

IN THE MATTER OF
I. RUBIN, INC., ET AL.

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

Docket 6781. Complaint, Apr. 18, 1957—Decision, Apr. 1, 1958

Order requiring a furrier in Beverly Hills, Calif., to cease violating the Fur Products Labeling Act by labeling which listed fictitious prices, named animals other than those producing certain furs, and failed to name the animals producing others, to state that certain furs were artificially colored, etc., or made of cheaper parts or waste fur, to name the manufacturer or country of origin, and failed in other respects to conform to the labeling requirements; by invoicing and advertising which erred in similar respects; and by failing to maintain adequate records on which claims of reduced prices were based; and

Dismissing charges of illegal removal of required labels and unsupported claims of comparative price and percentage savings.

John J. McNally, Esq., for the Commission.

Respondents, *pro se*.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

STATEMENT OF THE CASE

On April 18, 1957, the Federal Trade Commission issued its complaint against I. Rubin, Inc., a corporation, and Sheldon R. Rubin and Irving Rubin, individually and as officers of said corporation (hereinafter collectively called respondents), charging them with misbranding and falsely and deceptively invoicing and advertising certain fur products in violation of the provisions of the Fur Products Labeling Act (hereinafter called the Fur Act), 15 U.S.C. 69(a), *et seq.*, the rules and regulations promulgated thereunder, and the Federal Trade Commission Act (hereinafter called the act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served upon respondents.

The complaint alleges in substance that respondents (1) misbranded certain of their fur products by not labeling them as required under the Fur Act and the rules and regulations promulgated thereunder; (2) caused or participated in the removal of required labels from such fur products in violation of the Fur Act; (3) falsely and deceptively invoiced certain fur products in violation of the Fur Act and said rules and regulations; (4) falsely and deceptively advertised certain fur products by failing to disclose the name of the

animal producing the fur, by failing to disclose that they were composed of bleached, dyed or otherwise artificially colored fur, by misrepresenting the prices as having been reduced from regular or usual prices, and by means of comparative prices and percentage savings claims not based upon current market values or setting forth any time of such comparative prices, in violation of the Fur Act and the rules and regulations; and (5) failed to maintain adequate records upon which such price and value representations were based, in violation of the rules and regulations. Respondents appeared in person without counsel and filed an answer admitting the corporate and jurisdictional allegations of the complaint but denying all alleged violations.

Pursuant to notice, hearing was thereafter held on August 14, 1957, in Los Angeles, Calif., before the undersigned hearing examiner duly designated by the Commission to hear this proceeding. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file proposed findings of fact, conclusions of law and orders, together with reasons therefor. Pursuant to leave granted, both parties filed proposed findings of fact, conclusions of law and orders, together with reasons in support thereof. All such findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith specifically rejected.¹

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. The Business of Respondents

The complaint alleged, respondents admitted, and it is found that I. Rubin, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business located at 9516 Wilshire Boulevard, Beverly Hills, Calif. Sheldon R. Rubin and Irving Rubin are president and secretary-treasurer, respectively, of said corporation. These individuals, acting in cooperation with each other, formulate, direct and control the acts, policies and practices of the corporation. Their addresses are the same as that of the corporation.

¹ 5 U.S.C. § 1007(b).

II. Interstate Commerce

The complaint alleged, respondents admitted, and it is found that respondents are now and have been since August 9, 1952, the effective date of the Fur Act, engaged in the introduction into commerce and in the sale, advertising and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products, and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur," and "fur products" are defined in the Fur Act.

The record establishes that respondents advertised their fur products in commerce, sold fur products to customers from outside the State of California and subsequently delivered such products to such customers outside the State of California, purchased and had shipped to them in the State of California fur products from the State of New York, and sold, advertised for sale, transported and distributed fur products made in whole or in part of fur which had been shipped and received in commerce.

III. The Unlawful Practices

A. *Misbranding of Fur Products*

The complaint alleged that respondents misbranded certain fur products by not labeling them as required under the provisions of sections 4(1) and 4(2) of the Fur Act and rules 29 (a) and (b) of the rules and regulations.

