

Syllabus

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IN THE MATTER OF

ICELAND FUR DYEING COMPANY

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2130. 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, 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 genuine seal with its much superior pliability, durability, wearing quality and luster, the mark, brand or designation "Iceland Seal" in large and conspicuous letters, together with the words "Trade-Mark" and, below, in smaller and less conspicuous letters, the words "Dyed Cony", and with furnishing owners of such skins, for delivery to their garment manufacturer vendees, garment labels bearing the words "Iceland Seal" in large and conspicuous letters, with full knowledge and in aid of sale in interstate commerce, by said owners and manufacturers, respectively, of such skins, thus dressed and marked by it, and garments made therefrom; With capacity and tendency to mislead and deceive the public into the purchase of said skins, as and for seal, and of garments made therefrom, as and for the substantially more costly sealskin product, 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 said garments as made from genuine seal and by exhibiting to customers and prospective customers the words "Iceland Seal" stamped on the skins thereof or the aforesaid label, or both, in support of their said false representations, and of aiding, assisting and abetting sale in interstate commerce of rabbit and other skins dressed, etc., by it, and of garments thereof as and for seal, by the owners and manufacturers, respectively, and by latter's wholesale and retail dealer vendees in their various communities, and with capacity and tendency to divert trade to said owners offering and selling in interstate commerce such rabbit skins, thus dressed, dyed and marked by it, and to manufacturers of garments made therefrom, and to wholesale dealers offering and selling the same in such commerce, and to their retail dealer customers, from dealers or furriers selling in such commerce the skins of rabbit and other fur-bearing animals, truthfully described and marked, and from manufacturers and wholesale dealers similarly selling garments made from seal, or skin of rabbit or other fur-bearing animals, truthfully described and branded, and from their retail dealer vendees; to the prejudice of the public and of competitors of said owners and of their manufacturer and other vendees, and of its own competitors and of its principals and those thus aided, assisted and abetted by it in such practices.

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

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 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.

Mr. George J. Beldock, 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 Iceland Fur Dyeing Company, 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, Iceland Fur Dyeing Company 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 Brooklyn 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.

The 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 sealskins, and thereupon respondent stamps or causes to be stamped on the back of each of the skins so treated by it the mark, brand or designation "Iceland Seal," in large and conspicuous letters. Under the lower part of the border within which the words "Iceland Seal" are enclosed appear the words "Trade Mark," and below them appear the words "Dyed Coney" in smaller and less conspicuous letters than those in which the words "Iceland Seal" appear.

Garments made from rabbit skins so dyed, marked, branded, or designated by respondent resemble garments made from dyed seal-skins but in appearance only. Dyed rabbit skins are greatly inferior to the skins of seals in pliability and durability of the leather and in wearing quality and luster of the fur, and garments made from seal-skins command prices far in excess of or substantially greater than the prices commanded by garments made from rabbit skins.

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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 are and have been furriers or dealers engaged in the business of selling rabbit skins or 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, marked, branded, or designated for them by respondent, to sell them in interstate commerce to other furriers or dealers and to manufacturers of fur garments, having their places of business in the various States of the United States, and such manufacturers have offered for sale and sold garments made from rabbit skins so dressed, dyed, and marked or stamped by respondent, bearing the said brand "Iceland Seal," 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 marking 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, and the said acts and practices of respondent 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. Further to facilitate the sale as and for garments made from sealskins of garments made from rabbit skins so dyed and stamped or marked by it, respondent has furnished and furnishes owners of such skins for delivery to their vendees, manufacturing garments therefrom, labels to be attached to the completed garment, which bear the words "Iceland Seal" in large and conspicuous letters.

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 the owners thereof for sale in interstate commerce or for sale to manufacturers to be made into fur garments, to be sold in such commerce. The owners of rabbit skins so dressed, dyed, marked, branded, 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. 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, including the skins of seals, for their owners, to be sold in interstate commerce, to furriers or dealers or manufacturers to be made into fur garments for sale in interstate commerce, whose practice has been and is either to stamp or mark such skins so clearly as to indicate their kind or character, or to omit any mark or designation of their kind or character. Skins so dressed and dyed by such competitors of respondent with or without stamp or other designation thereon respecting the kind or character of the skins, and garments made from them have been and are offered for sale and sold in interstate commerce by furriers or dealers or manufacturers who have been and are competitors of the individuals, partnerships, and corporations for whom respondent performs and has performed the aforesaid service of dressing, dyeing, stamping, and branding such skins.

PAR. 3. The acts and practices of the owners of the rabbit skins 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 of "Iceland Seal" 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 able 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 words "Iceland Seal" or the aforesaid label on such garments, or by both acts, 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 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 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 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 vendees the retail dealers in the various States of the United States.

The acts and practices of respondent described in paragraph 1 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 in selling them in such commerce as and for garments made from sealskins, and their vendees, wholesale and retail dealers, in their various communities in such practice.

PAR. 4. 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 the 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 Federal Trade Commission, on the 9th day of November 1933 issued its complaint against Iceland Fur Dyeing Company, 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.

² Published as modified.

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, Iceland Fur Dyeing Company, 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".

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".

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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

M. J. HOLLOWAY & COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933.

Docket 2265. Complaint, Dec. 17, 1934—Decision, June 25, 1935

Where a corporation engaged in the manufacture and sale of candy, including such break-and-take assortments as (1) individually wrapped, penny caramels, together with a number of larger pieces or packages of candy to be given as prizes to chance purchasers of a few of said caramels, the concealed color of which, unlike the others, was not uniform throughout, (2) assortments composed of small caramels and larger bars, together with push cards or punch boards, through use of which it was determined, in accordance with explanatory legends thereon set forth and the chance number pushed or punched thereon, at a cost of a penny a punch, whether a caramel or bar should be received by the person making such chance selection, and the last remaining number on which also entitled person punching the same to an additional piece or prize, (3) its "Mystery Chest" assortment composed of large and small pieces of candy and small toys or prizes arranged in individual compartments within which they were concealed by a paper covering, so marked as to show the separate compartments, but not the contents thereof, so that the purchaser's chance selection decided the particular piece, and toy or prize, if any, secured for the money paid, (4) its so-called "Game of Skill" assortment composed of 150 individually wrapped caramels and 65 candy bars, to be given to the chance purchasers of as many caramels, with different colored centers, described by it on assortment's cover, not ordinarily seen, as larger in size than the others, facts being difference, if any, was too small to be discernible, and selection was made wholly by lot or chance, and (5) two-box assortments, separately billed at times, but sold together, and respectively containing assorted caramels, a few of which had concealed centers of a different color than the others, and larger pieces or bars, the number of which corresponded to that of the different colored center caramels, and so arranged that the two boxes might be displayed by the retailer as a single assortment, and the larger pieces distributed as prizes to purchasers of the smaller caramels as hereinbefore set forth;

Sold said assortments and push cards or punch boards to wholesalers and jobbers, so packed and assembled that they could be displayed for sale and distribution to the purchasing public, as hereinbefore set forth, without alteration or rearrangement, and could not, except in the case of said two-box assortments, be resold to the public except as a lottery or gaming device, without unwrapping, unpacking, disassembling, or rearranging the same, with knowledge and intent that said candy would and should thus be resold