

Syllabus

IN THE MATTER OF
MONTGOMERY WARD & COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4638. Complaint, Nov. 19, 1941—Decision, Sept. 28, 1943

- In order to prevent deception of the public, the designation of a fabric made to resemble the peltry of a fur-bearing animal should be such as to clearly disclose that such fabric is not made of fur but merely resembles the peltry of a fur-bearing animal, as, for example, "fur-like fabric" or "a fabric made to simulate fur."

Where names of fur-bearing animals are used in connection with coats made of fabric closely resembling the peltries of the animals referred to, such names should be immediately accompanied by another word or words disclosing that the fabric is merely an imitation of the peltry of the animal named, as, for example, "Imitation Persian Lamb," "Imitation Seal," etc.

Where a corporation, engaged in the interstate sale and distribution by mail order, among other merchandise, of women's coats made of fabrics so manufactured as to resemble closely the peltries of fur-bearing animals; in advertising in widely distributed catalogues—

Represented, through use of term "Fur Fabric" to designate said coats generally, and through such terms as "Persian Lamb Fabric," "Seal Fabric," "Hudson Seal Fabric," "Broadtail Fabric," and "Ombre Krimmer Fabric"—accompanied by depictions of women wearing coats which appeared to have been made of the peltries of such animals—that the coats were made of the peltries of the various animals referred to, or of the fur or hair thereof;

When in fact such coats were made entirely of textile fabrics composed of various combinations of rayon, cotton, silk and ordinary wool fiber;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the composition of such coats, thereby causing purchase thereof as result of such mistaken belief:

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.

As respects the use of the word "fabric" in such terms as "Fur Fabric," "Persian Lamb Fabric," etc., to designate and describe women's coats made of fabrics so manufactured as to simulate and closely resemble the peltries of the animals referred to, though in fact made entirely of textile fabrics composed of various combinations of rayon, cotton, silk and ordinary wool fiber: A contention that use of said word along with other descriptive words, as above indicated, was sufficient to apprise prospective purchasers of the fact that the coats were fabric or cloth rather than fur coats, and that any possibility of deception was removed through use of other statements in seller's advertisements including, in most cases, statement of the materials of which the coats were made, was not tenable as it does not preclude the belief or impression that the fabrics in question are made of the fur or hair of fur-bearing animals, and other statements

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referred to do not usually appear in immediate connection with the descriptive terms and would frequently escape the attention of the prospective purchaser.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. L. E. Creel, Jr. for the Commission.

Mr. F. P. Keiper, of Chicago, Ill., 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 Montgomery Ward & Co., Inc., a corporation, hereinafter referred to as respondent, has 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. Respondent, Montgomery Ward & Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 619 West Chicago Avenue, Chicago, Ill.

PAR. 2. Respondent is, and for more than two years last past, has been engaged in the operation of a mail order business. Among the articles sold by respondent are ladies fabric coats and other garments, which have been and are sold and distributed in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business, respondent causes and has caused said products when sold to be shipped from its place of business in the State of Illinois to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said fabric 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 its business as aforesaid in connection with the offering for sale and sale of certain of its fabric garments, respondent has advertised and now advertises said garments by means of catalogs and other written or printed advertising which have been and are now disseminated to customers and prospective customers located in the various States of the United States. Among and typical of the descriptive names given to various garments described in said advertisements are: Ombre Kerami Fabric, Krim-

mer Fabric, Broadtail Fabric, Nu-Seal Fabric, Persian Fabric, Imported Persian Lamb Fabric, Finest Imported Black Persian Lamb Fabric, Hudson Seal Fabric, and Persian Lamb Fabric.

PAR. 4. The descriptive phrases employed by respondent as aforesaid are composed of the names of animals or words resembling names of animals which are well known to the purchasing public as being used extensively in the manufacture of fur garments, combined with the word "Fabric." The fabrics used in making the garments hereinabove described are made to simulate, and have the appearance of being made from, the peltries of the various designated animals or from the hair or wool of such animals.

Respondent further employs, in connection with its advertising in its catalogs, pictorial representations of women wearing garments which have the appearance of furs which serve further to emphasize the resemblance of said fabric garments to fur garments.

