

IN THE MATTER OF
MINK TRADERS ASSOCIATION, INC., ET AL.

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

Docket 5844. Complaint, Jan. 26, 1951—Decision, Aug. 28, 1952

Where a membership corporation and its seventy-member mink fur dealers, manufacturers of mink fur products, and retailers located in New York City, who, normally in competition with each other and with others, represented a substantial part of the mink fur trade in said city and the country at large;

Following the organization of said association in September 1948, for the purposes, among others, of improving trade conditions, reforming and eliminating abuses relative thereto, and establishing lawful uniform rules, regulations and practices in the mink division of the fur industry; and the adoption of a program which included the reduction of the number of auction sales, the selling of mink in larger lots, the cancellation of the early December sales, cessation of the selling of mutation mink in the raw state, and the discontinuance of "private treaty" sales by the auction companies; through joint meetings with the auction companies in the United States and Canada, letters, other communications and meetings, and withdrawals from certain auction sales—

- (a) Cooperatively, concertedly, and collectively devised, dictated and composed methods, terms and conditions as to which those engaged in the mink fur industry, including the ranchers, breeders' associations and auction companies, were to market and distribute their mink pelts with respect to matters embraced in the aforesaid program; and
- (b) Persuaded, threatened, and coerced, and through the use of boycott and threats thereof, compelled those engaged in said industry, to comply with and abide by such terms and conditions;

With the result that members of the industry other than those included in the association membership, and particularly the breeders and the auction houses, were compelled and coerced to a certain extent to change methods of doing business which they had found to their advantage; nonmember buyers of mutation pelts at the New York auction houses and nonmember small fur dealers who dealt therein were prejudiced in various ways; the free play of competition by and among the breeders and the auction companies on the one hand and the members of respondent association and other buyers of mink pelts on the other hand was hampered, suppressed and hindered; and the business of nonmember competitors, who were deprived of their rights to buy in quantities most suitable for their needs and, potentially, of the opportunity to buy dressed mutation mink pelts from the breeders at the auction houses, was interfered with;

Capacity, tendency, and effect of which agreement, understanding and combination, and the methods, acts and practices, and things done and performed by respondents in pursuance thereof, were to unreasonably lessen, suppress and restrain competition and trade in the sale and distribution of mink fur pelts:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors of the members of said association and, in the light of the decision in *Fashion Originators Guild of America, Inc. v. Federal Trade Commission*, 312 U. S. 457, constituted unfair methods of competition in commerce.

While the members of respondent association used boycott and threats thereof only with respect to one phase of their program, namely, their determination that the mutation breeders be urged to cease offering their mink as dressed pelts "so that the traders would be enabled to buy quantity lots of goods without having to meet the competition of the small retailer who is interested in only one or two bundles", it was believed that such action on their part was an indication of the lengths to which they would go in the enforcement of any part of their program unless they were curbed by Government authority.

In the foregoing proceeding it was noted that it was not a case where the joint action of respondents had to do only with their own activities, but that there was involved a situation where, if the respondents carried their joint activities to their logical conclusion they would substantially interfere with the rights of members of other segments of the mink fur industry, and would not only deprive breeders of their freedom of action in selling their mink pelts, but also hinder and interfere with other mink buyers who were their competitors.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. George W. Williams and *Mr. Rufus E. Wilson* for the Commission.

Mr. Irving I. Dolowich, 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 the respondents named in the caption hereof, and hereinafter more particularly designated and described, 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 Mink Traders Association, Inc., is a membership corporation organized on or about September 27, 1948, under the laws of the State of New York, with its principal office and place of business located at 450 Seventh Avenue, New York, New York.

Said respondent sometimes hereinafter referred to as the "Association" or "Traders Association," is composed of approximately seventy members consisting of mink fur dealers, manufacturers of mink prod-

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ucts and retailers located in the City of New York. The Association was organized for and serves its members as an instrumentality or vehicle for joint and cooperative action among them. Said Association represents a substantial, if not an actual dominant, part of the mink fur trade in said city and the country at large.

PAR. 2. The following individuals are or have been during the time of the happenings herein described and set forth, officers of said association, and individually and as such officers, are named as respondents herein:

Joseph Liebergall, President.
Jack Levine, Vice-President.
Barney Wollman, Vice-President.
Sidney Ziskind, Treasurer.
Martin Schwarz, Secretary.

The following individuals are now, or have been, directors of said association during the time of the happenings hereinafter described and set forth, and as such directors, and individually, are named as respondents herein:

Al Weinig	Jack Farmer
Murray Schulman	Jack Klein
Morris Greenbaum	S. B. Levin
Sam Cherny	Philip Lieberman
Joe Feirstein	Henry Mechutan
Arthur Margolyes	E. J. Pager
Henry Bild	A. S. Gold
Mannie Lederberg	

The said officers and directors, hereinabove named, are either directly engaged in the industry as mink fur dealers, manufacturers of mink articles, or retailers or are connected with the business of one or more of the members of the respondent Association, engaged as aforesaid, and are therefore generally and fairly representative of the industry.

PAR. 3. The following individuals, partnerships and corporations are now, or have been, members of said Association during the time of the happenings hereinafter described and set forth, and as such, and individually, are named as respondents herein:

Joseph Liebergall and Sophie Liebergall, a partnership, trading as Joseph Liebergall and Company, 206 West 30th Street, New York, New York.

