

Syllabus

IN THE MATTER OF

PHILIP SHLANSKY & BRO., 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 5274. Complaint, Feb. 9, 1945—Decision, June 17, 1946

When garments closely simulating or resembling the peltries of animals bear labels which, because of the names and illustrations thereon, suggest such animals or the country of their origin, and which are either unaccompanied by words disclosing that such garments are in fact made of fabric rather than peltries, or bear descriptive phrases in such small type and in such manner that the purchasing public may not be readily apprised of the true nature of the material, such practice has the tendency and capacity to confuse, mislead, and deceive the purchasing public into the belief that such garments are made from the peltries or from the wool of such animals; and all the more when accompanied by pictorial representations of models wearing fur coats, and advertising phraseology which implies to a reader not familiar with peltries that said garments may be genuine fur garments.

There is a marked preference on the part of a substantial portion of the purchasing public for coats and other garments made from the peltries of fur-bearing animals, such as Persian lambs, seals, and camels, and from the wool of such animals, over garments made from fabrics composed of ordinary wool or composed of a mixture of ordinary wool and other materials.

Where a corporation and six partners who took over and continued the business thereof, engaged in the manufacture and in the interstate sale and distribution of ladies' coats made from certain fabrics which, composed of ordinary wool and cotton or ordinary wool and rayon or cotton and rayon, were designed to resemble or simulate the fur of various animals—

- (a) Made use, on tags and labels furnished by the fabric manufacturers and in advertising circulars and newspaper mats, of trade names which had the sound and appearance of various names which were associated in the minds of the purchasing public with southeastern European, southwestern Asiatic, and far-northern countries where the better known fur-bearing animals are found, including the names Alaskan Kurl, Arctic Kurl, Sitka Kurl, Ombre-Karabaa, Nu Persian, Crown Persian, Persia Laine, Persiana, Ural, Kara Kurl, Krim Kurl, Camalaine and Lammys;
- (b) Falsely represented through use of such trade names and depictions on many of such labels of a lamb, lama, and arctic scenes, and, in said advertising, of models wearing fur coats, along with such descriptive phrases as "fur fabric," that their fabrics and garments made therefrom were made from the peltries of Persian lambs, caraculs, and other fur-bearing animals or from the wool of such animals; and
- (c) Failed to reveal, in connection with the sale and distribution of its said garments made from fabrics containing a substantial percentage of rayon, such content of rayon, which, when manufactured into a fabric simulating the peltry or fur of the Persian lamb, caracul, or seal and other wool or fur-bearing animals, is accepted by the purchasing public as peltries or wool

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taken from such animals or fabric manufactured from such fur or wool, in the absence of true designation;

With effect of placing in the hands of uninformed and unscrupulous jobbers and retail dealers a means whereby they were enabled to mislead members of the purchasing public, and with the result of misleading a substantial portion thereof into the mistaken belief that said garments were made from the peltries of fur- or wool-bearing animals or from wool taken from such animals, and thereby inducing its purchase of substantial quantities of such products:

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.

Mr. DeWitt T. Puckett for the Commission.

Mr. Martin H. Young, of New York City, 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 Philip Shlansky & Bro., Inc., a corporation, Philip Shlansky, president and treasurer, and Lewis Shlansky, secretary of said corporation; and Philip Shlansky, Lewis Shlansky, Bessie Shlansky, Ida Shlansky, Morris Shlansky, and Selig Shlansky, individuals and copartners trading under the firm name of Philip Shlansky & Bro., hereinafter referred to as respondents have 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 Philip Shlansky & Bro., Inc., is a corporation organized under and by virtue of the laws of the State of New York with its principal office located at 500 Seventh Avenue, in the city and State of New York. Philip Shlansky was the president and treasurer, and Lewis Shlansky the secretary of said corporation, and said officers formulated, determined, controlled and executed all of the policies and business transactions of said corporation.

Philip Shlansky, Lewis Shlansky, Bessie Shlansky, Ida Shlansky, Morris Shlansky, and Selig Shlansky are individuals and copartners trading under the firm name and style of Philip Shlansky & Bro. with their principal office and place of business at 500 Seventh Avenue in the city and State of New York. Said copartnership took over and is now continuing the conduct of the business theretofore operated by the respondent corporation. Said corporate respondent and said in-

dividual respondents acted together and in cooperation with each other in doing the acts and things hereinafter alleged.

PAR. 2. Said respondent corporation had been for many years, and said individuals are now and have been for more than 1 year last past engaged in the manufacture, sale, and distribution of ladies' coats and other garments from certain fabrics which are designed to resemble or simulate in appearance the fur of various animals. Respondents caused and do now cause said products, when sold by them, to be transported from their place of business in the State of New York to various purchasers thereof located in the various States of the United States, other than the State of New York, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained a course of trade in their said 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 their business, respondents purchase various fabrics from a number of manufacturers thereof who also furnish to respondents various tags and labels intended to be used in and affixed to the garments manufactured by respondents and sold as aforesaid. For the purpose of inducing the purchase of their said garments, respondents also distribute in commerce as aforesaid, advertising material consisting of circulars and newspaper mats. Among the trade names used by respondents on said labels, tags, and advertising material, as aforesaid, were and are the following:

Alaskan Kurl	Nu Persian	Kurly Mo
Aloshan Kurl	Crown Persian	Krim Kurl
Arctic Kurl	Persia Laine	Camalaine
Sitka Kurl	Persiana	Lammys
Hudson Fabric	Newral	Inca Paca
Hudson Fabric.Seatex	Ural	-----
Ombre-Karabaa	Kara Kurl	-----
Nuray	Pepporay	
Loomray	Glossray	

Many of said labels, in addition to the name, bear pictures of a lamb, the llama, and arctic scenes. All of said labels and tags are used on the garments manufactured by respondent from fabrics resembling the furs and peltries of genuine Persian lamb, Alaska seal, Caracul, and other wool- or fur-bearing animals. The peltries are used in the manufacture of genuine fur garments.

Said trade names have the sound and appearance of various names which are associated in the minds of the purchasing public with south-

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eastern European, southwestern Asiatic, South American, and far northern countries where the better-known fur-bearing animals are found. For example, Alaskan Kurl and Arctic Kurl will be associated in the minds of the purchasing public with far northern countries, and the seal and other fur-bearing animals inhabiting said countries. Crown Persian and other trade names, including the name Persia or any corruption thereof, convey to the minds of the purchasing public the thought of the genuine Persian lamb which is a high-priced peltry used in the manufacture of fur coats.

In their newspaper advertisements and other advertising material disseminated in commerce as aforesaid, respondents, in connection with stating the trade name, use illustrations of models wearing fur coats, and such descriptive phrases as "Fur Fabric."

When garments closely simulating or resembling the peltries of animals bear labels which, because of the names and illustrations thereon, suggest such animals or the country of their origin, and which are either unaccompanied by words disclosing that such garments are in fact made of fabric rather than peltries, or bear descriptive phrases in such small type and in such manner that the purchasing public may not be readily apprised of the true nature of the material, such practice has the tendency and capacity to confuse, mislead, and deceive the purchasing public into the belief that such garments are made from the peltries or from the wool of such animals. Said tendency and capacity to mislead and deceive, as aforesaid, is increased by means of the pictorial representations of models wearing fur coats, and advertising phraseology which implies to a reader not familiar with peltries that said garments may be genuine fur garments.

Through the use of the aforesaid labels, picturizations and other means not herein specifically set out, respondents represent and have represented that their fabrics and the garments made therefrom are made from the peltries of Persian lambs, Caraculs, and other fur-bearing animals or from the wool of such animals.

PAR. 4. The foregoing labels are false and misleading. In truth and in fact none of respondents' products is composed of the peltries of various fur- or wool-bearing animals, such as Persian lambs, Caraculs, and seals or camels, nor are they composed of the wool or fur of any such animals. All of said garments are manufactured from fabrics composed of ordinary wool and cotton, or ordinary wool and rayon, or cotton and rayon.

PAR. 5. There is a marked preference on the part of a substantial portion of the purchasing public for coats and other garments made from the peltries of fur-bearing animals, such as Persian lambs,

Caraculs, seals, or camels, and from the wool of such animals, over garments made from fabrics composed of ordinary wool or composed of a mixture of ordinary wool and other materials.

PAR. 6. A further practice on the part of respondents is the sale and distribution of garments, manufactured from fabrics simulating in appearance the peltry, wool, or fur of the Persian lamb, the Caracul, or the seal, or other wool- or fur-bearing animals, containing a substantial percentage of rayon, with labels attached to said garments made from such fabrics, without disclosing the rayon content of such fabrics and garments.

Rayon is a chemically manufactured fiber or fabric which may be so manufactured when woven into a fabric as to simulate the peltry, wool, or fur of the Persian lamb, the Caracul, or the seal and other wool- or fur-bearing animals, and when so manufactured, rayon has the appearance of peltries or wool taken from such animals or fabric manufactured from such fur or wool and is practically indistinguishable therefrom by the purchasing public. By reason of these qualities rayon when so manufactured as to simulate the peltries or wool or fur of such animals, or fabrics manufactured from such wool or fur, and not designated as rayon, is believed and accepted by the purchasing public to be the peltries of such animals or wool or fur taken from such animals.

PAR. 7. Through the use of the acts and practices herein set forth, the respondents also place in the hands of uninformed and unscrupulous jobbers and retail dealers a means and instrumentality whereby jobbers and retail dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 8. The use by the respondents of the aforesaid acts and practices has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' garments are made from the peltries of fur- or wool-bearing animals or from wool taken from such animals, when such is not the fact. Because of such erroneous and mistaken belief, the purchasing public has been induced to and has purchased substantial quantities of respondents' products.

PAR. 9. 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.

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REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 9, 1945, issued and subsequently served its complaint in this proceeding upon the respondents, Philip Shlansky & Bro., Inc., a corporation, Philip Shlansky, president and treasurer, and Lewis Shlansky, secretary of said corporation, and Philip Shlansky, Lewis Shlansky, Bessie Shlansky, Ida Shlansky, Morris Shlansky and Selig Shlansky, individually and as copartners trading under the firm name of Philip Shlansky & Bro., 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, the Commission, by order entered herein, granted respondents' 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 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 Philip Shlansky & Bro., Inc., is a corporation organized under and by virtue of the laws of the State of New York, with its principal office located at 500 Seventh Avenue, in the city and State of New York. Philip Shlansky was the president and treasurer, and Lewis Shlansky the secretary of said corporation, and said officers formulated, determined, controlled, and executed all of the policies and business transactions of said corporation.

Respondents Philip Shlansky, Lewis Shlansky, Bessie Shlansky, Ida Shlansky, Morris Shlansky, and Selig Shlansky are individuals and copartners trading under the firm name and style of Philip Shlansky & Bro., with their principal office and place of business at 500 Seventh Avenue in the city and State of New York. Said copartnership took over and is now continuing the conduct of the business theretofore operated by the respondent corporation. Said corporate respondent and said individual respondents acted together and in

cooperation with each other in doing the acts and things hereinafter set forth.

PAR. 2. Said respondent corporation had been for many years, and said individuals are now and have been for more than 2 years last past, engaged in the manufacture of ladies' coats and other garments from certain fabrics which are designed to resemble or simulate in appearance the fur of various animals, and in the sale and distribution of such garments. Respondents cause and have caused said products, when sold by them, to be transported from their place of business in the State of New York to various purchasers thereof located in the various States of the United States, other than the State of New York, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said 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 their business, respondents purchase various fabrics from a number of manufacturers thereof who also furnish to respondents various tags and labels intended to be used in and affixed to the garments manufactured by respondents and sold as aforesaid. For the purpose of inducing the purchase of their said garments, respondents also distribute in commerce as aforesaid advertising material consisting of circulars and newspaper mats. Among the trade names used by respondents on said labels, tags, and advertising material are the following:

Alaskan Kurl

Arctic Kurl

Sitka Kurl

Persia Laine

Persiana

Ural

Ombre-Karabaa

Nu Persian

Crown Persian

Kara Kurl

Krim Kurl

Camalaine

Lammys

Many of said labels, in addition to the name, bear pictures of a lamb, the llama, and Arctic scenes. Said labels and tags are used on the garments manufactured by respondents from fabrics resembling the furs and peltries of genuine Persian lamb, Alaska seal, Karakul, and other wool or fur bearing animals, which peltries are used in the manufacture of genuine fur garments.