PAR. 5. In the manner and by the means aforesaid, the respondent has represented and now represents that said fabric garments sold and distributed by it as aforesaid are made from the peltries of said various animals or from the hair or wool taken from said animals.

In truth and in fact, said fabric garments are not made from the fur or peltries of animals nor are they made from fabrics composed of the hair or wool of the various animals used in describing the various garments. Said garments are on the contrary made of fabrics composed of various combinations of rayon, cotton, silk and ordinary wool fibers.

PAR. 6. The use by respondent of the names of the various fur-bearing animals or of words resembling such names in describing its said garments, although accompanied by the word "Fabric," has the tendency and capacity to and does confuse, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that its said garments are made from animal peltries or from the hair or wool taken from the animals described, and because of such erroneous and mistaken belief so engendered, has caused and induced and now causes and induces the purchase by the purchasing public of substantial quantities of respondent's said garments.

PAR. 7. The aforesaid acts and practices of the respondent 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 19, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Montgomery Ward & Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such 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 complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; 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. The respondent, Montgomery Ward & Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 619 West Chicago Avenue, Chicago, Ill. Respondent is now and for many years last past has been engaged in the operation of a mail order business. Among the made articles of merchandise sold and distributed by respondent are women's fabric coats.

PAR. 2. Respondent causes and has caused its merchandise, including such fabric coats, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its merchandise 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 its business and for the purpose of inducing the purchase of its coats, respondent advertises such coats by means of catalogs which are widely distributed among prospective purchasers throughout the United States. Among the coats so advertised and sold by respondent are certain coats designated by respondent generally as "fur fabric" coats, such coats being made of

fabrics manufactured in such manner as to resemble the peltries of certain fur-bearing animals. In addition to the general designation of "fur fabric," respondent uses other terms to describe such coats, including the terms "Persian Lamb Fabric," "Seal Fabric," "Hudson Seal Fabric," "Broadtail Fabric," and "Ombre Krimmer Fabric." The fabrics used in making these coats are made in such manner as to simulate the peltries of the various animals referred to and the fabrics do in fact closely resemble the peltries of such animals. Included in the advertisements in the catalogs are pictorial representations of women wearing coats which appear to have been made of the peltries of the various animals.

PAR. 4. The Commission finds that the term "fur fabric" and the various animal names as used by respondent constitute representations by respondent that such coats are made of the peltries of the various animals referred to or of the fur or hair of such animals.

PAR. 5. None of the coats so designated and described by respondent is made of the peltry of any animal, nor do any of such coats contain any fur or hair of the animals referred to. The coats are in fact made entirely of textile fabrics composed of various combinations of rayon, cotton, silk, and ordinary wool fibers. The Commission therefore finds that the term "fur fabric" and the various animal names as used by respondent to designate and describe its coats are misleading and deceptive.

PAR. 6. It is insisted by respondent that the use of the word "fabric" along with the other descriptive words is sufficient to apprise prospective purchasers of the fact that the coats in question are fabric or cloth coats rather than fur coats, and it is further insisted that any possibility of deception is removed through the use of various other statements in respondent's advertisements, including, in most cases, a statement of the materials of which the coats are made. The Commission is of the opinion, however, and finds, that the word "fabric" is insufficient to prevent deception or confusion as to the nature of such coats, as the word does not preclude the belief or impression that the fabrics in question are made of the fur or hair of fur-bearing animals. As to the other statements referred to by respondent, these statements do not usually appear in immediate connection with the descriptive terms and names and would frequently escape the attention of the prospective purchaser.

The Commission is of the opinion that in order to prevent deception of the public the designation of a fabric made in such manner as to resemble the peltry of a fur-bearing animal should be such as to clearly disclose that such fabric is not made of fur but merely re-

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sembles the peltry of a fur-bearing animal, as, for example, "fur-like fabric" or "a fabric made to simulate fur." The Commission is of the further opinion that when names of fur-bearing animals are used in connection with respondent's coats, such names should be immediately accompanied by another word or words disclosing that the fabric referred to is merely an imitation of the peltry of the animal named, as, for example, "Imitation Persian Lamb," "Imitation Seal," etc.

PAR. 7. The Commission finds further that the use by respondent of the term "fur fabric" and of the aforesaid animal names, as set forth herein, to designate and describe respondent's coats has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the composition of such coats, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such coats as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent as herein found are all to the 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, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Montgomery Ward & Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of women's coats and other garments in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "fur fabric," or any other term of similar import, to designate or describe any fabric which is not in fact made from

the fur or hair of a fur-bearing animal; provided, however, that in designating a textile fabric which is made in such manner as to resemble the peltry of a fur-bearing animal there may be used such terms as "fur-like fabric," "fabric made to simulate fur," or other similar terms which clearly disclose that such fabric is not made of fur but merely resembles the peltry of a fur-bearing animal.

2. Using the words "Persian Lamb," "Seal," "Hudson Seal," "Broadtail," or "Krimmer," or any other word which is indicative of a fur-bearing animal, to designate or describe any coat or other garment which is not in fact made from the peltry of the animal named; provided, however, that when used to designate a coat or other garment made of a textile fabric which is manufactured in such manner as to resemble the peltry of the animal named, such words may be used if immediately accompanied by another word or words disclosing that the fabric of which such coat or other garment is made is merely an imitation of the peltry of the animal named, as, for example, "Imitation Persian Lamb," "Imitation Seal," etc.

3. Representing in any manner or by any means that coats or other garments made from textile fabrics are made from the peltries of fur-bearing animals or from the fur or hair of such animals.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

It is further ordered, That no provision of this order shall be construed as relieving respondent in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the authorized rules and regulations thereunder.

IN THE MATTER OF

ANDREW J. LYTTLE AND RICHARD CARL LYTTLE, TRADING AS VOCATIONAL PLACEMENT BUREAU, DEBTORS FINANCE BUREAU AND BUREAU OF RECORDS OF EMPLOYMENT, AND WILLIAM EDGAR SPICER

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4829. Complaint, Aug. 31, 1942—Decision, Sept. 28, 1943

Where two individuals, engaged in operation of a collection agency under trade names "Vocational Placement Bureau" and "Bureau of Records of Employment," and, in connection therewith, in interstate sale and distribution of printed mailing post cards or folders for use in locating delinquent debtors which, (1) were composed of two units, i. e., an address card with space for inserting address of person from whom information was sought, to be returned to "Bureau of Records of Employment" at the Washington, D. C., address of their associate; and a return information card; (2) advised addressee, over signature as purported "Registrar," that the information was required by the "Bureau" to classify persons with respect to qualifications for employment at the most favorable wage, that his care in supplying the details would facilitate its work, and that "this department is not affiliated with any local or field offices"; (3) set forth on one side of information card its aforesaid trade names and Washington, D. C., address, and on the other, on a detachable stub, under caption "Employment Voucher," the words "Registration Number" followed by number, "Regional Agent For Eastern Area," and instruction to "Keep this stub," and under said stub blanks for the debtor's name, address, phone number, bank, wage or salary, home ownership, employer, marriage status, description, work, and experience; and (4) set forth opposite caption "Registrants," requests as to kind of work desired, physical defects and number of dependents; and, at the end, such matter as "Form V-T-B-100M-1-42," followed by same number given under employment voucher;

Making use of a plan under which the particular purchaser stamped and addressed the address card to the debtor at his last known address or to someone likely to have information concerning him, and forwarded the units to aforesaid individual in Washington, D. C., who mailed them and returned the information received to aforesaid two individuals at their place of business in Akron, for forwarding to the particular purchaser-customer identified by a code number stamped thereon—

- (a) Falsely represented, through use of said mailing cards, and placed in the hands of their customers a means of falsely representing, to debtors and others, that the request came from an agency or branch of the United States Government, including the Selective Service Administration which had from time to time theretofore issued questionnaires, forms for occupational deferment and classification notices designating persons involved as the "Registrant," and forms involving employment information, qualifications and preferences; and through use of such designation, and other designations such as trade name employed, words "Registrant," "Regional Area,"