

Decision

IN THE MATTER OF

LYTTON'S, HENRY C. LYTTON & CO.

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

Docket 6909. Complaint, Oct. 7, 1957—Decision, Feb. 27, 1958

Consent order requiring a furrier in Chicago to cease violating the Fur Products Labeling Act by failing to conform to the labeling and invoicing requirements; by advertising in newspapers which failed to disclose the names of animals producing the fur in certain products, described fur products by names connoting false geographical origin, represented prices as reduced from regular prices which were in fact fictitious, and used comparative prices not based on current market value; and by failing to keep adequate records as a basis for such purported price reductions.

Mr. William A. Somers supporting the complaint;
Ettelson & O'Hagan, of Chicago, Ill., for respondent.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on October 7, 1957, charging it with having violated the Fur Products Labeling Act and the rules and regulations issued thereunder, and the Federal Trade Commission Act, through the misbranding of certain fur products and the false and deceptive invoicing and advertising thereof. After being served with said complaint, respondent appeared by counsel and subsequently entered into an agreement, dated December 18, 1957, containing a consent order to cease and desist purporting to dispose of all this proceeding as to all parties. Said agreement, which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with section 3.25 of the Commission's rules of practice for adjudicative proceedings.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accord-

Order

54 F.T.C.

ance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to sections 3.21 and 3.25 of the Commission's rules of practice for adjudicative proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Lytton's, Henry C. Lytton & Co. is a corporation existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of doing business located at 235 South State Street, Chicago, Ill.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondent Lytton's, Henry C. Lytton & Co., a corporation, and its officers, 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, offering for sale, transportation or distribution of fur products 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 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 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 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.

2. Setting forth on labels attached to fur products information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder mingled with nonrequired information.

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 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 the 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 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 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 rules and regulations.

2. Describes fur products by animal names which connote a false geographic origin of the animal producing the fur.

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 product in the recent regular course of its business.

4. Makes use of comparative prices and percentage savings claims in advertisements 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.

5. Makes price claims or representations referred to in 3 and 4 above unless there are maintained by respondents full and adequate records disclosing the facts on which such claims or representations are based.

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 27th day of February 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the 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

DAVID E. FISCHER ET AL. TRADING AS AMERICAN
ASPHALT CO.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT*Docket 6912. Complaint, Oct. 9, 1957—Decision—Feb. 27, 1958*

Order requiring sellers in New York City of waterproof roof coatings and specialty paints, to cease representing falsely in letters and advertising literature mailed to members of the consuming public that they had certain specified quantities of "Kantleek" asbestos roof coating "left over" from a larger shipment for sale at or near the residence of the addressee at a "substantial discount * * * 20% off * * * ", and that they were "Manufacturers of waterproofing specialties" and "Established 1909."

Mr. Edward F. Downs and *Mr. Thomas A. Sterner* supporting the complaint.

No appearance for the respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

On October 9, 1957, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violation of the Federal Trade Commission Act as set forth in said complaint. From the record it appears that on October 22, 1957 copies of said complaint were duly served on respondents together with copies of an order designating and appointing the undersigned as hearing examiner in this proceeding. The complaint so served contained a notice that a hearing would be held in the Federal Trade Commission office, United States Court House, Foley Square, New York, N.Y., on December 17, 1957, on the charges set forth in said complaint at which time respondents would have the right to appear and show cause why an order should not be entered requiring each of them to cease and desist from violations of the law charged in the complaint. The complaint further contained a notice that respondents were afforded an opportunity to file with the Commission an answer to the complaint on or before 30 days after service.

The record further shows that no answer to the complaint was filed within the time prescribed and that after the time for filing answer had expired, upon motion of counsel supporting the complaint calling attention to the default in the matter of filing answer, the undersigned, on December 10, 1957, issued an order cancelling the hearing set for New York, N.Y., on December 17, 1957, and in lieu