

Complaint

IN THE MATTER OF
WILLIAM OVERTON TRADING AS VANCOUVER
FUR FACTORY

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

Docket 6509. Complaint, Feb. 17, 1956—Decision, May 10, 1956

Consent order requiring a fur dealer to cease false advertising, misbranding, and false invoicing of his fur products in violation of the Fur Products Labeling Act, through failing to disclose the names of animals producing the fur or that certain products contained artificially colored fur, setting forth names of animals other than the real source of certain furs, failing to maintain adequate records supporting purported claims of savings, failing to attach labels, and failing to set forth information as required on attached labels and invoices.

Before *Mr. William L. Pack*, hearing examiner.
Mr. John J. McNally for the Commission.

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 William Overton, an individual trading as Vancouver Fur Factory, hereinafter referred to as respondent, has 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 William Overton is an individual trading as Vancouver Fur Factory, with his office and principal place of business located at 114 Sixth Avenue, Vancouver, Washington.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has introduced, sold, advertised, offered for sale, transported and distributed fur products in commerce, and has 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. Certain of said fur products have been misbranded, falsely advertised and

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falsely invoiced in violation of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder.

PAR. 3. Certain of said fur products were falsely and deceptively advertised, in violation of the Fur Products Labeling Act, in that respondent 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 of the Rules and Regulations promulgated under 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. 4. Among and including the advertisements as aforesaid, but not limited thereto, were advertisements which appeared in various issues of "The Columbian," a publication having wide circulation in the State of Washington and in the adjacent areas of other States of the United States.

Certain of said fur products were falsely and deceptively advertised in that certain of the advertisements disseminated in commerce as aforesaid by respondent failed to set forth the information required by Section 5 (a) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder, in the following respects:

a. Certain of said advertisements failed to disclose:

1. 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. That fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact.

b. Certain of said advertisements set forth the name of an animal other than the name of the animal that produced the fur.

c. Certain of said advertisements contained pricing claims and representations as follows:

"Values up to \$299.00..... Now \$169.00.....
Reductions up to 50%"

Respondent, in making the pricing claims and representations referred to above 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 the said Rules and Regulations.

PAR. 5. Certain of said fur products were misbranded in that they did not have affixed thereto labels showing the information required

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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. 6. Certain others of said fur products were misbranded in that respondent, 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 others 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 on labels in abbreviated form in violation of Rule 4 of the said Rules and Regulations;

(b) Required information was mingled with nonrequired information on labels, in violation of Rule 29 (a) of the said Rules and Regulations;

(c) Required information was not completely set forth on one side of the labels, as required by Rule 29 (a) of the aforesaid Rules and Regulations;

(d) Required information was set forth in handwriting on labels, in violation of Rule 29 (b) of the aforesaid 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. Certain others 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) Required information was set forth in abbreviated form in violation of Rule 4 of the aforesaid Rules and Regulations;

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

PAR. 10. The aforesaid acts and practices of respondent are in violation of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this case charges the respondent with misbranding certain fur products in violation of the Fur Products Labeling Act and the Federal Trade Commission Act. No answer to the complaint has been filed by respondent. An agreement has now been entered into by respondent and counsel supporting the complaint, which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided for other orders of the Commission; and that the agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for an appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent William Overton is an individual doing business as Vancouver Fur Factory, with his principal place of business located at 114 Sixth Avenue, Vancouver, Washington.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent, William Overton, individually or trading as Vancouver Fur Factory or under any other trade name, and respondent's 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 had been shipped and received in commerce, as

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"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 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, 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 A (1) (a) above.

3. Setting forth on labels attached to fur products:

(a) Required information in abbreviated form;

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

(c) Required information in handwriting;

4. Failing to show, on labels attached to fur products, all of the required information on one side of such labels.

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 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.

2. Setting forth required information in abbreviated form.

3. Failing to show the item number or mark of fur products on the invoices pertaining to such products, as required by Rule 40 of the rules and regulations.

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:

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

3. Makes claims or representations as to value or savings, unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims or representations are based.

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 10th day of May, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Order Denying, etc.

IN THE MATTER OF
RIGID STEEL CONDUIT ASSOCIATION ET AL.

Docket 4452. Order and dissenting opinion, May 11, 1956

Order denying motion to modify desist order since it does not prohibit the independent practice of freight absorption or individual use of delivered prices.

Mr. Paul R. Dixon and Mr. R. D. Young, Jr. for the Commission.

ORDER DENYING MOTION TO REOPEN AND MODIFY ORDER TO
CEASE AND DESIST

This matter having been considered by the Commission upon a motion, filed by Triangle Conduit & Cable Co., Inc., requesting that the proceeding be reopened and the order to cease and desist entered on June 6, 1944,¹ modified in certain respects; and

It appearing that the alleged purpose of the requested modification is to make clear that the order does not prohibit any of the respondents, when acting independently, from quoting or selling rigid conduit at delivered prices or from absorbing freight, and particularly from quoting prices which "differ in terms of mill nets according to the location of purchasers"; and

The Commission having stated in its order of July 7, 1949, denying a similar motion that the questioned portion of the order to cease and desist does not prohibit the independent practice of freight absorption or selling at delivered prices by individual sellers, but only the continuance of the basing-point, delivered price system, found to have been the subject of conspiracy, or any variation thereof which might be accomplished through the practices specified in subparagraphs (a), (b), (c) or (d) when done, as stated in the order, "for the purpose or with the effect of systematically matching delivered price quotations"; and

The Commission being of the opinion that said portion of the order does not under any other circumstances prohibit the practice of quoting prices which differ in terms of mill nets received on sales to different purchasers; and

The allegations of the motion being insufficient to support a conclusion that conditions of fact or of law may have so changed since the issuance of the order as to require its modification or that the public interest may now require it:

¹ 38 F. T. C. 534.

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It is ordered, That the motion for reopening and modification be, and it hereby is, denied.

Commissioner Mason dissenting.

DISSENTING OPINION OF COMMISSIONER MASON

Quasi-judicial agencies would improve their appearance if, when caught in an irreconcilable position, they frankly (and in good season) admit the error of their ways and Get Right with Justice.

In the instant case the Commission made pretensions at powers not congressionally included within its statutory authority. The Federal Trade Commission was unable to find Clifton Conduit Co. and Spang Chalfant, Inc., guilty of conspiracy. Lacking the authority to command persons innocent of unlawful acts to submit to sanctions, the Commission nevertheless under Count II, which merely charged them with knowingly doing the same thing others were doing, ordered Clifton Conduit Co. and Spang Chalfant, Inc., to "cease and desist from * * * selling rigid steel conduit at delivered prices which systematically reflect the inclusion of a transportation factor greater *or less* than the actual cost of transportation from point of shipment to destination." A reviewing court, like the praising courtiers in the fable of the king who dressed in nothing, approved. Thus for twelve years we have been caught in the web of our over-enthusiasm. We have paraded too long in the naked inconsistency of Rigid Conduit. The Commission needs an innocent child to tell it that it hasn't any clothes on.

Now that the Supreme Court and the Seventh Circuit Court of Appeals have released us from our folly,² it would be the better part of discretion to renounce our former pretensions and amend the order in Rigid Conduit so that it would not provide as above.

The instant order does not do this.

I am against it.

² *Theater Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U. S. 537; *National Lead Company v. F. T. C.*, 227 F. 2d 825.

Findings

IN THE MATTER OF

JACQUES DE GORTER ET AL. TRADING AS PELTA FURS

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

Docket 6297. Complaint, Feb. 25, 1955—Decision, May 11, 1956

Order requiring furriers in Los Angeles, Calif., to cease false advertising and misbranding of fur products in violation of the Fur Products Labeling Act and the Federal Trade Commission Act.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. John T. Walker and *Mr. Edward F. Downs* for the Commission.
Walley & Davis, of Los Angeles, Calif., for respondents.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

The Commission, having fully considered the entire record herein, including the initial decision of the hearing examiner and the cross-appeals therefrom, and having rendered its decision granting the appeal of counsel in support of the complaint and denying the appeal of respondents, and having vacated and set aside the initial decision, finds that this proceeding is in the interest of the public and makes this, its findings as to the facts, conclusions drawn therefrom, and order, the same to be in lieu of said initial decision.

FINDINGS AS TO THE FACTS

1. Respondents, Jacques De Gorter and Suze C. De Gorter, are individuals trading as Pelta Furs, with their office and principal place of business located at 437 West Seventh Street, Los Angeles, California.

2. Respondents, Jacques De Gorter and Suze C. De Gorter, individually and trading as Pelta Furs, for several years last past have been engaged in the purchase and distribution of fur products, including fur coats, jackets, stoles and related fur garments.

3. Respondents stipulated that in the course of their business, they are in substantial competition in commerce with other firms, corporations, copartnerships and individuals also engaged in the sale of fur products to members of the purchasing public, and it is established by uncontroverted evidence that respondents obtained approximately 25% of their fur products by means of purchases made outside the State of California, and that such fur products were shipped to them