

IN THE MATTER OF
ELLISBERG'S, INC., ET AL.

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

Docket 6819. Complaint, June 14, 1957—Decision, Sept. 18, 1957

Consent order requiring a furrier in Raleigh, N.C., to cease violating the Fur Products Labeling Act by fictitious pricing on labels and in advertising, and by advertising in newspapers which failed to disclose the names of animals producing the fur in certain products or the country of origin or that certain furs were artificially colored, and which misrepresented values, comparative prices, percentage savings, and guarantees; and by failing in other respects to comply with the labeling, invoicing and advertising requirements of the Act.

Michael J. Vitale and Thomas A. Ziebarth, Esqs., supporting complaint.

Howard E. Manning, Esq., representing respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued June 14, 1957, charges the respondents, above-named, with violation of the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the Rules and Regulations promulgated under the last-named Act, in connection with the sale, advertising and offering for sale, transportation and distribution, shipping and receiving in commerce, of fur and fur products, as the designations "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act.

Subsequent to the service of the complaint on all respondents, all parties did, on July 20, 1957, enter into an agreement for a consent order disposing of all of the issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation of the Commission. It was provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all of 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 parties expressly waived a hearing before

a 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 and oral argument before the Commission, and all further and other procedure before the Hearing Examiner and the Commission to which the respondents may otherwise, but for the execution of said agreement, 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 though 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 statute for other orders of the Commission.

Said agreement recites that respondent Ellisberg's, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of North Carolina; that the individual respondents, Elias and Mortimer Ellisberg are, respectively, President and Secretary-Treasurer of the corporate respondent; the complaint charges that the individual respondents, acting in cooperation with each other, formulate, direct and control all of the acts and policies of the corporate respondent. The address and principal place of business of all respondents is located at No. 126 Fayetteville Street, Raleigh, North Carolina.

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.

Consonant with the express terms and provisions of said agreement, the Hearing Examiner finds that the complaint herein states a valid cause of action; that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of all respondents named herein and that this proceeding is in the public interest, wherefore he issues the following order:

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ORDER

It is ordered, That respondent Ellisberg's, Inc., a corporation, and its officers, and Elias Ellisberg and Mortimer Ellisberg, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product, or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped or 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 by affixing thereto any label or tag containing a price which is greater than the price normally charged in the usual and regular course of business;

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;

(b) That the fur product contains or is composed of used fur, when such is the 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;

3. Setting forth on labels attached to such fur products non-required information mingled with information that is required under Section 4(2) of the Act and the Rules and Regulations thereunder;

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

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(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;

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 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 any imported fur contained in such fur products;

2. Sets forth information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations thereunder in abbreviated form;

3. Fails to set forth in type of equal size and conspicuousness information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations thereunder;

4. Represents prices of fur products as being reduced from regular or usual prices where the so-called regular or usual prices are in fact fictitious, in that they are not the prices at which said merchandise is usually sold by respondents in the recent regular course of business in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations thereunder;

5. Guarantees that prices will be higher later in the season unless such is the fact;

D. Making use of comparative prices and percentage savings claims in advertising unless such prices and claims are based on

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current market values or unless the designated time of a bona fide compared price is given;

E. Making pricing claims and representations of the type referred to in Paragraphs C 4 and D unless full and adequate records disclosing the facts upon which such claims and representations are purportedly based are maintained, as required under Rule 44(e) of the Rules and Regulations.

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 18th day of September, 1957, 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.

Findings

IN THE MATTER OF
J. H. FILBERT, INC.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(d) OF THE CLAYTON ACT*Docket 6467. Complaint, Nov. 21, 1955—Decision Sept. 19, 1957*

Order requiring a Baltimore manufacturer of food products—principally salad dressing and oleomargarine sold under the trade name "Mrs. Filbert's"—with annual sales of approximately \$16,000,000, to cease violating Sec. 2(d) of the Clayton Act by such practices as paying sums of money to a Philadelphia food chain as compensation or allowance for advertising furnished in connection with the sale of its products, while not making any allowance available on proportionally equal terms to competitors of the chain.

Mr. Andrew C. Goodhope and Mr. Fredric T. Suss for the Commission.

Mr. Nathan Patz, of Baltimore, Md., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Complaint herein, issued November 21, 1955, charged respondent with having paid advertising or promotional allowances for services to some of its customers without making such payments available on proportionally equal terms to all of its other customers competing in the resale of respondent's products with the recipients in violation of Section 2(d) of the Clayton Act (15 U.S.C. 13). After service of the complaint, various motions by respondent were made and ruled on and thereupon, on January 24, 1956, respondent filed its answer admitting descriptive and jurisdictional facts, admitting the payment of various allowances, but only for valuable services performed in good faith, and alleging availability and proportionally equal treatment of all its customers. Thereafter, six hearings were held in Baltimore, Maryland, four for the reception of evidence supporting the charge, and two for respondent's defense, at which 29 witnesses testified for a total of 610 pages of transcript, and at which 27 exhibits were received as supporting the charge and 14 exhibits in defense thereof. Thereafter, all counsel filed with the hearing examiner proposed findings and conclusions of law, on consideration of which, together with the entire record herein, said hearing examiner makes the following:

FINDINGS OF FACT

1. Respondent J. H. Filbert, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the