

Decision

IN THE MATTER OF
DURLACHER AND COMPANY, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket 6355. Complaint, May 16, 1955—Decision, July 24, 1956

Consent order requiring importers in New York City, to cease violating the Flammable Fabrics Act by importing into the United States and selling or transporting in commerce silk scarves manufactured in Japan which were so highly inflammable as to be dangerous when worn; and furnishing customers with guaranties falsely representing that tests made under the procedures provided by the Act showed that the scarves were not dangerously inflammable.

Mr. Brockman Horne for the Commission.

Mr. Frederick E. M. Ballon, of New York City, for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued May 16, 1955, charges the respondents Durlacher and Company, Inc., a corporation existing under and by virtue of the laws of the State of New York, and Lester Toplitt and Israel Otnow, individuals and as officers of the respondent corporation, with violation of the Federal Trade Commission Act and of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, in connection with the importation, sale, offering for sale and transporting in interstate commerce of articles of wearing apparel which articles were so highly flammable as to be dangerous when worn by individuals.

After the issuance of said complaint and the filing of their answer thereto, the respondents entered into an agreement for consent order with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement, the answer heretofore filed by respondent was withdrawn and the parties expressly waived a hearing before the hear-

Order

53 F.T.C.

ing 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 and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement, respondents further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that the said order may be altered, modified or set aside in the manner provided by the statute for the orders of the Commission.

Said agreement recites that respondent Durlacher and Company, Inc. is a corporation existing under and by virtue of the laws of the State of New York; respondents Lester Toplitt and Israel Otnow are individuals and, respectively, are President and Secretary-Treasurer of the corporate respondent and as such formulate, direct, and control the policies of the corporation. The office and principal place of business of all respondents is located at No. 120 East 23rd Street, New York, New York.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order.

ORDER

It is ordered, That the respondent Durlacher and Company, Inc., a corporation, and its officers, and respondents Lester Toplitt and Israel Otnow, individually and as officers of said corporation, and

respondents' representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. (a) Importing into the United States; or
- (b) Selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or
- (c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce; any article of wearing apparel, which, under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

2. Furnishing to any person a guaranty with respect to any article of wearing apparel which respondents, or any of them, have reason to believe may be introduced, sold, or transported in commerce, which guaranty represents, contrary to fact, that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, show or will show that the article of wearing apparel, or the fabrics used or contained therein, covered by the guaranty, is not, in the form delivered or to be delivered by the guarantor, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals, provided, however, that this prohibition shall not be applicable to a guaranty furnished on the basis of, and in reliance upon, a guaranty to the same effect received by respondents in good faith signed by and containing the name and address of the person by whom the wearing apparel was manufactured or from whom it was received.

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 24th day of July, 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.

Decision

IN THE MATTER OF
NIGBOR FURS, INC., ET AL.

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

Docket 6516. Complaint, Feb. 20, 1956—Decision, July 24, 1956

Consent order requiring furriers in Stevens Point, Wis., to cease violating the Fur Products Labeling Act by removing labels from fur products prior to their ultimate sale; by failing to comply with labeling requirements of the Act; and by advertisements in newspapers which failed to disclose the names of animals producing the furs and the country of origin, or that certain products were artificially colored, or which represented regular prices as reduced without maintaining adequate records upon which such pricing claims were based.

Mr. William A. Somers for the Commission.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on February 20, 1956, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding and falsely advertising their fur products and by removing labels required to be affixed to such fur products. After the issuance of said complaint and the filing of their answer thereto, the respondents entered into an agreement, dated May 25, 1956, containing a consent order to cease and desist disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the Director of the Bureau of Litigation. 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 respondents' answer to the complaint shall be con-