Arthur B. Margolyes, Inc., is a corporation, organized, existing and doing business under the laws of the State of New York and has its

office and place of business at 200 West 30th Street, New York, New York.

Samuel B. Levin, Irene Levin and Edith Falick, a partnership, trading as S. B. Levin Fur Company, are located at 348 Seventh Avenue, New York, New York.

B. Wollman and Bros., Inc., is a corporation, organized, existing and doing business under the laws of the State of New York, and has its office and place of business at 352 Seventh Avenue, New York, New York.

Jack Levine Fur Company, Inc., is a corporation, organized, existing and doing business under the laws of the State of New York, and has its office and place of business at 356 Seventh Avenue, New York, New York.

Joseph Schwarz and Martin Schwarz, a partnership trading as Joseph Schwarz and Son, 233 West 29th Street, New York, New York.

Samuel Cherny and Joseph Cherny, a partnership, trading as Cherny Fur Company, 208 West 39th Street, New York, New York.

The membership of the respondent Mink Traders Association, Inc., is as above described, and from time to time the membership therein is changed by the addition and withdrawal of members, so that all of the members of said association at any given time cannot be properly described herein for the purpose of naming them as respondents without considerable inconvenience and delay, and also said respondent membership constitutes a class so numerous as to make it impracticable, without considerable inconvenience and delay, to name them all as respondents herein; wherefore, the respondents hereinbefore named as respondents, as such officers, directors, and members, are also made respondents as generally and fairly representative of and as representing all of the members of said respondent Association, including those members not herein specifically named.

PAR. 4. The membership of said respondent Association since its organization has consisted of the several corporations, partnerships and individuals referred to and named in the preceding paragraphs as respondents and as representative of those members not specifically named herein and sometimes hereinafter referred to and described as member respondents. All of the said member respondents were during the times mentioned herein, and still are, engaged as aforesaid, in the mink fur business, either as dealers in mink furs or manufacturers of various articles from mink and the retailers thereof. Said skins or pelts are purchased by respondent members at auction market sales held in various States of the United States, and Canada, and are then shipped or otherwise transported from such market places to the respective factories, warehouses and places of business of said pur-

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chasers located in various States other than where purchased, where they are resold, after in some instances having been first processed or manufactured into coats, stoles, jackets, or other fur articles, and caused to be shipped or otherwise transported from the States wherein said member respondents maintain their respective places of business to the purchaser or purchasers thereof located in States other than the place of origin of such shipment, and there has been, and now is, a constant current and course of trade and commerce in said products between and among the several States of the United States, and in the District of Columbia.

PAR. 5. Said member respondents are in competition with each other and with other members of respondent Association in the purchase, manufacture, sale and distribution of their said articles of merchandise in the various States of the United States and in the District of Columbia, except in so far as their said competition has been hindered, lessened or restrained, or potential competition among them forestalled, by the acts and practices, methods and policies of said respondents as herein set forth.

There are other corporations, partnerships, firms and individuals not affiliated with respondent Association, and which are engaged in the purchase, manufacture, sale and distribution of similar articles or products in the area in which said respondents trade in competition with one another and with one or more of said member respondents, or other members of respondent association, except in so far as such competition has been hindered, lessened and restrained, or potential competition among them forestalled by the said respondent's acts, practices, methods and policies hereinafter described.

PAR. 6. Said respondents within the last two years, including the present time, have entered into, maintained and carried out an agreement, understanding and combination between and among themselves, and others, to suppress, hinder and lessen competition in the purchase, manufacture, sale and distribution of said mink fur pelts and mink fur products among and between the various States of the United States and in the District of Columbia.

Pursuant to, and in furtherance of, and to make effective said agreement, understanding and combination said respondent members and individuals have cooperatively, concertedly and collectively adopted, engaged in, and carried out, among others, the following methods, acts and practices:

1. Organized respondent Association, as aforesaid, to control and regulate the manner in which mink pelts were marketed or distributed so as to achieve or bring about the following results:

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- (a) Bring about generally a decrease in the number of auction sales conducted by auction firms and pending a general decrease in the number of such sales to call off or cancel certain specified ones;
- (b) Prevent or curtail fluctuation in the price of mink pelts;
- (c) Increase the size of individual bundles or auction lots;
- (d) Cause the discontinuance or at least a reduction in the number of "dressed" mink pelts offered for sale; and
- (e) Cause the discontinuance of private sales between members of breeder and respondent associations and others.

2. Devised, dictated and imposed methods, terms and conditions under which those engaged in the mink fur industry, including the ranchers, breeder associations and auction companies were to market or distribute their mink pelts and thus achieve the aims and purchases of respondents, as aforesaid.

3. Persuaded, threatened, coerced, and through the use of other means and methods, including boycott and threats to boycott, compelled those engaged in the mink fur industry, including the ranchers, breeders associations and auction companies to conform, comply with and abide by said methods, terms and conditions devised, dictated and imposed by said respondents in order to make effective the said aims, intent and purposes of respondents, as aforesaid.

