

Decision

IN THE MATTER OF
THE McALPIN CO.

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

Docket 6834. Complaint, July 8, 1957—Decision, Jan. 22, 1958

Consent order requiring a furrier in Cincinnati, Ohio, to cease violating the Fur Products Labeling Act by making deceptive comparative price and percentage saving claims in its advertising and failing to keep the required records on which the pricing claims were based; and by failing in other respects to comply with the advertising, labeling, and invoicing requirements of the act.

Mr. John T. Walker for the Commission.
The McAlpin Co., pro se.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, and the Federal Trade Commission Act, in connection with the advertising and sale of its fur products. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an ade-

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quate basis for an appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent The McAlpin Co. (erroneously referred to in the complaint as The McAlpin Co., Inc.) is a corporation existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 6th and Race Streets, Cincinnati, Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent, The McAlpin Co., a corporation, its officers, 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 fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which have been 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. 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.

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(f) The name of the country of origin of any imported furs used in the fur product.

2. 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, in abbreviated form or in handwriting.

(b) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, mingled with nonrequired information.

3. Failure to show on labels attached to fur products all of the information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, on one side of such labels.

B. Falsely or deceptively invoicing fur products by:

1. Failure 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 invoice.

(f) The name of the country of origin of any imported fur contained in a fur product.

(g) The item number or mark assigned to a 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.

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

2. Fails to set forth information required under section 5(a) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in type of equal size and conspicuousness.

3. Represents, directly or by implication, 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 its business.

4. Makes use of comparative prices or percentage savings claims unless such compared prices or percentage savings are based upon current market values or unless a bona fide price at a designated time is stated.

5. Makes pricing claims and representations of the types referred to in subparagraphs 3 and 4 above, unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims or 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 22d day of January 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Decision

IN THE MATTER OF
SPURGEON PICKERING TRADING AS MONDO GRASS CO.
AND MONDO GRASS & NURSERY CO.

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

Docket 6847. Complaint, July 23, 1957—Decision, Jan. 22, 1958

Consent order requiring a seller of nursery stock in Biloxi, Miss., to cease representing falsely in newspaper and magazine advertisements that the plant *Ophiopogon Japonicus*—which he referred to as "Mondo 'Grass'"—is a grass, will make a lawn, maintain lawn height, withstand traffic, remain evergreen the year round, withstand severe freezing, and is drought resistant.

Mr. John W. Brookfield, Jr., and Mr. Charles W. O'Connell for the Commission.

Mr. Leonard J. Calhoun, of Washington, D.C., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of the Federal Trade Commission Act in connection with the advertising of a plant known as *ophiopogon japonicus*, referred to by respondent as "Mondo Grass." An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.