The first such allegation of misbranding was that respondents falsely and deceptively labeled certain fur products with respect to the name of the animal that produced the fur, in violation of section 4(1) of the Fur Act. The record reveals and respondents admitted at least two instances of false labeling with respect to the name of the animal which produced the fur. In one instance, respondents' label referred to a product as sable when it was in fact American sable,² a less valuable and desirable fur and a different species, as demonstrated by the Fur Products Name Guide.³ In another instance, respondents labeled a fur product as dyed black fox and admitted that the garment was made of a red fox fur. These two animal names are distinguished in the Fur Products Name Guide and do not include

² See Commission exhibit 36.

³ Section 7 of the Fur Act requires the Commission to promulgate the Fur Products Name Guide, and sections 4 and 5 of the Fur Act require the use of such names in labeling, advertising and invoicing fur products.

all of the same species. It is concluded and found that respondents misbranded fur products in violation of section 4(1).

The complaint also alleged that respondents misbranded fur products in violation of section 4(1) by labeling them with "regular" price tickets which prices were in fact false and fictitious. This allegation will be considered hereinafter in connection with the alleged false advertising by the use of fictitious prices, inasmuch as substantially the same facts and law are applicable to both.

With respect to the alleged misbranding in violation of section 4(2), the record reveals and respondents admitted that they misbranded certain fur products by not labeling them as required under subsections (a), (c), and (f) thereof, which require, respectively, labels showing (1) the name of the animal as set forth in the Fur Products Name Guide; (2) that the fur is bleached, dyed, or otherwise artificially colored; and (3) the country of origin of any imported fur.⁴ As alleged in the complaint, the record further reveals and respondents admitted that certain of their fur products were misbranded in violation of the Fur Act in that they were not labeled in accordance with rules 29 (a) and (b), respectively, in that nonrequired information was mingled with required information,⁵ and required information was set forth in handwriting.⁶ Accordingly, it is concluded and found that respondents misbranded fur products in violation of section 4(2) and rules 29 (a) and (b).

B. Removal of Required Labels

The complaint alleged that respondents caused or participated in the removal of required labels from fur products in violation of section 3(d) of the Fur Act. There is no proof in support of this allegation, as counsel supporting the complaint now concedes in his proposed findings, and accordingly no such finding is made.

C. False Invoicing of Fur Products

The complaint alleged that respondents falsely invoiced certain fur products in violation of section 5(b)(1) of the Fur Act and rules 4, 19(e), and 40(a). With respect to section 5(b)(1), the record reveals and respondents admitted that they falsely invoiced certain fur products by failing to show, as required under subsections (a), (c), and (f), respectively, the name of the animal as set forth in the

⁴ See Commission exhibits 6, 37, 5, 8 and 9.

⁵ See Commission exhibits 2, 3, 4, 5, 8 and 9.

⁶ See Commission exhibits 2 through 9, inclusive.

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Fur Products Name Guide; that the fur was bleached, dyed, or otherwise artificially colored; and the country of origin of imported furs contained in fur products.⁷

The record also reveals and respondents admitted that certain of their fur products were falsely invoiced in violation of rules 4, 19(e), and 40(a) in that required information was set forth in abbreviated form, the term "blended" was used to describe a fur product which had in fact been dyed, and required item numbers or marks were not set forth.⁸ Accordingly, it is concluded and found that respondents falsely invoiced fur products in violation of section 5(b)(1) and rules 4, 19(e), and 40(a).

