

IN THE MATTER OF

MAURICE BALL TRADING AS MAURICE BALL FURS

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

Docket 6631. Complaint, Sept. 12, 1956—Decision, Oct. 7, 1957

Order requiring a Los Angeles furrier to cease violating the Fur Products Labeling Act in advertising and labeling which falsely identified the animals producing the fur in certain products and carried fictitious prices; by failing to comply with the labeling and invoicing requirements of the Act; by advertisements in newspapers which failed to disclose that certain fur products were artificially colored, and misrepresented the geographic origin of certain furs, their values, and prices; and by failing to keep adequate records as a basis for such pricing claims.

Mr. Michael J. Vitale and Mr. Thomas A. Ziebarth for the Commission.

Tyre & Kamins, of Beverly Hills, Calif., by *Mr. Richard J. Kamins*, for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned hearing examiner for final consideration upon the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by both parties, and all findings of fact and conclusions of law proposed by the parties respectively not hereinafter specifically found or concluded are herewith rejected, and the hearing examiner having considered the record herein and being now fully advised in the premises makes the following findings as to the facts, conclusions drawn therefrom, and order:

1. Respondent Maurice Ball is an individual trading as Maurice Ball Furs with his place of business located at 521 West Seventh Street, Los Angeles 14, California. Respondent is a retail furrier and has been engaged in the purchase and distribution of fur products, including coats, jackets, stoles and related fur garments in the downtown Los Angeles area for over 35 years.

2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been engaged in the advertising and in the sale and distribution of fur products in interstate commerce. The evidence in this proceeding shows that respondent obtained substantial quantities of its fur products by means of pur-

chases made outside the State of California and that such fur products were shipped to him at his place of business in California. The evidence also shows that these fur products were thereafter advertised in newspapers having an interstate circulation, and in at least four instances respondent sold and transported fur garments to purchasers located outside the State of California. Respondent also purchases mink pelts or furs from a source in Los Angeles, California, for use in the manufacture, by him, of fur products. These pelts have their origin outside the State of California. The activities of the respondent in procuring fur products from sources outside the State of California, and thereafter advertising and offering for sale in newspapers having an interstate circulation, and thereafter selling, shipping, and delivering such fur products in commerce clearly brings its business activities within the concept of "commerce" under the Fur Products Labeling Act.

3. In the course and conduct of his business, certain of the fur products hereinabove described were misbranded as follows:

(a) Some of respondent's fur products were falsely and deceptively labeled or otherwise were falsely or deceptively identified with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured in violation of Section 4(1) of the Fur Products Labeling Act.

(b) Some of respondent's fur products were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act, or in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

(c) Some of respondent's fur products were misbranded in that required information was mingled with non-required information on labels, and in some instances information on labels was set forth in handwriting in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

(d) Respondent caused or participated in the removal of labels required under the Fur Products Labeling Act to be affixed to fur products prior to the time such fur products were sold and delivered to the ultimate consumer in violation of Section 3(d) of the Fur Products Labeling Act and Rule 27 of the Rules and Regulations promulgated thereunder.

(e) Respondent's fur products were falsely and deceptively invoiced in that such invoices in some instances did not contain the name or names of the animals that produced the fur; did not indicate that the fur products contained or were composed of bleached, dyed or otherwise artificially colored fur; did not show that the fur products were composed of paws, tails, bellies or waste fur; or did not give the correct country of origin of such fur; as required

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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.

(f) Respondent's products in some instances 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 that required information was set forth in abbreviated form in violation of Rule 4 of the aforesaid Rules and Regulations.

(g) Respondent caused dissemination in commerce, as "commerce" is defined in the Fur Products Labeling Act, of certain advertisements concerning his said fur products, by means of newspapers and by various other means, which advertisements were not in accordance with the provisions of Section 5(a) of said Act and the Rules and Regulations promulgated thereunder.

(h) Respondent caused dissemination in commerce, as "commerce" is defined in the Fur Products Labeling Act of certain advertisements concerning his said fur products, which falsely and deceptively advertised said fur products, in that some of said advertisements:

(1) Failed to disclose the name or names of the animal or animals producing the fur or furs contained in the fur products.

(2) Failed to disclose that the fur products were bleached, dyed, or otherwise artificially colored.

(3) Falsely represented the geographical origin of the animal or animals which produced the fur contained in said fur products.

4. In the course and conduct of his business respondent held fur sales from time to time. On such occasions respondent placed advertisements in various newspapers having interstate circulation including Los Angeles Examiner, Los Angeles Times, and Los Angeles Herald and Express. In such advertisements respondent represented that he was holding store-wide sales, during which his fur products could be purchased at a substantial discount or saving off regular prices.

5. There is testimony in this proceeding that when a shipment of fur products was received, respondent's clerk wrote on the manufacturer's ticket attached to the garment the cost of said article as shown by the invoice. After the cost of the garment had been placed on the ticket, the garment was inspected by the respondent and two figures placed upon the manufacturer's tag designating the top or ticketed price and the sale price. This procedure was not denied by the respondent except that he testified that this was only done when garment was received to be included in a sale to be or

being held. The clerk then prepared a yellow ticket to be attached to the garment showing the fur and origin and the top or ticketed price in figures—and the cost price in code. In the event a sale was being conducted a sales ticket was also attached to the garment showing the sale price in figures. The manufacturer's tag was then removed and attached to the invoice.

6. While the evidence as a whole indicates that respondent does in fact place both the top and lower figure on the manufacturer's tag, even in non-sales periods, this is not material as the top or ticketed price was merely a bargaining price and did not represent the actual price at which the garment was required to be sold by any sales person. This is borne out by the testimony of the respondent:

Q. And don't several of your customers, or prospective customers, I should say, during your regular season periods offer to purchase the garments for less than is shown on the yellow tag?

A. Quite a number of them do.

Q. And also on those occasions where quite a number of them do, if you can make what you consider a fair profit, you sell it for less, don't you?

A. We do. (Tr. 230)

Even during a sale period, respondent's sales personnel are authorized, subject to approval of respondent or his store manager, to sell a garment for less than the sales ticket price.

7. In pricing his garments the respondent did not use any systematic mark-up from costs, and in fact the prices fixed by respondent to be placed on the yellow ticket had no systematic relation to cost and were not set up on a definite pattern of profit.

8. The representations contained in the advertisements issued by the respondent constitute a misrepresentation of prices in violation of the Fur Products Labeling Act and Rule 44(a) promulgated thereunder. Respondent's system of pricing was such that the representations in advertisements of the regular price were fictitious, and further the purported saving indicated by the advertisements was in fact fictitious since the designated regular price, or respondent's ticketed price, included Federal tax, while the sales price did not include tax.

CONCLUSION

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

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ORDER

It is ordered, That respondent Maurice Ball, an individual doing business as Maurice Ball Furs, or under any other name, and respondent's representatives, agents, and 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 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 and received in commerce, as the terms "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. Falsely or deceptively labeling or otherwise identifying any such product as to the regular price or value of such product when such price is not that at which such product is regularly sold by respondent.

3. 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 artificially colored fur, when such 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.

4. Setting forth on labels attached to fur products:

a. Non-required information mingled with required information;

b. Required information in handwriting.

B. Removing or participating in the removal of labels required by the Fur Products Labeling Act to be affixed to fur products, prior to

the time any fur product is sold and delivered to the ultimate consumer.

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 bleached, dyed, or otherwise artificially colored fur, when such is the fact;

c. That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

d. The name of the country of origin of any imported furs contained in the fur product.

2. Setting forth required information in abbreviated form.

D. 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 by 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.

2. Represents, directly or by implication:

a. That the amount set forth on price tags attached to fur products represents the value or the usual price at which said fur products had been customarily sold by the respondent in the recent regular course of his said business, contrary to fact;

b. That the country of origin of any imported fur or furs used in said fur products sold by respondent is other or different than is the fact;

c. That any such product is of higher grade, quality, or value than is the fact;

d. That the regular or usual price of any fur product is any amount which is in excess of the price at which the respondent has usually and customarily sold such products in the recent, regular course of his business.

E. Making use of comparative prices or percentage savings claims in advertising unless such compared prices or claims are based upon the current market value of the fur product or upon a bona fide compared price at a designated time.

F. Making price claims and representations of the types referred to in Paragraphs D 2a, D 2c, D 2d, and E, unless there is 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

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision, filed August 2, 1957; and

The Commission having determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding:

It is ordered, That the aforesaid initial decision be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent, Maurice Ball, 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 contained in said initial decision.



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IN THE MATTER OF
REYNOLDS METALS COMPANY AND LIFETIME
SALES, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6650. Complaint, Oct. 12, 1956—Decision, Oct. 8, 1957

Order dismissing—for the reason that respondent sold all that part of its production herein concerned, along with trade-mark and good will—complaint charging a manufacturer of stainless steel cooking utensils at its factory in LaGrange, Ill., with falsely representing benefits to health and nutrition obtainable from use of its utensils and recommended "waterless" cooking methods, and dangers inherent in use of competitive products.

