

Decision

IN THE MATTER OF
NEVIUS BROTHERS, INC., ET AL.

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

Docket 6957. Complaint, Nov. 25, 1957—Decision, Oct. 15, 1958

Consent order requiring a furrier in Trenton, N.J., to cease violating the Fur Products Labeling Act by tagging fur products with fictitious prices and failing to comply with other labeling and invoicing requirements; by advertising in newspapers which failed to disclose that certain products contained artificially colored fur and to set out other required information, represented sale prices as reduced from regular prices which were in fact fictitious, and misrepresented percentage reductions; and by failing to keep adequate records as a basis for such pricing claims.

John T. Walker, Esq., in support of the complaint.

Scott Scammell, II., Esq., of Trenton, N.J., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued November 25, 1957, charges the respondents above-named with violation of the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the Rules and Regulations promulgated under the last-named 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 the designations "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act.

After issuance and service of said complaint, respondents Nevius Brothers, Inc., and George Nevius entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding as to them, which agreement was duly approved by the director and assistant director of the Bureau of Litigation. It was provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by the signatory respondents that they have violated the law as alleged in the complaint.

Attached to said agreement, and forming an integral part of same for the purposes of the record, are two affidavits:

- (1) that of respondent George Nevius which recites in sub-

Decision

55 F.T.C.

stance that he is president of the corporate respondent but that his primary responsibility is the management of corporate respondent's store in New Brunswick, N.J., (the alleged violations having taken place in corporate respondent's store in the city of Trenton, N.J.), wherefore affiant-respondent had no knowledge, and was not aware, of the alleged violations; and

(2) that of the named respondent, Harvey C. Voorhees, which recites in substance that his correct name is Harvey C. Voorhees, (incorrectly referred to in the complaint as Harvey M. Voorhees), and that his duties consist of managing and controlling the accounts payable and receivable of the corporate respondent without control, responsibility or managerial direction of the corporate activities forming the basis of the charges of the complaint.

On the basis of the foregoing, and counsel in support of the complaint conceding there is no available evidence to contravene the averments set forth in said affidavits, it was agreed that the complaint shall be dismissed as to George Nevius individually, (but not as an officer of the corporate respondent), and shall also be dismissed as to Harvey C. Voorhees, both as an individual and as an officer of said corporate respondent, all of which is accomplished by the order hereto attached and as in said agreement contained.

By the terms of said agreement, the signatory 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 respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement the signatory respondents further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if 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

561

Order

complaint, shall constitute the entire record herein; that the complaint 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 for other orders of the Commission.

Said agreement recites that respondent Nevius Brothers, Inc., trading as Nevius-Voorhees, and other names, 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 131-135 East State Street, (inadvertently designated in the complaint as 131-135 State Street), in the city of Trenton, State of N.J.

Respondent George Nevius is president of said corporate respondent and has the same address as said corporate respondent.

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, without further notice to respondents, is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein; that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents, Nevius Brothers, Inc., a corporation, trading under the name of Nevius-Voorhees, or under any other name, and its officers (excepting Harvey C. Voorhees, assistant treasurer), and George Nevius, as president 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, 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 are 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:

Order

55 F.T.C.

A. Misbranding fur products by:

1. Representing on labels affixed to the fur products or in any other manner, that certain amounts are the regular and usual prices of fur products when such amounts are in excess of the prices at which respondents usually and customarily sell such products in the recent regular course of their business.

2. 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, or transported or distributed it in commerce;

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

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

3. Setting forth on labels affixed to fur products:

(a) Information required under Section 4 (2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder 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.

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;

561

Order

(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.

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 that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

2. Fails to set out all the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in close proximity with each other and 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 such products were sold in the recent regular course of their business;

4. Represents directly or by implication through percentage savings claims that the regular or usual retail prices charged by respondents for fur products in the recent regular course of their business are reduced in direct proportion to the amounts of savings stated, when contrary to fact.

D. Making price claims or representations in advertisements respecting reduced prices, comparative prices or percentage savings, unless there is maintained by respondents, full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That the complaint be, and hereby is, dismissed as to respondent George Nevius, individually, and as to Harvey C. Voorhees, individually and as an officer of the corporate respondent Nevius Brothers, Inc.

Decision

55 F.T.C.

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 15th day of October 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Nevius Brothers, Inc., a corporation, and George Nevius, as president of said corporation, 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.

Findings

IN THE MATTER OF
REUBEN POMERANTZ JEWELRY CO., INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 6869. Complaint, Aug. 20, 1957—Decision, Oct. 16, 1958*

Order requiring manufacturers in New York City to cease representing falsely, by stamping "14K" on gold spiral chain bracelets and chokers manufactured from gold wire of only 13½ karat fineness, that such products were of 14 karat fineness.

Mr. S. F. House supporting the complaint.

Mr. George Landesman, of New York City, for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

Reuben Pomerantz Jewelry Co., Inc., Reuben Pomerantz, and Hyman Pomerantz, individually and as officers of said corporation, hereinafter referred to as respondents, are charged with violating the provisions of the Federal Trade Commission Act by misrepresenting the gold content of gold spiral chain bracelets and chokers which they manufacture, sell and distribute to jobbers and retailers for resale to the general public.

The complaint alleges that respondents stamp the phrase "14K" on their gold spiral chain bracelets and chokers which, in fact, are manufactured from gold of less than 14 carat fineness. Respondents admitted some and denied other allegations of the complaint and hearings thereon have been completed. Proposed findings of fact, conclusions and proposed order have been submitted by respective counsel. All findings of fact and conclusions of law proposed by respective counsel not hereinafter specifically found or concluded are rejected. Upon the basis of the entire record, the hearing examiner makes the following findings of fact, conclusions, and issues the following order:

FINDINGS OF FACT

1. The respondent Reuben Pomerantz Jewelry Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business at 800 Eighth Avenue, New York,