D. False Advertising of Fur Products

The complaint alleged that respondents falsely and deceptively advertised fur products in violation of sections 5(a)(1) and (3) of the Fur Act, rule 44(a) of the rules and regulations, section 5(a)(5) of the Fur Act and rule 44(b). The record establishes, respondents admitted, and it is found that they caused the dissemination in commerce of a removal sale advertisement on February 8, 1956, in the *Los Angeles Times*, a newspaper published daily and Sundays in the city of Los Angeles, having a wide and general circulation throughout the State of California and extending into adjacent States of the United States, which advertisement was intended to aid and did aid, promote, and assist, directly or indirectly, in the sale and offering for sale of respondents' fur products. This was the only newspaper advertisement disseminated by respondents.⁹

1. The failure to disclose the proper name of the fur and that certain fur products were dyed

Respondents' advertisement of February 8, 1956, specifically described a number of the fur products offered in their removal sale. The record establishes, respondents admitted, and it is found that one of such descriptions did not show the correct name, as set forth in the Fur Products Name Guide, of the animal that produced the fur, in violation of section 5(a)(1), and that five of such product descriptions failed to disclose that the fur products were bleached, dyed, or otherwise artificially colored, in violation of section 5(a)(3).

2. The fictitious pricing

The complaint alleged that in said newspaper advertisement respondents falsely represented the prices of fur products as having been

⁷ See Commission exhibits 12, 14, 16, and 18.

⁸ See Commission exhibits 10, 20, and 23 through 26, inclusive.

⁹ Commission exhibit 1.

reduced from regular or usual prices, when such so-called regular or usual prices were in fact fictitious. The advertisement of February 8, 1956, described the sale as a removal sale and stated that all of respondents' fur products were being offered "¼ to ½ off our regular prices." At the foot of the advertisement, respondents listed three columns of fur products, each column followed by two columns of prices with the headings: "Regular" and "Sale." It is these so-called "Regular" prices which are alleged to be fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular course of their business. As referred to hereinabove in section III-A, it was also alleged that respondents attached to said fur products regular price tickets or labels which were also in fact fictitious. This allegation is considered here in conjunction with the alleged advertised fictitious prices inasmuch as it involves substantially the same facts and law.

Respondents are engaged in the sale of fur products principally at retail and occasionally at wholesale. While they purchase most of their fur products, they also do some manufacturing, primarily of mink fur products. Mr. Irving Rubin does most of the buying, which includes both furs for manufacturing and fur products for resale. Respondents maintain a stock record book. At the time fur products are purchased or manufactured by them, the cost is entered in the stock record book. At the time the fur products are put into stock for sale, respondents enter in their stock record book the retail selling price for which they hope to sell each product. The record reveals that this "regular" selling price entered in the stock record book was substantially in excess of the usual and regular prices at which respondents sold their fur products. Respondents normally averaged from 30 to 35 percent gross profit computed on the selling price. The retail selling prices contained in respondents' stock record book and received in evidence averaged substantially higher than 35 percent gross profit. Thus it can be seen that even these so-called "regular" prices, which are not alleged in the complaint as fictitious and were substantially below the alleged fictitious prices, were in fact substantially higher than the usual and regular prices at which respondents sold their products.

Respondents' sale commenced February 8, 1956, and ran through either March 21 or April 8, 1956, as will be seen hereinafter. On February 21, during the sale, Mr. Anderson, a Commission investigator, visited respondents' place of business and secured from respondents' records and stock certain information concerning some of the products listed in the newspaper advertisement and others not specifically listed

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but tagged with sale prices. Many of the garments in stock bore two labels or price tags, a white one and a red one. The white tag purported to be the garment's usual and regular price, and the red tag, the garment's reduced or sale price. Mr. Anderson made a random tabulation of some 28 garments bearing such tags, 9 of which by chance were also specifically listed in the newspaper advertisement.¹⁰ Mr. Anderson included in his tabulation the item number, the regular price shown on the white tag, the reduced price shown on the red tag, the retail selling price shown in the stock record book, the cost of the fur product shown in the stock record book, and the actual selling price of the garments which were sold, together with certain computations concerning gross profit based on the various different prices. With respect to the nine garments included in the tabulation which were specifically listed in the newspaper advertisement, the prices appearing upon the white tickets and those listed in the newspaper advertisement as the regular price were identical. The sale included respondents' entire stock of fur products.

Other tabulations received in evidence established that before, during, and after the sale respondents averaged from 30 to 35 percent gross profit computed on selling price. The tabulation of the 28 garments selected at random reveals that if respondents had sold such products at the so-called "regular" price listed on the white tickets and set forth in the advertisement they would have averaged 59.3 percent gross profit on such selling prices. In addition thereto, every one of the garments actually sold was sold at a price less than the so-called "sale" price listed on the red ticket, but nevertheless resulted in a total gross profit of 31.9 percent, exactly the same gross profit realized by respondents during the entire month of December preceding the "sale."

However, it is unnecessary to rely upon gross profit comparisons to establish that respondents' "regular" prices, listed in their advertisement and set forth on the white tickets attached to the garments, were in fact fictitious and greatly in excess of their usual and regular selling prices. Of the 28 items contained in the random tabulation, all but two had "regular" prices listed on the white tickets far in excess of the retail selling price listed in the stock record book by respondents. Of the remaining two, one had no selling price listed in the stock record book and the other, the least expensive item included in the list, had a retail selling price in the book \$5 in excess of the price listed on the white ticket. Thus it can be seen that the

¹⁰ Commission exhibits 27-A and B.

vast majority of the items selected at random had tagged "regular" prices far in excess of respondents' stock record selling prices, which latter prices were in excess of respondents' usual and regular prices. The same conclusion applies to the advertised regular prices, since each of the nine items included in the tabulation contained the same price on the white tag as listed in the newspaper advertisement, greatly in excess of the stock record book selling price. In addition to the foregoing, 17 of the 28 garments had red tags with so-called "reduced" prices which were exactly the same as the retail selling price shown in the stock record book. Of the remaining 11, some had "reduced" red tag prices in excess of the retail selling price shown in the stock record book and some had red tag prices less than such retail selling price. The conclusion is inescapable that the "regular" prices listed in respondents' advertisement and attached to the garments by the white tickets were in fact fictitious and that respondents never sold their garments at such prices. Accordingly it is concluded and found that respondents, by the above advertisement and the "regular"-price white labels, falsely and deceptively advertised and misbranded such products with respect to their usual and regular prices, in violation of rule 44(a) and section 4(1) of the Fur Act, respectively.

3. The alleged comparative prices

The complaint alleged that respondents in said advertising used comparative prices and percentage savings claims which were not based upon current market values and which failed to give a designated time of a *bona fide* compared price in violation of section 5(a)(5) of the Fur Act and rule 44(b). As found above, the only price references in respondents' advertisement were their "regular" and "sale" prices, and that all of their "regular" prices were reduced one-fourth to one-half. These price references, as found above, clearly were representations by respondents concerning their regular and usual prices. However, counsel supporting the complaint advances a novel and ingenious argument that such advertised prices also constitute the use of comparative prices and percentage savings claims not based upon current market values. He argues that, based upon the decisions of the hearing examiner, the Commission, and the Court in the *Pelta Furs* case,¹¹ the listing of regular and sale prices constitutes a use of comparative prices within the meaning of rule 44(b).

¹¹ *Pelta Furs v. F.T.C.*, 244 F. 2d 270 (C.A. 9, 1957), affirming Commission decision, May 11, 1956, docket No. 6297.

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The decisions of the Commission as well as rules 44 (a) and (b) demonstrate the invalidity of this argument. Rule 44 (a) deals with fictitious prices or a claimed reduction from usual and regular prices and has nothing to do with value, whereas rule 44(b) deals with comparative prices and percentage savings claims based upon current market value, or a compared price at some other designated time, and has nothing to do with the question of usual and regular prices. The decisions of the Commission in *Rudin & Roth*, *Ma-Ro* and *Neuville*¹² establish beyond doubt that the question of "value" has nothing to do with the question of fictitious prices, which involves only whether or not respondents truthfully represented their usual and regular prices. Conversely, as demonstrated by the provisions of rule 44(b), the question of comparative pricing concerns "value" and has nothing to do with usual or regular prices. Rule 44(b) clearly authorizes comparative pricing where based upon true current market values. It is clear from the reasoning of the decisions referred to above as well as the decision of the Commission in the *Mandel* case¹³ that comparative pricing deals with the question of current or designated market values or prices.

