

Syllabus

IN THE MATTER OF
MENDOZA FUR DYEING WORKS, INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2126. Complaint, Nov. 9, 1933—Order, June 25, 1935¹*

Complaint charged respondent corporation, engaged in dressing, dyeing, and trade-marking or otherwise marking and designating, among others, rabbit skins, 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, and trade-marked or otherwise marked or designated, to garment manufacturers, or make use thereof themselves for garment manufacture, with misbranding or mislabeling, and advertising falsely or misleadingly, in describing or designating as "Mendoza Beaver", rabbit skins so dyed by it as to cause the fur thereof to resemble that of dyed beaver, using said words in advertising in magazines and trade literature of general circulation, together with the words "This stamp signifies genuine Mendoza Beaver and Mendoza Seal", and furnishing the owners of said skins, thus dyed by it, garment labels containing the words, "Mendoza Beaver", with full knowledge and in aid of sale in interstate commerce of said skins, thus dressed, dyed, and designated by it, and garments made therefrom, as and for beaver on account of their resemblance thereto, resulting from its said service, and advertisements and labels, describing, and designating, as aforesaid, such skins and garments made therefrom;

With capacity and tendency to mislead and deceive the public into the purchase of said skins and of garments made therefrom, from said owner and manufacturer vendors thereof, respectively, as and for beaver, and with effect of furnishing manufacturers and wholesale and retail dealers with the means enabling them to perpetrate a fraud upon the purchasing public by advertising in the various localities of the several States in which their businesses are conducted, garments made from skins so dressed and dyed by it, as "Mendoza Beaver", and by offering and selling the same to the public as and for genuine beaver, and of aiding, assisting, and abetting sale in interstate commerce of rabbit skins, thus dressed, etc., by it, and of garments thereof, as and for beaver, by the owners and manufacturers, respectively, and with capacity and tendency to divert trade to owners offering and selling in interstate commerce rabbit skins thus dressed and dyed by it, and to manufacturers selling in such commerce garments thereof, and to other vendees of said owners, and to wholesalers of such garments, and their customers, the retailers, from dealers or furriers selling the skins of rabbit and other fur-bearing animals in such commerce, truthfully described and marked, and from manufacturers and dealers selling therein garments made from beaver, rabbit, and other skins of fur-bearing animals, truthfully branded and described, and from their customers, the retailers; to the prejudice of the public and of competitors of the aforesaid owners of such rabbit skins, and of manufacturers of

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

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garments therefrom, thus aided, assisted, and abetted by it in the sale of said skins and garments as and for beaver, and to the prejudice of competitors of itself and of its principals and those it thus aided, etc., 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 furs other than by the use of the correct name of the fur as the last word in the designation thereof, and from the use of the words "Beaver" or "Seal" as designations thereof, subject to the 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.

Mr. Philip L. Liebman, of New York City, 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 Mendoza Fur Dyeing Works, Inc., hereinafter designated 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, Mendoza Fur Dyeing Works, 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 York with its principal office and place of business in the city of New York, in said State, and engaged in the business of dressing, dyeing, and trade-marking or otherwise marking and designating rabbit skins and the skins of other fur-bearing animals for the owners thereof. It uses, and has used a process for dyeing rabbit skins which causes the fur of such skins to resemble the fur of dyed beaver skins, and it describes and designates rabbit skins so dyed by it as "Mendoza Beaver".

Respondent has rendered and renders such service for owners of rabbit skins, 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 rabbit skins or the skins of other 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 rabbit skins dressed, dyed, and trade-marked or otherwise marked or designated for them by respondent, to sell them to manufacturers of fur garments, and others

described and designated as Mendoza Beaver, at the instance of, and in cooperation with, respondent. Such manufacturers have offered for sale and sold garments made from rabbit skins so dressed, dyed, and designated by respondent, in commerce among and between the various States of the United States, as "Mendoza Beaver", 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 service in dressing, dyeing, and designating rabbit skins 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. In furtherance of such sales in interstate commerce it has been and is the practice of respondent to advertise in magazines, journals, and other trade literature of general circulation in and through the various States of the United States, in the course of which, it has used and uses the following language to describe rabbit skins dyed by it and garments made therefrom, to wit, "Mendoza Beaver". In such advertisements, or some of them, appear representations or stamps, below one of which is the following: "This stamp signifies genuine Mendoza Beaver and Mendoza Seal". Further to encourage, assist, and promote the sale of such garments in such commerce as and for garments made from beaver skins, it has been and is the practice of respondent to furnish the owners of rabbit skins, dyed by it to resemble beaver skins, with labels to be attached to garments made from such skins containing the words "Mendoza Beaver".

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 for manufacture into garments to be sold in such commerce. The owners of rabbit skins dressed, dyed, described, 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 interstate commerce.

PAR. 2. Large quantities of rabbit skins have been and are so dressed and dyed by respondent as to resemble and imitate beaver skins, for their owners, including M. D. Spigel, Inc., a manufacturing furrier, doing business in the city of New York and State of New York, for manufacture into coats or other fur garments for

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women. Such garments, usually bearing labels described in paragraph 2 hereof in a conspicuous place thereon, have been sold and are sold by such manufacturers, including said M. D. Spigel, Inc., among and between the various States of the United States, as and for Mendoza Beaver on account of or by means of their resemblance to the dyed furs of genuine beavers, resulting from the agency or service of respondent and its advertisements and labels describing and designating such skins and garments made therefrom as "Mendoza Beaver".

PAR. 3. There are now and have been for many years past competitors of respondent dressing and dyeing rabbit skins or skins of other fur-bearing animals, for their owners, either for sale in interstate commerce, or for sale for manufacture into garments for such commerce, who either stamp or mark them so as clearly to indicate the kind or character of such skins, or omit any mark or designation.

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

PAR. 4. The acts and practices of the owners of the rabbit skins so dressed and dyed 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 beaver skins, described and designated as Mendoza Beaver, 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 beaver skins, and into the purchase of garments made from such skins as and for garments made from beaver skins. 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 adver-

tising in the various localities of the various States in which their business is conducted, garments made from skins so dressed and dyed by respondent as Mendoza Beaver, and by offering for sale and selling the same to the public as and for genuine beaver.

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

The acts and practices of respondent described in paragraph 2 have aided, assisted, and abetted the owners of rabbit skins dressed and dyed for them by respondent in selling such skins in and among the various States of the United States as and for beaver skins, and have aided, assisted, and abetted the manufacturers of garments from such skins in selling them in such commerce as and for garments made from beaver skins.

PAR. 5. The above and foregoing practices of the owners of rabbit skins dressed and dyed by respondent and of the vendees of such owners, 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 respondent's competitors and the competitors 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 DESIST ²

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

² Published as modified.

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Federal Trade Commission, on the 9th day of November 1933, issued its complaint against Mendoza Fur Dyeing Works, 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 16, 1935, 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, Mendoza Fur Dyeing Works, Inc., its officers, agents, representatives, and employees, in connection with the dyeing or dressing, sale, offering for sale, or advertising of 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" or the word "beaver" alone or in connection, combination, or conjunction with any other word or words to describe or designate dyed cony or dyed beaver, unless and until the word "seal" and the word "beaver" are compounded with the word "dyed" and such compounded word or words are immediately followed by the word "cony", as "seal-dyed cony" or "beaver-dyed cony".

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 word "beaver" or the words "Hudson Seal" standing alone or in connection, combination, or conjunction with any other word or words (regardless of corporate name,

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trade name or trade-mark), except that the word "seal" or the word "beaver" 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 "beaver-dyed cony" 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
OAKLAND FUR DYEING, INC.

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

*Docket 2127. Complaint, Nov. 9, 1933—Order, June 25, 1935*¹

Complaint charged respondent corporation, engaged in dressing, dyeing, and trade-marking or otherwise marking and designating, among others, rabbit skins, 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, branded, or designated by it for them, to garment manufacturers, with misbranding or mislabeling in stamping on the backs of rabbit skins, so dressed and dyed by it as to cause the fur thereof to resemble the appearance of the much superior sealskin in pliability, durability, and wearing quality of the fur, the words "Oakland Seal" in large and conspicuous letters, together with the words "Dyed Cony" in small and inconspicuous letters, with full knowledge and in aid of sale in interstate commerce by said owners of such skins, thus dressed, dyed, and marked by it for them, and by the manufacturers of garments made therefrom under the designation "Sealines", on account of or by means of their resemblance to the dyed fur of genuine seal, resulting from its said agency or service and its aforesaid mark or brand, conspicuously displaying the words "Oakland Seal" ;

With capacity and tendency to mislead and deceive the public into the purchase of said skins and of garments made therefrom, from said owner and manufacturer vendors thereof, as and for seal, and the substantially more costly sealskin garments, respectively, and with effect of furnishing manufacturers and wholesale and retail dealers with the means enabling them to perpetrate a fraud upon the purchasing public by representing that said garments are made of genuine seal and by exhibiting to customers and prospective customers the words "Oakland Seal" stamped on the skins thereof in support of such false representation, and of aiding, assisting, and abetting sale in interstate commerce of rabbit skins thus dressed, etc., by it, and of garments therefrom, as and for seal, by the respective owners and manufacturers, and dealers therein in their various localities, and with capacity and tendency to divert trade to owners offering and selling in interstate commerce said skins, thus dyed, dressed and stamped by it for them, and to manufacturers of garments made thereof similarly offering the same, and to wholesale dealers therein and latter's retail dealer customers, from dealers or furriers selling skins of rabbit and other fur-bearing animals in such commerce, truthfully described and marked, and from manufacturers and wholesalers thus selling garments made of seal, rabbit, or skin of other fur-bearing animals, truthfully described and branded, and from their retail dealer customers; to the prejudice of the public and of competitors of the aforesaid owners and of said owners' vendees, the garment manufacturers, and to the prejudice of the competitors

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