PAR. 7. The capacity, tendency and effect of the aforesaid agreement, understanding and combination and the methods, acts and practices and things done and performed by respondents in pursuance thereof are, and have been, to unreasonably lessen, suppress and restrain competition and trade in the purchase, manufacture, sale and distribution of said articles of merchandise in the various States of the United States and in the District of Columbia, and to deprive the purchasing, using, and consuming public of the advantage of competitive prices, terms, and conditions in connections with the purchase thereof, and other advantages which they would receive and enjoy under conditions of normal, unobstructed, free and fair competition in said trade and industry and to otherwise operate as a restraint upon, obstruction and detriment to, the freedom of fair and legitimate competition in such trade and industry.

PAR. 8. The acts and practices of said respondents, and the things done and performed by them, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and actually hindered and prevented competition and restrained trade between and among said member respondents and others in the purchase, manufacture, sale and distribution of their said articles of merchandise in commerce, within the intent and meaning of the Federal Trade Commission Act; and placed in respondents the power to

control and enhance prices and other terms and conditions in connection with the purchase, manufacture, sale and distribution of the said articles of merchandise; have a dangerous tendency to create in said respondents a monopoly in said articles of merchandise in said commerce; have unreasonably restrained such commerce in their said articles of merchandise, and constitute unfair methods of competition and unfair and deceptive acts or practices in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated August 28, 1952, the initial decision in the instant matter of hearing examiner Everett F. Haycraft, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 26, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act. After the filing of answers to the complaint, hearings were held at which testimony and other evidence in support of the complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission. At the conclusion of these hearings in October 1951, at which time attorneys in support of the complaint closed their case in chief, respondents moved to dismiss the complaint. Thereupon the hearing examiner heard oral argument on said motion, which was later denied, and thereafter testimony and other evidence in opposition to the allegations of the complaint were introduced before the above-named hearing examiner, and on January 31, 1952, the taking of testimony was closed before the hearing examiner. Thereafter proposed findings were submitted by attorneys in support of the complaint, counsel for the respondents having waived the filing of proposed findings and conclusions. Oral argument was heard before the hearing examiner on the merits of the case on March 31, 1952; and on April 14, 1952, the proceeding before the hearing examiner was closed. Thereafter, this proceeding regularly came on for final consideration by said hearing examiner upon the complaint, the answers thereto, testimony and other evidence,

proposed findings as to the facts and conclusions presented by counsel in support of the complaint, and oral arguments of counsel, and said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Mink Traders Association, Inc., sometimes hereinafter referred to as the "Association," is a membership corporation organized on or about September 27, 1948 under the laws of the State of New York with its principal office and place of business located at 450 Seventh Avenue, New York, New York. Said Association is composed of approximately seventy members consisting of mink fur dealers, manufacturers of mink fur products, and retailers located in the city of New York, and said Association was organized for and serves its members as an instrumentality or vehicle for joint or cooperative action among them. Said Association represents a substantial part of the mink fur trade in said city and the country at large.

PAR. 2. The following individuals are now or have been during the period of time since September 1948 officers and directors of said respondent Association:

(a) Respondent Joseph Liebergall was President of respondent Association from on or about September 27, 1948, until the fall of 1950 when he was succeeded by respondents Al Weinig, Arthur B. Margolyes and Henry Mechutan who were designated as presidents.

(b) Respondent Jack Levine was Vice-President of respondent Association at the date of issuance of the complaint on January 26, 1951.

(c) Respondent Barney Wollman was Vice-President of respondent Association until September 30, 1950, at which time his firm B. Wollman and Bros., Inc., resigned as members of respondent Association and respondent Barry Wollman ceased to be an officer thereof.

(d) Respondent Sidney Ziskind was Treasurer of respondent Association on January 26, 1951.

(e) Respondent Martin Schwartz (erroneously named as Martin *Schwarz* in the complaint) was Secretary of respondent Association on January 26, 1951.

(f) The following named individuals were directors of said respondent Association during the period subsequent to September 1948 and held such office on January 26, 1951, the date of the issuance of the complaint: respondents Al Weinig, Murray Schulman, Morris

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Greenbaum, Sam Cherny, Joe Feirstein, Arthur Margolyes, Henry Bild, Mannie Lederberg, Nathan Farber (erroneously named as *Jack Farmer* in the complaint), Jack Klein, S. B. Levin, Philip Lieberman, Henry Mechutan, E. J. Pager and A. S. Gold.

PAR. 3. The following individuals, partnerships, and corporations are now or have been members of said respondent Association during the period of time subsequent to September 1948:

(a) Respondents Joseph Liebergall and Sophie Liebergall are a partnership, trading as Joseph Liebergall and Company, 206 West 30th Street, New York, New York.

(b) Respondent Arthur B. Margolyes, Inc., is a corporation organized, existing and doing business under the laws of the State of New York and has its office and place of business at 200 West 30th Street, New York, New York.

(c) Respondents Samuel B. Levin, Irene Levin and Edith Falick are a partnership, trading as S. B. Levin Fur Company and are located at 348 Seventh Avenue, New York, New York.

(d) Respondent B. Wollman and Bros., Inc., is a corporation organized, existing and doing business under the laws of the State of New York, and has its office and place of business at 352 Seventh Avenue, New York, New York.

(e) Respondent Jack Levine Fur Company, Inc., is a corporation organized, existing and doing business under the laws of the State of New York, and has its office and place of business at 356 Seventh Avenue, New York, New York.

(f) Respondents Joseph Schwartz (erroneously named as Joseph *Schwarz* in the complaint) and Martin Schwartz (erroneously named as Martin *Schwarz* in the complaint) are a partnership trading as Joseph Schwartz and Son, 233 West 29th Street, New York, New York.

(g) Respondents Samuel Cherny and Joseph Cherny are a partnership, trading as Cherny Fur Company, 208 West 39th Street, New York, New York.

The membership of said respondent Association is changed by the addition and withdrawal of members from time to time so that all the members of said Association cannot be properly described herein as respondents without inconvenience and delay, wherefor, the respondents hereinbefore named as members are also named respondents as generally and fairly representative of and as representing all the members of said respondent Association, including those members not herein specifically named.

PAR. 4. A substantial quantity of the mink skins pelted in the United States and Canada are sold at auction market sales held in the

cities of New York, Milwaukee, Minneapolis, Seattle and Denver, as well as various places in Canada, including Montreal, Vancouver, Quebec and Regina. The mink skins that are offered for sale at these auction markets are grown on various mink farms or ranches in the United States and Canada or trapped in the wild state, their pelts taken, and then such pelts shipped or otherwise transported to the various auction markets for sale.

Respondent members of respondent Association in the course and conduct of their respective businesses as dealers in mink furs or manufacturers of or dealers in various articles from mink fur purchase a substantial quantity of their requirements of mink pelts at the auction market sales held in various States of the United States other than the States in which their respective businesses are located, and in Canada, and cause such products when thus purchased to be shipped or otherwise transported to them across State lines from such market places to the respective factories, warehouses and places of business of said purchasers where they are resold either in the raw or dressed state or after having been first processed or manufactured into coats, stoles, jackets, or other fur articles and then caused to be shipped or otherwise transported from the States wherein the said member respondents maintain and have their respective places of business to purchasers thereof located in States other than the place of origin of such shipment. There has been and now continues to be a constant current and course of trade and commerce in said mink pelts and mink fur products between and among the several States of the United States and in the District of Columbia and from the Dominion of Canada into the United States.

PAR. 5. Said member respondents are in competition with each other and with other members of said respondent Association in the purchase, manufacture, sale and distribution of their said articles of merchandise in the various States of the United States and in the District of Columbia except insofar as their said competition has been hindered, lessened or restrained by the acts and practices, methods and policies of said respondents as hereinafter set forth.

There are other corporations, partnerships, firms and individuals not affiliated with said respondent Association, and which are engaged in the purchase, manufacture, sale and distribution of similar articles or products in the area in which said respondents have been doing business who are in competition with said respondents, except insofar as such competition may have been hindered, lessened or restrained by the respondents' acts and practices, methods and policies as hereinafter described.

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PAR. 6. On or about September 27, 1948, representatives of the respondent members organized the respondent Association for the announced and declared purposes, among others, to provide a medium through which the program of persons engaged in the handling, marketing, manufacture, breeding, and distribution of minks, mink skins, and mink garments could be promoted; to foster trade, commerce and the interest of its members and to improve generally trade conditions in such industry, to reform and eliminate abuses and evils relative thereto; and to establish lawful uniform rules, regulations and practices in the mink division of the fur industry.

At the first meeting of the respondent Association held on October 7, 1948, the membership consisted of approximately fifty mink dealers and one-half dozen manufacturers, and a few retailers, all of them patrons of the auction companies. At this meeting a four point program was adopted as follows:

1. That the auction companies make known the expected quantities of ranch mink available for the coming season. This, so that the trade can pace itself and set its anticipated requirements over a period of a year.

2. To petition the auction sales companies and mink fur breeders requesting that the amount of sales be substantially reduced so that there will be less fluctuating in the price of mink from one week to the next and that the trade might feel more secure in patronizing such sales and buying, and anticipating requirements for a longer period of time.

3. That the auction companies put up larger lots of goods.

4. That the mutation breeders cease offering their mink as "dressed pelts," but rather offer them in the "raw state" so that the traders may be enabled to buy quantity lots of goods without having to meet the competition of the small retailer who is interested in only one or two bundles.

PAR. 7. On October 21, 1948, a joint meeting was held of representatives of respondent Association and the following auction companies of the United States and Canada: New York Auction Company; Lampson, Fraser & Huth of New York City, Montreal Fur Auction; Soudack Fur Auction Company, Winnipeg, Canada; American National Fur Auction Company, Milwaukee, Wisconsin; and the following Ranch Mink Associations: United Mink Products Association, (sometimes herein referred to as UMPA); Great Lakes Mink Association, Kenosha, Wisconsin; Associated Fur Farms, New Holstein, Wisconsin; and National Board of Fur Farm Organizations.

At this meeting a five point program was agreed upon as follows:

- "(1) Reduction of the number of auction sales;
- (2) Selling of Mink in larger lots;
- (3) Cancellation of the early December sales;
- (4) Selling of Mutation mink in the raw state;
- (5) Announcement by Auction when lot is not sold."

Thereafter, further meetings were held between representatives of respondent Association and the two New York auction companies, and the mink breeders associations, with respect to said five point program.

PAR. 8. With respect to the first point of said program, namely, the reduction of the number of auction sales, it appears that meetings held by and between respondents and the auction companies and the mink breeders associations resulted in the following arrangement to enable the Great Lakes Mink Association to eliminate half the auction sales scheduled during December 1948:

New York Auction Company would run its early sale of raw mutation pelts and the few standards that would be received in their warehouse by December 3rd. Great Lakes Mink Association would move its scheduled December 17th sale up to December 21st and by doing this combine its offering with the offering of the UMPA and the Mutation Mink Breeders Association. The entire collection of the three Associations would go on show on the same date and the sale of the pelts would take three days. The proportion of mink for each of the Associations would be such that the quantity would not be too heavy for the trade to absorb and considerable time would be saved by the trade in its attendance at this combination sale. Lampson, Fraser and Huth also agreed to cancel two of its four scheduled sales so that in place of eight sales, we would now be reduced to a schedule of four sales spaced so that the trade could patronize and support each of them.

The representative of the UMPA did not agree to the arrangement at the meeting and when he referred the matter to his principal the plan was not approved.

Representatives of the mink breeders associations, UMPA and Great Lakes Mink Association later (in November 1948) advised the President of the respondent Association that they were unable to cooperate in the program but were willing to do everything possible to establish some system of orderly marketing. The North Western Auction Company and the Southern Fur Exchange both agreed to cooperate in the rearrangement in sales dates. Both the New York and Lampson, Fraser & Huth auction companies agreed to hold two mink sales only during the month of December. The Seattle Fur Exchange also cooperated by reducing the number of its sales during December. In order for the Southern Fur Exchange to comply with the request of the respondent Association with respect to the reduction of the number

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of auction sales, it was necessary for them to cancel three of their original five sales dates for December 1948, and it was necessary for the North Western Fur Auction Company to cancel two of their fur sales scheduled for December 1948. Also the Western Canadian Raw Fur Auction Sales, located in Vancouver, B. C., combined two of its auction sales in December 1948.

Attempts were also made by respondent Association, acting through its Conference Committee, to persuade the auction companies to cancel or postpone other sales during the months of January, February and March 1949. Letters were written to the auction companies and meetings were held with the representatives of the auction companies by the Conference Committee of the respondent Association. For the most part, the auction companies cooperated in this phase of the program although the cooperation was not 100%. The following letter, dated February 24, 1949, was received by the respondent Association from the President of the Montreal Fur Sales (Canada) Ltd., Montreal, Canada:

In the short few hours that have elapsed since receiving your telegram, we learned that the Canadian Fur Auction Sales did not and does not want to announce any change in their Auction Schedule and intend to go on sale with mink on March 21st. Mr. Cantor, the President of the New York Auction Company, declared that he has no comment to make and has made no decision yet with regard to this matter. Furthermore, in the mail today, we received a notice of the Soudack Fur Auction Sales, Winnipeg, announcing their next Auction Sale which includes Mink for March 9th and 10th.

On hand of this information, as well as based on the very unsatisfactory experience at and after the meeting the writer of this attended in the fall at the Hotel New Yorker, you may understand that we cannot precipitate our decision.

As you must very well recall, we were the first at this meeting with full understanding for the problems of the trade, to pledge our full cooperation, and complied by cancelling our Mink Sale, in December, and otherwise, as well, adhered wholeheartedly to the spontaneous commitment we pledged at the meeting. Disappointment and considerable material damage was our share, however, for our full co-operation, after the other Canadian auction sales did not follow in line. By not putting up any sale until later in January we had to stand for the strong criticism of our ranchers, who justly accused us of disregarding their interests, and by their looking in consequence for the other more convenient outlets for earlier sales, we have lost great quantities of Mink and many of our regular shippers, which fact not only influences the material outcome of the seasonal business enormously but also is of very great damage to our reputation.

As a result of the activities of members of respondent Association acting for and on behalf of such Association there were only two major auction companies left in the United States and Canada who had up to this time not acceded to the request of respondent Association to cancel their scheduled March 1949 sales of mink, namely, Edmonton Fur Auction Sales, Ltd., Edmonton, Alberta, Canada, and Denver Fur Auction Company, Inc., Denver, Colorado. Respondent Lie-

bergall addressed a telegram to both these auction houses under date of March 19, 1949, as follows:

Have been advised that your Company has announced auction sale of mink for March 30th. All other auction companies in the United States and Canada willingly cancelled their sales of ranch & wild mink for entire month of March. Our members respectfully urge your continued cooperation by postponing your March 30th sale to any day in April 1949. The joint efforts of the ranching Association and other auction companies and our organization to improve marketing conditions for our mutual benefit dependent upon your cancellation of mink sales in March. Please answer by return wire so that we may advise all of our members.

No auction sales were held in the United States or Canada in March 1949 by those auction companies contacted by respondent Liebergall, President of respondent Association, or by other members of respondent Association.

The results of this portion of the respondent Association's program is summarized by Mr. Liebergall, President of respondent Association, in a speech he made to the members in June, 1949.

The first, and most important reason for having fewer sales is that, frankly, gentlemen, the frequent sales are undermining our health. It is impossible for any of us to be present at all the many sales, then to intelligently examine the goods, then to sit in at the sale and buy our requirements, and then and at the same time, attend to the business of selling the goods we buy from you. Further, recent economic conditions have definitely turned for the worse. In fact, as I see it, we are in the throes of a recession. May we all hope that this recession does not turn into a depression. We must find ways and means, therefore, to market goods in a manner fitting the times. Our Mink Traders Association realizing the conditions of the trade, asked all the auction companies of the United States and Canada, at the end of February, for the best interests of everyone in the mink business, to postpone all sales scheduled for March so as to give the market a breathing spell it so urgently needed. You know what happened and you know what the net results were. The sales during April and May were highly successful and I am sure you will agree with me, that you did far better during these months, than you would have done if your goods were put on the auction block in March.