Said trade names have the sound and appearance of various names which are associated in the minds of the purchasing public with southeastern European, southwestern Asiatic, and far northern countries where the better known fur-bearing animals are found. For example,

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Alaskan Kurl and Arctic Kurl will be associated in the minds of the purchasing public with far northern countries, and the seal and other fur-bearing animals inhabiting said countries. Crown Persian and other trade names, including the name Persia or any corruption thereof convey to the minds of the purchasing public the thought of the genuine Persian lamb which is a high priced peltry used in the manufacture of fur coats.

In their newspaper advertisements and other advertising material disseminated in commerce as aforesaid, respondents, in connection with stating the trade name, use illustrations of models wearing fur coats, and such descriptive phrases as "Fur Fabric."

When garments closely simulating or resembling the peltries of animals bear labels which, because of the names and illustrations thereon, suggest such animals or the country of their origin, and which are either unaccompanied by words disclosing that such garments are in fact made of fabric rather than peltries, or bear descriptive phrases in such small type and in such manner that the purchasing public may not be readily apprised of the true nature of the material, such practice has the tendency and capacity to confuse, mislead, and deceive the purchasing public into the belief that such garments are made from the peltries or from the wool of such animals. Said tendency and capacity to mislead and deceive is increased by means of the pictorial representations of models wearing fur coats, and advertising phraseology which implies to a reader not familiar with peltries that said garments may be genuine fur garments.

Through the use of the aforesaid labels and picturizations respondents represent and have represented that their fabrics and the garments made therefrom are made from the peltries of Persian lambs, Caraculs, and other fur-bearing animals or from the wool of such animals.

PAR. 4. The foregoing labels are false and misleading. In truth and in fact, none of respondents' products is composed of the peltries of fur or wool bearing animals such as Persian lambs, seals, or camels, nor are they composed of the wool or fur of any such animals. All of said garments are manufactured from fabrics composed of ordinary wool and cotton, or ordinary wool and rayon, or cotton and rayon.

PAR. 5. There is a marked preference on the part of a substantial portion of the purchasing public for coats and other garments made from the peltries of fur-bearing animals, such as Persian lambs, seals, and camels, and from the wool of such animals, over garments made from fabrics composed of ordinary wool or composed of a mixture of ordinary wool and other materials.

PAR. 6. A further practice on the part of respondents is the sale

and distribution of garments manufactured from fabrics simulating in appearance the peltry, wool, or fur of the Persian lamb, the Caracul, or the seal, or other wool or fur-bearing animal, containing a substantial percentage of rayon, with labels attached to said garments made from such fabrics, without disclosing the rayon content of such fabrics and garments.

Rayon is a chemically manufactured fiber or fabric which may be so manufactured that when woven into a fabric it simulates the peltry, wool, or fur of the Persian lamb, the Caracul, or the seal and other wool- or fur-bearing animals, and when so manufactured, rayon has the appearance of peltries or wool taken from such animals or fabric manufactured from such fur or wool and is practically indistinguishable therefrom by the purchasing public. By reason of these qualities, rayon, when so manufactured as to simulate the peltries or wool or fur of such animals, or fabrics manufactured from such wool or fur, and not designated as rayon, is believed and accepted by the purchasing public to be the peltries of such animals or wool or fur taken from such animals.

PAR. 7. Through the use of the acts and practices herein set forth, the respondents also place in the hands of uninformed and unscrupulous jobbers and retail dealers a means and instrumentality whereby jobbers and retail dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 8. The use by the respondents of the aforesaid acts and practices has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' garments are made from the peltries of fur- or wool-bearing animals or from wool taken from such animals, when such is not the fact. Because of such erroneous and mistaken belief, the purchasing public has been induced to purchase and has purchased substantial quantities of respondents' products.