As to respondent sales company, the matter was disposed of on June 1, 1957 (53 F.T.C. 1108), by a consent order.

*Mr. Morton Nesmith and Mr. John Mathias for the Commission.
Mr. Gustav B. Margraf and Mr. W. Tobin Lennon, of Richmond, Va., and Mr. Fred R. Edney, of Louisville, Ky., for Reynolds Metals Co.*

INITIAL DECISION AS TO REYNOLDS METALS COMPANY BY
ABNER E. LIPSCOMB, HEARING EXAMINER

On October 12, 1956, the Commission issued its complaint in this proceeding, charging Respondents with the dissemination, in connection with advertising and selling their stainless steel cooking utensils, of false, misleading and disparaging representations, in violation of the Federal Trade Commission Act.

On April 26, 1957, the hearing examiner herein issued his initial decision accepting an agreement containing a consent cease-and-desist order disposing of this proceeding as to Respondent Lifetime Sales, Inc., which, on May 31, 1957, was adopted by the Commission.

Thereafter, on August 15, 1957, the ...

search
Consent

The affidavit further states that Respondent's decision to withdraw from the business of manufacturing stainless steel cooking utensils was made after the issuance of the complaint herein. The affidavit affirms that this Respondent does not now manufacture, sell or otherwise distribute cooking utensils except for replacement of utensils previously sold which prove to be defective or not as guaranteed, and that such replacement of utensils by the Respondent will be continued until September 10, 1957. Thereafter, the West Bend Aluminum Company will assume the obligation of such replacements, and the Respondent, Reynolds Metals Company, will be completely and wholly divorced from the manufacture, sale and distribution of cooking utensils.

The affidavit further states that Respondent Reynolds Metals Company has no intention of engaging in the manufacture, sale and distribution of cooking utensils in the future, and stipulates that if Respondent's motion for dismissal is granted, and it should resume the direct selling of utensils, this present action may at that time be reopened by the Commission.

On August 22, 1957, counsel supporting the complaint submitted an answer to Respondent's motion, stating that, in his opinion, public interest has been adequately protected, and that, by virtue of the policy of the Commission as set forth in the matter of *Bell & Howell Company*, Docket No. 6729, Respondent's motion to dismiss should be granted without prejudice.

After consideration of the entire record herein, the hearing examiner agrees with counsel supporting the complaint that Respondent's motion should be so granted, since public interest herein has already been adequately protected by the action of Respondent Reynolds Metals Company in selling its business, and that heretofore taken by the Commission with respect to Respondent Lifetime Sales, Inc.; and that this proceeding, insofar as it involves Respondent Reynolds Metals Company, should be dismissed without prejudice.

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IN THE MATTER OF
ADVANCE SPECTACLE COMPANY, INC., ET AL.

Docket 6285. Order reopening, etc., Oct. 11, 1957

Order reopening proceeding, vacating decision,¹ and remanding case to hearing examiner.

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. William A. Somers for the Commission.

Mr. Alfred B. Teton of *Froelich, Grossman, Teton and Tabin*, of Chicago, Ill., for respondents.

Whereas, the hearing examiner, on April 12, 1955, filed an initial decision in which he accepted an agreement containing an order to cease and desist theretofore executed by the respondents and counsel in support of the complaint, which decision, on May 22, 1955, became the decision of the Commission in disposition of this proceeding; and

Whereas, counsel in support of the complaint, by motion filed September 13, 1957, requested that the matter be reopened and that said decision be vacated and set aside and the case remanded to the hearing examiner for further proceedings, which motion was, on September 18, 1957, duly served upon the respondents; and

It appearing that the ground for said motion is that the respondents have asserted a misunderstanding on their part as to the scope of the order agreed to, stating that they understood that said order would relate only to advertising material packaged with their eye-testing device and not to their advertising generally; and

It further appearing to the Commission that while the order to cease and desist on its face admits of no ambiguity, clearly applying to all forms of advertising disseminated by the United States mail or by any means in commerce, the discussion on the record at the time of submittal of the agreement containing the order does indicate a possible basis for the respondents' misunderstanding; and

The Commission being of the opinion that, in the circumstances, the public interest will best be served by vacating the decision and directing that the case be tried:

It is ordered, That this proceeding be reopened and that the initial decision of the hearing examiner filed April 12, 1955, and the decision of the Commission and order to file report of compliance, issued May 20, 1955, be, and they hereby are, vacated and set aside.

It is further ordered, That the case be, and it hereby is, remanded to the hearing examiner for further proceedings in regular course.

¹ 51 F.T.C. 1216.