

Complaint

IN THE MATTER OF
JOSEPH SPERLING, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5113. Complaint, Jan. 10, 1944—Decision, Apr. 11, 1945*

Where a corporation engaged in buying and making ladies' fur coats and garments and in the sale thereof to purchasers in several states and the District of Columbia—Represented that certain fur coats were made from leopard peltries, through statements on tags affixed thereto and in radio continuities and newspaper and other advertisements including, as typical, the statement “ * * There is variety in the Leopard hide * * This kingly animal is judged by his markings. That is why you'll particularly appreciate these superb South American Spotted Leopard fur coats * * * Choose this long wearing and flattering fur”;

The facts being that the garments in question were not made from leopard pelts but from South American spotted cat pelt, garments of which are practically indistinguishable by the purchasing public from the long highly esteemed and more costly leopard and, when not designated South American spotted cat, are readily believed to be and accepted as leopard;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, on account of which belief it purchased a substantial volume thereof:

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

Mr. Carrel F. Rhodes for the Commission.

Mr. Fulton Brylawski, of Washington, D. C., 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 Joseph Sperling, 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, Joseph Sperling, Inc., is a corporation, organized under the laws of the State of Delaware, with its principal office and place of business located at 709 13th Street, N. W., Washington, D. C.

PAR. 2. Respondent is now, and for several years last past has been, engaged in buying, making and selling ladies' fur coats and garments.

Respondent causes its said products when sold, to be transported from its place of business in the District of Columbia to purchasers thereof located in the several States of the United States and in the District of Columbia. Respondent maintains, and for several years last past has maintained, a course and current of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. South American Spotted Cat pelts and garments made therefrom resemble but are not equal in quality nor comparable in value to

Leopard pelts and garments made from such pelts. Coats and garments made from the peltries of South American Spotted Cat have the appearance and feel of garments made from the peltries of the Leopard, and are by the purchasing public practically indistinguishable from garments made of Leopard pelts. By reason of the similarity in appearance and feel of garments made from peltries of the South American Spotted Cat and not so designated, they are readily believed to be and accepted by the purchasing public as being made from Leopard pelts.

PAR. 4. Garments made from the pelts of Leopards have for many years held, and still hold, great public esteem and confidence, and because of their luster and superior lasting qualities command a higher price than garments made from the peltries of the South American Spotted Cat.

PAR. 5. In the course and conduct of its aforesaid business, in connection with the offering for sale, sale and distribution of its products in commerce, and for the purpose of inducing the purchase thereof by the public, respondent has made, or caused to be made, various statements, and representations descriptive of its products and the material of which they are composed on tags affixed to said products and by radio continuities and advertisements in newspapers and other media distributed among customers and prospective customers located in the various States of the United States and in the District of Columbia.

Many of the statements and representations made by respondent designating and describing said products and the furs from which they are made are false and misleading. Among and typical but not exclusive of such false and misleading statements and representations are the following:

* * There is variety in the Leopard hide * * This kingly animal is judged by his markings. That is why you'll particularly appreciate these superb South American Spotted Leopard fur coats displayed now at Joseph Sperling * * Washington's oldest exclusive furriers * * at only \$295 * * Choose this long wearing and flattering fur * * at Joseph Sperling, 709 13th Street, N. W., Washington, D. C.

PAR. 6. Through the use of the statements and representations herein above set forth respondent represents that its said fur coats are made from Leopard peltries. In truth and in fact respondents said fur coats are not made from Leopard peltries.

PAR. 7. The use by the respondent of the foregoing acts and practices has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and that respondent has truthfully represented the furs from which its coats and garments are made. On account of these erroneous beliefs, a considerable number of the consuming and purchasing public have purchased a substantial volume of respondent's said products.

PAR. 8. 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

Fursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 10, 1944, issued and subsequently served its complaint in this proceeding upon respondent, Joseph Sperling,

Inc., a corporation, charging it 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 the respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said 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, Joseph Sperling, Inc., is a corporation, organized under the laws of the State of Delaware, with its principal office and place of business located at 709 Thirteenth Street, N. W., Washington, D. C. It is now, and for several years last past has been, engaged in buying, making, and selling ladies' fur coats and garments.