CONCLUSION

The 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 and the answer of the respondents, in which answer respondents admit all of the material

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allegations of fact set forth in the complaint and state that they waive all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent Philip Shlansky & Bro., Inc., a corporation, and its officers, and respondents Philip Shlansky, Lewis Shlansky, Bessie Shlansky, Ida Shlansky, Morris Shlansky, and Selig Shlansky, individually, and as copartners, trading under the name Philip Shlansky & Bro., or trading under any other name, and respondents' representatives, agents, 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 wearing apparel in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "Alaskan Kurl," "Arctic Kurl," "Sitka Kurl," or "Ural," or any others terms indicative of geographical origin, to designate or describe textile fabric products which resemble in appearance the peltries of fur-bearing animals found in the region indicated.

2. Using the terms "Nu Persian," "Crown Persian," "Persia Laine," "Persiana," "Ombre-Karabaa," "Kara Kurl," or "Krim Kurl," or any other terms or words indicative of a fur-bearing animal, to designate or describe any product which is not in fact made from the peltry of the animal indicated: *Provided, however,* That when used to designate a product made of a textile fabric which is manufactured in such manner as to resemble the peltry of the animal named, words denoting fur-bearing animals may be used if immediately accompanied by another word or words disclosing that the fabric of which such product is made is merely an imitation of the peltry of the animal named, as, for example, "Imitation Persian Lamb."

3. Using the term "Camaline," or any other term or word indicative of the camel, to designate or describe any product which is not in fact made of camel hair: *Provided, however,* That in the case of products composed in part of camel hair and in part of other fibers or materials such terms may be used as descriptive of the camel hair content if there are used in immediate conjunction therewith, in letters of at least equal conspicuousness, words truthfully designating each constituent fiber or material of such product.

4. Using the term "Lammys," or any other term or word indicative of the lamb, to designate or describe any product which is not in fact composed of wool obtained from lambs: *Provided, however,*

That in the case of products composed in part of such wool and in part of other fibers or materials such terms may be used as descriptive of the wool content if there are used in immediate conjunction therewith, in letters of at least equal conspicuousness, words truthfully designating each constituent fiber or material of such product.

5. 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 resemble 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.

6. Representing in any manner or by any means, either through words or pictorial representations, that products made from textile fabrics are made from the peltries of fur-bearing animals or from the fur or hair of such animals.

7. Supplying to or placing in the hands of others circulars, newspaper mats, or other advertising material containing any representations prohibited by this order.

8. Advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly disclosing such rayon content; and when such products are composed in part of rayon and in part of other fibers or materials all of such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

It is further ordered, That nothing contained in this order shall be construed as limiting any applicable provisions of the Wool Products Labeling Act of 1939 or the rules and regulations promulgated thereunder.

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.

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IN THE MATTER OF
STROMBERG HATCHERY

MODIFIED CEASE AND DESIST ORDER

Docket 5162. June 24, 1946

Order modifying, pursuant to stipulation and agreement, previous order of October 31, 1945, 41 F. T. C. 204, requiring respondents, in connection with the offer, etc., in commerce of baby chicks or other poultry to cease and desist from representations therein specified with respect to their being United States Record of Performance Breeders, etc., through the addition of a proviso that if they become actual participants in the National Poultry Improvement Plan, nothing contained in the order shall be construed as prohibiting the use of representations, designations, or emblems authorized and permitted to participants in said National Poultry Improvement Plan, during the time of such participation.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation as to the facts having been entered into between the respondents and Richard P. Whiteley, assistant chief counsel, for the Federal Trade Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue its findings as to the facts and conclusions based thereon and an order disposing of the proceeding; and the Commission having made its findings as to the facts and conclusion that the respondents have violated the provisions of the Federal Trade Commission Act, it entered and issued its order to cease and desist on October 3, 1945, and thereafter this proceeding came on for consideration by the Federal Trade Commission upon a stipulation and agreement entered into by and between the respondents and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, which provided for the modification of the order issued on October 3, 1945, by adding the following:

"It is further ordered, That if the respondents become an actual participant in the National Poultry Improvement Plan nothing contained in this order shall be construed as prohibiting the use of representations, designations, or emblems authorized and permitted to participants in said National Poultry Improvement Plan, during the time of such participation";

and the Commission having duly considered said stipulation and agreement and the record herein, issues this its modified order to cease and desist: