

Decision

IN THE MATTER OF

HARRY PELTZ ET AL., TRADING AS
BRESLAU, AND M. H. PELTZ, INC.

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

Docket 6694. Complaint, Dec. 13, 1956—Decision, Nov. 22, 1957*

Consent order requiring two associated furriers in Washington, D.C., and Baltimore, Md., to cease violating the Fur Products Labeling Act by advertising, labeling, and invoicing which, variously, carried fictitious prices and misrepresented values, named animals other than those producing certain furs, failed to disclose that the fur in certain products was secondhand used, and failed in other respects to comply with the requirements of the Act.

Mr. Brockman Horne supporting the complaint.

Mr. Webster Ballinger of Washington, D.C., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 13, 1956, charging them with violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and also violation of the Federal Trade Commission Act as set out in said complaint. After service of the complaint, joint answer was filed by the respondents. Hearings were held for the taking of evidence after which both sides rested. Subsequently the complaint was, on motion of counsel supporting the complaint, without objection by respondents, amended to conform to the proof. The original answer was allowed to stand as answer to the complaint, as amended. The hearing examiner fixed the time for filing proposed findings of fact, conclusions of law and order and the reasons therefor.

On September 7, 1957 respondents and their counsel and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist from the practices complained of which agreement purports to dispose of all the issues in this proceeding. This agreement has been duly approved by the Assistant Director and the Director of the Bureau of Litigation and has been submitted to the undersigned hearing examiner herein for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

* Amended Aug. 16, 1957.

It is noted that whereas the complaint as amended charged that respondents Harry Peltz, Samuel Peltz and Irving Peltz were trading as copartners under the name of Breslau, the agreement is executed by Harry Peltz as an individual doing business as Breslau. The other individual respondents executed the agreement as individuals and as officers of the corporate respondent M. H. Peltz, Inc. The order to cease and desist is directed to all respondents.

Section 3.25(b) of the Commission's Rules of Practice says among other things that an agreement for a consent order to cease and desist may contain a statement "that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint." It is noted that the agreement does not contain such statement. Since such statement is not mandatory, its absence is held not to vitiate the agreement.

In said agreement, respondents herein have admitted all of the jurisdictional facts alleged in the complaint and have agreed that the record may be taken as if findings of the jurisdictional facts had been made in accordance with such allegations. Said agreement provides further that respondents waive all further procedural steps before the hearing examiner and 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 the agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement and that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said order to cease and desist shall have the same force and effect as if entered into after a full hearing and may be altered, modified or set aside in the manner provided for other orders of the Commission and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, the hearing examiner finds that the agreement and the order contained therein adequately cover all of the material allegations of the complaint and provide for a fair, just and appropriate disposition of this proceeding. The order and the agreement are hereby accepted and ordered filed upon becoming a part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice and the hearing examiner accordingly makes the following findings for jurisdictional purposes, and order:

Order

1. Respondent Harry Peltz is an individual trading as Breslau, with his office and principal place of business located at 614 Twelfth Street, N.W., Washington, D.C.

2. Respondent M. H. Peltz, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 228-230 Eutaw Street, Baltimore, Maryland.

3. Respondents Samuel Peltz and Irving Peltz are individuals and are Vice-President and Secretary-Treasurer, respectively, of said corporation, and they formulate, direct, and control its policies, acts, and practices. Their business address is the same as that of the corporation.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act and under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. This proceeding is in the public interest.

ORDER

It is ordered, That respondents Harry Peltz, an individual trading as Breslau or under any other name, M. H. Peltz, Inc., a corporation, and its officers, and Samuel Peltz and Irving Peltz, individually and as officers of said corporation, and respondents' 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 "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by setting forth on labels attached thereto prices represented to be the regular or usual price of such fur products which are an amount in excess of the prices at which the respondents usually or customarily sell such fur products.

B. 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;

(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 the fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the 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 fur products information required under Section 4(2) of the Act and the Rules and Regulations thereunder in abbreviated form or in handwriting.

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 the fact;

(c) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the 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 on invoices information required under Section 5(b)(1) of the Act and the Rules and Regulations thereunder in abbreviated form.

3. Failing to set forth an item number or mark assigned to fur products on invoices pertaining to such products as required by Rule 40 of the Rules and Regulations.

4. 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 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 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. Represents, directly or by implication:

(a) That respondents' price of any fur product is below cost, when such is not the fact.

(b) That the regular or usual price of fur products is an amount in excess of the prices at which the respondents usually or customarily sell such fur products.

3. Makes pricing claims or representations of the type referred to in paragraph D(2) above unless there are maintained by the respondents full and adequate records disclosing the facts upon which such claims and representations are based as required by 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 22nd day of November, 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.

IN THE MATTER OF
BERNARD D. GARFINKEL DOING BUSINESS AS
BENAT WATCH CASE CO.

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

Docket 6857. Complaint, July 26, 1957—Decision, Nov. 22, 1957

Consent order requiring a New York City distributor to cease misrepresenting the gold karat fineness of watch cases he sold to jobbers and retailers by imprinting "14 K" on the backs thereof.

Edward F. Downs, Esq. and Thomas A. Sterner, Esq., for the Commission.

Respondent, pro se.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on July 26, 1957, charging him with having violated the Federal Trade Commission Act by labeling his gold watch cases 14 karat when they were in fact less than 14 karat. Respondent entered into an agreement, dated September 21, 1957, 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.

Respondent, pursuant to the aforesaid agreement, has 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 made duly in accordance with such allegations. Said agreement further provides that respondent waives 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 record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission,