

Complaint

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IN THE MATTER OF

AL A. ROSENBLATT CO., INC., ET AL.

CONSENT AND DEFAULT ORDERS, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT AND OF THE FUR PRODUCTS
LABELING ACT

Docket 6299. Complaint, Feb. 25, 1955—Decision, July 13, 1955

Consent and default orders requiring the consenting respondent and the defaulting respondents, furriers in Boston, Mass., and Buffalo, N. Y., respectively, to cease violating the Fur Products Labeling Act and the Federal Trade Commission Act by representing falsely in advertising, by statements of salesmen, on tags or labels and in invoices, the composition, prices, quality, source, etc., of their fur products, and by failing in other respects to conform to the requirements of the Act.

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

Mr. John J. McNally for the Commission.

Arenella & Arenella, of Boston, Mass., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Al A. Rosenblatt Co., Inc., a corporation, and Lila Rosenblatt, individually and as President of said corporation, and Mac Goldman, an individual trading as Mac Goldman Company, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 Al A. Rosenblatt 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 office and principal place of business located at 683 Main Street, Buffalo, New York.

Respondent Lila Rosenblatt, an individual, is President of respondent Al A. Rosenblatt Co., Inc., and in said capacity controls, formulates and directs the acts, practices and policies of said corporate respondent. Her business address is the same as that of said corporate respondent.

Respondent Mac Goldman is an individual, trading as Mac Goldman Company, with his principal office and place of business located at 600 Washington Street, Boston, Massachusetts.

PAR. 2. Respondents Al A. Rosenblatt Co., Inc., and Lila Rosenblatt are engaged in the sale of fur products at wholesale to furriers, and at retail, to members of the purchasing public. Respondent Mac Goldman, trading as Mac Goldman Company, provides fur products, had on consignment from numerous fur product manufacturing and distributing concerns located in various States of the United States, to retailers thereof located in various States of the United States, for sale to the purchasing public.

In the course and conduct of their respective businesses as aforesaid, respondents entered into an arrangement wherein certain of the stocks of fur products in the custody or control of said respondents were merged and commingled for a period of time, during which said respondents jointly promoted the sale thereof to members of the purchasing public.

The aforesaid arrangement provided that respondents Al A. Rosenblatt Co., Inc., and Lila Rosenblatt undertake the dissemination of advertisements concerning the sale of said commingled stock of fur products, and to furnish the premises, most of the sales personnel, and the invoices and other facilities necessary for the said joint promotion and sale, and to be responsible for the Federal Excise taxes collected incident to the sale of said merchandise. Respondent Mac Goldman assisted in the formulation of the promotional material and supplied one sales person. Said arrangement further provided that such fur products from the stocks supplied by respondent Goldman as were sold during said joint promotion and sale be billed directly to respondent Al A. Rosenblatt Co., Inc., by the consigners thereof, and be invoiced to the purchasers thereof by and in the name of respondent Al A. Rosenblatt Co., Inc.

Upon the termination of said joint promotion and sale, and after the payment of all expenses related thereto, the fur products remaining from the stocks supplied by respondent Mac Goldman were withdrawn from the premises of Al A. Rosenblatt Co., Inc., and the net profits accruing from said joint venture were thereupon equally shared between respondents Mac Goldman and Al A. Rosenblatt Co., Inc.

PAR. 3. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, the respondents, acting in conjunction and in cooperation with each other, have introduced, sold, advertised, offered for sale, transported and distributed fur products in commerce, and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur," and "fur product," are defined in the Fur Products Labeling Act.

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Certain of said fur products have been misbranded, falsely advertised and falsely invoiced in violation of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were falsely and deceptively advertised, in violation of the Fur Products Labeling Act, in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain advertisements concerning said fur products by means of newspapers and by various other means, which advertisements were not in accordance with the provisions of Section 5 (a) of the Fur Products Labeling Act and of the Rules and Regulations promulgated under the said Act, and which advertisements were intended to and did aid, promote and assist, directly and indirectly, in the sale and offering for sale of said fur products.

