

Decision

IN THE MATTER OF

JOSEPH BENARD TRADING AS BENARD'S FURS

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

Docket 6731. Complaint, Feb. 21, 1957—Decision, May 24, 1957

Consent order requiring a furrier in San Francisco, Calif., to cease violating the Fur Products Labeling Act by deceptively naming, in advertising and on labels and invoices, the animals producing certain furs or naming other animals; by substituting deceptive and incomplete labels for the original manufacturer's labels; by abbreviating information on invoices; failing to name the country of origin of imported furs and to reveal that the fur in certain products was artificially colored; advertising regular prices as reduced; and failing in other respects to conform to the requirements of the Act.

Mr. George E. Steinmetz for the Commission.

Mr. Joseph Benard, of San Francisco, Calif., pro se.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued February 21, 1957, charged the respondent Joseph Benard, an individual trading as Benard's Furs, located at 55 Regency Court, "Stonestown", San Francisco, California, with the use of unfair and deceptive acts and practices in interstate commerce in violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

After the issuance of said complaint, the respondent Joseph Benard, an individual trading as Benard's Furs, 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 Acting Director, 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 respondent that he has violated the law as alleged in the complaint.

By the terms of said agreement, the said respondent admitted all the jurisdictional facts alleged in 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.

By said agreement the respondent expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the

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rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondent 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.

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 said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

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 respondent named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondent Joseph Benard, individually and trading as Benard's Furs, or trading under any other name or names, and respondent's representatives, agents or 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 of any fur product which is 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. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured.

2. 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;

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(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 or flanks, 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, 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.

3. Setting forth on labels attached to fur products:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which is intermingled with nonrequired information;

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which is in handwriting.

4. Failure to show on labels attached to fur products an item number or mark assigned to fur products, in violation of Rule 40(a) of the Rules and Regulations.

B. Removing or mutilating, or causing or participating in the removal or mutilation of, labels affixed to fur products showing information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, prior to the time the fur products are sold and delivered to the ultimate purchasers of such products.

C. 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 or flanks, when such is a fact;

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- (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 information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

3. Failing to set up, on each invoice, required information concerning the country of origin of imported furs, in violation of Rule 12 of the said Rules and Regulations.

4. Failing to disclose that fur products contain or are composed of bleached, dyed or artificially colored furs, in violation of Rule 19 of the said Rules and Regulations.

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

D. Falsely or deceptively advertising fur products through the use of any advertisements, representations, 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 product as set forth in the Fur Products Name Guide and as prescribed under the said Rules and Regulations.

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

3. Represents directly or by implication:

(a) That fur products consisting of bleached, dyed or otherwise artificially colored furs are "blended", in violation of Rule 19(e) of the said Rules and Regulations;

(b) That the regular price of any fur product is any amount which is in excess of the price at which respondent has regularly or customarily sold or offered for sale in good faith fur products of like grade and quality, in the recent regular course of his business.

4. Makes use of comparative prices or percentage savings claims unless such compared prices or claims are based upon the current market value of the fur products or upon a bona fide compared price at a designated time.

5. Makes representations and pricing claims of the nature referred to in D(3)(b) and 4 hereto, unless full and adequate records disclosing the facts upon which the claims and representations are based are made.

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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 May, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That 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.

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IN THE MATTER OF
MARYLAND BAKING CO. ET AL.

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(a)
OF THE CLAYTON ACT

Docket 6327. Order, May 31, 1957

Order modifying, to accord with decision of the Court of Appeals for the Fourth Circuit¹ cease and desist order of June 29, 1956, 52 F.T.C. 1679, so as to require respondent baking company to cease discriminating in price "by selling ice cream cones to any purchaser at [higher prices] *a price which is lower* than the price[s] charged any other purchaser engaged in the same line of commerce where [, in the sale of said cones to] *such lower price undercuts the price at which the purchaser charged the lower price* [, respondent The Maryland Baking Company is in competition with another seller] may purchase ice cream cones of like grade and quality from another seller.²

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

Mr. Rice E. Schrimsher for the Commission.

Burke, Gerber & Wilen, of Baltimore, Md., and *Mr. William Simon*, of *Howrey & Simon*, of Washington, D.C., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This matter having been heard by the Commission upon the appeal of respondent, The Maryland Baking Company, and counsel supporting the complaint from the hearing examiner's initial decision, on briefs and oral argument of counsel; and, the Commission having duly considered the record and the questions raised on appeal, and having thereafter, on the 29th day of June, 1956, rendered its decision in which it denied the appeals and adopted as its own the findings, conclusions, and order contained in the initial decision; and issued the order to cease and desist against respondent, The Maryland Baking Company, its officers, representatives, agents, and employees; and

Respondent, The Maryland Baking Company, having filed in the United States Court of Appeals for the Fourth Circuit its petition for review of, and to set aside, said order to cease and desist; and the Court having heard the cause on briefs and oral argument, including a suggested alternative form of order submitted by the Commission pursuant to request of the Court; and the Court having

¹ 243 F. 2d 716, Apr. 8, 1957.

² Language deleted by the Court from the original order is enclosed in brackets; language added is italicized.