PAR. 2. In the course and conduct of the aforesaid business, respondent causes its products, when sold, to be transported from its place of business in the District of Columbia to purchasers thereof located in several States of the United States and in the District of Columbia. Respondent maintains, and for several years last past has maintained, a course and current of trade in said products in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. In connection with the offering for sale, sale, and distribution of its products as aforesaid, and for the purpose of inducing the purchase thereof by the public, respondent has made, or caused to be made, various false and misleading statements and representations purporting to be descriptive of its products and the material of which they are composed by means of tags affixed to said products, by radio continuities, and by advertisements in newspapers and other media distributed among customers and prospective customers located in various States of the United States and in the District of Columbia. Among and typical of such statements and representations are the following:

* * There is variety in the Leopard hide * * This kingly animal is judged by his markings. That is why you'll particularly appreciate these superb South American Spotted Leopard fur coats displayed now at Joseph Sperling * * Washington's oldest exclusive furriers * * at only \$295 * * Choose this long wearing and flattering fur * * at Joseph Sperling, 709 13th Street, N. W., Washington, D. C.

PAR. 4. Through the use of the foregoing statements and representations, respondent represents that the fur coats so described are made from leopard peltries, whereas in truth and in fact respondent's said fur coats are not made from leopard peltries.

PAR. 5. Garments made from leopard pelts have for many years held, and still hold, great public esteem and confidence, and because of their luster and superior lasting qualities command a higher price than garments made from the peltries of the South American spotted cat. Said South American spotted cat pelts resemble leopard pelts, but such spotted

cat pelts and garments made therefrom are not equal in quality or comparable in value to leopard pelts and garments made from such pelts. Coats and garments made from the peltries of South American spotted cat have the appearance and feel of garments made from leopard peltries and are practically indistinguishable by the purchasing public from garments made of leopard pelts. By reason of the similarity in appearance and feel of garments made from peltries of the South American spotted cat and not so designated, they are readily believed to be and accepted by the purchasing public as being made from leopard pelts.

PAR. 6. The use by respondent of the aforesaid false and misleading statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and that respondent has truthfully represented the furs from which its coats and garments are made. On account of these erroneous beliefs, numbers of the consuming and purchasing public have purchased a substantial volume of respondent's said products.

CONCLUSION

The aforesaid acts and practices of respondent 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 and the answer of the respondent in which answer respondent admitted all of the material allegations of fact set forth in said complaint and waived 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, Joseph Sperling, Inc., a corporation, 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 furs or fur garments in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "leopard," or any simulation thereof, either alone or in conjunction with any other word or words, to designate furs or fur garments not made from the peltries of the leopard; or designating or describing furs or fur garments in any way other than by the use of the true name of the fur as the last word of the designation or description; provided, that if a fur is so dyed or processed as to simulate another fur and the name of the animal whose fur is so simulated be given, such name shall be immediately followed by and compounded with the words "dyed" or "processed," together with the true name of the animal producing the fur as the last word of the description, and all words of such designation shall be equally conspicuous.

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.

Complaint

IN THE MATTER OF
JASPER W. EFIRD, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (c) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY ACT OF JUNE 19, 1936

Docket 3955. Complaint, Nov. 21, 1939—Decision, Apr. 14, 1945

Where an individual who (1) together with his four (later—three) brothers or their immediate families, controlled 38 corporations engaged in the operation as a family enterprise of retail department stores in North and South Carolina and Virginia and acted as vice president, director and buyer thereof; (2) received substantial amounts in salary and dividends therefrom; (3) made use of a New York office maintained in his name for the receipt and execution of orders transmitted to him for or by said corporate units, approving or negotiating orders placed by managers and buyers of different units, subject to his approval, on occasional trips to said city, and making some purchases directly for said units without requisition; (4) listed on the stationery employed by him in such purchasing said various businesses and their locations, and was in turn listed on their order blanks and stationery as their New York office, and so listed himself in various circulars and instructions sent to them; (5) exacted discounts or allowances in lieu thereof when able in negotiating with manufacturers and sellers for the most favorable prices on such purchases, shipments of which were as a rule made directly to the particular store involved; and (6) made use of funds thus received in paying the expenses of said office—

- (a) Received, while thus acting in his capacity as an officer of said corporate units and in their behalf, commissions and payments and allowances in lieu thereof from manufacturers and sellers of merchandise purchased for or in behalf of said units and used for their sole benefit in maintaining said buying office for them; and,

Where said corporate units—

- (b) Received as aforesaid such commissions and allowances in lieu thereof upon purchases made for them, and, in some instances in which said individual was successful in beating down a price of a manufacturer or seller to the point where the commissions which otherwise would have been paid were not permitted by the price allowed, but, instead, were included in the discounts allowed on the transaction, benefitted directly:

Held, That in receiving and accepting brokerage fees or commissions, or allowances and discounts in lieu thereof, from manufacturers and sellers upon purchases of merchandise as hereinabove found, said individual and corporations violated the provisions of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before Mr. John P. Bramhall, trial examiner.

Mr. Frank Hier for the Commission.

Guthrie, Pierce & Blakeney, of Charlotte, N. C., for respondents.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties named in the caption hereof and hereinafter more particularly designated