

Complaint

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IN THE MATTER OF

S. A. BARKER COMPANY ET AL.

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

Docket 6433. Complaint, Oct. 27, 1955—Decision, Mar. 14, 1956

Consent order requiring a furrier in Springfield, Ill., to cease violating the Fur Products Labeling Act through advertising in newspapers which did not give the correct name of the animal producing certain furs, did not disclose the country of origin of imported furs or that certain products were made of artificially colored fur, or named animals other than those producing the fur; and through failing to comply with labeling and invoicing requirements of the Act.

Before *Mr. Robert L. Piper*, hearing examiner.

Mr. William A. Somers for the Commission.

Stevens, Herndon & Nafziger, of Springfield, Ill., 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 S. A. Barker Company, a corporation, and S. A. Barker and Louis Friedman, individually and as officers 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. The corporate respondent, S. A. Barker Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois.

Individual respondent, S. A. Barker, is President and individual respondent, Louis Friedman, is Vice-President of the corporate respondent. These individual respondents formulate, direct, and control the acts, practices and policies of the corporate respondent. The office and principal place of business of all of said respondents is located at 603 East Adams Street, Springfield, Illinois.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, the respondents have introduced, sold, advertised, offered for sale, transported, and distributed fur

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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.

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 the Fur Products Labeling Act, of certain advertisements concerning said 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 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. 4. Among and including the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in various issues of the Illinois State Journal and Illinois State Register, publications having wide circulation in the State of Illinois and in the adjacent areas of other States of the United States.

By means of the aforesaid advertisements, and through others of similar import and meaning, not specifically referred to herein, the respondents falsely and deceptively advertised its fur products in that said advertisements:

A. Failed 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 in violation of Section 5 (a) (1) of the Fur Products Labeling Act.

B. Failed to disclose that fur products contained or were composed of 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. Failed to disclose the name of the country of origin of imported furs contained in such fur products in violation of Section 5 (a) (6) of the Fur Products Labeling Act.

D. Contained the name or names of an animal or animals other than those producing the fur contained in the fur product, in violation of Section 5 (a) (5) of the Fur Products Labeling Act.

PAR. 5. 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.

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PAR. 6. Certain of said fur products were misbranded in that respondents, on labels attached thereto, set forth the name of an animal other than 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. 7. 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 abbreviated on labels, in violation of Rule 4 of the said Rules and Regulations;

B. Required information was set forth on labels which did not comply with the minimum size requirements in violation of Rule 27 of said Rules and Regulations;

C. Required information was mingled with non-required information on labels, in violation of Rule 29 (a) of the said Rules and Regulations;

D. Required information was set forth in handwriting on labels, in violation of Rule 29 (b) of the said Rules and Regulations.

PAR. 8. 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.

PAR. 9. Respondents, in the course of their business, are in substantial competition in commerce with other firms, corporations, co-partnerships and individuals also engaged in the sale of fur products to members of the purchasing public. As a result of the acts and practices alleged herein substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents were in violation of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on October 27, 1955, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act.

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After being served with said complaint, respondents appeared by counsel and entered into an agreement, dated December 27, 1955, containing a consent order to cease and desist disposing of all the issues in this proceeding without hearing. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the same are hereby accepted and ordered filed upon becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent S. A. Barker Company is a corporation existing and doing business under and by virtue of the laws of the State of Illinois. Individual respondent, S. A. Barker, is president of the corporate respondent. Lester Friedman¹ is vice president of the corporate respondent. The office and principal place of business of all of said respondents is located at 603 East Adams Street, Springfield, Illinois.

¹ Incorrectly referred to as Louis Friedman in the caption of the complaint and other documents.

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents S. A. Barker Company, a corporation, S. A. Barker and Lester Friedman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or the sale, advertising or offering for sale, or the transportation or distribution of any fur product in commerce; or in connection with the sale, advertising, offering 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 product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. 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:

(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 the fact;

(c) The name of the country of origin of imported furs contained in fur products.

2. Contains the name or names of any animal or animals other than the name or names provided for in Paragraph A (1) (a) above.

B. 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 products 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;

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(c) That the fur product contains or is composed of bleached, dyed or otherwise 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, 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 it 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 B (1) (a) above.

3. Setting forth on labels attached to fur products;

(a) Required information in abbreviated form or in handwriting;

(b) Non-required information mingled with required information.

4. Attaching to fur products labels which fail to meet the minimum size requirements of Rule 27 of the Rules and Regulations.

C. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices showing:

(a) The name or names of the animal 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 otherwise 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.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of March, 1956, 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.

IN THE MATTER OF

CROSSE & BLACKWELL COMPANY, POMPEIAN OLIVE
OIL CORPORATION, McCORMICK & COMPANY, INC.

Dockets 6463, 6468, 6470. Orders and opinion, Mar. 15, 1956

Interlocutory order in Clayton Act proceeding denying respondents' appeals from hearing examiner's denial of motions to quash subpoenas duces tecum issued by him.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Andrew C. Goodhope and *Mr. Frederic T. Suss* for the Commission.

Niles, Barton, Yost & Dankmeyer, of Baltimore, Md., and *Mr. James W. Cassedy*, of Washington, D. C., for Crosse & Blackwell Co.

Mr. Morton J. Hollander, of Baltimore, Md., and *Mr. James W. Cassedy*, of Washington, D. C., for Pompeian Olive Oil Corp.

Anderson, Barnes & Coe, of Baltimore, Md., and *Mr. James W. Cassedy*, of Washington, D. C., for McCormick & Co., Inc.

ORDER RULING ON RESPONDENTS' APPEALS FROM
ORDER OF HEARING EXAMINER

The respondents having filed appeals from the hearing examiner's order denying their motions to quash the subpoenas duces tecum issued by the hearing examiner on January 12, 1956; and

The matter having been heard on the briefs of counsel and the Commission having determined, for reasons stated in its accompanying opinion, that the appeals should be denied:

It is ordered, That the respondents' appeals be, and they hereby are, denied.

OPINION OF THE COMMISSION

Per Curiam:

The respondents in each of these cases filed motions to quash the subpoenas duces tecum which were issued by the hearing examiner directing production, by designated officers of the respective respondent corporations, of records and documentary information there described. Those motions were denied by the hearing examiner and, as permitted under Section 3.17 (d) of the Commission's published rules and procedures, the respondents have brought appeals here from his rulings.

The complaints in these proceedings charge that each of the respondents has engaged in acts and practices violative of subsection