

Complaint

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IN THE MATTER OF

LEO NELSON, INC., ET AL.

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

Docket 6341. Complaint, May 4, 1955—Decision, Aug. 25, 1955

Consent order requiring a furrier in Hackensack, N. J., to cease violating the Fur Products Labeling Act by advertising in newspapers which misrepresented prices, values, and source of its fur products, failed to disclose the names of animals producing the fur in certain products or the fact that it was artificially colored, and otherwise failed to conform to requirements of the Act.

Before *Mr. Frank Hier*, hearing examiner.

Mr. John T. Walker for the Commission.

Brenman & Susser, of Paterson, N. J., 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 Leo Nelson, Inc., a corporation, and Leo Nelson, individually and as an officer of said corporation, 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, Leo Nelson, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Respondent Leo Nelson, an individual, is president of respondent, Leo Nelson, Inc., and in said capacity formulates and controls the policies and practices of said corporate respondent. The said corporate respondent and said individual respondent have their office and principal place of business located at 260 Main Street, Hackensack, New Jersey.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been, and are now, engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products, 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 products" are defined in the Fur Products Labeling Act.

PAR. 3. 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 said Act, and which advertisements were intended to aid and did aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 4. Among and including the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in the "Bergen Evening Record," a newspaper published in Hackensack, New Jersey, and having wide circulation in said State and in various other States of the United States.

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

A. Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur products, as set forth in the Fur Products Name Guide, in violation of Section 5 (a) (1) of the Fur Products Labeling Act.

B. Failed to disclose that fur contained in fur products was bleached, dyed, or otherwise artificially colored fur, when such was the fact, in violation of Section 5 (a) (3) of the Fur Products Labeling Act.

C. Misrepresented, by means of comparative prices and percentage savings claims not based on 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.

D. Misrepresented the value of fur products, when such claims and representations were not true in fact, in violation of Rule 44 (d) of the aforesaid Rules and Regulations.

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

Respondents, in making the pricing claims and representations referred to in subparagraphs (C) and (D) 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. 5. 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 FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission on May 4, 1955, issued and subsequently served its complaint on respondents herein.

Although corporate respondent herein is named and designated in the complaint as Leo Nelson, Inc., it is agreed that its correct name is Nelson Furs, Inc. The said Nelson Furs, Inc., hereby acknowledges service of process upon it and consents that this proceeding shall be treated as though Nelson Furs, Inc., were properly named as party respondent in the complaint.

Respondent, Nelson Furs, Inc., is a corporation organized under the laws of the State of New Jersey and respondent, Leo Nelson, an individual, is president thereof and in said capacity formulates and controls the policies and practices of said corporate respondent. Both respondents have their office and principal place of business located at 260 Main Street, Hackensack, New Jersey, and are engaged thereat in the introduction into commerce, and in the sale, advertising and offering for sale in commerce, of fur products.

On June 24, 1955, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel in support of the complaint providing for entry of a consent order. By the terms thereof respondents admit all the jurisdictional allegations set forth in the complaint; agree that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with allegations thereof in the complaint; expressly waive the filing of answer, a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions or oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents agree that the order hereinafter provided for shall have the same force and effect as if made after a full

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hearing, presentation of evidence and findings and conclusions thereon, and specifically waive any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with such agreement.

It was further agreed that such agreement, together with the complaint, shall constitute the entire record herein and shall be filed with the hearing examiner for his consideration in accordance with Section 3.21 of the Commission's Rules of Practice; that the signing of the agreement was for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; that the complaint herein may be used in construing the terms of the order hereinafter entered, which order may be altered, modified or set aside in the manner provided by the statute for the orders of the Commission; that the agreement is subject to approval in accordance with Sections 3.21 and 3.25 of the Commission's Rules of Practice and that the order shall have no force and effect until and unless it becomes the order of the Commission.

On the basis of the foregoing, the undersigned hearing examiner concludes that this proceeding is in the public interest; that such agreement is an appropriate disposition of the proceeding and in accordance with the action contemplated and agreed upon, makes the following order:

ORDER

It is ordered, That respondent Nelson Furs, Inc., a corporation (erroneously referred to in the complaint as Leo Nelson, Inc., and which by the agreement for a consent order is to be substituted for Leo Nelson, Inc., and is to be treated as though Nelson Furs, Inc., was named as a party respondent in the complaint), and its officers, and Leo Nelson, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, 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 has been shipped and received in commerce, as "commerce," "fur," and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from 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:

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1. Fails to disclose:

(a) 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;

(b) That the fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur, when such is a fact.

2. 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 the respondents have usually and customarily sold such products in the recent regular course of their business;

(b) The value of fur products, when such claims and representations are not true in fact;

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

3. Makes pricing claims or representations of the type referred to in Paragraph 2 (a) and (b) above, unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based, as required by Rule 44 (e) of the Rules and Regulations promulgated pursuant to the Fur Products Labeling Act effective August 9, 1952.

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 25th day of August, 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.

Decision

IN THE MATTER OF
DOUBLEDAY AND COMPANY, INC.

ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND OF SEC. 2 (a) OF THE CLAYTON
ACT

Docket 5897. Complaint, June 29, 1951—Decision, Aug. 31, 1955

Order requiring a publishing house in Garden City, N. Y., to cease discriminating in price by requiring that retailers, but not book clubs, sell at fixed minimum resale prices books which it sublicensed the clubs to publish, and by selling publishers' editions to some wholesalers or jobbers at lower prices than to their competitors.

Mr. Fletcher G. Cohn, Mr. Lewis F. Depro and Mr. Paul H. LaRue for the Commission.

Satterlee, Warfield & Stephens, of New York City, for respondent.

Wolfson, Caton & Moguel, of New York City, for Book-of-the-Month Club, Inc., *amicus curiae*.

Newman & Katz, of New York City, and *Davies, Richberg, Tydings, Beebe & Landa*, of Washington, D. C., for American Booksellers Association, Inc., *amicus curiae*.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

The Proceedings

This proceeding began on June 29, 1951, with the issuance by the Commission of a four count complaint against the respondent. Simultaneously there was issued complaints against five other large and prominent book publishers substantially the same as the first two counts in this proceeding.¹ Since the four counts in this proceeding are in reality four different actions, clarity will be served if their particular charges are set out separately hereinafter when each individual count is separately discussed. Suffice it to say here that the first three counts in this proceeding charge a violation of the Federal Trade Commission Act through the use by respondent of unfair methods of competition by reason of unreasonable restraints of trade imposed by it upon its distributive outlets and that the fourth count charges respondent with price discrimination in the sale of its publications in violation of Section 2 (a) of the Clayton Act [U. S. C. Title

¹ A third count in each of these five cases charging price discrimination was subsequently dismissed by the Commission.