PAR. 9. With respect to that phase of the program of respondents to increase the size of individual bundles or auction lots, the breeders associations and the auction companies were generally in accord. However, it was testified by some of the breeders that although they agreed to sell their pelts in larger bundles, it was not always possible to do so because some of the ranchers did not like to "part-lot" with other ranchers, and although selling in larger bundles would give an advantage to some shippers; in some cases large bundles would keep some of the smaller buyers off the market. The auction companies promised the respondents they would put up larger lots but they did so only on rare occasions.

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PAR. 10. With respect to that phase of the program of respondents to bring about the discontinuance or at least a reduction of the number of mutation mink "dressed pelts" offered for sale by the breeders at the auction houses a joint meeting of the marketing boards of United Mink Producers Association (UMPA), Great Lakes Mink Association (GLMA), Mutation Mink Breeders Association (MMBA) and representatives of the respondent Association and of certain auction companies was held in Milwaukee, Wisconsin, in June 1949, at which the matter was discussed but no decision reached. Later, on September 8, 1949, the Secretary of MMBA notified the President of respondent Association, that in view of the requests received from buyers and part of the fur trade, they would sell certain types of mutation pelts dressed during the coming years. This action did not satisfy respondent Association, and in a letter dated September 28, 1949, addressed to the MMBA, the President of respondent Association expressed surprise and amazement at the decision of the MMBA and stated:

In order to prove conclusively to the members of your association that our statement regarding the wishes of the buyers was a true and accurate one, we circulated a petition among the buyers of mink pelts in the city of New York and we enclosed a photostatic copy thereof. You will note that this resolution contains 73 signatures and that the individuals and firms signing this petition comprise approximately 85% to 90% of the buyers of mutation mink in this city. We trust that you will also note that the reasons given in the resolution for the sale of mutation mink in the raw state are cogent, practical and meritorious, and if followed, will inure to the benefit of the breeders, auction companies, dealers and manufacturers.

We sincerely hope that in the light of this petition, you will reconsider your decision and follow the desires and recommendations of the overwhelming majority of the purchasers of mutation mink at auction sales.

Subsequently, a meeting was held in Chicago attended by the representatives of the breeders association and the respondent Association. Further discussion took place with respect to that question. The breeders were generally opposed to this phase of the program for the various reasons as testified by one witness:

It is almost impossible to take goods from different ranches, match them together raw well enough so that when they come back from the dressers they will be usable bundles. The mink from different ranches don't dress out the same through dressing.

* * * * *

In the introduction of a new mutation, it is necessary for the goods, almost all have to be part-lotted to make usable bundles, dressing is a must. We have always dressed all goods in introducing a new mutation mink. In dressed goods sales there is probably a larger group of people who can buy dressed goods than can participate in raw goods.

* * * * *

People with limited capital probably wouldn't be able to buy enough raw goods to make matched bundles while in the dressed goods they have an opportunity to buy a few bundles which would be made into marketable merchandise. It probably would deprive certain segments of the trade who are limited in capital from participating in that business or would force them to go to the large dealers who have bought large quantities and re-sort the goods and make matched bundles.

Finally, in December 1949, members of the respondent Association walked out of the auction sales at both auction houses in New York City when dressed pelts were offered for sale. They remained out of the auction houses until the offering of dressed pelts was completed and the sale of raw pelts took place, whereupon they returned to the auction houses and bid upon the offerings of raw pelts. Some of the members of respondent Association at that time criticized the representatives of the breeders association and others responsible for the refusal on their part to cooperate in this phase of the program of respondents.

The effect of the "walk out" at one of the auction houses was described by one mink breeder as follows:

At Lampson's when the dressed goods came up for sale, the mink traders got up and left the room. We continued to sell to people who were members of the traders' association who stayed and continued to purchase goods. The boys were a little loud in their talk but I don't think there were any threats at the time by anybody. The first few pages of the catalog wasn't much sold but before the sale was over, why, we were moving a fair percentage of the goods at market levels, or very close to market levels. The level probably wasn't quite as high as it might have been if we had had more company figures at the sale.

The "walk outs" by members of respondent Association and the rumors that accompanied them had an injurious effect generally upon the market for mutation mink pelts aside from the actual reduction in the number of pelts sold by the auction houses at the time of the walk outs.

Buyers of mutation pelts at the New York auction houses who were not members of respondent Association, including small fur manufacturers, found it a convenience to buy dressed mutation mink pelts as it was more difficult to match the raw pelts, and the small mink fur manufacturers would be compelled to buy more raw pelts than needed in order to obtain enough to make the finished garment. Furthermore, if small fur dealers who are not members of the respondent Association could not purchase dressed mutation mink pelts at the auction houses, they would be compelled to buy their requirements from members of the respondent Association who were engaged in buying raw pelts and having them dressed and in selling the same

to small mink fur manufacturers as well as others in the trade. Also under such circumstances the small mink fur manufacturers would be required to pay higher prices for the mutation mink pelts than they would pay if they could buy raw mutation mink pelts direct from the breeders at the auction houses.

It was customary for the auction houses to have the raw mutation mink pelts sent them by the traders dressed by three established fur dressers in New York City, usually confining the dressing of any one particular type to one dresser so that the purchasers of such pelts could obtain uniform selections. While there was some testimony from representatives of the respondents to the effect that the pelts dressed in this manner were not so satisfactory as those dressed by the members of respondent Association, it is found that this testimony was not supported by testimony from independent and unbiased sources.

PAR. 11. With respect to the phase of the program of respondents to cause the discontinuance of "private treaty" sales by the auction companies, it appears that this matter was first discussed between the members of respondent Association and breeders associations at a meeting in Chicago in December 1949. Private treaty selling has been described as the practice of "offering pelts during the period of regularly scheduled auction sales." It has also been defined as the practice of the auction houses selling individually to anyone who will come into them or sell to fur buyers at the same time the auction is going on aside from the auction, that is, individual deals. The auction houses have a room where such goods are put on display and individual buyers are allowed to look at the goods and leave a bid of what they would be willing to pay, and the highest bid, if there is more than one bid, is submitted to the owner of the goods to see if he will sell at that price. If he will, the sale is made.

Some members of respondent Association were in opposition to the sale of mink pelts by private treaty. As one witness stated:

The only opposition was that they shouldn't sell goods by private treaty at the time when they are running sales. When an auction is in progress, we asked them not to sell at that particular time, so if they have anything for offer by private treaty, some of us should be able to look at those goods and perhaps buy some of the goods that were offered by private treaty.

Very often the auction houses would call the fur dealers on the telephone and ask them if they were interested in certain goods they had for sale by private treaty. The fur pelts offered for sale at private treaty were not listed in the catalogs issued by the auction houses. However, sometimes when some of the producers buy back the goods

after a sale is concluded, the auction houses may call up dealers and try to sell such pelts at private treaty.

This practice was generally condemned by the marketing boards of the fur breeders associations as a practice that was not desirable from the standpoint of either the producer or the buyer. While many of the fur breeders expressed themselves in favor of this phase of the program, the extent to which it was put into effect was limited.

The Mutation Mink Breeders Association recommended to the auction houses that no private treaty selling of *dressed goods* be made between sales "so as to protect the buyers who have protected us in our sales."

CONCLUSION

It is concluded from the foregoing facts that the respondents herein have entered into, maintained and carried out an agreement, understanding and combination between and among themselves and others to suppress, hinder and lessen competition in the purchase, manufacture, sale and distribution of mink fur pelts between and among the various States of the United States and in the District of Columbia, and that pursuant to and in furtherance of said agreement, understanding and combination, said respondents cooperatively, concertedly and collectively devised, dictated and composed methods, terms and conditions as to which those engaged in the mink fur industry, including the ranchers, breeders associations, and auction companies, were to market and distribute their mink pelts, and have persuaded, threatened, coerced, and through the use of boycott and threats to boycott, have compelled those engaged in the mink fur industry, including the ranchers, breeders associations and auction companies to conform to, comply with, and abide by said terms and conditions.

In arriving at the foregoing conclusion consideration has been given especially to the fact that the members of respondent Association in their program to eliminate so-called abuses and evils in the mink fur industry have attempted to compel and coerce, and to a certain extent have succeeded in compelling and coercing, other members of that industry, particularly the breeders and the auction houses, to change their methods of doing business and have thus hampered, suppressed and hindered the free play of competition between and among the breeders and the auction companies on the one hand and the members of respondent Association and other buyers of mink pelts on the other hand. Consideration also has been given to the fact disclosed by the record that members of respondent Association in carrying out their program have interfered with the business of their competitors who are not members of respondent Association and who have been de-

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prived of their rights to buy in quantities most suitable for their needs, and if the program was carried out to its logical conclusion they would be deprived of buying dressed mutation mink pelts from the breeders at the auction houses.

That the members of the respondent Association acted deliberately and with full knowledge of the effect that would be created from such activities, is indicated at the first meeting of the respondent Association when it was determined that the mutation breeders would be urged to cease offering their mink as dressed pelts "so that the traders would be enabled to buy quantity lots of goods without having to meet the competition of the small retailer who is interested in only one or two bundles." While the members of respondent Association used boycott and threats of boycott only with respect to this phase of their program, it is believed that such action on their part is an indication of the lengths to which they would go in the enforcement of any part of their program unless they were curbed by Government authority.

This is not a case where the joint action of respondents had to do only with their own activities but it is a situation where if the respondents carried their joint activities to their logical conclusion they would substantially interfere with the rights of members of other segments of the mink fur industry and not only deprive breeders of their freedom of action in selling their mink pelts but also hinder and interfere with other mink buyers who are direct competitors of these respondents.

The capacity, tendency and effect of the aforesaid agreement, understanding and combination and the methods, acts and practices and things done and performed by respondents in pursuance thereof, as hereinbefore found, are and have been to unreasonably lessen, suppress and restrain competition and trade in the sale and distribution of mink fur pelts in the various States of the United States and in the District of Columbia.