Counsel's reliance on the *Pelta* case, *supra*, is misplaced. The excerpted advertisements in that decision reveal that the respondent therein used both fictitious prices and comparative price claims. Although not elucidated in that decision, apparently because there was no issue or controversy concerning the point, the quoted advertisements refer to prices in one instance as "were" and "now," and in another as "values up to" and "now." It is clear that the former constitutes a representation concerning "usual and regular" prices whereas the latter constitutes a representation as to current market value and is comparative pricing as referred to in rule 44(b). Because the decision referred to such advertising as both fictitious pricing and comparative pricing, counsel concludes that the comparative pricing refers to the usual and regular prices listed, as well as the comparative prices. Obviously such a conclusion is unsound inasmuch as the reference was to advertisements containing both fictitious pricing and comparative pricing. The very quotation relied upon by counsel demonstrates that the fictitious prices therein were *not* the prices found to be comparative prices by the Commission. The quotation reads:

In summary, by affixing to fur products price tags showing plainly marked price values containing fictitious prices and by the aforesaid reductions in

¹² *Rudin & Roth*, docket No. 6419 (1956); *Ma-Ro Hosiery Co., Inc.*, docket No. 6436 (1957); and *Neuville, Inc.*, docket No. 6405 (1956).

¹³ *Mandel Bros., Inc.*, docket No. 6434 (1957).

price, such as one-half off, *and by comparative pricing*, * * * respondents are found to have engaged in false, misleading and deceptive practices. [Emphasis supplied.]

If fictitious pricing constitutes comparative pricing then there would be no need for rule 44(a). Logical construction of the language demonstrates the contrary: representations with respect to "usual" and "regular" prices have nothing to do with value, whereas "comparative" prices deal with market value or price and have nothing to do with the "usual" and "regular" prices of the person making the representation. Counsel's reliance upon the representation in the advertisement of one-fourth to one-half off is also misplaced inasmuch as it clearly dealt with regular prices and not with current market values.

However, even assuming *arguendo* that respondents' representation was one of comparative pricing, counsel supporting the complaint has failed to prove that such prices were not the current market values of the product. Apparently counsel seeks the reversal of the recent decision of the Commission in *Mandel, supra*, deciding this issue to the contrary. Counsel seeks to distinguish the *Mandel* decision by contending that it required affirmative proof of the actual market value in order to establish the falsity of the represented market value, whereas in this case he contends that it is necessary only to establish that the comparative prices are not based upon current market values—a negative rather than an affirmative showing. This appears to be a distinction without a difference, in view of the holding of the Commission that it is not possible to find that a respondent misrepresented the amount of savings to be effectuated by purchasers by means of market prices or other statements as to value without first finding what the actual market value or price in fact was.

Actually, counsel here seeks to prove that respondents' "comparative" prices were not based upon current market values by proof of the same kind as that rejected by the Commission in the *Mandel* case, *supra*. Counsel argues that because the fictitious prices would have almost doubled respondents' usual markup, based upon the cost of the products, and greatly exceeded respondents' actual selling prices, such prices could not have been based upon current market values. Substantially stronger proof than this was rejected by the Commission in the *Mandel* case. There the record established that the comparative prices used represented a markup of 400 to 500 percent over respondents' costs, that the highest markup customarily used in the industry in that area was 70 percent, yet the Commission held that this did not establish that respondent misrepresented the current market

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value of its products. After considering the aforesaid facts, the Commission said:

This reasoning of the hearing examiner, while cogent, does not establish to the satisfaction of the Commission that the respondent misrepresented, by means of comparative prices and other statements as to "value," the amount of savings to be effectuated by purchasers. In order to make such a finding, it is obviously necessary to first find what the actual market value, or price, of the fur product involved in this proceeding in fact was. There is no evidentiary basis on the record here to make such a determination. All that this record does show is what respondent's costs were, the usual and customary trade mark-up in the Chicago area and the retail prices at which respondent sold fur products. In view of the lack of evidence establishing actual market value, the Commission cannot accept the reasoning of the initial decision as establishing the conclusion that respondent did, in fact, misrepresent savings to be effectuated by prospective purchasers of fur products advertised and sold by it. It follows that the charge in the complaint to the effect that respondent misrepresented, by means of comparative prices and other statements as to "value" not based on current market values, the amount of savings to be effectuated by purchasers of respondent's fur products has not been substantiated. The initial decision will be modified accordingly.

Counsel supporting the complaint also argues that current market value should be determined by the usual and regular prices at which a respondent sells its products. Patently, this contention is invalid. If it were correct, no one could represent that his prices were below current market values and represented savings even when such representation was true in fact, if the prices used were his usual and regular prices, consistently below current market prices, such as in the case of discount and cut-rate houses.

For all of the foregoing reasons, it is concluded and found that the evidence in the record fails to establish that respondents used comparative prices and percentage savings claims not based upon current market values, as alleged in the complaint.

D. The Failure to Maintain Records Concerning Pricing Claims and Representations

The complaint alleged that respondents failed to maintain full and adequate records disclosing the facts upon which the advertised pricing claims and representations discussed above were based, in violation of rule 44(e). Because there has been no finding of comparative pricing, this allegation is necessarily limited to the above-found fictitious pricing. The only record which respondents maintained which disclosed any regular and usual selling prices was their stock record book. As found above, eight of the nine advertised items tabulated by Mr. Anderson in Commission Exhibit 27 had a listed

selling price in respondents' stock record book substantially below that found in the newspaper advertisement, and the other had no selling price entered in the stock record book. It was thus demonstrated that respondents did not maintain "full and adequate records" upon which their pricing representations were based. One example, item No. 1141, showed a cost price of \$575 and a retail selling price listed in the stock record book of \$925, yet was included in the advertisement as regularly priced at \$1,525, with a reduced sale price of \$925.

It was demonstrated at the hearing that respondents altered their stock record book between the time of the investigation and the hearing. Mr. Anderson's tabulation listed the retail selling prices as contained in the stock record book at the time of the investigation. Respondents produced the original stock record book at the hearing. A number of the original retail selling prices obviously had been altered to conform the price to that listed in the advertisement and found on the white price ticket as the usual and regular price. At the request of counsel, the undersigned examined the original stock record, and the alterations, as well as the original figures in conformity with those in Mr. Anderson's tabulation were readily apparent. For example, the first item on Mr. Anderson's tabulation, No. 112, which was included in respondents' newspaper advertisement, was entered in the tabulation as having a stock record book selling price of \$300 and a white price tag of \$495, the same price used in the newspaper advertisement as the regular price. An examination of the stock record book at the hearing revealed that the figure of \$495 had been written over the figure of \$300. This was evident to the naked eye. The record establishes, and it is found, that respondents failed to maintain full and adequate records disclosing the facts upon which their pricing claims and representations were based, in violation of rule 44(e)

CONCLUSIONS OF LAW

1. Respondents are engaged in commerce and engaged in the above-found acts and practices in the course and conduct of their business in commerce, as "commerce" is defined in the Fur Act.
2. The acts and practices of respondents hereinabove found are in violation of the Fur Act and rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce under the act.
3. This proceeding is in the public interest, and an order to cease and desist the above-found acts and practices should issue against respondents.

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4. There is no evidence in the record that respondents have, as alleged in the complaint, violated the Fur Act or the rules and regulations by advertising their fur products with comparative prices and percentage savings claims which were not based upon current market values or which failed to give a designated time of a *bona fide* compared price.

ORDER

It is ordered, That respondent I. Rubin, Inc., a corporation, and its officers, and respondents Sheldon R. Rubin and Irving Rubin, as individuals 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, advertisement, offer for sale, transportation, or distribution in commerce of any fur product, or in connection with the sale, advertisement, offer 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:

1. Misbranding fur products by:

A. Falsely or deceptively labeling or otherwise indentifying any such product as to the name or names of the animal or animals that produced the fur from which such products were manufactured.

B. Failing to affix labels to fur products showing:

(1) 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;

(2) That the fur product contains or is composed of used fur, when such is a fact;

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

(4) That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur when such is a fact;

(5) 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;

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

C. Falsely or deceptively labeling or otherwise identifying any such products as to the regular prices or values thereof by any representation

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that the regular or usual price of such product is any amount in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of business.

D. Setting forth on labels attached to fur products:

- (1) Required information in handwriting;
- (2) Nonrequired information mingled with required information.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing:

- (1) 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;
- (2) That the fur product contains or is composed of used fur, when such is a fact;
- (3) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is a fact;
- (4) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is a fact;
- (5) The name and address of the person issuing such invoice;
- (6) The name of the country of origin of any imported fur contained in a fur product.

B. Setting forth required information in abbreviated form.

C. Using the term "blended" to refer to or to describe bleached, dyed, or otherwise artificially colored fur products.

D. Failing to set forth the item number or mark assigned to such products.

3. 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:

A. Fails to disclose:

(1) 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;

(2) That the fur products contain or are composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

B. 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 respondents have usually and customarily sold such products in the recent regular course of business.

C. Makes pricing or savings claims or representations of the type referred to in paragraph 3(B) above unless there are maintained by

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respondents full and adequate records disclosing the facts upon which such claims or representations are based.

It is further ordered, That the allegations of the complaint that respondents caused or participated in the removal of required labels from fur products and advertised their fur products with comparative prices and percentage savings claims which were not based upon current market values or which failed to give a designated time of a *bona fide* compared price be and hereby are dismissed.

OPINION OF THE COMMISSION

By Secrest, Commissioner:

Respondents here are charged in the complaint with engaging in labeling, invoicing, and advertising practices in violation of the Fur Products Labeling Act¹ which, in turn, constitutes a violation of the Federal Trade Commission Act.² The hearing examiner's initial decision containing an order to cease and desist was filed December 31, 1957. The order presented questions as to its proper scope and the Commission on February 27, 1958, placed the case on its own docket for review, no notice of intention to appeal having been filed.

For the reasons stated below, the Commission has concluded that the order should be modified and that, as modified, the initial decision should be adopted as the decision of the Commission.

In addition to its charges pertaining to alleged misbranding and false invoicing, the complaint in this proceeding alleged that the respondents' advertising was in violation of section 5(a)(1) of the Fur Products Labeling Act through their failure to disclose in such advertising the names of the animals producing the constituent furs of the fur products offered; and it further charged violation of section 5(a)(3) through failure to disclose that the fur products were composed of bleached, dyed, or otherwise artificially colored fur. While the complaint also contains additional charges relating to alleged departures in the advertising from the requirements of the Rules and Regulations promulgated under the Act, which charges were properly sustained in part and dismissed in part by the hearing examiner, these matters are not material to the issues discussed here and are not further referred to.

The main question presented on this review of the initial decision pertains to the scope of its order to cease and desist relevant to the violations of section 5(a) found by the hearing examiner. As we have

¹ 15 U.S.C. 69, et seq.

² 15 U.S.C. 41, et seq.

noted above in this regard, the complaint alleges only that respondents have violated sections 5(a) (1) and (3); and the proof and findings go only to those allegations. The complaint makes no charges with regard to sections 5(a) (2), (4), (5) or (6)³ nor are there any findings or proof with regard thereto. The order to cease and desist contained in the initial decision, however, contains prohibitions covering the items of information enumerated in sections 5(a) (1), (2), (3), (4) and (6) of the Act.⁴ The broad form of order contained in the initial decision apparently is based on the rationale of our decision in the matter of *Mandel Brothers, Inc.*, Docket No. 6434 (decided July 5, 1957), which related, however, not to the appropriate scope of orders in proceedings instituted under section 5(a), but to those directed against misbranding and false invoicing practices respectively proscribed under subsection (2) of section 4 and subsection (1) of section 5(b) of the act.

In instances of proved violations of subsection (2) of section 4 and subsection (1) of section 5(b) of the act, it is the Commission's policy to issue an order requiring cessation of the misbranding or the false invoicing by failing to attach to the products labels or to issue to purchasers invoices containing all of the required information. This is because the violations with which these subsections are concerned consist of the failure to attach to the product an adequate label as prescribed in subsection (2) of section 4 or to deliver to the purchaser an adequate invoice as prescribed in subsection (1) of section 5(b), and it is the recognized duty of the Commission to so frame its order as to fully correct the practices found to be unlawful. (In the matter of *Mandel Brothers, Inc.*, *supra*.)

As distinguished from subsection (2) of section 4 and subsection (1) of section 5(b), making labeling and invoicing in the manner there prescribed mandatory, section 5(a) of the act imposes no similar requirement with respect to advertising. It is only when a seller of furs or fur products elects to advertise or otherwise resort to public announcements or notices intended to assist in the sale of his wares that section 5(a) imposes upon him any legal obligation whatsoever, and then only to the extent necessary to avoid confusion and deception. It is apparent, therefore, that violation of section 5(a) consists not in a failure to advertise or to advertise in a specified manner, but rather in the use of advertising which is deceptive. Thus, the Commission, in proceeding under this section, is seeking merely to prohibit advertising

³ These provisions of the act relate respectively to failure to disclose that fur is used fur; that fur products are composed of paws, tails, bellies or waste fur; to the use of names of animals other than those specified in the Fur Products Name Guide; and lastly, to failure to disclose the country of origin.

⁴ The order contains no inhibition pertaining to the matters enumerated in section 5(a)(5), however.

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practices which are false or misleading, and its orders, to be effective, need only prohibit the practices which are found to be so and other similar practices, the threat of which in the future is indicated because of their similarity to those engaged in in the past.

It follows that the proscriptions contained in paragraph 3A of the initial decision's order should have been limited to requiring the respondents to comply with sections 5(a)(1) and 5(a)(3) of the act, and that subparagraphs A(2), A(4) and A(5) are unjustified. On the other hand, paragraph 1B of the order is deficient in that it fails to require a disclosure on labels of the information specified in subsection (F) of section 4(2) of the act, namely, the country of origin of any imported furs contained in the respondents' garments. Paragraphs 1B and 3A of the order are being modified accordingly.

FINAL ORDER

This matter having come on for review of the hearing examiner's initial decision by the Commission in regular course, and the Commission having concluded for the reasons stated in the accompanying opinion that the initial decision is an appropriate and adequate disposition of the proceeding except that the order to cease and desist should be modified in certain respects:

It is ordered, That paragraph 1B of the order to cease and desist be, and it hereby is, modified by adding to it a sixth subparagraph reading as follows: "The name of the country of origin of any imported furs used in the fur product."

It is further ordered, That paragraphs 3A (2), (4) and (5) of the order to cease and desist be, and they hereby are, deleted.

It is further ordered, That, as so modified, the initial decision be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent I. Rubin, Inc., a corporation, and respondents Sheldon R. Rubin and Irving Rubin 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 contained in the initial decision as modified.

Decision

IN THE MATTER OF
LURKIS FURS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 6917. Complaint, Oct. 17, 1957—Decision, Apr. 1, 1958*

Consent order requiring a furrier in Newark, N.J., to cease violating the Fur Products Labeling Act by removing required labels from fur products prior to delivery to the ultimate consumer; failing to comply with the invoicing and labeling requirements; and advertising fur products falsely as being from the stock of a liquidating business.

Mr. S. F. House for the Commission.

Parsonnet, Weitzman & Oransky, by *Mr. Samuel Weitzman*, of Newark, N.J., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with removal of labels from certain of its fur products, and with misbranding and falsely and deceptively invoicing and advertising said products, in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, and of the Federal Trade Commission Act.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and the assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Lurkis Furs, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 106 Halsey Street, Newark, N.J., and that respondent Jacob Lurkis is president of said corporation and formulates, directs and controls the acts, policies and practices thereof, his address being the same as that of the corporate respondent.

The agreement provides, among other things, that the respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless