

Complaint

42 F. T. C.

IN THE MATTER OF

ATHENSON & PASSIN, INC.

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

Docket 5334. Complaint, June 16, 1945—Decision, May 10, 1946

Where a corporation engaged in the manufacture and interstate sale and distribution of fur products—

Represented through the depiction of a native African and a treed leopard on the tags or labels attached to such products, and through the use of designations "Leopard Cat," "Leopard Cat Tails," and "Leopard Cat Paws" to refer thereto in newspaper and periodical advertisements and in invoices and sales promotion material, that said products were made from the peltries of the leopard;

When in fact they were not made of leopard peltries, for the products of which there is a demand on the part of a substantial portion of the retail merchants and of the purchasing public throughout the United States, but were made of the peltries of the South American spotted cat, or ocelot, or some animal other than leopard;

With effect of misleading and deceiving wholesaler and retailer purchasers and of placing in their hands a means whereby they might and did mislead and deceive the purchasing public as to the actual peltries used in the manufacture of the aforesaid products, whereby substantial quantities of its fur products were purchased in the belief that they were made wholly or in part of the peltries of the leopard:

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. Clyde M. Hadley*, trial examiner.

Mr. DeWitt T. Puckett and *Mr. G. M. Martin* for the Commission.

Mr. Isidore Meyer, 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 Athenson & Passin, 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. The respondent Athenson & Passin, Inc., is a corporation organized, existing, and doing business under and by virtue

of the laws of the State of New York and has its principal office and place of business at 330 Seventh Avenue, New York, N. Y. Respondent is now and for more than 1 year last past has been engaged in the manufacture, sale, and distribution of fur products.

Respondent causes and has caused said fur products during all the time mentioned herein, when sold by it, to be transported from 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 fur products among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of certain of its said fur products, the respondent has represented and now represents by means of a depiction or picturization of a native African and a treed leopard on the tags or labels attached to such fur products, and in advertisements in newspapers and magazines of Nation-wide circulation and on its invoices and sales promotion material wherein certain of these said garments were designated or described as "Leopard," "Leopard Cat," "Leopard Cat Tails," and "Leopard Cat Paws," that these fur garments were made of the peltries of the leopard.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented and now represents that said fur products are made from the peltries of the leopard. In truth and in fact said products are not made of leopard peltries but are made of the peltries of the South American Spotted Cat, or Ocelots, or some animal other than leopard.

PAR. 4. There is a demand on the part of a substantial portion of the retail merchants and of the purchasing public throughout the United States for fur products made from the peltries of the leopard.

PAR. 5. The use by the respondent of the acts and practices hereinabove described has the capacity and tendency to mislead and deceive and does mislead and deceive wholesalers and retailers who purchase respondent's said fur products as to the true peltries used in the manufacture of said products. By said acts and practices respondent also places in the hands of the purchasers of its said fur garments for resale a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the actual peltries used in the manufacture of the aforesaid products. As a result of this deception, substantial quantities of respondent's fur products are purchased in

the belief that they are made wholly or in part of the peltries of the leopard.

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 June 16, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, Athenson & Passin, 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 respondent's answer thereto, 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, the proceeding regularly came on for final hearing before the Commission upon 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. The respondent, Athenson & Passin, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and has its principal office and place of business at 330 Seventh Avenue, New York, N. Y. Respondent is now and, for more than 1 year last past has been engaged in the manufacture, sale, and distribution of fur products.

Respondent causes and has caused said fur products, during all the time mentioned herein, when sold by it, to be transported from 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 fur products among and between the various States of the United States and in the District of Columbia.

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PAR. 2. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of certain of its said fur products, the respondent has used and now uses a depiction or picturization of a native African and a treed leopard on the tags or labels attached to such fur products, and in advertisements in newspapers and magazines of Nation-wide circulation, and on its invoices and sales promotion material, has referred to and designated such fur products as "Leopard Cat," "Leopard Cat Tails," and "Leopard Cat Paws."

PAR. 3. Through the use of said depiction or picturization and the use of the statements and representations hereinabove set forth, the respondent has represented and now represents that said fur products are made from the peltries of the leopard. In truth and in fact, said products are not made of leopard peltries but are made of the peltries of the South American Spotted Cat, or Ocelots, or some animal other than leopard.

PAR. 4. There is a demand on the part of a substantial portion of the retail merchants and of the purchasing public throughout the United States for fur products made from the peltries of the leopard.

PAR. 5. The use by the respondent of the acts and practices hereinabove described has the capacity and tendency to mislead and deceive and does mislead and deceive wholesalers and retailers who purchase respondent's said fur products as to the true peltries used in the manufacture of said products. By said acts and practices, respondent also places in the hands of the purchasers of its said fur garments for resale a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the actual peltries used in the manufacture of the aforesaid products. As a result of this deception, substantial quantities of respondent's fur products are purchased in the belief that they are made wholly or in part of the peltries of the leopard.

CONCLUSION

The aforesaid acts, practices, and methods of respondent, 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 and the answer of the respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint and states that it

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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, Athenson & Passin, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of fur products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "leopard," either alone or in conjunction with other words, to designate, describe, or refer to any product not made of leopard peltries; or otherwise representing, either through words or pictorial representations, that any product is made of leopard peltries when such is not the fact.

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.

Syllabus

IN THE MATTER OF

ISADORE PUKEL TRADING AS I. PUKEL

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

Docket 5399. Complaint, Nov. 2, 1945—Decision, May 10, 1946

Where an individual engaged in competitive interstate sale and distribution of musical vanity chests, toiletries, fountain pens, and other articles—

(a) Furnished various plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes for the sale of said merchandise, and the distribution to operators and to members of the public of push cards, order blanks, designations of said merchandise, and a circular letter explaining a plan of selling it and allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public, under which, as typical, a customer who succeeded in selecting from 79 feminine names displayed on card, the name corresponding to that concealed under card's master seal, received for the chance determined sum paid by him in accordance with number punched, a musical vanity chest; and thereby—

Supplied to and placed in the hands of operators, who made use of such push cards in selling said merchandise in accordance with the aforesaid sales plan, involving sale of a chance to produce the articles involved at much less than their normal retail price, and under which whether a purchaser received an article or nothing for his money, and amount he paid for the merchandise or chance was determined purely by chance—the means of conducting lotteries in the sale of his merchandise; contrary to an established public policy of the United States Government and in competition with many who are unwilling to use methods involving chance or contrary to public policy, and refrain therefrom;

With result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell his merchandise in preference to that of his said competitors, and with tendency and capacity to unfairly divert substantial trade in commerce to him from them;

(b) Falsely represented through statement in advertising literature "additional surprise gift," "free surprise gift," that the article referred to was given free or without cost to the recipient; notwithstanding the fact that he gave no merchandise free or unconditionally and the so-called "free surprise gift" was given only as compensation to the operators of his sales plan;

(c) Falsely represented through statement "This prize \$15," in circulars distributed to the purchasing public, that chests referred to had a retail value of said amount; when in fact said amount was a fictitious and exaggerated price;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true, and inducing its purchase of said merchandise:

Held, That such acts and practices, under the circumstances set forth, were