PAR. 5. Among and including the advertisements as aforesaid, but not limited thereto, was an advertisement of respondents which appeared in the March 10, 1954, issue of the "Buffalo Evening News," a publication having wide circulation in the State of New York, and in adjacent counties of the State of Pennsylvania and in adjacent provinces of Canada.

By means of the aforesaid advertisement, and through others of the same import and meaning not referred to specifically herein, respondents falsely and deceptively:

(a) Misrepresented prices of fur products as having been reduced from regular or usual prices, where the so-called regular or usual prices were in fact fictitious, in that they were not the prices at which said merchandise was usually sold by respondents, in the recent regular course of their business, in violation of Rule 44 (a) of the aforesaid Rules and Regulations.

(b) Misrepresented, by means of comparative prices and percentage savings claims not based upon current market values, the amount of savings to be effectuated by purchasers of said fur products, in violation of Rule 44 (b) of the aforesaid Rules and Regulations.

(c) Misrepresented the grade, quality or value of certain of said fur products, by the use of illustrations depicting higher prices or more valuable products than those actually available for sale at the advertised selling price, in violation of Rule 44 (f) of the aforesaid Rules and Regulations.

(d) Misrepresented said fur products as being the stock of a business in a state of liquidation in violation of Rule 44 (g) of the said Rules and Regulations.

Respondents, in making the pricing claims and representations referred to in subparagraphs (a) and (b) hereof, failed to maintain

full and adequate records disclosing the facts upon which such claims and representations were purportedly based, in violation of Rule 44 (e) of said Rules and Regulations.

PAR. 6. Certain of said fur products were falsely and deceptively advertised in that the name of the animal producing the fur contained in said fur products was orally misrepresented by respondents or their sales people, in promoting the sale of such fur products, in violation of Section 5 (a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 7. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4 (2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 8. Certain of said fur products were misbranded in that respondents, on labels attached thereto, set forth the name of an animal in addition to the name of the animal that produced the fur, in violation of Section 4 (3) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 9. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Required information was set forth in abbreviated form in violation of Rule 4 of the aforesaid Rules and Regulations;

(b) The country of origin of imported furs contained in fur products was set forth in abbreviated form and in the adjective form in violation of Rule 12 (e) of the aforesaid Rules and Regulations;

(c) Required information was mingled with non-required information in violation of Rule 29 (a) of the said Rules and Regulations;

(d) Required information was set forth in handwriting in violation of Rule 29 (b) of the said Rules and Regulations;

(e) Required information was set forth in improper sequence in violation of Rule 30 of the aforesaid Rules and Regulations;

(f) Respondents failed to set forth an item number of mark assigned to fur products, in violation of Rule 40 (a) of said Rules and Regulations.

PAR. 10. Certain of said fur products were falsely and deceptively invoiced in that they were not invoiced as required under the provisions of Section 5 (B) (1) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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PAR. 11. Certain of said fur products were falsely and deceptively invoiced in that respondents, on invoices furnished to purchasers of said fur products, set forth the name of an animal in addition to the name of the animal that produced the fur, and misrepresented the country of origin of imported furs contained in fur products, in violation of Section 5 (B) (2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 12. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act, in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The country of origin of imported furs contained in fur products was set forth in abbreviated form in violation of Rule 12 (e) of the aforesaid Rules and Regulations.

(b) Respondents failed to set forth an item number of mark assigned to fur products in violation of Rule 40 (a) of the aforesaid Rules and Regulations.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constituted unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on February 25, 1955, charging them with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promulgated under the Fur Products Labeling Act.

Respondents Al A. Rosenblatt Co., Inc., and Lila Rosenblatt, individually and as President of said corporation, failed to file answers to the complaint and failed to appear at the time and place fixed for hearing in said complaint. The "Notice" portion of the complaint, based upon the provisions of Rule V, provided that the failure of respondents to file timely answers and to appear at the time and place fixed for hearing would be deemed to authorize the Commission and the hearing examiner to issue an order in the form therein set forth.

Respondent Mac Goldman, an individual, trading as Mac Goldman Company, after being duly served with said complaint, and filing answer thereto, entered into a stipulation with counsel in support of the complaint dated May 9, 1955, providing for the entry of a con-

sent order disposing of all the issues in this proceeding. Said stipulation has been submitted to the above-named hearing examiner for his consideration in accordance with Rule V of the Commission's Rules of Practice. Respondent Goldman, pursuant to the aforesaid stipulation, has admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Said stipulation further provides that the answer heretofore filed in this proceeding by respondent Goldman be withdrawn, which action is hereby authorized, and that all parties expressly waive a hearing before the hearing examiner or the Commission, and all further and other procedure to which the respondent may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondent Goldman has also agreed that the order to cease and desist issued in accordance with said stipulation shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waives any and all right, power, or privilege to challenge or contest the validity of the said order. It was also stipulated and agreed that the stipulation, together with the complaint, shall constitute the entire record for respondent Goldman. It has been further stipulated and agreed that the complaint herein may be used in construing the terms of the order provided for in said stipulation, and that the signing of said stipulation is for settlement purposes only and does not constitute an admission by respondent Goldman that he has violated the law as alleged in the complaint, and that this stipulation is subject to Rules V and XXII of the Commission's Rules of Practice and that the said order shall have no force and effect until it becomes the order of the Commission.

This proceeding having now come on for final consideration by the hearing examiner on the complaint, the record herein, and the aforesaid stipulation for consent order, and it appearing that said stipulation provides for an appropriate disposition of this proceeding as to respondent Mac Goldman, the same is hereby accepted and made a part of the record.

The said hearing examiner having duly considered the record herein, pursuant to Rules V and VIII of the Rules of Practice of the Commission, makes the following findings for jurisdictional purposes, and order:

1. Respondent Al A. Rosenblatt 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 office and principal place of business located at 683 Main Street, Buffalo, New York.

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2. Respondent Lila Rosenblatt, an individual, is President of respondent Al A. Rosenblatt Co., Inc., and in said capacity controls, formulates and directs the acts, practices and policies of said corporate respondent. Her business address is the same as that of said corporate respondent.

3. Respondent Mac Goldman is an individual, who for several years last past, up to and including February 1, 1955, has traded as Mac Goldman Company. His office and principal place of business, up to and including October 1, 1954, has been 600 Washington Street, Boston, Massachusetts. His place of residence is now 8 Ranger Road, West Natick, Massachusetts.

4. By reason of their failure to file answer to the complaint and to appear at the time and place fixed in said complaint for a hearing thereon, the respondents, Al A. Rosenblatt Co., Inc., a corporation, and Lila Rosenblatt, individually and as President of said corporation, became amenable to the default provisions of Rule V (b) of the Commission's Rules of Practice, and by reason of the stipulation afore-described as to the respondent, Mac Goldman, it is concluded by this hearing examiner that the Federal Trade Commission has jurisdiction of the subject matter and of all respondents herein; that the complaint adequately states a cause of action under the Federal Trade Commission Act and under the Fur Products Labeling Act and that this proceeding is in the public interest, wherefore the following order is issued:

ORDER

It is ordered, That respondents Al A. Rosenblatt Co., Inc., a corporation, and its officers, and Lila Rosenblatt, individually and as an officer of said corporation, and Mac Goldman, an individual trading as Mac Goldman Company or under any other trade name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or the sale, advertisement, offer for sale, transportation or distribution of fur products in commerce, or in connection with the sale, advertising, offer for sale, transportation or distribution of fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur," and "fur product," are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur

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Products Name Guide and as prescribed under the Rules and Regulations;

(b) That the fur product contains or is composed of used fur, when such is a fact;

(c) That the fur product contains or is composed of bleached, dyed, or artificially colored fur when such is a fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur when such is a fact;

(a) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered for sale in commerce, or transported or distributed it in commerce;

(f) The name of the country of origin of any imported furs used in the fur product.

2. Setting forth on labels attached to fur products, the name or names of any animal or animals other than the name or names provided for in Paragraph A (1) (a) above.

3. Setting forth on labels attached to fur products:

(a) Required information in abbreviated form;

(b) The country of origin of imported fur contained in fur products in abbreviated form or in the adjective form;

(c) Non-required information mingled with required information;

(d) Required information in handwriting;

(e) Required information in a sequence different than that required by Rule 30 (a) of the Rules and Regulations.

4. Failing to show, on labels attached to fur products, the item number or mark assigned to such fur products, as required by Rule 40 of the Rules and Regulations.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

(b) That the fur product contains or is composed of used fur, when such is a fact;

(c) That the fur product contains or is composed of bleached, dyed, or artificially colored fur when such is a fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur when such is a fact;

(e) The name and address of the person issuing such invoices;

(f) The name of the country of origin of any imported furs contained in the fur product.

2. Using on invoices the name or names of any animal or animals other than the name or names provided for in Paragraph B (1) (a) above, or furnishing invoices which misrepresent the country of origin of imported furs contained in fur products, or which contain any form of misrepresentation or deception, directly or by implication, with respect to such fur products.

3. Setting forth the name of the country of origin of imported furs contained in fur products in abbreviated form.

4. Failing to show the item number or mark of fur products on the invoices pertaining to such products.

C. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice, which is intended to aid, promote or assist, directly or indirectly in the sale or offering for sale of fur products, and which:

1. Fails to disclose the name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

2. Contains the name or names of any animal or animals other than the name or names specified in Paragraph C (1) above;

3. Represents directly or by implication:

(a) That the regular or usual price of any fur product is any amount which is in excess of the price at which such product has been offered for sale in good faith or sold by respondents in the recent regular course of their business;

(b) That a sale price enables purchasers of fur products to effectuate any savings in excess of the difference between the said price and the price at which comparable products were sold during the time specified or, if no time is specified, in excess of the difference between said price and the current price at which comparable products are sold;

(c) That any such product is of a higher grade, quality or value than is the fact, by means of illustrations or depictions of higher priced or more valuable products than those actually available for sale at the advertised selling price;

(d) That any of such products were the stock of a business in a state of liquidation, contrary to fact.

4. Makes pricing claims or representations of the type referred to in Paragraph C(3) (a) and (b) above, unless there is maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based, as required by Rule 44(e) of the Rules and Regulations;

5. Contains any form of misrepresentation or deception, directly or by implication, with respect to such fur products.

DECISION OF THE COMMISSION AND ORDER TO
FILE REPORT OF COMPLIANCE

Pursuant to Sec. 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of July, 1955, become the decision of the Commission; and, accordingly:

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.

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IN THE MATTER OF
CROSS BAKING COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF
THE CLAYTON ACT

Docket 6334. Complaint, Apr. 22, 1955—Decision, July 13, 1955

Consent order requiring a leading producer of bakery products, sold under the trade names "Holsum", "Bamby", "Hollywood", and others, with main office in Montpelier, Vt., to cease selling and contracting to sell, and fixing prices for, their products on the condition that purchasers not use or deal in bakery products of any competitor.

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

Mr. William H. Smith and *Mr. Andrew C. Goodhope* for the Commission.

Mr. Robert H. Ryan, of Montpelier, Vt., for respondents.

COMPLAINT

Pursuant to the provisions of an act of Congress, commonly known as the Clayton Act, the Federal Trade Commission having reason to believe that Cross Baking Company, Inc., a corporation, and G. Landale Edson, individually and as an officer of said corporation (hereinafter called respondents) have violated the provisions of Section 3 of the Clayton Act (15 U. S. C. A. Sec. 14), the Commission hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Cross Baking Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Vermont, having its principal office and place of business located at 101 Main Street, Montpelier, Vermont.

Respondent G. Landale Edson is an individual and is president of respondent Cross Baking Company, Inc. Respondent G. Landale Edson at all times hereinafter mentioned has controlled and directed the policies and practices of corporate respondent Cross Baking Company, Inc., including the methods, acts and practices mentioned herein.

PAR. 2. Respondents are now and for many years have been engaged in the manufacture, sale and distribution of a variety of bakery products, including various kinds of bread, rolls, cakes and pastries. Respondents sell their products under a number of trade names, including "Freshbake," "Sun-Spun," "Betsey Ross," "Holsum," "Bamby," "Hollywood" and "Duncan Hines." Respondents sell