

Complaint

IN THE MATTER OF

LOUIS ESTRIN, CHARLES ESTRIN, SIDNEY ESTRIN,
ESTHER ESTRIN AND BELLE ESTRIN, TRADING AS
HUDSON FUR DYEING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3951. Complaint, Nov. 15, 1939—Decision, July 29, 1941*

Where five partners engaged, in New Jersey, as successors to similarly named corporate business, in dyeing, for fur dealers, garment manufacturers, and others in New York City, rabbit furs or peltries under process which was intended to and did result in a product simulating genuine seal, and Hudson seal, or, as generally understood in the trade, seal-dyed muskrat—

Stamped each peltry dyed by them with the words "Hudseal Dyed Coney," unless otherwise directed, and supplied with each 50 peltry lot—the number usually required for a coat—to be attached to garments made therefrom, cloth labels bearing the inscription "HUDSEAL Seal-Dyed Coney Trade Mark Reg. * * * Super Quality," and cardboard tags similarly inscribed, for the better grade, and tags bearing the words "SATINSEAL Registered Seal Dyed Coney Hudseal Process" with similar lots of poorer quality;

With result that a substantial proportion of the purchasing public were caused to believe that such contraction of words "Hudson Seal" was intended to mean Hudson seal or muskrat fur dyed to resemble seal, and with tendency to cause members of the purchasing public, confused thereby, to call upon the sales person for an explanation of the terms used, thus placing in the hands of others an instrumentality whereby they might mislead and deceive members of the purchasing public into the erroneous belief that garments thus labeled were made from peltries of seal or muskrat or other animals more desirable than rabbit peltries, and that they were of greater value and better quality than rabbit furs;

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Koehler, Augenblick & Freedman, of Newark, N. J., 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 Louis Estrin, Charles Estrin, Sidney Estrin, Esther Estrin, and Belle Estrin, individuals, trading as Hudson Fur Dyeing Co. have violated the

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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, Louis Estrin, Charles Estrin, Sidney Estrin, Esther Estrin, and Belle Estrin, are now and for more than 1 year last past have been engaged in the business of processing and dyeing rabbit peltries under the trade name of Hudson Fur Dyeing Co. with their principal office and place of business located at 29 Congress Street in the city of Newark, in the State of New Jersey.

PAR. 2. In the course and conduct of their business the respondents are engaged in the sale and distribution of rabbit peltries dyed to imitate seal in commerce among and between the various States of the United States, and also in the processing and dyeing of rabbit peltries to imitate natural seal for various customers. In the conduct of this business, the respondents cause said customers who are located in various States of the United States other than the State of New Jersey, to ship rabbit peltries from their various points of location to respondents for processing and dyeing. When rabbit peltries are processed and dyed by the respondents, said respondents attach to said peltries labels or tags of the Hudson Fur Dyeing Co. and also furnish labels or tags to be attached to the finished garments, which labels and tags so attached and furnished are hereinafter more fully described. When said peltries are so processed and dyed the respondents ship said peltries, together with such labels and tags from their place of business in the State of New Jersey to purchasers or customers located in various other States of the United States.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said peltries processed by them and in labels to be attached to the finished garments in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents furnish labels and tags to purchasers or customers for used on finished garments made from such peltries and also cause labels or tags to be placed on the peltries processed by them, as hereinabove described, upon which labels, and tags appear the following representations:

HUDSEAL
(Seal Dyed Coney)
Trade Mark Reg.

* * *

Super Quality

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The word "HUDSEAL" is printed in type 6/16" to 10/16" high, while the term "Seal Dyed Coney" is printed in type 2/16" high, surrounded by a border. There is no difference in the color of the lettering of any of the lines.

Upon another tag or label furnished and used by respondents on many of their said peltries appear the following representations:

SATINSEAL
REGISTERED
Seal Dyed Coney
* * *
Hudseal Process

On this tag the words "Seal Dyed Coney" are also in substantially less conspicuous type than the word "SATINSEAL."

PAR. 4. There is a preference on the part of the purchasing public for fur products made from peltries of seal because of their superior qualities such as pliability, durability, and luster.

By the use of tags or labels as set out above which prominently display the word "HUDSEAL" with the term "Seal Dyed Coney" in substantially smaller letters, an impression is created in the minds of the purchasers and prospective purchasers of the finished products that said garments are "Hudson Seal" and are composed of seal peltries.

In the same manner the use of the word "SATINSEAL" in large, conspicuous letters with the qualifying term "Seal Dyed Coney" in substantially smaller letters, as well as the use of the words "Hudseal Process" on said labels or tags, creates an impression in the minds of the purchasing public that the finished garments so labeled and tagged are composed of seal peltries.

The term "Seal Dyed Coney" as used by the respondents in connection with the term "Hudseal" or "Satinseal" is not sufficiently known to the purchasing public to be readily recognized as describing rabbit peltries. The term "Satinseal" is a coined or trade name which is not known to the public and would have no special meaning other than that garments so designated were composed of seal peltries.

PAR. 5. In truth and in fact the peltries so dyed bearing the labels and designations, as hereinabove set out, are rabbit peltries dyed to imitate seal. Said rabbit peltries are inferior to the peltries of seal, in appearance, pliability, durability, and in the luster of the fur.

PAR. 6. By the use of this practice of furnishing false and misleading labels and tags to customers and causing them to be placed upon peltries, the respondents place in the hands of uninformed or unscrupulous retail dealers and manufacturers a means and instrumentality whereby said dealers and manufacturers may deceive or mis-

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lead members of the purchasing public into the erroneous belief that fur garments made from rabbit peltries are in fact composed of seal peltries.

PAR. 7. The use by the respondents of the foregoing false and misleading statements and representations on their labels and tags, as above set out, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that garments containing the labels or tags supplied by the respondents are composed of seal peltries. As a result of such erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of garments containing respondents' labels and tags.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and 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 November 15, 1939, issued and thereafter served its complaint in the above-entitled proceeding upon the respondents, Louis Estrin, Charles Estrin, Sidney Estrin, Esther Estrin, and Belle Estrin, individuals trading as Hudson Fur Dyeing 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Joseph C. Fehr, attorney for the Commission, and in opposition to the allegations of the complaint by Bernard Freedman, attorney for the respondents, before Lewis C. Russell, an 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 the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; 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 and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Louis Estrin, Charles Estrin, Sidney Estrin, Esther Estrin, and Belle Estrin have since April 1938 constituted a partnership doing business under the name Hudson Fur Dyeing Co., with their principal place of business at 29 Congress Street, Newark, N. J. This partnership succeeded to the business of Hudson Fur Dyeing, Inc., a New Jersey corporation which had its place of business at the same address. Respondents have been, and are now, engaged in the business of dyeing rabbit furs for various fur dealers, garment manufacturers, and others who have their places of business in New York, N. Y.

PAR. 2. Respondents' customers in New York in some instances deliver to respondents in New Jersey rabbit furs which they wish dyed, and in other instances respondents receive such furs from customers in New York and transport them to their place of business in New Jersey. After said peltries are dyed they, together with certain tags and labels furnished by respondents as hereinafter more fully set out, are transported by respondents from their place of business in New Jersey to the respective places of business of their customers in New York. Respondents maintain a constant course of trade in commerce in said peltries, tags, and labels between the States of New York and New Jersey.

PAR. 3. In the course and conduct of their business respondents stamp each peltry which they dye, unless the customer otherwise directs, with the words "Hudseal Dyed Coney." With each lot of 50 dyed peltries (50 peltries being the number usually necessary for the manufacture of a coat) respondents supply for the future use of their customers certain cardboard tags intended to be attached by their customers to garments when made from such peltries and a cloth label intended to be attached to such garment. The cloth label bears the following inscription:

HUDSEAL
Seal-Dyed Coney
Trade Mark Reg.

* * *

Super Quality

The word "Hudseal" appears in large letters and the remainder of the words on such label are in letters of much smaller size. The cardboard tag is similarly inscribed except the word "Registered" appears thereon instead of the term "Trade Mark Reg." Upon receipt by respondents peltries are graded and the better grade, when dyed, are segregated into lots, usually of 50 each, and with each such lot respondents furnish one each of the above-described tags and labels. The poorer quality

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peltries when dyed are also segregated into similar lots and with each such lot is furnished a cardboard tag bearing the words:

SATINSEAL

Registered

Seal Dyed Coney

Hudseal Process

Some of the manufacturers who make garments from peltries dyed by respondents attach the above-described labels and tags to completed garments which are subsequently sold to members of the purchasing public. There is no separate specific charge made by respondents for the tags and labels, the charge therefor being included in the respondents' charges for dyeing the peltries.

PAR. 4. Respondents' process of dyeing rabbit peltries is intended to, and does, result in a product which when made into a garment for sale to members of the purchasing public simulates in appearance genuine seal and Hudson seal. Hudson seal is a term generally understood in the fur trade to mean seal-dyed muskrat fur. This term is understood by a substantial portion of the purchasing public to mean genuine seal or muskrat fur dyed to resemble seal. Rabbit peltries dyed to simulate genuine seal or Hudson seal (seal-dyed muskrat) are considered by the fur trade and by the consuming public generally to be inferior to either of the products which such seal-dyed rabbit peltries simulate, and there is a preference on the part of the purchasing public for genuine seal or Hudson seal (seal-dyed muskrat) as compared with seal-dyed coney.

Many members of the purchasing public are not sufficiently familiar with furs to rely upon their own judgment with respect thereto, and consequently must, and do, rely upon the representations of manufacturers of or dealers in the fur garments offered for sale. The word "Hudseal" is a contraction of the words "Hudson Seal," and when used on tags and labels attached to fur garments simulating genuine seal and Hudson seal (seal-dyed muskrat) causes a substantial proportion of the members of the purchasing public to believe that it is intended to mean Hudson seal. The term "Hudseal" as used by respondents in connection with the words "Seal Dyed Coney" is contradictory and creates confusion and uncertainty in the minds of members of the purchasing public as to whether the garment so designated is seal, Hudson seal (seal-dyed muskrat), or in fact seal-dyed coney. This confusion and uncertainty tends to cause such members of the purchasing public to call upon the sales person displaying such garment for an explanation of the terms used and thus places in the hands of others an instrumentality whereby they may mislead and deceive members of the purchasing public into the erroneous belief that the garments thus labeled

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are made from seal peltries, muskrat peltries, or peltries of other animals more desirable than rabbit peltries, and that they are of greater value and better quality than rabbit furs.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice and injury 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 respondents, testimony, and other evidence in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Louis Estrin, Charles Estrin, Sidney Estrin, Esther Estrin, and Belle Estrin, individuals trading as Hudson Fur Dyeing Co., or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the dyeing or dressing, branding, labeling, tagging, or advertising in any manner of rabbit peltries distributed or transported by them in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Hudseal" as a trade name, trade-mark, or otherwise, or any other word or words signifying or connoting Hudson seal, either separately or in connection or conjunction with any other word or words, to designate or describe dyed rabbit peltries.

2. Describing peltries 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 so dyed or treated must appear as the last word of the description and must be immediately preceded by the word "dyed" or "blended" compounded with the name of the simulated fur.

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.

IN THE MATTER OF

NATIONAL DISTILLERS PRODUCTS CORPORATION

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

Docket 4425. Complaint, Dec. 19, 1940—Decision, July 30, 1941

Where a corporation engaged in the manufacture, as a by-product from grain left after distillation of whiskey of a semisolid poultry feed supplement variously designated as "Produlac Brand Semi-Solid Distillers Grains Mash," "Semi-Solid Produlac," and "Produlac," and in interstate sale and distribution thereof; by means of letters, circulars, and reprints of testimonial letters, transmitted through the mail and otherwise—

Represented, directly or by implication, that poultry rations frequently are inadequate and must be supplemented by the addition of vitamins and nutritional factors represented as being contained in its said product, and that the use thereof as a supplement to a diet or ration, regardless of whether said diet or ration already contained a sufficient quantity of necessary food elements, would result in a substantial increase of egg production, healthier poultry, high percentage of hatchability of eggs, and a decrease in the mortality rate, as well as other advantages;

Facts being its said product was but one of a class of dried grain after-distillation remnants made as a by-product in whiskey distilleries and sometimes referred to as "stillage" or "distillery slop," and did not contain vitamins and other nutritional factors sufficient to assure aforesaid advantages, which are the result of many factors, such as breed of poultry, general care, feeding, and general health of the flock, in addition to diet; and there is no scientific or other basis for its claim that poultry rations are frequently inadequate or must be supplemented by the addition of vitamin and nutritional factors said to be contained in its product, or that its said product made an excellent replacement or substitute for green feeds or creates a better appetite;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that aforesaid representations were true, and to cause many members of the public, because of said belief thus engendered, to purchase its said product:

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.

Mr. D. E. Hoopingarner for the Commission.

Breed, Abbott & Morgan, of New York City, for respondent.

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 National Distillers Products Corporation, hereinafter referred to as respondent, has vio-