

IN THE MATTER OF
BENJAMIN GLICKMAN AND ISAAC GLICKMAN TRADING
AS GLICKMAN BROS.

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

Docket 6713. Complaint, Jan. 22, 1957—Decision, Dec. 27, 1957

Order requiring a manufacturing furrier in New York City to cease misbranding and false invoicing of fur products and to comply generally with requirements of the Fur Products Labeling Act.

Mr. Ross D. Young, Jr. and Mr. Robert E. Vaughan for the Commission.

Mr. Max Zucker, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

Benjamin Glickman and Isaac Glickman, individually and as co-partners trading as Glickman Bros., hereinafter referred to as respondents, are charged with misbranding and issuing false and deceptive invoices in connection with the sale of fur products. The complaint charges that respondents misbranded their fur products by failing to show on the labels attached to each fur product which they manufacture (1) the country of origin and (2), the item number thereof. The complaint further alleges that respondents falsely and deceptively invoiced their fur products by failing to show on their sales invoices (1) the country of origin of the fur and (2), the item number thereof.

Respondents filed an answer to the complaint admitting that they manufactured, sold, and distributed fur products in "commerce," admitted the allegations as to misbranding, but denied the allegations as to false and deceptive invoicing on the ground that they had no intent to deceive. Thereafter, counsel for respondents and counsel supporting the complaint negotiated for a consent agreement. Respondents were willing to execute an agreement to cease and desist misbranding their fur products, as alleged in the complaint, by failing to show on each fur product the (1) country of origin and (2), the item number thereof, but refused to agree to a consent cease and desist order covering and including each and all of the mandatory requirements of section 4(2)(A) through (F) and section 5(b)(1)(A) through (F) of the Fur Products Labeling Act. Respondents con-

tend that, since the complaint charges that respondents were deficient in only two of the six labeling and invoicing requirements of sections 4(2) and 5(b)(1) of the act, therefore, the cease and desist order to be entered herein should only require cessation of the labeling and invoicing deficiencies found and should not contain and include provisions making it mandatory for respondents to likewise observe the other affirmative requirements of sections 4(2) and 5(b)(1) of the act. Respondents contend that, in the event they should agree to such a broad order as proposed by counsel supporting the complaint, persons in the fur industry who might read such an order would infer and conclude that respondents had violated each and all of the mandatory requirements of section 4(2) and section 5(b)(1) of the act, which would reflect on respondents' integrity and damage them financially in the operation of their business. Rather than accept such a broad order, respondents requested a hearing in the belief that the order to be issued as a result of the evidence introduced at a hearing would, under the law, including the Administrative Procedure Act, only contain those mandatory requirements of said sections of the act which respondents might be found deficient and which respondents admitted.

Hearings were held in New York, N.Y., on March 25 and April 25, 1957, for the presentation of evidence in support of the complaint. Respondents rested at the close of the testimony in support of the complaint and did not present any direct testimony. There is actually no disagreement as to the facts. Proposed findings, conclusions, and order have been submitted by counsel supporting the complaint and counsel for respondents. The examiner has considered the evidence and testimony introduced at the hearing and the proposed findings of fact, conclusions, and order submitted by counsel. All proposed findings and conclusions not specifically found or concluded in this decision are rejected. Upon the basis of the entire record the examiner makes the following findings of fact, conclusions, and issues the following order:

FINDINGS OF FACT

The respondents Benjamin Glickman and Isaac Glickman are co-partners trading as Glickman Bros., with their office and principal place of business located at 146 W. 29th Street, New York, N.Y. Since the effective date of the Fur Products Labeling Act, August 9, 1952, and for approximately 25 years prior thereto, respondents have been engaged in the manufacture, sale, and distribution in "commerce"

Findings

54 F.T.C

of small fur garments, such as stoles, capes, and furs to retail and department stores. Respondents manufacture and sell mink garments exclusively. Approximately 80 percent of the mink skins purchased by respondents for manufacture are raw skins which are delivered direct from the dealer to the dresser for processing preparatory to manufacture by respondents into fur garments. About 70 percent of the mink skins purchased by respondents originate in the United States and the remaining 30 percent originate in five or six foreign countries, including Norway, Denmark, Sweden, and Scandinavian countries. The raw skins purchased by respondents do not bear individual tags showing the country of origin of each skin. The only reference to the origin of the individual raw skin is contained on the invoice delivered by the dealer to respondents at the time of purchase. Occasionally respondents purchase more than one batch of raw mink skins from a dealer which may have originated in more than one foreign country. In such a situation, when the raw skins are sent to the processor, skins which have originated in more than one foreign country may be placed in one vat during processing, thus making it impossible to thereafter identify the country of origin of each particular skin. Although the evidence shows that a tag or label was attached to each individual mink garment manufactured, sold, and distributed in "commerce" by respondents which contained the word "Mink" and the country of origin thereof, nevertheless, since raw furs from several foreign countries may have been intermingled during processing in some instances, it follows that, in such instances, the designation on the label as to country of origin may not have been an accurate representation. This was one of the two types of violations alleged in the complaint with respect to misbranding. Respondents admitted this allegation. The other related to the failure of respondents to list the item number¹ on the tag or label attached to each individual fur garment manufactured by respondents. Respondents also admitted this allegation and it is found that, prior to September 1956, the tag or label on fur products manufactured, sold, and distributed by respondents did not show the item number thereof. However, since September 1956, respondents have been maintaining a record of the item number on each fur product which they manufacture and such item number is shown on the tag or label which is attached to each individual fur garment.

The other type of violation alleged in the complaint concerns respondents' practices with respect to invoicing. Respondents do not

¹ By maintaining an item number for each individual fur garment, a line of continuity from the source to the finished fur product may be maintained.

deny that their invoicing practices did not comply with the requirements of the act in every respect. It is found, with the exception of one invoice dated January 26, 1956, that, for the period beginning January 3, 1956 (invoice No. 866) through September 28, 1956 (invoice No. 1643), the invoices issued by respondents in connection with the sale and delivery in "commerce" of their manufactured fur products did not contain the item number as required by rule 40(a) of the rules and regulations promulgated under the Fur Products Labeling Act nor the country of origin as required by section 5(b)(1)(F) of the act.

CONCLUSIONS

The aforesaid acts and practices of respondents, as found herein, are in violation of the provisions of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

At the time of the hearing, the principal question for decision was the form of the cease and desist order to be issued herein. Since that time the Commission has resolved the question by its decision in *Mandel Brothers, Inc.*, docket No. 6434, issued on July 5, 1957. In that case, as here, the respondent was found to have violated the Fur Products Labeling Act by failing to label and invoice its fur products in accordance with some of the mandatory requirements of sections 4(2) and 5(b)(1) of the act. However, the cease and desist order contained in the initial decision in that case was limited in scope to the mandatory requirements of sections 4(2) and 5(b)(1) which respondent was found to have failed to observe, and did not include each of the other mandatory requirements of sections 4(2) and 5(b)(1) of the act. On appeal from the examiner's failure to include each of the mandatory provisions of sections 4(2) and 5(b)(1) in the cease and desist order, the Commission held that, in such a case, the order should include each of the mandatory provisions of sections 4(2) and 5(b)(1) even though respondent was found deficient in only some of the labeling and invoicing requirements of sections 4(2) and 5(b)(1) of the act. Accordingly, the order to be issued herein will follow that decision.

ORDER

It is ordered, That respondents, Benjamin Glickman and Isaac Glickman, individually and as copartners trading as Glickman Bros., or under any other name, and respondents' representatives, agents:

and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, or in connection with the manufacture for sale, sale, offering for sale, transportation, or distribution of fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as "commerce", "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

(A) The name or names of the animal or animals that produced the fur, 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; and

(G) the item number of such fur product as required by rule 40(a) of the regulations under the Fur Products Labeling Act.

B. 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 that produced the fur as set forth in the Fur Products Name Guide and as prescribed by 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 invoice;

(F) the name of the country of origin of any imported furs contained in the fur product; and

(G) the item number of such fur product as required by rule 40(a) of the regulations under the Fur Products Labeling Act.

OPINION OF THE COMMISSION

By Secrest, Commissioner:

In his initial decision filed after hearings were concluded, the hearing examiner found that the respondents had misbranded and falsely invoiced certain of their fur products in respects there designated. Holding that these acts and practices were in violation of the Fur Products Labeling Act and of rules and regulations promulgated thereunder, the initial decision's order to cease and desist proposes to require that the respondents correct the labeling and invoicing deficiencies there found and directs their adherence in future labeling and invoicing to the requirements prescribed under sections 4(a)(2) and 5(b)(1) of that act. The appeal filed by the respondents from the initial decision excepts to the scope of the order.

The respondents manufacture and sell in commerce to retailers and wholesalers mink stoles and capes and other garments composed of that fur. The respondents have admitted the jurisdictional allegations of the complaint and interpose no exceptions to the hearing examiner's finding that their labeling practices constituted misbranding within the meaning of the Act in that certain of the labels attached to their garments have not contained statements, as required under section 4(a)(2) of the act, correctly identifying the country of origin of imported furs contained in their fur products. Furthermore, prior to September 1956, their garment labels contained no item number designating the particular products being sold.

Identification by item number on labels and invoices for garments subject to the Act is required under rule 40(a) of the rules promulgated by the Commission pursuant to authority delegated to it under the Fur Products Labeling Act. As to respondents' invoicing practices, the appeal further concedes that the fur products were not duly identified on sales invoices by item numbers and that the invoices issued by the respondents departed from the requirements of section 5(b)(1) of the act in that they likewise omitted a statement as to the country of origin of imported furs which were components of the garments.

In addition to prescribing that the country of origin of any imported fur skins contained in garments be disclosed on required

Opinion

54 F.T.C.

labels and invoices for products covered by the act, sections 4(a)(2) and 5(b)(1) also require that such labels and invoices show the name or names of the animals producing the fur, that they identify, in manners there designated, the manufacturers or sellers of the fur products and that disclosures be made, when such be the fact, that the garments contain used fur, are composed of paws, tails, bellies or waste fur or contain dyed, bleached or otherwise artificially colored fur; and the sections specify that failure to supply such information on labels and invoices likewise constitutes misbranding and false invoicing. The order contained in the initial decision includes provisions directing that the respondents similarly observe the foregoing companion requirements of those subsections in their future marketing of garments covered by the act. No evidence was received indicating that the respondents had failed in any manner to disclose labeling or invoicing information prescribed under these latter provisions and no violations on those scores were found in the initial decision. The appeal contends that the scope of the order should be limited solely to directing compliance with those requirements of the subsections and rules which the evidence shows the respondents heretofore have failed to observe and that the proscriptions additionally requiring adherence in labeling and invoicing to the subsections' companion provisions lack adequate legal basis.

We are of the view, however, that the initial decision's order has sound basis both in law and public policy. Under the act, a fur product subject thereto is misbranded and its manufacture for sale or its distribution is unlawful unless it has attached to it a label setting forth clearly and conspicuously all the data indicated as necessary to be included thereon by section 4(a)(2); and such garment is falsely invoiced unless there is issued in connection with its sale an invoice containing each of the statements contemplated by section 5(b)(1). It is clear, therefore, that the essence of the respondents' illegal conduct consisted of their failure to attach proper labels to their fur products and to issue proper invoices in connection with sales thereof.

In our decision in the matter of *Mandel Brothers, Inc.*, docket No. 6434 (decided July 5, 1957), we rejected, for reasons there stated, contentions similar to those passed here by the respondents. We held in that case and reaffirm that ruling here that orders to be issued in connection with offenses where there has been failure to comply fully with requirements of sections 4(a)(2) or 5(b)(1) should require not only cessation of the practices theretofore engaged

896

Order

in but should require that proper labels be attached and proper invoices be issued in full compliance with sections 4(a)(2) and 5(b)(1). We therefore deem the hearing examiner's order in this proceeding to be appropriate in scope and accordingly are denying respondents' appeal and are adopting the initial decision as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of the above-named respondents from the initial decision of the hearing examiner and upon the briefs filed in support of and in opposition to the appeal; and

The Commission having rendered its decision denying the appeal and adopting the initial decision of the hearing examiner as the decision of the Commission:

It is ordered, That the respondents 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
RODNEY, INC., ET AL.

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

Docket 6824. Complaint, June 24, 1957—Decision, Dec. 28, 1957

Consent order requiring sellers in Chicago to cease advertising falsely in newspapers that greatly exaggerated and fictitious prices were the usual retail prices for their sewing machines and that the difference between such prices and the advertised prices represented savings to purchasers; and that their machines carried a "25-Year Guarantee" or "Lifetime Guarantee" when in fact the electrical parts were guaranteed for only 1 year and other parts not at all.

Mr. William A. Somers for the Commission.

Froelich, Grossman, Teton and Tabin, by *Mr. Seymour Tabin*, of Chicago, Ill., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents, Rodney, Inc., a corporation, and Irwin Ratner, Joseph Wandel, and Joseph Ratner, individually and as officers of said corporation, with having violated the provisions of the Federal Trade Commission Act in certain particulars. The respondents were duly served with process and in due course filed their answer. The initial hearing was cancelled pending negotiations of counsel for a consent agreement.

On October 25, 1957, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement containing consent order to cease and desist," which had been entered into by and between all the respondents herein except Joseph Ratner, and by their attorney and William A. Somers, counsel supporting the complaint, under date of October 24, 1957, subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by that Bureau.

On due consideration of the said "Agreement containing consent order to cease and desist," the hearing examiner finds that said agreement, both in form and in content, is in accord with section 3.25 of the Commission's rules of practice for adjudicative proceedings and that by said agreement the parties have specifically agreed that: