

Decision

IN THE MATTER OF
BENJAMIN P. CANIGLIA
TRADING AS INTERNATIONAL COMPANY

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

Docket 6813. Complaint, June 3, 1957—Decision, Sept. 30, 1958

Order requiring a furrier in Fullerton, Calif., to cease violating the Fur Products Labeling Act by removing required labels from fur products before delivery to the ultimate consumer; by failing to disclose on labels that certain products contained secondhand used fur, and failing to comply with other labeling and invoicing requirements by advertisements in letters falsely stating that enclosed credit checks reduced the prices of fur products; and by offering products for sale at purported reduced prices without maintaining adequate records as a basis for such pricing claims.

Mr. Harry E. Middleton, Jr., and Mr. John J. McNally for the Commission.

No appearance on behalf of respondent.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On June 3, 1957, the Federal Trade Commission issued its complaint against Benjamin P. Caniglia (erroneously referred to in the complaint as Benjamin B. Caniglia), an individual trading as International Company, charging him with violation of the Federal Trade Commission Act, the Fur Products Labeling Act and the Rules and Regulations promulgated under said Fur Products Labeling Act. From the record it appears that the complaint could not be served by mail and personal service was made on July 11, 1957. The complaint, so served, contained a notice that a hearing would be held on August 14, 1957, in Fullerton, Calif., on the charges set forth therein. The Hearing Examiner issued an order on August 7, 1957, postponing the initial hearing to September 16, 1957, which could not be served upon respondent. However, the hearing examiner's notice of April 7, 1958, scheduling the initial hearing on April 28, 1958, in Los Angeles, Calif., was personally served on the respondent by leaving the same at his last known address.

On April 28, 1958, the initial hearing was held, as scheduled, at which hearing counsel supporting the complaint was present but the respondent was not present, either in person or by coun-

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sel, and that fact was duly noted of record. It was also noted on the record that no answer to the complaint was filed by the respondent. Counsel supporting the complaint moved that a default order to cease and desist be entered and stated that a proposed form of such order would be forwarded to the hearing examiner. On May 19, 1958, a form of said order was submitted to the hearing examiner. Accordingly, the following findings, conclusions and order are entered:

FINDINGS OF FACT

PARAGRAPH 1. Respondent Benjamin P. Caniglia is an individual doing business as International Company, with his residence at 1024 North Stanford Avenue, Fullerton, Calif.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been engaged in the introduction into commerce, in the sale, advertising and offering for sale in commerce, and in transportation and distribution in commerce of fur products, and has 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 Products Labeling Act.

PAR. 3. Respondent removed or participated in the removal of, prior to the time certain of said fur products were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such fur products, in violation of Section 3(d) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act, in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Respondent failed to disclose that the fur contained in the fur products were second-hand used fur, when such was the fact, in violation of Rules 21 and 23.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder was

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mingled with nonrequired information on labels in violation of Rule 29(a).

(c) Required item numbers were not contained on labels in violation of Rule 40.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations thereunder.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act, in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations thereunder was set forth in abbreviated form in violation of Rule 4.

(b) Said invoices failed to disclose the item numbers or marks assigned to fur products in violation of Rule 40.

PAR. 8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that said respondent caused the dissemination of certain advertisements concerning said fur products by means of false representations and letters with credit checks enclosed and by various other means, which advertisements were not in accordance with the provisions of Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and which advertisements were intended to and did aid, promote and assist in the sale and offering for sale of said fur products.

PAR. 9. Among and included in the advertisements as aforesaid but not limited thereto, were letters with credit checks enclosed which the respondent caused to be disseminated through the United States mails to a substantial number of the general public.

By means of the aforesaid letters with credit checks enclosed and through other advertisements of similar import and meaning not specifically referred to herein respondent falsely and deceptively represented as follows:

We did not hear from you. Perhaps you did not hear our radio program over KBAB and XERB. Your name has been Selected. You are the Lucky Winner of the enclosed credit check to be applied toward any fur garment at the International Co. We have beautiful fur stoles for as low as \$69. This is a

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give away that will never be repeated. Imagine getting a beautiful fur stole for as low as \$29 with your credit check which is the same as money in our store.

Look at your additional gift certificate plus your credit check.

Please Tell Your Close Ones About Your Good Luck As We Wish To Serve You In Years To Come.

PAR. 10. The aforesaid statements and representations were false and deceptive. In truth, the fur products offered for sale by the respondent were not sold at prices below the usual or regular prices. While the recipients of the checks were allowed to apply the amounts designated therein as a part of the price charged for the fur products purchased, such applications did not result in any savings or reductions from the usual or regular prices for such fur products since such prices were increased by adding thereto the amount set out in the credit check with the result that purchases made in connection with the credit checks were actually at regular or usual prices. Such statements and representations are in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 11. In advertising and offering the said fur products for sale, as aforesaid, respondent used comparative prices and represented that the prices at which the said fur products were offered for sale were reduced prices from the regular price of the said fur products or that said fur products were of a value greater than the advertised sale price. Respondent in making such pricing claims and representations failed to maintain full and adequate records disclosing the facts upon which these claims and representations were based, in violation of Rule 44(e) of the Rules and Regulations.

CONCLUSIONS

The aforesaid acts and practices of respondent, as herein found, are in violation 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; and

Since the respondent has presented neither answer nor appearance, under the default provisions of Rule 3.7(b) of the Commission's Rules of Practice, the hearing examiner declares and finds that respondent Benjamin P. Caniglia is in default.

ORDER

It is ordered, That respondent Benjamin P. Caniglia, an individual trading as International Company, or under any other name, and respondent's representatives, agents, and employees, directly or through any corporate or other device in connection with the introduction into commerce, or 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 products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Removing, or causing the removal, or participating in the removal of labels required to be affixed to fur products, prior to the time fur products are sold and delivered to the ultimate purchaser of such products.

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 Rules and Regulations;

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

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

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

Nonrequired information mingled with information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder.

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3. Failing to set forth on labels attached to fur products:

(a) An item number or mark assigned to fur products as required under Rule 4 of the Regulations;

(b) That the fur products contain secondhand used fur, when such is the fact, in violation of Rules 21 and 23 of the Regulations.

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 Rules and Regulations;

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

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

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is a 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 of the fur product required under Rule 40 of the Regulations.

2. Setting out on invoices information required under Section 5(b) (1) of the Fur Products Labeling Act and the Rules and Regulations thereunder in abbreviated form.

D. Falsely and deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended in the sale or offering for sale of fur products and which:

1. Represents to customers or prospective customers, by letters with credit checks enclosed or otherwise, that fur products offered by respondent have greater selling prices than the prices at which the same are so offered, when such is not the fact;

2. Employs the name or names of any animal or animals other than the name or names provided for under Section 5(a) (1) of the Fur Products Labeling Act.

E. Making price claims or representations in advertising respecting reduced prices, comparative prices or values or quality of furs or fur products, unless there are maintained by respondent

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adequate records disclosing the facts upon 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 did, on the 30th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Benjamin P. Caniglia (erroneously referred to in the complaint as Benjamin B. Caniglia), an individual trading as International Company, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF
BOY-CREST CLOTHES, INC., ET AL.

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

Docket 7113. Complaint, Apr. 9, 1958—Decision, Sept. 30, 1958

Consent order requiring manufacturers in Brooklyn, N.Y., to cease violating the Wool Products Labeling Act by labeling boys' coats falsely as "85% wool, 15% nylon," and by failing to comply in other respects with the labeling provisions of the Act.

Mr. Floyd O. Collins supporting the complaint.

Mr. Henry L. Burkitt, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On April 9, 1958, the Federal Trade Commission issued a complaint charging that Boy-Crest Clothes, Inc., a corporation, and Milton Portman, Fanny Labovich, and Nathan Labovich, individually and as officers of said corporation had violated the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated under the last-named Act by misbranding the wool products they manufacture.

After issuance and service of the complaint, respondents Boy-Crest Clothes, Inc., and Nathan Labovich, together with counsel supporting the complaint, entered into an agreement for a consent order. By the terms of said agreement, it was agreed that the complaint be dismissed as to the respondents Milton Portman and Fanny Labovich.

The order disposes of the matters complained about with respect to Boy-Crest Clothes, Inc., a corporation, and Nathan Labovich, individually and as an officer of said corporation, hereinafter referred to as respondents. The agreement has been approved by the director and assistant director of the Bureau of Litigation.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order: the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the de-