

Complaint

IN THE MATTER OF

BEN KALISH

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

Docket 4974. Complaint, May 29, 1943—Decision, Mar. 2, 1944

Where an individual engaged in the manufacture and interstate sale and distribution of furs and fur garments; in advertisements on letterheads and invoices and in other ways—

- (a) Represented, through use of words "Black Kid Caracul" that certain of his said products were made from lamb peltries of the Karakul breed of sheep and characterized by open type curl, when in fact they were made from kid peltries; and
- (b) Represented through use of such words and phrases as "Silak Seal," "Silak Beaver," "Beaver," "Mendoza Beaver," and "Beaver Coney" that certain furs and fur garments manufactured from rabbit skins were made from seal and beaver peltries;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing it because of such mistaken belief, to purchase his said products:

Held, That such acts, practices and methods, 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. Miles J. Furnas*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Reuben B. Shemitz, 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 Ben Kalish, an individual, herein-after referred to as respondent, has violated the provisions of the 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, Ben Kalish, is an individual, engaged in manufacturing and selling furs and fur garments. His principal office and place of business are at 330 Seventh Avenue, New York, N. Y.

Respondent causes and has caused said furs and fur garments, when sold by him, to be transported from his place of business in the State of New York to various purchasers thereof at their respective points of location in the various 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 furs and fur garments in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business respondent advertised certain of his furs and fur garments by means of letterheads, invoices and in various other ways, as "Black Kid Caracul" and "Cara-

cul." Such words and phrases constituted a representation that the furs and fur garments so advertised were made from the peltries of a species of lamb belonging to the Karakul breed of sheep, which peltries are characterized by an open type curl. In truth and in fact, said furs and fur garments were not manufactured from such peltries but were manufactured from kid peltries.

PAR. 3. Respondent also advertised certain of its furs and fur garments, distributed as aforesaid, by means of invoices, letterheads and various other ways, as "Silak Seal," "Silak Beaver," "Beaver," "Mendoza Beaver," and "Beaver Coney." Such words and phrases constituted a representation that the furs and fur garments so advertised were made from seal and beaver peltries, respectively. In truth and in fact, said furs and fur garments were not made of seal or beaver peltries but were manufactured from rabbit skins.

PAR. 4. There is a demand on the part of a substantial portion of the purchasing public for furs and fur garments made of seal peltries and beaver peltries and also for furs and fur garments made of karakul peltries.

PAR. 5. The use by the respondent of the foregoing false, deceptive and misleading representations with respect to his furs and fur garments, disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and has induced a portion of the purchasing public because of such erroneous and mistaken belief to purchase the respondent's said furs and fur garments.

PAR. 6. The aforesaid acts, practices and methods of 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 May 29, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Ben Kalish, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the issuance of the complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw his answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was dictated into the record by respondent's attorney at a hearing in this proceeding. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and substitute answer, 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. Respondent, Ben Kalish, is an individual, engaged in manufacturing and selling furs and fur garments. His principal office and place of business are at 330 Seventh Avenue, New York, N. Y.

Respondent causes and has caused said furs and fur garments, when sold by him, to be transported from his place of business in the State of New York to various purchasers thereof at their respective points of location in the various 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 furs and fur garments in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business respondent advertised certain of his furs and fur garments by means of letterheads, invoices and in various other ways, as "Black Kid Caracul" and "Caracul." Such words and phrases constituted a representation that the furs and fur garments so advertised were made from the peltries of the species of lamb belonging to the Karakul breed of sheep, which peltries are characterized by an open type curl. In truth and in fact, said furs and fur garments were not manufactured from such peltries but were manufactured from kid peltries.

PAR. 3. Respondent also advertised certain of his furs and fur garments, distributed as aforesaid, by means of invoices, letterheads and various other ways, as "Silak Seal," "Silak Beaver," "Beaver," "Mendoza Beaver," and "Beaver Coney." Such words and phrases constituted a representation that the furs and fur garments so advertised were made from seal and beaver peltries, respectively. In truth and in fact, said furs and fur garments were not made of seal or beaver peltries but were manufactured from rabbit skins.

PAR. 4. There is a demand on the part of a substantial portion of the purchasing public for furs and fur garments made of seal peltries and of beaver peltries and also for furs and fur garments made of Karakul peltries.

PAR. 5. The use by the respondent of the foregoing false, deceptive and misleading representations with respect to his furs and fur garments, disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and has induced a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the respondent's said furs and fur garments.

CONCLUSION

The acts, practices, and methods 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

38 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in the complaint and states that he waives all intervening procedure and further hearing as to said facts, 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, Ben Kalish, an individual, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of furs and fur garments in commerce, as, "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Caracul" or any simulation thereof, either alone or in conjunction with any other word or words, to designate or describe furs or fur garments made from kidskin or from the peltries of any animals other than lambs or sheep of the Karakul breed.

2. Designating or describing the peltries of which furs or fur garments are made in any way other than by the use of the correct name of the peltries as the last word of the description; and where a fur or fur garment is made of peltries which have been dyed, the correct name of the peltries shall be immediately preceded, in letters of at least equal conspicuousness, by the word "dyed"; and in the case of peltries which have been dyed to simulate other peltries, the word "dyed" may be compounded with the name of the peltries simulated, as, for example, "Seal-Dyed Rabbit" or "Beaver-Dyed Rabbit."

3. Misrepresenting in any manner or by any means the peltries of which furs or fur garments are made.

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

Complaint

IN THE MATTER OF

H. D. SHIPP COMPANY, INC. ET AL.

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

Docket 4986. Complaint, June 25, 1943—Decision, Mar. 14, 1944

Where a corporation and its president, who controlled its sales policy and advertising program, engaged in the interstate sale and distribution of its "Sneaker" drinking glass; in advertisements in newspapers, periodicals, circulars and other media—

Falsely represented that their said product was a tasteless glass, the use of which would camouflage and eliminate obnoxious tastes of liquids administered therefrom, through such statements as "WONDERFUL NEW INVENTION MEETS DEMANDS OF MILLIONS NOW AT LAST! Science gives us a brand new discovery that enables everyone to easily and enjoyably drink ill-tasting medicines, oils, etc." and "will camouflage the flavor of oils, medicines or liquors by the formation of a liquid capsule, as the distasteful fluid is completely surrounded by your favorite drink";

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true, as a result whereof it purchased their said product:

Held, That said acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. R. P. Bellinger for the Commission.

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 H. D. Shipp Company, Inc., a corporation, and H. D. Shipp, individually, and as President of H. D. Shipp Company, Inc., hereinafter referred to as respondents, have violated the provisions of the 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, H. D. Shipp Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal place of business located at 12 South Capitol Avenue, Indianapolis, Ind. Respondent, H. D. Shipp, is an individual, and is President of the corporate respondent above named and as such dominates and controls the sales policy and advertising program thereof, including the acts and practices hereinafter complained of. His business address is the same as that of the corporate respondent above shown.

PAR. 2. Respondents are now and for several years last past have been engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of a drinking glass designated as "Sneaker," designed to camouflage or eliminate the objectionable tastes of liquids drunk therefrom.