

IN THE MATTER OF

E. S. ULLMANN-ALLIED COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 5397. Complaint, Oct. 25, 1945—Decision, Sept. 12, 1947

Where a corporation engaged in the purchase of animal peltries in foreign countries, and in the interstate sale and shipment thereof to dealers and garment manufacturers from its place of business in New York—

Designated and described certain peltries imported and sold by it as aforesaid as "sealskins"; notwithstanding the fact that such peltries, while obtained from the young of a branch of the seal family, were not obtained from the earless or true seal family, nor from the eared fur seals or sea bears, which, like the other, have the dense coat of soft, short fur under the stiff long hair which forms the outer covering of all members of both families; and were not fur seals, nor the sealskins used in the manufacture of the fur garments long and favorably known among the trade and the purchasing public as such; but were obtained from young sea lions found in South America, skins of which are characterized by short hair and which are popularly referred to as "rock seals";

With capacity to mislead the public through such advertising or other reference, and lacking the explanatory term "South American rock" immediately preceding use of words "seal" or "sealskin," to mislead the public into the belief that products in question were fur sealskins, or garments made therefrom, and to cause substantial portion of the public, thus misled, to purchase substantial quantities of said products as a result of the mistaken belief thus engendered:

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.

Mr. DeWitt T. Puckett for the Commission.

Mr. Sidney Tolmage, 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 E. S. Ullmann-Allied 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. The respondent, E. S. Ullmann-Allied Co., 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 131 West Thirtieth Street, New York, N. Y.

PAR. 2. The respondent is now, and for several years last past has been, engaged in purchasing animal skins or peltries in foreign countries and having said skins shipped from said countries to respondent's aforesaid place of business in the State of New York. Respondent sells and ships said skins to dealers and garment manufacturers located in various States of the United States and in the District of Columbia.

PAR. 3. Among the animal skins purchased as aforesaid and imported into the United States from said foreign countries and offered for sale and sold by respondent, as aforesaid, are certain skins or peltries designated, referred to and described by respondent in its invoices and otherwise, as "sealskins."

PAR. 4. Seals are pinniped animals and are divided into two distinct families, the true or earless seals and the eared seals. Those species having a dense coat of soft, short fur under the stiff long hair which forms the outer covering of all members of both families are called fur seals, and those that are entirely devoid of this underfur, or possess it only in a limited degree, are known as hair seals. Eared seals differ from all other seals in that they possess small distinctly projecting ears. The eared seal family is further divided into two subfamilies, the eared hair seals or sea lions and the eared fur seals or sea bears. It is from this latter group, the eared fur seals, that the sealskins used in the manufacture of fur garments are obtained. Not all members of the eared seal family are fur seals, but all members of the earless or true seal family are hair seals.

PAR. 5. Fur sealskins have been used in the United States of America for many years in manufacturing fur garments, and such garments have been long and favorably known among the trade and the purchasing public, and there is now and has been for many years last past, a purchaser demand for such garments. Such sealskins and garments made therefrom are characterized by a type and quality of fur not found in other types of sealskins.

PAR. 6. The skins imported and sold by respondent as aforesaid as sealskins are not obtained from the fur seals or sea bears described above nor are they the sealskins used in the manufacture of sealskin garments above referred to, but are skins characterized by short bristly hair and are obtained from young sea lions.

PAR. 7. The aforesaid acts and practices of the respondent in connection with the sale of said skins have the capacity and tendency to deceive and mislead dealers and manufacturers as to the type or kind

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of skins respondent offers for sale and sells. By said acts and practices, respondent also places in the hands of dealers and manufacturers a means and instrumentality whereby they may and do deceive and mislead retailers and the ultimate purchasing public as to the type or kind of skins of which the finished garments are made.

PAR. 8. The aforesaid acts, practices, and methods of respondent as alleged herein 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 October 25, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, E. S. Ullman-Allied 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. Thereafter, a stipulation of facts was entered into between counsel for the Commission and counsel for respondent which provided that, subject to the approval of the Commission, the facts therein set forth might be taken as the facts in this proceeding and in lieu of testimony in support of the complaint or in opposition thereto, and that the Commission might proceed upon the complaint and stipulation to make its report, stating its findings as to the facts (including inferences which it might draw from the stipulated facts) and its conclusion based thereon, and issue its order disposing of the proceeding without the presentation of oral argument or the filing of briefs. Subsequently, the matter regularly came on for final consideration by the Commission upon the complaint and stipulation of facts, 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, E. S. Ullmann-Allied Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 131 West Thirtieth Street, New York, N. Y.

PAR. 2. Respondent is now and for several years last past has been engaged in purchasing animal peltries in foreign countries and having

such peltries shipped from such countries to respondent's place of business in the State of New York. Respondent sells and ships such peltries to dealers and garment manufacturers located in various States of the United States.

PAR. 3. Among the animal peltries imported into the United States and sold by respondent as aforesaid are certain peltries designated and described by respondent in its invoices and otherwise as "sealskins."

PAR. 4. Seals are pinniped animals and are divided into two distinct families, the true or earless seals and the eared seals. Those species having a dense coat of soft, short fur under the stiff long hair which forms the outer covering of all members of both families are called fur seals, and those which are entirely devoid of this under-fur, or possess it only in a limited degree, are known as hair seals. Eared seals differ from all other seals in that they possess small, distinctly projecting ears. The eared seal family is further divided into two subfamilies, the eared hair seals or sea lions and the eared fur seals or sea bears. It is from this latter group, the eared fur seals, that the fur seal skins used in the manufacture of fur garments are obtained. Not all members of the eared seal family are fur seals, but all members of the earless or true seal family are hair seals.

PAR. 5. Fur sealskins have been used in the United States for many years in manufacturing fur garments and such garments have long and favorably been known among the trade and the purchasing public as "sealskin" garments. There is now and has been for many years last past a purchaser demand for such garments. Such sealskins and the garments made therefrom are characterized by a type and quality of fur not found in other types of sealskins.

PAR. 6. Certain of the peltries imported and sold by respondent as "sealskins" are not obtained from the fur seals or sea bears described above nor are they the sealskins used in the manufacture of the sealskin garments referred to above, but are skins or peltries characterized by short hair and are obtained from young sea lions found in South America, heretofore popularly referred to as "rock seals."

PAR. 7. While these peltries are obtained from the young of a branch of the seal family, the Commission finds that to advertise or otherwise refer to such peltries as "sealskins," or to advertise or otherwise refer to the garments made therefrom as "sealskin" garments, has the capacity to mislead the public into the belief that such products are fur sealskins or garments made therefrom, unless the word "seal" or "sealskins" is immediately preceded by the explanatory term "South American rock."

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PAR. 8. The acts and practices of respondent as herein set forth have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of 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 and a stipulation of facts entered into between counsel for the Commission and counsel for respondent, which stipulation provided that, subject to the approval of the Commission, the facts therein set forth might be taken as the facts in this proceeding and in lieu of testimony in support of the complaint or in opposition thereto, and that the Commission might proceed upon the complaint and stipulation to make its report, stating its findings as to the facts (including inferences which it might draw from the stipulated facts) and its conclusion based thereon, and issue its order disposing of the proceeding without the presentation or oral argument or the filing of briefs, 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, E. S. Ullmann-Allied 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 animal peltries in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the term "seal," "sealskin," or "seal skin," or any simulation thereof, to designate or describe peltries obtained from South American sea lions, unless such terms are immediately preceded by the words "South American rock."

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
THE SUPER-COLD CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 4904. Complaint, Feb. 9, 1943—Decision, Sept. 26, 1947

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of refrigeration equipment, including refrigerator display cases; in advertising and describing its said cases in catalogs and other advertising literature which, although prepared primarily for the information of its sales and service representatives, were accessible to the public generally and were shown to prospective purchasers by dealers and salesmen—

- (a) Represented, directly or by implication, that its said cases would operate at least 40 percent cheaper than competitive cases, whether refrigerated with ice or by the usual mechanical process, were operated with a motor generating only half the horsepower required to operate competitive products, and entailed a cost for power about 50 percent less than that required for the latter;

The facts being that while its cases, in which the refrigeration was provided by a low-pressure gravity-type coil system and in which the refrigerant most frequently used was methyl chloride, would operate more cheaply and on less horsepower than the old style case using ice or ammonia or carbon-dioxide gas, its said cases would not operate substantially more cheaply or on substantially less horsepower than other modern competitive cases which employed a low-pressure gravity system; and there was nothing in its advertising statements or in the literature from which taken to indicate that the comparisons in operating costs were restricted to the old-style ice and high-pressure systems;

- (b) Represented that all refrigerator display cases other than its own had fronts sealed with ordinary putty, or set in rubber, or mounted in rubber, putty or cement, and that they would sweat or become cloudy within 1 to 3 years' time;

The facts being that while prior to January 1941 the glass fronts of the majority, if not all, of the display cases sold in competition with its own, were sealed with putty, rubber, or cement, as it represented, it was not true that all such fronts sweated or failed to remain clear for more than 3 years, it appearing, on the contrary, that glass fronts of some such other cases had not sweated and had remained clear for at least 10 years;

- (c) Represented that its cases were the only display cases on the market equipped with noninsulated all-metal drain pans that did not sweat;

The facts that while it probably was the first refrigerator-display-case manufacturer to perfect and install in its cases such a drip or drain pan, by 1937 or before, numerous other manufacturers had perfected drain pans which were noninsulated and all metal and did not sweat;

- (d) Represented falsely that its engineers had developed every new and advanced engineering principle in refrigerator display construction and application during the past 15 years, and that, by reason of such fact, it had become