed sealskins, and thereupon respondent stamps or causes to be stamped on the back of each of the skins so treated by it a mark, brand, or designation consisting of the letters "B" and "N", the one superimposed on the other, and below this the word "seal" in large and conspicuous letters with the words "dyed cony" below the border of the mark, brand, or designation in much smaller and less conspicuous letters.

Garments made from rabbit skins so dressed and dyed by respondent resemble garments made from dyed sealskins in appearance only, and are inferior to the skins of the seal in pliability and durability of the leather and wearing quality and luster of the fur, and garments made from sealskins command prices substantially greater than the prices of garments made from rabbit skins.

PAR. 3. Large quantities of rabbit skins are dressed, dyed, marked, branded, or designated by respondent, as described in paragraph 2 hereof, for manufacture into coats or other fur garments for women. Such garments bearing the aforesaid mark, brand, or designation of respondent on the back of the skins from which they have been and

are made have been and are sold by manufacturers thereof in the course of their business among and between the various States of the United States, under the name of or described as "Sealines" on account or by means of their resemblance to the dyed furs of genuine seals, resulting from the agency or service of respondent and mark, brand or designation conspicuously displaying the words "B & N Seal" as described in paragraph 2 hereof.

PAR. 4. There are now and have been for many years last past competitors of respondent dressing and dyeing rabbit skins or skins of other fur-bearing animals and stamping or marking them truthfully, or omitting any stamp or mark, for their owners for sale in interstate commerce, or for manufacture into fur garments for sale in such commerce, in competition therein with rabbit skins or garments made therefrom, dyed and trade-marked or otherwise marked or designated by respondent as described in paragraph 2.

There are now and for many years last past have been competitors of the owners of rabbit skins dyed and trade-marked or otherwise marked or designated by respondent, and of manufacturers selling garments made therefrom, offering for sale and selling in interstate commerce dyed rabbit skins clearly described and advertised as such and garments made therefrom without any trade mark, brand, stamp, or other description containing the word "seal" or thereby or otherwise suggesting or implying by trade mark, brand, stamp, or other descriptive matter that such garments have been or are made from or out of sealskins, and there have been or are other competitors of the owners of rabbit skins dyed and trade-marked or otherwise marked or designated by respondent and of manufacturers selling in interstate commerce garments made therefrom, offering for sale and selling in interstate commerce garments made from genuine dyed seal-skin truthfully trade-marked, branded, and described.

PAR. 5. The acts and practices of the owners of the rabbit skins so dressed, dyed and branded for them by respondent at their instance and request, in offering for sale and selling such skins in interstate commerce, and the acts and practices of manufacturers of fur garments in offering for sale and selling in interstate commerce garments made from rabbit skins dyed to resemble sealskins and bearing the aforesaid brand, have had and have and each of them has had and has the capacity and tendency to mislead and deceive the public into the purchase of such skins as and for sealskins, and into the purchase of garments made from such skins as and for garments made from sealskins. Such acts and practices have furnished manufacturers and dealers, wholesale and retail,

with the means by which they have been and are enabled to perpetrate a fraud upon the purchasing public by representing that garments made from such skins are made of genuine seal fur, and by exhibiting to customers and prospective customers, stamped on such skins the word "seal" to support their false representations that such garments are made from genuine seal fur.

Such acts and practices by the owners of rabbit skins dressed, dyed, and stamped by respondent and by their vendees, the manufacturers of fur garments have had and have and each of them has had and has the capacity and tendency to divert trade to the owners of rabbit skins dyed, dressed, and stamped by respondent, who have offered for sale and sold them in interstate commerce, and to manufacturers of garments made from such skins, and wholesale dealers offering for sale and selling them in interstate commerce, and to their customers, the retail dealers in the various States of the United States, from dealers or furriers selling the skins of rabbit and of other fur-bearing animals in interstate commerce, truthfully described and marked, and from manufacturers and wholesale dealers selling in interstate commerce garments made from sealskins, rabbit skins and the skins of other fur-bearing animals truthfully branded and described, and from their customers, the retail dealers in the various States of the United States.

The acts and practices of respondent described in paragraph 2 hereof have aided, assisted, and abetted the owners of rabbit skins and the skins of other fur-bearing animals, dressed, dyed and stamped for them by respondent, in selling such skins in and among the various States of the United States as and for sealskins, and have aided, assisted, and abetted the manufacturers of garments from such skins and wholesale dealers therein in selling them in such commerce as and for garments made from sealskins, and their customers, retail dealers in the various States of the United States in so selling them to the consuming public.

PAR. 6. The above and foregoing practices of the owners of rabbit skins, dressed, dyed and stamped by respondent, and of their vendees, including the manufacturers of garments from such skins, have been and are to the prejudice of the public and of their competitors and the above and foregoing practices of respondent have been and are to the prejudice of the public and of respondent's competitors, and the competitor's of respondent's principals, and those it has aided, assisted, and abetted in such practices in interstate commerce, which practices have been and are unfair methods

of competition in interstate commerce in violation of the provisions of Section 5 of an Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST²

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, on the 9th day of November 1933 issued its complaint against Bayonne-Newland Fur Dressers & Dyers, Inc., a corporation, respondent herein, and caused the same to be served upon said respondent as required by law, in which complaint it is alleged that respondent has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act.

On May 18, 1934, respondent filed an answer to said complaint in which it consented that the Commission may make, enter, and serve upon it an order to cease and desist from the violations of law alleged in the complaint, in accordance with the provisions of Section (b) of Rule V of the Rules of Practice of the Commission; and the Commission having accepted said answer, issued an order to cease and desist on May 16, 1935, and thereafter, on, to wit, the 17th day of June 1935 the Commission, being now fully advised in the premises, modifies the said order to cease and desist, and

It is now ordered That respondent, Bayonne-Newland Fur Dressers & Dyers, Inc., its officers, agents, representatives, and employees, in connection with the dyeing or dressing, sale, offering for sale, or advertising of dyed muskrat fur or dyed cony (rabbit) fur, cease and desist from:

1. Describing furs in any other way than by the use of the correct name of the fur as the last word of the description, and when any dye or blend is used simulating another fur the true name of the fur appearing as the last word of the description must be immediately preceded by the word "dyed", or "blended", compounded with the name of the simulated fur.

2. Using the word "seal" alone or in connection, combination, or conjunction with any other word or words to describe or designate dyed cony, unless and until the word "seal" is compounded with the word "dyed" and such compounded word is immediately followed by the word "cony", as "seal-dyed cony."

² Published as modified.

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3. Using the word "seal" or the words "Hudson Seal" standing alone or in connection, combination or conjunction with any other word or words to describe or designate dyed muskrat unless and until the word "seal" or the words "Hudson Seal" are compounded with the word "dyed" and such word or words so compounded are immediately followed by the word or words signifying or designating the true name of the fur, as "seal-dyed muskrat" or "Hudson Seal-dyed muskrat."

4. Using the word "seal" or the words "Hudson Seal" standing alone or in connection, combination or conjunction with any other word or words (regardless of corporate name, trade name, or trade mark), except that the word "seal" may be used as an adjective to denote or describe the color or character of the dye of muskrat or cony fur, as "seal-dyed muskrat" or "seal-dyed cony", and except that the words "Hudson Seal" may be used as an adjective to denote or describe the color or character of the dye of muskrat fur, as "Hudson Seal-dyed muskrat."

5. Using the word "Hudson" standing alone or in connection, combination or conjunction with any other word or words to describe or designate dyed cony (rabbit) fur.

It is further ordered, That the respondent shall, within 90 days from the date of the service upon it of the order herein, file with the Commission a report in writing, setting forth in detail the manner and form of its compliance with this order.

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IN THE MATTER OF

A. HOLLANDER & SON, INC., ET AL.

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2123. Complaint¹, Nov. 28, 1934—Order, June 25, 1935²*

Complaint charged respondent Hollander & Son, dressers and dyers of muskrat and rabbit skins by processes which caused same to resemble appearance of dyed sealskin, respondents Jacobson Brothers, Corn & Fenning, and Fenrab Company, engaged in purchasing such furs for dressing and dyeing by it and in selling same thereafter to garment manufacturers and fur dealers, and respondents Geller & Son, Oldman Brothers, and Abrams & Linden, engaged in purchasing such furs for dressing and dyeing by it, as aforesaid, or in purchasing such furs already thus dressed and dyed by it, from dealers therein, and in manufacturing fur garments thereof and selling same to dealers therein for resale to ultimate user purchasers, with misbranding or mislabeling and advertising falsely or misleadingly, in the respective dressing and dyeing, and selling muskrat and rabbit skins and garments made thereof, under said first-named respondent's widely advertised and featured brands, marks, and designations, which, in case of said muskrat, displayed conspicuously, words "Seal", "Hollander Seal", or "Hudson Seal", and, in case of said rabbit, words "Nubian Seal", together with words "Dyed Muskrat" or "Dyed Cony", respectively, in such small and inconspicuous letters in relation to the others as to be unnoticeable except on close inspection, and which are repeated on garment labels and tags supplied by said first-named respondent, which, through extensive advertisements in periodicals, window displays, pamphlets, and otherwise promotes and encourages sale under its trade name, letters, marks, designations, and plan, of said muskrat and rabbit furs, thus dressed, dyed, stamped, marked, and described by it for the owners in accordance with its agreements therewith, and of garments made thereof, thus labeled and tagged, and for the superior and more costly seal, and which in its aforesaid practices knowingly and intentionally aided, assisted, abetted, and caused such sales by its co-respondents;

With result of furnishing manufacturers and dealers, wholesale and retail, with the means enabling them to perpetrate a fraud upon the purchasing public by representing the furs thus dressed, dyed, and stamped by said first-named respondent, and garments made thereof, as seal, and of supporting such false representations by exhibiting to customers and prospective customers the marks or designations stamped thereon or the labels and tags attached thereto, supplied by it, or both, and with tendency and capacity to mislead and deceive the consuming public into the purchase of such furs and garments as and for the more pliable, durable, and costly seal, and to divert trade to them and to dealers offering or selling such furs or garments to their customers in interstate commerce, and to retailers

¹ Amended and supplemental.

² The order is published as modified as of that date. Original order, not printed, was made as of May 16, 1935.