The acts and practices of respondents as herein found are all to the prejudice of the public and competitors of the members of respondent Association and in the light of the decision in *Fashion Originators Guild of America, Inc., v. Federal Trade Commission*, 312 U. S. 457, constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents, Mink Traders Association, Inc., an incorporated trade association, its directors and officers individually and as such directors and officers, Joseph Liebergall, Jack Levine,

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Barney Wollman, Sidney Ziskind, Martin Schwartz, Al Weinig, Murray Schulman, Morris Greenbaum, Sam Cherny, Joe Feirstein, Arthur Margolyes, Henry Bild, Mannie Lederberg, Nathan Farber, Jack Klein, S. B. Levin, Philip Lieberman, Henry Mechutan, E. J. Pager, and A. S. Gold, individually and in their capacities as officers, members, representatives and agents of other respondents; Arthur B. Margolyes, Inc., a corporation, B. Wollman & Bros., Inc., a corporation, Jack Levine Fur Company, Inc., a corporation; their respective officers, representatives, agents and employees; Joseph Liebergall and Sophie Liebergall trading under the name and style of Joseph Liebergall & Company, a partnership, their representatives, agents and employees; Samuel B. Levin, Irene Levin and Edith Falick trading under the name and style of S. B. Levin Fur Company, a partnership, their representatives, agents and employees; Joseph Schwartz and Martin Schwartz trading under the name and style of Joseph Schwartz & Son, a partnership, their representatives, agents and employees; and Samuel Cherny and Joseph Cherny, trading under the name and style of Cherny Fur Company, a partnership, their representatives, agents and employees; all other members of said Association, as representatives for whom the said members named above were made respondents herein; individually and in their capacities as members, representatives and agents of other respondents in, or in connection with, the offering for sale, sale and distribution in interstate commerce of "mink fur pelts" in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, cooperating in, carrying out or continuing any planned common course of action, understanding, agreement or combination between and among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts and things:

1. Holding, attending, or participating in meetings, or agreeing upon, arriving at or adopting any plan, device or program for the purpose or with the effect of reducing the number of mink pelt auction sales or postponing or cancelling any such sales;

2. Holding, attending, or participating in meetings, or agreeing upon, arriving at or adopting any plan, device or program for the purpose or with the effect of controlling the size of individual mink pelt bundles or auction lots of mink pelts;

3. Holding, attending or participating in meetings, or agreeing upon, arriving at or adopting any plan, device or program for the purpose or with the effect of eliminating dressed mink pelts from

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at such sales or in any way to reduce the number of such pelts offered at such sales;

4. Holding, attending or participating in meetings, or agreeing upon, arriving at or adopting any plan, device or program for the purpose or with the effect of eliminating "private treaty" selling by mink ranchers, the members of mink breeders associations and auction houses to the members of respondent Association or others;

5. Hindering or preventing by intimidation, coercion, persuasion, withdrawal or threatened withdrawal of patronage, or custom, or by boycotting, or threatening to boycott, expressly or impliedly, the sale of mink pelts by any auction house, mink rancher or mink breeders association.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (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 the order to cease and desist [as required by said declaratory decision and order of August 28, 1952].

Syllabus

IN THE MATTER OF
BENJAMIN BIELER ET AL. DOING BUSINESS AS BIELER
AND RABINOWITZ AND SEW-EASY PRODUCTS CO.

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

Docket 5891. Complaint, June 27, 1951—Decision, Aug. 28, 1952

When sewing machines are exhibited and offered for sale by retailers to the purchasing public not marked or not adequately marked showing their foreign origin, or if foreign markings are concealed, such purchasing public understands and believes them to be wholly of domestic origin.

There is among members of the purchasing public a substantial number who have a decided preference for sewing machines originating in the United States over machines originating in whole or in part in foreign countries.

Where two partners engaged in the interstate sale to wholesale and retail dealers of imported sewing machine heads which, when purchased by them from the importers or from other dealers disclosed their Japanese origin in some cases plainly on the front of the vertical arms, in others in such a way as to be distinguished only by careful inspection, and in others on the rear of said arm, to some of which heads they attached a motor which concealed the words "Made in Occupied Japan" or "Japan"—

- (a) Failed adequately to disclose on said sewing machine heads, to which motors of domestic manufacture, as plainly indicated thereon had been attached as aforesaid, that said heads were manufactured in Occupied Japan;
- (b) Falsely represented that they were the manufacturers of the sewing machine heads or sewing machines they sold through the statement in their advertising, "All machines are fully guaranteed at our factory," notwithstanding the fact that they had no factory, and thereby still further strengthened and implemented the erroneous impression engendered as aforesaid; and
- (c) Confusingly and misleadingly represented that their said products were fully or otherwise guaranteed through use of the word "guaranteed" as above set forth, without disclosing the terms and conditions of the guarantee and clearly indicating the identity of the guarantor;

With tendency and capacity to lead a substantial number of the purchasing public into the erroneous belief that their said products were of domestic origin and manufactured by them and thereby induce purchase thereof, with the result of unfairly diverting substantial trade in commerce to them from their competitors, to the substantial injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and their competitors, and constituted unfair methods of competition in commerce and deceptive acts and practices therein.

In said proceeding the fact that the acts and practices of respondents, found violative of the Federal Trade Commission Act, constituted a minor rather than a major part of respondents' business, as contended, was neither defense nor justification for that part thereof continuing to deceive and mislead, even indirectly, the substantial numbers of the public involved.