

IN THE MATTER OF
EDWARD MALKIS ET AL. TRADING AS ARCTIC FUR CO.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING
ACTS

Docket 6786. Complaint, Apr. 30, 1957¹—Decision, Feb. 8, 1958

Consent order requiring furriers in Cincinnati, Ohio, to cease violating the Fur Products Labeling Act by failing to comply with the advertising, invoicing, and labeling requirements.

*Morton Nesmith and John J. Mathias, Esqs., for the Commission.
Goodman & Goodman, by Sol Goodman, Esq., of Cincinnati, Ohio,
for respondents.*

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The Complaint in this proceeding, issued April 30, 1957, charges the respondents, Edward Malkis and Bess Malkis, individually and as copartners trading as Arctic Fur Co., with violation of the provisions of the Federal Trade Commission Act and of the Fur Products Labeling 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 "commerce," "fur," and "fur products" are defined in the Fur Products Labeling Act.

Subsequent to the issuance and service of the complaint the parties, in February 1957, incorporated the theretofore existing copartnership under the corporate name and style of their former trade name, that is, Arctic Fur Co. The complaint was, on August 20, 1957, amended to substitute Arctic Fur Co., a corporation, and Edward Malkis and Bess Malkis, individually and as officers of said corporation, as parties respondents in lieu of Edward Malkis and Bess Malkis, individually and as copartners trading as Arctic Fur Co. The individual respondents agreed that the answer filed by them on May 28, 1957, may be withdrawn, which agreement is ratified and said answer is hereby ordered withdrawn of record.

Thereafter, on October 14, 1957, respondents entered into an agreement with counsel supporting the complaint 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 Federal Trade Commission. It was expressly

¹ Amended Aug. 20, 1957.

provided in said agreement that the signing thereof is for the purpose of settlement only and does not constitute an admission by the respondents that they have violated the law as alleged in the amended 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 the 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, as amended, shall constitute the entire record herein; that the complaint herein, as amended, 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 respondents Edward Malkis and Bess Malkis, prior to the issuance of the complaint, were and had been for several years, copartners trading and doing business as Arctic Fur Co. with their office and principal place of business located at No. 407 Race Street, Cincinnati, Ohio; that in February 1957, the copartnership was converted into a corporation of the same name, engaged in the same business, located at the same address, and that the two hereinabove-named respondents are the principal officers of said corporation in which capacities they formulate, direct and control the acts, policies and practices of the newly formed corporation.

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 Com-

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mission'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, as amended, states a valid cause of action; that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein and that this proceeding is in the public interest, wherefore he issues the following order:

It is ordered, That respondents Arctic Fur Co., a corporation, and its officers and Edward Malkis and Bess Malkis, 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, transportation or distribution of any fur product in commerce, 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. Falsely or deceptively advertising fur products through the use of any advertisements, 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 that produced the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the said 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.

2. Sets forth information required under section 5(a) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form.

B. 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 said 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;

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(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 of the persons who manufactured such fur product for introduction 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.

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 mingled with non-required information.

(b) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder 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 said 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.

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.

3. Failing to set forth an item number or mark assigned to such product.

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 did, on the 8th day of February 1958, 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.

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IN THE MATTER OF
ISIDOR GUTGOLD TRADING AS PEER JEWELRY CO.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6565. Complaint, Aug. 14, 1957—Decision, Feb. 12, 1958

Consent order requiring a manufacturer in New York City to cease selling with the phrase "14 K" appearing thereon, bracelets which were manufactured from gold of substantially less than 14 karat fineness.

Mr. Charles W. O'Connell for the Commission.

Mr. Samuel B. Ohlbaum, of New York, N.Y., for respondent.

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 respondent Isidor Gutgold, an individual trading and doing business as Peer Jewelry Co., with having violated the Federal Trade Commission Act in certain particulars. The respondent was duly served with process and in due course filed his answer. An initial proceeding was convened at New York, N.Y., on November 14, 1957, pursuant to due notice at which time and place counsel for both parties were present. During a recess of the hearing an "Agreement containing consent order to cease and desist" was executed. The hearing examiner, therefore, recessed the initial hearing pending the submission of said agreement in due course.

On November 18, 1957, there was submitted to the undersigned hearing examiner for his consideration and approval said "Agreement containing consent order to cease and desist" entered into and executed by respondent and his attorney and Charles W. O'Connell, counsel supporting the complaint, which agreement had been thereafter approved by the Bureau of Litigation of the Commission.

On due consideration of 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:

1. Respondent Isidor Gutgold is an individual trading and doing business as Peer Jewelry Co., with his office and principal place of business located at 125 W. 45th Street, in the city of New York, State of New York.